

A-570-008  
Remand – NSRP: 7/25/14 – 6/30/15  
NSR Remand Court No. 16-00259  
~~Proprietary Document~~  
E&C/V: AB  
**PUBLIC VERSION**

*Haixing Jingmei Chemical Products Sales Co., Ltd. v. United States*

**Court No. 16-00259, Slip Op. 17-159 (CIT December 5, 2017)**

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**

**I. SUMMARY**

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the decision and remand order of the Court of International Trade (CIT or Court) in *Haixing Jingmei Chemical Products Sales Co., Ltd. v. United States*, Court No. 16-00259, Slip Op. 17-159 (CIT December 5, 2017) (*Remand Opinion and Order*). These final remand results concern *Calcium Hypochlorite from the People’s Republic of China: Final Decision to Rescind the New Shipper Review of Haixing Jingmei Chemical Products Sales Co., Ltd.*, 81 FR 83804 (November 22, 2016) (*Final Rescission*), and accompanying Issues and Decision Memorandum (IDM). In its *Remand Opinion and Order*, the CIT remanded the *Final Rescission* for Commerce to determine whether Haixing Jingmei Chemical Products Sales Co., Ltd.’s (Jingmei’s) sales during the period of review were *bona fide*.<sup>1</sup>

As set forth in detail below, pursuant to the CIT’s *Remand Opinion and Order*, we have conducted a *bona fide* sales analysis and determined that Jingmei’s sales are indicative of non-*bona fide* sales, based on the totality of the circumstances surrounding the sales. Commerce finds that we cannot rely on these sales to calculate a dumping margin, and, therefore, there are no sales on which we can base this new shipper review (NSR). Consequently, for the purposes

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<sup>1</sup> See *Remand Opinion and Order* at 16.

of these final results of redetermination on remand, we continue to determine that rescission is appropriate.

On January 29, 2018, we released our draft results of redetermination to interested parties.<sup>2</sup> On February 8, 2018, Jingmei provided comments.<sup>3</sup> We respond to these comments below. After considering these comments and analyzing the record, for purposes of this final remand redetermination, Commerce continues to find that Jingmei's sales are indicative of non-*bona fide* sales.

## II. REMANDED ISSUE

### *Bona Fide Analysis*

#### A. Background

On July 17, 2015, Commerce received a request for a NSR from Jingmei and its affiliated producer, Haixing Eno Chemical Co., Ltd. (Eno).<sup>4</sup> On August 26, 2015, Commerce initiated this NSR.<sup>5</sup> Jingmei had two sales of subject merchandise to the United States during the period of review (POR) for this NSR.<sup>6</sup> Jingmei sold calcium hypochlorite produced by Eno to [ ], a [ ] reseller of swimming pool supplies,<sup>7</sup> who then sold the goods to the ultimate U.S. customer, [ ]

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<sup>2</sup> See Department Letter re: "Draft Remand Determination in the New Shipper Review of Calcium Hypochlorite from the People's Republic of China; 7/25/14 – 6/30/15," dated January 29, 2018 (Draft Remand).

<sup>3</sup> See Jingmei's Letter re: "Calcium Hypochlorite from the People's Republic of China Refiling Comments on Draft Remand Redetermination Comments on Draft Remand," dated January 29, 2018 (Draft Comments).

<sup>4</sup> See Letter re: "Calcium Hypochlorite from the People's Republic of China Entry of Appearance and Request for New Shipper Review," dated July 17, 2015 (NSR Request); *see also* Letter re: "Calcium Hypochlorite from the People's Republic of China Entry of Appearance and Corrected Request for New Shipper Review," July 20, 2015 (Corrected NSR Request).

<sup>5</sup> See *Calcium Hypochlorite from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2014–2015*, 80 FR 51774 (August 26, 2015).

<sup>6</sup> See Corrected NSR Request at 3 and Exhibit 2.

<sup>7</sup> See Letter re: "Calcium Hypochlorite from the People's Republic of China Section A Response," dated September 16, 2015 (SAQR) at 22-24.

].<sup>8</sup> Jingmei sold the goods to [ ] under [ ] terms, and title to the subject merchandise transferred immediately to [ ] when the goods left Eno's plant;<sup>9</sup> [ ] sold the merchandise to [ ] on [ ], and title was transferred to [ ] when the goods [ ].<sup>10</sup> Pursuant to the sales terms, [ ] for the sales of subject merchandise.<sup>11</sup>

Pursuant to the sales terms, Jingmei did not incur any shipment expenses and [ ] paid for shipment to [ ] on the first sale and to [ ] on the second sale.<sup>12</sup> However, Jingmei stated that because [ ] is not a company registered in Mainland China, Jingmei completes the Chinese customs declaration formalities for exporting purposes and is listed as the [ ] in the Chinese customs declaration documents.<sup>13</sup> [ ] was responsible for [ ] associated with the transactions.<sup>14</sup> [ ] acted as the importer of record and paid the U.S. import processing fees<sup>15</sup> and [ ].<sup>16</sup> Jingmei and Eno report that they have not made any sales of subject merchandise to the United States subsequent to the POR.<sup>17</sup>

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<sup>8</sup> See, e.g., Letter re: "Calcium Hypochlorite from the People's Republic of China Supplemental Section A Questionnaire Response," dated December 28, 2015 (SuppA) at 1-2.

<sup>9</sup> *Id.* at 16.

<sup>10</sup> *Id.* at 21-22.

<sup>11</sup> See, e.g., SuppA at 22-23; Letter re: "Calcium Hypochlorite from the People's Republic of China Supplemental Section A and C Questionnaire Response," dated April 11, 2016 (SuppAC), at 11.

<sup>12</sup> See SuppA at 3-4.

<sup>13</sup> See SuppAC at 2-3.

<sup>14</sup> See SuppA at 5 and 22.

<sup>15</sup> *Id.* at 24-25.

<sup>16</sup> *Id.* at Exhibit SQ1-6.

<sup>17</sup> See SAQR at 17.

Commerce preliminarily determined to rescind the review, finding that there was insufficient information on the record to conduct a *bona fide* analysis.<sup>18</sup> In the *Final Rescission*, we made no changes to this preliminary determination and rescinded the NSR with respect to Jingmei.<sup>19</sup>

Jingmei challenged Commerce's *Final Rescission* at the CIT. In the *Remand Opinion and Order*, the CIT held that substantial evidence did not support Commerce's reasoning that it lacked sufficient information to conduct the *bona fide* analysis.<sup>20</sup> The Court remanded the *Final Rescission* to Commerce so that we may determine whether Jingmei's sales during the POR are *bona fide*, based on the record evidence.<sup>21</sup> For purposes of these final remand results, Commerce has completed a *bona fide* analysis of Jingmei's sales during the POR.

## **B. Framework for Analysis**

Section 751(a)(2)(B)(iv) of the Act was recently amended<sup>22</sup> to codify the criteria Commerce will examine to determine whether sales, such as the sales by Jingmei under review in this NSR, are *bona fide*. Any weighted average dumping margin determined in a NSR shall solely be based on *bona fide* sales during the POR.<sup>23</sup> In evaluating whether the sales in a NSR are commercially reasonable or typical of normal business practices, and therefore *bona fide*, Commerce considers, "depending on the circumstances surrounding such sales":

(I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in

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<sup>18</sup> See *Calcium Hypochlorite from the People's Republic of China: Preliminary Intent To Rescind the New Shipper Review of Haixing Jingmei Chemical Products Sales Co., Ltd.*, 81 FR 41522, 41523 (June 27, 2016).

<sup>19</sup> See *Calcium Hypochlorite from the People's Republic of China: Final Decision To Rescind the New Shipper Review of Haixing Jingmei Chemical Products Sales Co., Ltd.*, 81 FR 83804 (November 22, 2016).

<sup>20</sup> See *Remand Opinion and Order* at 9.

<sup>21</sup> *Id.* at 16.

<sup>22</sup> See Section 433 of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016) (adding a new section 751(a)(2)(B)(iv) entitled, "Determinations based on *bona fide* sales").

<sup>23</sup> See Section 751(a)(2)(B)(iv) of the Act.

the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.<sup>24</sup>

Although some *bona fide* issues may share commonalities across various cases, Commerce examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.<sup>25</sup> Accordingly, Commerce considers a number of factors in its *bona fide* sales analysis and, in examining the totality of the circumstances, Commerce looks to whether the transaction is “commercially unreasonable” or “atypical of normal business practices.”<sup>26</sup> In *TTPC*, the CIT affirmed Commerce’s practice of considering that “any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,” and found that “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”<sup>27</sup> The CIT has also affirmed that Commerce may evaluate the circumstances surrounding a new shipper review sale so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer’s usual commercial practice would dictate.<sup>28</sup> Moreover, Commerce’s practice makes clear that Commerce will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order.<sup>29</sup> Thus, a

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<sup>24</sup> *Id.*

<sup>25</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (*New Donghua*) (*New Donghua*).

<sup>26</sup> See *New Donghua*, 374 F. Supp. 2d at 1340 citing *Windmill Int’l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1313 (CIT 2002) (*Windmill*), and *Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1260 (CIT 2005) (*TTPC*).

<sup>27</sup> See *TTPC*, 366 F. Supp. 2d at 1250, 1263.

<sup>28</sup> See *New Donghua*, 374 F. Supp. 2d at 1344.

<sup>29</sup> *Id.* at 1339.

respondent is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold the merchandise in a manner representative of its future commercial practice.<sup>30</sup>

### C. Questionnaire Responses

Commerce issued to Jingmei its standard NSR questionnaire on August 26, 2015.<sup>31</sup> Commerce determined that it needed additional information from Jingmei, its reseller, and U.S. customer TTPC to analyze the factors outlined in the statute. Subsequently, Commerce issued questionnaires between November 30, 2015, and April 18, 2016.<sup>32</sup> The record information included in Jingmei's questionnaire responses is detailed below.

In Appendix IX of the standard NSR questionnaire, Commerce solicits information from the importer of the goods subject to the NSR regarding: 1) history, organization, ownership and affiliations; 2) sales during the POR; 3) other purchases of subject merchandise; and 4) resale of subject merchandise.<sup>33</sup> The purpose of this information is to provide Commerce with the facts needed to analyze the statutory factors of Section 751(a)(2)(B)(iv) of the Act. Respondents are instructed in the questionnaire to answer the questions where possible and, if they are not able to

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<sup>30</sup> See *TTPC*, 366 F. Supp. 2d at 1250, 1263.

<sup>31</sup> See Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China," dated August 26, 2015.

<sup>32</sup> See Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China - Supplemental Questionnaire," dated November 30, 2015; Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China - Questionnaire," dated December 1, 2015; Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China - Supplemental Questionnaire," dated December 9, 2015; Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China - Domestic Subsidies Supplemental Questionnaire," dated January 11, 2016; Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China - Section D Supplemental Questionnaire," dated February 3, 2016; Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China - Supplemental Section A, C, and Customer Questionnaire," dated March 28, 2016; Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China - Second Section D Supplemental Questionnaire," dated March 28, 2016; Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China - Supplemental Questionnaire," dated April 18, 2016.

<sup>33</sup> See, e.g., Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China," dated August 26, 2015, at Appendix IX.

fully respond, forward the appendix to the importer and include the importer's responses in their response.<sup>34</sup>

In response to a request for a list of the companies from which [ ] purchased subject merchandise, and the quantity, value, and date of each purchase, [ ] responded that it "considers that the list of companies from whom we have purchased, including quantity, value and date of each purchase, to be highly confidential and sensitive information not to be disclosed to any other parties."<sup>35</sup> [ ] further stated that it "confirmed that the prices as from Jingmei were within the normal range of our prices from other suppliers."<sup>36</sup> In response to a request for the names, addresses and facsimile numbers of the companies from which [ ] purchased subject merchandise during or subsequent to the POR, [ ] responded that it considers "the requested information to be highly confidential and {is} not in a position to disclose it."<sup>37</sup> The purpose of Commerce requesting this information from [ ] is to determine whether the price and quantity of the sales subject to this NSR are not atypical and whether the subject sales provide a reasonable basis to calculate an antidumping duty margin.

Commerce issued a supplemental questionnaire to [ ], again requesting the information [ ] refused to provide, as well as additional information, and also issued Appendix IX to the ultimate U.S. customer [ ]. In response, [ ] again refused to provide the requested information, stating that the "requested information is highly confidential information of [ ]" and that they "are not in the position to

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<sup>34</sup> See, e.g., SAQR at 22.

<sup>35</sup> *Id.* at 26.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 27.

release such confidential information to anyone in accordance with the law.”<sup>38</sup> [ ] refused to identify its downstream customers to whom it sold the subject merchandise under review, stating that its “customer information is highly confidential, and {it} will not release such information as protected by laws.”<sup>39</sup> We also requested of [ ] the details regarding any purchases that it made from [ ] subsequent to its purchase of merchandise covered by this review (*i.e.*, invoices, contracts, sales negotiation documents) and [ ] again responded that its “purchase information is highly confidential, and we are not in the position to release any such purchase information other than the sales covered by this review.”<sup>40</sup>

In light of the repeated refusals of Jingmei’s customer and the ultimate U.S. customer to provide vital requested information, Commerce advised Jingmei in a supplemental questionnaire that the requested information is necessary for Commerce’s analysis and encouraged complete responses to our requests for information.<sup>41</sup> We also advised [ ] and [ ]

[ ] that the requested information is required for Commerce’s analysis and that “{f}ailure to provide requested information may affect Commerce’s determination as to the *bona fide* nature of the sales subject to this review.”<sup>42</sup> In an effort to alleviate any concerns as to the protection of their proprietary information, Commerce also advised [ ] and [ ] of the following:

Information submitted by interested parties in antidumping duty proceedings is protected by an administrative protective order (“APO”), which is the mechanism under which the Department regulates and insures the security of proprietary

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<sup>38</sup> See SuppA at 21.

<sup>39</sup> See Letter re: “Calcium Hypochlorite from the People’s Republic of China Customer’s Supplemental Questionnaire Response,” dated December 28, 2015 (Customer Response) at 3.

<sup>40</sup> *Id.* at 6.

<sup>41</sup> See Letter re: “Supplemental Section A, C, and Customer Questionnaire,” dated March 28, 2016, at Attachment I.

<sup>42</sup> *Id.* at Attachment II and III.



information released to APO authorized representatives involved in antidumping duty proceedings. Information submitted under an APO may only be released to authorized legal counsel and the owners of said information, and may not be disclosed to any other party. If {[ ]} is concerned about maintaining the security of its business proprietary information, it may submit its response to these questions, by the above referenced deadline, under separate cover.<sup>43</sup>

However, in response, [ ] and [ ] provided select information piecemeal and refused to provide other information. [ ] explicitly refused to provide the following:

1. Copies of the sales ledger and accounting vouchers that document all purchases of subject merchandise from Jingmei during the POR – [ ] stated that “for our sales ledgers, we cannot disclose them because they contain other financial information related to an unaffiliated company.”<sup>44</sup>
2. Copies of the ledgers showing where payment of any movement expense paid for by [ ] associated with its purchases of subject merchandise from Jingmei during the POR were booked – [ ] stated that “we are not in the position to provide other financial ledgers for the purpose of this review.”<sup>45</sup>

[ ] explicitly refused to provide the following:

1. Copies of the accounting records demonstrating where purchases of [ ] were recorded – [ ] stated that it is “not in the position to provide any other financial or accounting systems, as would include sensitive confidential company information.”<sup>46</sup>
2. Copies of accounting records documenting where payment of all freight expenses paid for by [ ] are recorded – [ ] stated that it is “not in the position to provide other accounting systems, as it contains other sensitive company information.”<sup>47</sup>

In addition to the information that [ ] and [ ] explicitly refused to provide, both parties also provided limited responses, limited documentation, or no answers at all, to the following requests for information:

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<sup>43</sup> *Id.*

<sup>44</sup> *See* SuppAC at 8.

<sup>45</sup> *Id.* at 9.

<sup>46</sup> *Id.* at 11.

<sup>47</sup> *Id.* at 12.

1. We asked [ ] for a sales listing of all sales to [ ] from all suppliers during the POR, including invoice numbers – [ ] did not provide invoice numbers for such sales.<sup>48</sup>
2. We asked [ ] for invoices supporting movement expenses it incurred – [ ] only provided [ ] of [ ] invoices.<sup>49</sup>
3. We asked [ ] for broker invoices, accounting vouchers and expense ledger documentation supporting its claim that it [ ] for both sales – [ ] failed to provide accounting vouchers and expense ledger documentation and only provided “broker invoices and payments of import duties.”<sup>50</sup> The “payment” documentation appears to be two partial screen shots from a banking website that does not identify the remitter and does not conclusively support payment. Specifically, the screen shot states: [ ]  
[ ]<sup>51</sup> Thus, apart from providing insufficient detail (*i.e.*, remitter name), [ ] “payment” documentation also does not appear to be a final transaction confirmation and does not support payment of import duties, as claimed.
4. We asked [ ] for purchase orders and commercial invoices supporting procurement of [ ] – [ ] only provided [ ] of [ ] purchase orders and stated that the supplier did not issue invoices.<sup>52</sup>
5. We asked [ ] for images of the [ ] the merchandise subject to this review, including a clear image of the labels affixed to each – [ ] only provided one image of a [ ], of insufficient clarity to read the entire label, and stated that the [ ] were sold out and it could not provide images at that time.<sup>53</sup>
6. We asked [ ] for documentation demonstrating its resale of all of the merchandise subject to this review – [ ] only provided two sample resale invoices.<sup>54</sup>
7. We asked [ ] for a sales listing of all purchases of subject merchandise, including invoice date, invoice number, supplier name and address, quantity, value, and sales terms - [ ] provided in response to a subsequent question a “list of all

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<sup>48</sup> *Id.* at 8 and Exhibit SQ7-6.

<sup>49</sup> *Id.* at 9 and Exhibit SQ7-7.

<sup>50</sup> *Id.* at 9 and Exhibit SQ7-8.

<sup>51</sup> *Id.* at Exhibit SQ7-8.

<sup>52</sup> *Id.* at 11.

<sup>53</sup> *Id.* at 11-12 and Exhibit SQ7-11.

<sup>54</sup> *Id.* at 11-12 and Exhibit SQ7-13.

purchases of subject merchandise {it} made during the POR” that only included the [ ] and no other information.<sup>55</sup>

8. We asked [ ] for the details of any purchases from [ ] subsequent to its purchase of merchandise covered by this review, including invoices, contracts and sales negotiation documents – [ ] referred to the sales list addressed in item 7, above, and provided no other information.<sup>56</sup>

Upon receipt of the deficient responses from [ ] and [ ] noted above, Commerce issued a supplemental questionnaire to Jingmei requesting that Jingmei describe and document its efforts to encourage and ensure full cooperation from Jingmei’s downstream customers in responding to our requests for information.<sup>57</sup> Jingmei stated that it attempted to encourage its downstream customers to provide full cooperation “but because these downstream customers are not affiliated with Jingmei, Jingmei has no control over them and only has a business buyer-seller relationship with the companies.”<sup>58</sup> Email communication submitted by Jingmei indicates that after initial receipt of the deficient responses, Jingmei contacted [ ] to request the information and in response to Jingmei’s request, [ ] stated the following:

“[

]”<sup>59</sup>

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<sup>55</sup> *Id.* at 12-13 and Exhibit SQ7-14.

<sup>56</sup> *Id.*

<sup>57</sup> See Letter re: “Supplemental Questionnaire Response,” dated April 20, 2016 (April Supp Response) at 1-2 and Exhibit SQ8-1.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

#### **D. Analysis of Jingmei's New Shipper Sales**

Using the factors set forth in section 751(a)(2)(B)(iv) of the Act, we have analyzed the evidence on the record with respect to whether Jingmei's two sales under review are *bona fide* transactions and therefore reviewable under the new shipper provisions of Commerce's regulations.

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or if an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.<sup>60</sup> In so doing, and under the TPEA,<sup>61</sup> Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party

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<sup>60</sup> See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

<sup>61</sup> On June 29, 2015, the TPEA made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See *Applicability Notice*, 80 FR at 46794-95. Therefore, the amendments apply to this NSR.

had complied with the request for information.<sup>62</sup> In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>63</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>64</sup> It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>65</sup>

Here, we find that Jingmei, [ ], and [ ] failed to cooperate to the best of their ability in this NSR. As noted in the questionnaire section of this *bona fide* analysis, certain necessary information to evaluate whether Jingmei’s two sales are *bona fide* is not on the record, or not on the record in the form and manner requested, despite requesting this information from Jingmei’s reseller and ultimate U.S. customer, pursuant to section 782(d) of the Act. Thus, consistent with section 776(a) of the Act, we find it necessary to evaluate Jingmei’s sales using facts otherwise available. During this new shipper review, we issued multiple supplemental questionnaires to each party, and advised Jingmei, [ ] and [ ] that confidential information is protected by APO. Accordingly, we are relying, in part, on adverse inferences with respect to our interpretation of the facts available and thus, some of the

<sup>62</sup> See section 776(b)(1)(B) of the Act.

<sup>63</sup> See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2005).

<sup>64</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

<sup>65</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying IDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

weight we put on the record evidence is affected by the parties' lack of cooperation and adverse inferences.

### 1. Price and Quantity of the Sales

The goal of our *bona fide* sales analysis in a NSR is to ensure that the U.S. price used in the dumping calculation is realistic and indicative of prices at which the respondent will sell the product in the future.<sup>66</sup> Otherwise, the respondent may benefit from obtaining a low dumping margin based on an atypical price that does not reflect the respondent's usual commercial practices. If Commerce determines that the price was not based on normal commercial considerations or is atypical of the respondent's future sales, the sale may be considered not *bona fide*.<sup>67</sup> Further, while an aberrational sales quantity may not be sufficient, by itself, to warrant a finding that a transaction is not *bona fide*, when analyzed together with the totality of the circumstances of the sale, the aberrational quantity of the sale informs our decision as to whether the sale was *bona fide*.<sup>68</sup>

Jingmei had two export price sales of subject merchandise during the POR to its customer, [ ], and the ultimate U.S. customer, [ ], the latter of whom [ ] for the sales of subject merchandise. The quantity of those sales was [ ] kilograms (kg) and [ ] kg, and the per-unit value of those sales was [ ] and [ ] U.S. dollars/kg, respectively.<sup>69</sup>

<sup>66</sup> See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review*; 2015, 82 FR 1317 (January 5, 2017) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>67</sup> See *American Silicon Technologies v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000) (*Silicon Technology*); see also *Windmill*, 193 F. Supp. 2d at 1307.

<sup>68</sup> See *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439, 1440 (January 10, 2003) and accompanying Issues and Decision Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews*, 68 FR 52746, 52747 (September 5, 2003).

<sup>69</sup> See, e.g., Corrected NSR Request at Exhibit 2.

To determine whether the price and quantity of these two sales are reflective of Jingmei's usual commercial practices and indicative of prices and quantities that Jingmei will sell the subject merchandise in the future, Commerce requested from [ ] a list of the companies from which [ ] purchased subject merchandise during the POR, and the quantity, value, and date of each purchase. [ ] did not provide Commerce with this information, stating that it "confirmed that the prices as from Jingmei were within the normal range of our prices from other suppliers."<sup>70</sup> Commerce also requested from [ ] a list of its downstream customers to whom it sold the subject merchandise under review, and details regarding any purchases that it made from [ ] subsequent to its purchase of merchandise covered by this review (*i.e.*, invoices, contracts, sales negotiation documents).<sup>71</sup> [ ] did not provide Commerce with this information.<sup>72</sup>

In a supplemental questionnaire, Commerce requested that Jingmei account for the gross unit price difference between the two sales.<sup>73</sup> Jingmei responded that, for the first sale, it "offered [ ] for marketing purposes."<sup>74</sup> Commerce also requested that Jingmei submit copies of all documentation related to its efforts to encourage its downstream customers to respond to Commerce's questionnaires.<sup>75</sup> In response, Jingmei submitted a copy of email correspondence between Jingmei and its customer [ ].<sup>76</sup> In this email correspondence, [ ] explained that a part of its reasoning for [ ]

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<sup>70</sup> See SAQR at 26.

<sup>71</sup> See Customer Response at 3.

<sup>72</sup> *Id.*

<sup>73</sup> See, e.g., Letter re: "Calcium Hypochlorite from the People's Republic of China: Supplemental Section C Questionnaire Response," dated December 23, 2015 (SuppC) at 5.

<sup>74</sup> *Id.*

<sup>75</sup> See April Supp Response at 1-2 and Exhibit SQ8-1.

<sup>76</sup> *Id.*

] requested by Commerce was because it “[  
]”<sup>77</sup>

Here, the record lacks sufficient objective, verifiable evidence to support the claim that the price and quantity of Jingmei’s sales are reflective of Jingmei’s usual commercial practices and indicative of prices and quantities Jingmei will sell the subject merchandise in the future.<sup>78</sup>

[ ], [ ], statement that its purchase prices from Jingmei were within the normal range of its purchase prices from other suppliers is not substantiated by objective evidence on the record. Therefore, because such necessary information has been withheld, we considered available information on the record.<sup>79</sup>

Accordingly, we determine that the information that we do have on the record raises concerns that these two sales are not indicative of future sales by Jingmei. First, Jingmei admitted that it offered a [ ] for the first sale. Second, [ ] stated to Jingmei that it [ ]. The first statement indicates the second [ ] The second statement reflects [ ] Taken together, these statements suggest that the price and quantity of the sales may not be typical or based on normal commercial considerations. Thus, in light of these statements and the failure to provide necessary information, as requested, we find these factors weigh against a finding that Jingmei’s sales are *bona fide*.<sup>80</sup>

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<sup>77</sup> *Id.*

<sup>78</sup> See *New Donghua*, 341 F. Supp. 2d at 1339.

<sup>79</sup> See sections 776(a)(1) and (a)(2)(A) of the Act.

<sup>80</sup> See section 782(d) and section 776(b) of the Act.



## 2. Timing

The POR for this NSR is July 25, 2014, through June 30, 2015. Jingmei reported that the following sequence of events resulted in its two POR sales:

- Jingmei and [ ] negotiated the sales terms at a face-to-face meeting during a swimming pool trade show from [ ].<sup>81</sup> Jingmei reports that a couple of phone calls were made after the meeting to finalize the sales terms.<sup>82</sup>
- For the first sale, [ ] submitted a purchase order to [ ], and [ ] submitted a [ ] to Jingmei on [ ].<sup>83</sup> Jingmei issued a commercial invoice to [ ] on [ ] and [ ] issued a commercial invoice to [ ] on [ ], the same day listed as the [ ] on the Customs Form 7501.<sup>84</sup> [ ] remitted payment to [ ] on [ ] and [ ] remitted payment to Jingmei on [ ].<sup>85</sup>
- For the second sale, [ ] purchased [ ] on [ ] from an unaffiliated third party which were delivered directly to Eno's factory.<sup>86</sup> On the same day, [ ] submitted a purchase order to [ ], for the subject merchandise.<sup>87</sup> On [ ], [ ] submitted a [ ] to Jingmei.<sup>88</sup> Jingmei issued a commercial invoice to [ ] on [ ] and [ ] issued a commercial invoice to [ ] on [ ], the same day listed as the [ ] on the Customs Form 7501.<sup>89</sup> [ ] remitted payment to [ ] on [ ] and [ ] remitted payment to Jingmei on [ ].<sup>90</sup>

### *Timing of Sales*

In accordance with section 751(a)(2)(B)(iv)(III) of the Act, we examined the timing of these sales. Although the second sale occurred near the end of the POR, we note that this is not unusual for NSR sales and, by itself, does not indicate that the sale was not made on a *bona fide*

<sup>81</sup> See SuppA at 12-13.

<sup>82</sup> *Id.*

<sup>83</sup> See NSR Corrected Request at Exhibit 2.

<sup>84</sup> *Id.*; see also SuppA at Exhibit SQ1-6.

<sup>85</sup> *Id.*

<sup>86</sup> See SuppAC at 11 and Exhibit SQ7-10.

<sup>87</sup> See SuppA at Exhibit SQ1-6.

<sup>88</sup> See Corrected NSR Request at Exhibit 2.

<sup>89</sup> See Corrected NSR Request at Exhibit 2; SAQR at Exhibit 7; SuppA at Exhibit SQ1-6.

<sup>90</sup> *Id.*

basis. Therefore, we preliminarily find that the timing of the sales does not indicate that Jingmei's sales were made on a non-*bona fide* basis.

*Timing of Payment*

Commerce may also consider the timing of payment in determining whether a sale is *bona fide*.<sup>91</sup> In determining whether the timing of payment indicates a sale as *bona fide*, Commerce will look at the sales terms and determine when payment was due. If payment is untimely, Commerce will examine whether or not there was any attempt to collect on the overdue payments.<sup>92</sup>

For both sales, payment terms required that [ ] pay [ ]  
[ ].<sup>93</sup> Jingmei explained that according to these payment terms, payment should be made [ ].<sup>94</sup> For the first sale, [ ] remitted payment to Jingmei on [ ], [ ] days after the [ ].<sup>95</sup> For the second sale, [ ] remitted payment to Jingmei on [ ], [ ] days after the [ ].<sup>96</sup> In response to Commerce's inquiry as to why there was a significant discrepancy in [ ], Jingmei explained that "sometimes the customer did not pay exactly in accordance with the payment terms."<sup>97</sup>

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<sup>91</sup> See *TTPC* at 1258.

<sup>92</sup> See *TTPC* at 1259; see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Intent to Rescind Antidumping Duty New Shipper Reviews; 2013-2014*, 80 FR 4544 (January 28, 2015) and accompanying Issues and Decision Memorandum at comment 1, unchanged in *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission of Antidumping Duty New Shipper Reviews; 2013-2014*, 80 FR 36970 (June 29, 2015).

<sup>93</sup> See Corrected NSR Request at Exhibit 2.

<sup>94</sup> See SuppC at 4.

<sup>95</sup> See SAQR at Exhibit 7; SuppA at Exhibit SQ1-6.

<sup>96</sup> *Id.*

<sup>97</sup> See SuppC at 3.

Commerce has found that allowing payment to go uncollected departs from normal commercial business practices.<sup>98</sup> While late payment, by itself, may not indicate that a sale is not *bona fide*, the [ ] in payment date [ ], and the lack of record evidence showing that Jingmei made any attempt to collect payment during the [ ] in which the payments went uncollected, indicates a departure from normal business practices.<sup>99</sup> Accordingly, the timing surrounding [ ] payment for the sales suggests that the sales may be non-*bona fide*.

### 3. Expenses Arising from the Sales

Pursuant to section 751(a)(2)(B)(iv)(IV) of the Act, we considered the expenses arising from the two sales. Additionally, we considered the sales terms in our analysis of the expenses to determine whether the two sales under review are in line with the new shipper's typical sales practice.<sup>100</sup> In order to analyze whether or not the sales expenses are typical, it is critical to have a complete and accurate record of each expense on the record. This requires documentation supporting the amount of each expense incurred, which party paid each expense, and documentation which ties the payment to both the sale and the company's books and records.

Here, the record is missing substantial information and documentation necessary to substantiate the purported sales terms, and to indicate which parties incurred the expenses associated with foreign inland freight, foreign brokerage and handling, international freight, and import duties, and [ ]. Because [ ] and [ ] did not provide the necessary information in the form and manner requested by Commerce, despite multiple questionnaires, we review the facts otherwise available, with an adverse inference, to determine

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<sup>98</sup> See *TTPC* at 1259-60.

<sup>99</sup> *Id.* at 1258.

<sup>100</sup> See *Am. Silicon Techs. v. United States*, 24 C.I.T. 612, 627, 110 F.Supp.2d 992 (2000).

whether the expenses arising from the sales are indicative of *bona fide* transactions, consistent with sections 782(d) and section 776(b) of the Act.

Regarding foreign inland freight and foreign brokerage and handling, Jingmei states that because the sales to [ ] were made [ ], it did not incur [ ] expenses and that [ ] paid for foreign [ ] expenses associated with [ ] to [ ] on the first sale, and to [ ] on the second sale.<sup>101</sup> Commerce requested that [ ] submit invoices supporting its procurement of services associated with these purported movement expenses, and ledgers showing where [ ] booked the payment of those services.<sup>102</sup> [ ] provided [ ] of the [ ] requested invoices for these expenses, and did not provide the requested financial ledgers showing the booked payment of these purported expenses.<sup>103</sup> We find it unusual that [ ] did not provide [ ] invoices for its purported [ ] expenses. We find that the [ ] that is on the record simply demonstrates that [ ] was invoiced for foreign movement services provided by [ ] for the [ ] sale on [ ]. The payment of these expenses, however, is unsubstantiated because [ ] did not provide financial ledgers showing the booked payment for these expenses.

Regarding international freight expenses, [ ] purports that because [ ] sold to [ ] on [ ], [ ] was responsible for the [ ] associated with the first sale, and [ ] associated with the second sale.<sup>104</sup> Commerce requested that [ ] provide a narrative description

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<sup>101</sup> See SuppA at 3-4.

<sup>102</sup> See SuppAC at 8-9.

<sup>103</sup> *Id.* at 9 and Exhibit SQ7-7.

<sup>104</sup> See SuppA at 22.

of all freight expenses paid for by [ ] and to provide documentation supporting its response, including accounting documentation demonstrating where payment of these purported international freight expenses were recorded in [ ] accounting system.<sup>105</sup> In response, [ ] stated that it “paid the ocean freight,” and submitted an ocean freight invoice, and did not provide any further explanation or documentation, including accounting documentation demonstrating where payment of the purported international freight expenses were recorded.<sup>106</sup> We find it unusual that [ ] was unable to provide [ ] the [ ] or the ocean freight invoice. We find that the ocean freight invoice that is on the record simply demonstrates that [ ] was invoiced for ocean freight services provided by [ ] for the [ ] sale on [ ]. It is unclear from the ocean freight invoice submitted that the expenses were associated with the merchandise subject to this review. The payment of these expenses, however, is unsubstantiated because [ ] did not provide financial ledgers showing the booked payment for these expenses.

Regarding [ ] expenses, under the sales terms, [ ] the merchandise subject to this review.<sup>107</sup> Commerce requested that [ ] provide purchase orders and commercial invoices supporting the procurement of the [ ], provide images of the [ ] with clear images of the labels affixed to each, and submit copies of the accounting records demonstrating where the purchases of [ ] were recorded in [ ] accounting records.<sup>108</sup> In response, [ ] only submitted [ ]

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<sup>105</sup> See SuppAC at 12.

<sup>106</sup> *Id.* at 12 and Exhibit SQ7-12.

<sup>107</sup> See, e.g., SuppA at 22-23; Letter re: “Calcium Hypochlorite from the People’s Republic of China Supplemental Section A and C Questionnaire Response,” dated April 11, 2016 (SuppAC), at 11.

<sup>108</sup> See SuppAC at 11-12.

[ ] associated with the second sale, and an image of a [ ] which does not appear to contain the subject merchandise under review (*i.e.*, the image provided is of [ ], while the subject merchandise purportedly sold in the [ ] is [ ].<sup>109</sup> [ ] stated that the supplier did not separately issue invoices.<sup>110</sup> [ ] did not submit a [ ] for the procurement of [ ] for the first sale, and it did not submit copies of the accounting records demonstrating where the purchases of [ ] were recorded in [ ] accounting records. We find it unusual that [ ] was able to only provide [ ] invoice, that its supplier did not issue commercial invoices, and that it was not able to provide images of [ ], and that the image it did provide does not appear to be of the merchandise under review. We find that the [ ] that is on the record simply demonstrates that [ ] was invoiced for [ ] provided by [ ] on [ ]. The payment of these expenses, however, is unsubstantiated because [ ] did not provide financial ledgers showing the booked payment for these expenses.

Regarding import duties, [ ] reported that it paid the import duties for both sales.<sup>111</sup> Commerce requested that [ ] submit documentation demonstrating payment of the import duties, and to include broker invoices, accounting vouchers, and expense ledger documentation in its response.<sup>112</sup> In response, [ ] only provided broker invoices and payment documentation, which appears to be two partial screen shots from a

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<sup>109</sup> *Id.* at Exhibit SQ7-10 and Exhibit SQ7-11, *compare* resale invoice at Exhibit SQ7-13.

<sup>110</sup> *Id.* at 11.

<sup>111</sup> *Id.* at 9.

<sup>112</sup> *Id.*

banking website that lacks sufficient detail to conclusively support payment (*i.e.*, the payment documentation does not identify the remitter and does not appear to be a final transaction confirmation.<sup>113</sup> [ ] did not provide accounting vouchers or expense ledger documentation showing the booked payment for these purported expenses. Again, we find this information, alone, simply demonstrates that [ ] was invoiced for import duties on [ ] and [ ]. However, the payment of these expenses is unsubstantiated because [ ] did not provide financial ledgers showing the booked payment for these expenses.

Unusual expenses arising from a transaction can be an indication that the sale is not a *bona fide* sale. For example, in *CTL Plate from Romania*, Commerce found that “{t}he extraordinarily high transportation costs incurred by the importer, combined with other expenses borne by the importer in connection with this sale and the fact that the merchandise was subsequently resold at a significant loss (excluding transportation and other costs) lead us to conclude that there is no basis upon which it could be found that the sale was commercially reasonable.”<sup>114</sup> In *CTL Plate from Romania*, we also noted that “{t}he cost of the air freight, customs fees, brokerage expenses, warehousing, and miscellaneous expenses . . . was significantly greater than the total value of the sale.”<sup>115</sup>

Here, [ ] purported payments of [ ] alone are significantly greater than the total value of the sales. Specifically, for the first sale, [ ] purportedly paid [ ] in import duties for a sale in which it received payment from

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<sup>113</sup> *Id.* at Exhibit SQ7-8.

<sup>114</sup> See *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Rescission of Antidumping Duty Administrative Review*, 63 FR 47232, 47234 (September 4, 1998) (*CTL Plate from Romania*).

<sup>115</sup> *Id.* at 47233.

[ ] in the amount of [ ] and remitted payment to Jingmei in the amount of [ ].<sup>116</sup> For the second sale, [ ] purportedly paid [ ] in import duties for a sale in which it received payment from [ ] in the amount of [ ] and remitted payment to Jingmei in the amount of [ ].<sup>117</sup> Here, as in *CTL Plate from Romania*, that the cost of the import duties was significantly greater than the total value of the sale leads us to question the commercial reasonableness of these sales.

In sum, the record lacks a complete and accurate record of each expense purportedly assumed by other parties, and contains no evidence tying these purported expenses to [ ] and [ ] accounting records. Due to the lack of accounting evidence on the record, the invoices documenting expenses that were submitted remain unsubstantiated absent accounting documentation demonstrating which parties actually incurred those expenses. In addition, based upon [ ] and [ ] failure to produce the requested documentation means that the claims made by these parties as to the expenses incurred, including whether the sales terms were in fact [ ] and whether Jingmei incurred any freight expenses, are unverifiable, and therefore unreliable. Indeed, the PRC customs declaration documents filed by Jingmei with the PRC government indicate that, contrary to its claim, the sales terms were [ ].<sup>118</sup> Although Jingmei claims that the [ ],<sup>119</sup> the record lacks evidence to support this statement. For these reasons, we find this factor weighs against a finding that the sales are *bona fide*.

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<sup>116</sup> See SAQR at Exhibit 7; SuppA at Exhibit SQ1-6; SuppAC at Exhibit SQ7-8.

<sup>117</sup> *Id.*

<sup>118</sup> See SuppC at 8 and Exhibit SQ3-7.

<sup>119</sup> *Id.*



#### 4. Whether the Subject Merchandise Was Resold at a Profit in the United States

As part of determining whether the sales under review are *bona fide*, pursuant to section 751(a)(2)(B)(iv)(V) of the Act, Commerce examines whether the subject merchandise under review was resold in the United States at a profit. Reselling the subject merchandise at a profit is indicative of whether the sale under review is similar to other U.S. sales of subject merchandise, as well as whether the respondent may be able to sell subject merchandise in the future at similar pricing levels. In a NSR, Commerce requires parties to provide detailed information on the importer's purchases and ongoing commercial operations to analyze whether the subject merchandise was resold at a profit.<sup>120</sup> When the information is not provided in a timely manner, it speaks to the non-*bona fide* nature of the sale.<sup>121</sup>

As discussed above, our ability to analyze the sales depends on the record containing complete and accurate information and supporting documentation. Here, the record provides insufficient documentation to support the purported expenses associated with the sales, and to tie these purported expenses to any financial records. Thus, pursuant to section 782(d) and section 776(b) of the Act, we considered the facts otherwise available, with an adverse inference. Moreover, documentation from a party's accounting system, linked to its audited financial statements, represents the best evidence that expenses were actually incurred and revenue earned by the company and that such expenses/revenues were recorded in their financial records. Absent such documentation, the respondent has failed to establish that the company actually incurred the purported expenses.

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<sup>120</sup> See *Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory v. United States*, 920 F. Supp. 2d 1350, 1359–60 (CIT 2013), (*Foshan*).

<sup>121</sup> *Id.* at 1360 (“Faced with such varied responses, and the importer’s failure to provide supporting documents, the Court finds that Commerce acted reasonably in concluding that the U.S. sale under review was not typical for the importer.”).

Here, Commerce specifically requested accounting records from [ ] and [ ] to substantiate the veracity of the purported expense claims and to affirmatively determine which parties actually incurred these expenses. Furthermore, the record lacks sufficient documentation demonstrating [ ] resale of all merchandise subject to this review.<sup>122</sup> [ ] only provided two sample resale invoices, and we note that [ ] failure to provide all resale invoices for at least the [ ] is not a consequence of that merchandise remaining in inventory, as [ ] had stated that such merchandise was sold out.<sup>123</sup> Accordingly, the record lacks objective evidence to substantiate whether the subject merchandise was resold in the United States at a profit. This lack of record evidence speaks to the non-*bona fide* nature of the sales under review, and weighs against a finding that the sales are *bona fide*.

#### 5. Whether the Sales Were Made on an Arms-Length Basis

In order to evaluate whether the sales under review were made on an arms-length basis, we considered the relationship between Jingmei, [ ], and [ ], evidence of price negotiations, the terms of the sale, and other circumstances surrounding the sale. Despite claims by the parties that they are unaffiliated,<sup>124</sup> the lack of necessary documentation, as requested, on the record and [ ] and [ ] unwillingness to provide Commerce with this documentation, indicates that Jingmei has not demonstrated that the sales were made at arm's length.

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<sup>122</sup> See SuppAC at 12 and Exhibit SQ7-13.

<sup>123</sup> *Id.* at 11-12.

<sup>124</sup> See, e.g., SuppA at 14 (“Jingmei and Eno have no relationship with [ ]; SAQR at 24 (“There is only a buyer-seller relationship between {Jingmei} and {[ }].”

Further, despite Jingmei's claim that it has no relationship with [ ], pursuant to the sales terms, [ ] supplied Jingmei's producer, Eno, with [ ]. For the second sale, [ ] ordered customized [ ] on [ ] to be delivered directly to Eno's factory.<sup>125</sup> This order, however, was submitted before [ ] submitted its purchase order to Jingmei on [ ].<sup>126</sup> [ ] willingness to order [ ] that it shipped directly to Eno's factory approximately [ ] before Jingmei and [ ] finalized the sale does not appear to be a normal sales practice and indicates that Jingmei has not demonstrated that the sales were made at arm's length.

## 6. Additional Factors Considered

Commerce will consider any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future.<sup>127</sup> Commerce's practice is to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an order.<sup>128</sup> The additional factors outlined below also suggest that these sales may not be *bona fide*.

### ***Packaging Labels***

Commerce requested images of the subject merchandise during this NSR in order to examine the labels on the [ ] to confirm that the subject merchandise under review was Eno-produced calcium hypochlorite that entered during the POR.<sup>129</sup> [ ] only submitted [ ], which does not appear to be of the

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<sup>125</sup> See SuppAC at Exhibit SQ7-10.

<sup>126</sup> See Corrected NSR Request at Exhibit 2.

<sup>127</sup> See *TTPC*, 366 F. Supp. 2d at 1250, citing *Windmill*, 193 F. Supp. 2d at 1303, 1307.

<sup>128</sup> See *New Donghua*, 374 F. Supp. 2d at 1339.

<sup>129</sup> See SuppAC at 11.

merchandise subject to this review. Specifically, the image provided is of [ ], while the subject merchandise, at issue in this NSR, purportedly sold in the [ ] is [ ].<sup>130</sup>

### ***Weight Discrepancies***

Document deficiencies further raise doubt as to the *bona fide* nature of a sale.<sup>131</sup> Here, for both sales, there is a discrepancy between the gross weight listed on the commercial invoices, [ ] and [ ], respectively, and the gross weight recorded on the entry summaries, [ ] and [ ], respectively.<sup>132</sup> Commerce asked [ ] to explain these discrepancies and to submit documentary evidence to support its response. [ ] stated that, for the first sale, the gross weight on the entry summary included [ ] provided by the [ ], and that for the second sale, it was not aware of why the broker reported the difference, and that it may be some kind of typographical error.<sup>133</sup>

### ***Questionnaire Response Deficiencies***

As explained in Section II.C, *supra*, [ ] and [ ] failed to provide critical information requested by Commerce. The purpose of Commerce requesting this information was to determine whether the sales subject to this NSR are typical, and whether the subject sales provide a reasonable basis to calculate an AD margin. [ ] and [ ] failure to provide this critical information increases Commerce's concerns as to the *bona fide* nature of the sales.

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<sup>130</sup> *Id.* at Exhibit SQ7-13.

<sup>131</sup> *See Foshan*, 920 F. Supp. 2d at 1350.

<sup>132</sup> *See* Corrected NSR Request at Exhibit 2.

<sup>133</sup> *See* SuppAC at 9.

Further, upon receipt of the deficient responses, Commerce issued a supplemental questionnaire to Jingmei requesting that Jingmei describe and document its efforts to encourage and ensure full cooperation from Jingmei's downstream customers in responding to our requests for information.<sup>134</sup> In response, Jingmei submitted evidence of email correspondence with [ ].<sup>135</sup> In this email correspondence, Jingmei requests that [ ] and [ ] provide all of the documentation requested by Commerce.<sup>136</sup> [ ] responds to Jingmei stating that they [ ].<sup>137</sup> Jingmei responds to [ ] stating that it [ ].<sup>138</sup> In light of Commerce's warning to all parties that failure to provide requested information may affect Commerce's determination as to the *bona fide* nature of the sales subject to this review, we find it unusual that the parties did not further cooperate, particularly in light of the fact that [ ] purports to have paid [ ] on these sales that were significantly [ ] than the value of the sales. Further, we find that the parties' selective provision of necessary information, as requested, along with other, unverifiable (*i.e.*, unreliable) information cannot support its claim that the two sales under examination satisfy Commerce's test for *bona fide* sales. Accordingly, we find that this factor weighs against finding that these sales are *bona fide*.

### III. CONCLUSION

Based on the foregoing, we find that Jingmei's reported U.S. sales are not *bona fide*. The following factors suggest that the sale is not indicative of normal business practices: 1) price and

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<sup>134</sup> See Letter re: "Supplemental Questionnaire Response," dated April 20, 2016 (April Supp Response) at 1-2 and Exhibit SQ8-1.

<sup>135</sup> See April Supp Response at 1-2 and Exhibit SQ8-1.

<sup>136</sup> *Id.* at Exhibit SQ8-1.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

quantity of the sale; 2) timing of payment; 3) whether the goods were resold at a profit; 4) whether the sale was made on an arms-length basis; and 5) other relevant issues, such as the submitted [ ] on the record not appearing to be of subject merchandise, the gross weight discrepancies on the record, and the substantial deficiencies in questionnaire responses.

Therefore, after considering all evidence on the record, and relying, in part, on adverse inferences with respect to our interpretation of the facts available due to interested parties' failure to fully cooperate during this NSR, we determine that the totality of the circumstances surrounding Jingmei's sales indicate that they are non-*bona fide*.

#### IV. INTERESTED PARTY COMMENTS

On January 29, 2018, Commerce released the draft results of redetermination to all interested parties and invited parties to comment on the draft results of redetermination.<sup>139</sup> Jingmei submitted comments on February 8, 2018.<sup>140</sup> No other interested party submitted comments.

#### **Issue 1: Whether the Record Contains the Information Necessary to Determine that Jingmei's Sales are *Bona Fide* and to Calculate an Antidumping Duty Margin**

##### *Jingmei's Comments:*

- Commerce has received more than an adequate amount of information to allow it to determine that Jingmei's sales are *bona fide*.<sup>141</sup>
- Commerce incorrectly maintains that [ ] refused to provide Commerce with the quantity, value, and date of its purchases of subject merchandise during the POR because this information is provided at Exhibit SQ7-6.<sup>142</sup>

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<sup>139</sup> See Draft Remand.

<sup>140</sup> See Draft Comments.

<sup>141</sup> *Id.* at 2.

<sup>142</sup> *Id.* at 6.

- Commerce cannot use the alleged lack of information on downstream sales by [ ] and [ ] to determine whether the price and quantity of Jingmei’s sales are reflective of Jingmei’s usual commercial practices and indicative of prices and quantities Jingmei will sell the subject merchandise in the future.<sup>143</sup>
- Regarding the difference in price between the two sales, the circumstances of Jingmei’s two sales should underscore the *bona fide* nature of the sales. Jingmei’s first sale should be understood as a sample sale, with [ ] transportation costs, and no profit expected. The second sale was shipped via ordinary means using typical ocean freight and both companies made a profit. Jingmei’s first sale reflects a typical request at the beginning of a supplier-customer relationship in which the customer requests the supplier to supply a small amount of a product to test the quality of the merchandise and reliability of the supplier before committing to a more substantial order of the merchandise.<sup>144</sup>
- Commerce must justify its treatment of sample sales as either non-reviewable transactions or as sales capable of *bona fide* consideration.<sup>145</sup>
- Commerce’s finding that [ ] late payments of 15 days and 75 days were atypical or outside of normal commercial business practices is incorrect and not supported by substantial evidence. Commerce’s reliance on *TTPC* is misplaced because, in *TTPC*, the late payment occurred nine months after the due date, and thus is a disparity so great that it cannot provide a practical example of “normal commercial business practices.”<sup>146</sup> Conversely, in *Huzhou Muyun Wood*, the CIT recently found that a late

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<sup>143</sup> *Id.* at 7.

<sup>144</sup> *Id.* at 10.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 12 (citing *TTPC*, 366 F. Supp. 2d. at 1254-1255 (CIT 2005)).

payment of nine days was a short delay in payment and not atypical in international business.<sup>147</sup>

- Commerce incorrectly claims that the ocean freight invoice does not clearly identify the shipped product as the merchandise under review.<sup>148</sup> However, the bill of lading number on the invoice corresponds to the China Customs Export Declaration Form, the Ocean Bill of Lading, and the CBP Form Entry Summary.<sup>149</sup> These documents support the fact that the product shipped was subject merchandise.<sup>150</sup>
- Regarding the packing expenses, for the second sale, the record includes the purchase order for the pails and a picture of the [ ] showing the subject merchandise packaged under the brand name [ ].<sup>151</sup> The picture of the packaging provided to Commerce shows legibly in the middle of the text on content (right under the logo) that the main active ingredient is [ ].<sup>152</sup>
- Commerce incorrectly maintains that [ ] failed to provide information regarding its other purchases from [ ] because this information was provided at Exhibit SQ7-14.<sup>153</sup>
- Commerce's consideration of the deposit of high dumping duties as an indication of an atypical sale is misdirected, as this reasoning would disqualify all potential new shippers from making *bona fide* transactions because the current antidumping margin is a fixed

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<sup>147</sup> See Draft Comments at 12 (citing *Huzhou Muyun Wood Co. v. United States*, 2017 CIT LEXIS 163 at 36-37).

<sup>148</sup> *Id.* at 13-14.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at 14.

<sup>151</sup> *Id.* at 14-15.

<sup>152</sup> *Id.* at 15.

<sup>153</sup> *Id.* at 6-7.



circumstance of this proceeding.<sup>154</sup> The willingness of the customer to deposit the antidumping duties is an attestation to the *bona fide* nature of the transaction.<sup>155</sup>

- Commerce's conclusion that the discrepancy between the gross weight listed on the CBP Entry Summary and other sale documents casts doubt on the *bona fide* nature of the sales is not supported by the record evidence.<sup>156</sup> For the first sale, the invoice to which Commerce refers records only the net weight, which corresponds to the entry summary.<sup>157</sup> Both the net and gross weights recorded on the entry summary correspond to net and gross weights recorded on the PRC Customs Export Declaration and the airway bill.<sup>158</sup> For the second sale, the discrepancy can be attributed presumably to a transcription error.<sup>159</sup> Other information provided on the entry summary, like the master bill of lading number, support the notion that the entry summary represents the sale at issue in this NSR.<sup>160</sup>
- Commerce incorrectly maintains that [ ] failed to provide information on its resales of merchandise under review because this information was provided at Exhibit SQ7-13.<sup>161</sup>
- [ ] and [ ] accounting records are not necessary because the document paper trail on the record is sufficient to establish the *bona fide* nature of the sales.<sup>162</sup> The documentation submitted on the record is in exactly the form that

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<sup>154</sup> *Id.* at 15.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 15-16.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 16.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 6.

<sup>162</sup> *Id.* at 3, 13.

Commerce requested in this review and normally accepts as evidence that procured goods and services were invoiced and paid.<sup>163</sup> Commerce's stance in this case is greatly incongruous and indicates that Commerce is free to reject requested documents unless it has conducted an on-site verification to authenticate the documents.<sup>164</sup>

- It is unreasonable for Commerce to require accounting documentation from [ ] and [ ].<sup>165</sup> Commerce provides no support for the proposition that to perform a *bona fide* analysis, a respondent must provide customers' or downstream customers' accounting and financial documentation.<sup>166</sup>
- Neither the *Honey NSR* or *Shrimp NSR* are applicable to this case as neither required the new shippers to provide accounting documentation from the importer or the importer's customer with links to their financial statements.<sup>167</sup>

*Commerce's Position:*

Regarding Jingmei's argument that there is adequate information on the record to allow Commerce to determine that Jingmei's sales are *bona fide* and to calculate an antidumping duty margin for Jingmei,<sup>168</sup> we disagree. As explained above, Congress recently amended the Act by adding section 751(a)(2)(B)(iv), which codified the requirement that U.S. sales of an exporter or producer made during the POR that serve as the basis of an individual weighted average antidumping duty rate in an NSR be *bona fide* sales, and sets forth criteria for considering

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<sup>163</sup> *Id.* at 3.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 4.

<sup>166</sup> *Id.*

<sup>167</sup> See Draft Comments at 4-6 (citing *Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 72 FR 37715 (July 11, 2007) (*Honey NSR*) and accompanying Issues and Decision Memorandum; *Certain Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) (*Shrimp NSR*) and accompanying IDM.

<sup>168</sup> See Draft Comments at 2.

whether sales are *bona fide*.<sup>169</sup> Thus, pursuant to section 751(a)(2)(B)(iv) of the Act, any weighted-average dumping margin determined in an NSR must be based solely on *bona fide* sales during the POR.<sup>170</sup> This requires an affirmative determination, supported by evidence on the record, that the sales under review are *bona fide* before Commerce can calculate an antidumping duty margin in this new shipper review.<sup>171</sup>

Congress amended the Act to prevent what it viewed as abuse of the statute's NSR provision.<sup>172</sup> Congress expressed concern that NSRs had been abused by new exporters and producers to secure low cash deposit rates that are not reflective of their future commercial behavior.<sup>173</sup> In particular, Congress expressed concern over the ability of new exporters or producers to enter into a scheme to structure a few sales to show little or no dumping or subsidization when those sales are reviewed by Commerce during an NSR, resulting in a low or zero antidumping duty margin for that producer or exporter.<sup>174</sup> An importer could then bring in that producer's or exporter's merchandise at highly dumped prices but with little or no cash deposit.<sup>175</sup>

The CIT has affirmed Commerce's practice of examining objective, verifiable factors in a *bona fide* analysis to ensure that a sale is not being made to circumvent an antidumping duty order.<sup>176</sup> As such, in order for a new shipper to demonstrate under the statute that its sales are

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<sup>169</sup> See Section 751(a)(2)(B)(iv) of the Act.

<sup>170</sup> *Id.*

<sup>171</sup> See e.g., *Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty New Shipper Reviews; 2014-2015*, 82 FR 25766 (June 5, 2017).

<sup>172</sup> See Section 433 of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016) (adding a new section 751(a)(2)(B)(iv) entitled, "Determinations based on bona fide sales"); see also H. Rpt. No. 114-114 (2015) (May 14, 2015) (H. Rpt. No. 114) at 89.

<sup>173</sup> See H. Rpt. No. 114 at 89.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> See *New Donghua*, 374 F. Supp. 2d at 1339.

*bona fide*, it must provide the Department with objective, record evidence concerning “the circumstances surrounding such sales.”<sup>177</sup> In a *bona fide* sales analysis, Commerce examines objective, record evidence on both sides of the sales transaction. This information is key to supporting an assertion that the merchandise under consideration was resold at a profit.<sup>178</sup> As explained above, notwithstanding Commerce’s repeated requests, the record lacks the objective, record evidence necessary to evaluate the totality of the circumstances surrounding Jingmei’s sales. Accordingly, because such necessary information was withheld, we considered available information on the record, and determined that the information that we do have on the record raises concerns that these two sales are not indicative of future sales by Jingmei.

Jingmei criticizes Commerce’s evaluation of the certain information on the record, and argues that the available information on the record supports a finding that Jingmei’s sales are *bona fide*.<sup>179</sup> For the reasons explained, we do not find that Jingmei’s arguments have merit and disagree with Jingmei’s contention that the record contains the information necessary to conclude that Jingmei’s sales are *bona fide*.

### ***Price and Quantity***

Jingmei argues that Commerce incorrectly concluded that [ ] refused to provide Commerce with the quantity, value, and date of its purchases of subject merchandise during the POR, and argues that the requested information is at Exhibit SQ7-6.<sup>180</sup> Contrary to Jingmei’s claim, Exhibit SQ7-6 does not provide Commerce with complete, objective information regarding [ ] purchases of subject merchandise during the POR.

[ ] submitted Exhibit SQ7-6 in response to Commerce’s third request for

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<sup>177</sup> See Section 751(a)(2)(B)(iv) of the Act; see also *New Donghua*, 374 F. Supp. 2d at 1339.

<sup>178</sup> See Section 751(a)(2)(B)(iv)(V).

<sup>179</sup> See Draft Comments at 2-16.

<sup>180</sup> *Id.* at 6.

details of all companies from whom [ ] purchased calcium hypochlorite during the POR. In response to Commerce's first two requests, [ ] refused to provide Commerce with this information, stating that the information was highly confidential.<sup>181</sup> Commerce provided [ ] a third opportunity to submit this information, requesting that [ ] submit a sales listing, which included the invoice date, invoice number, quantity, purchase price, selling price, supplier name, and address of all sales from [ ] to [ ] of subject merchandise sourced from all suppliers during the POR.<sup>182</sup> The worksheet submitted by [ ] at Exhibit SQ7-6, however, provides no invoice numbers, as requested by Commerce, nor does it include information regarding its purchases from Jingmei, as requested by Commerce.<sup>183</sup> In addition, [ ] expressly refused to submit its sales ledgers and accounting vouchers documenting its purchases from Jingmei of the merchandise under review.<sup>184</sup>

Commerce's multiple requests to [ ] for details regarding its purchases from all suppliers during the POR, and copies of its sales ledgers and accounting vouchers documenting its purchases from Jingmei, were necessary to evaluate both sides of the transaction and, thus, determine whether the price and quantity of the sales subject to this NSR are not atypical and whether the subject sales provide a reasonable basis to calculate an antidumping duty margin. The sales ledger submitted by Jingmei,<sup>185</sup> lacked the level of detail needed to fully substantiate any details regarding the two sales at issue.<sup>186</sup> Specifically, Jingmei's sales ledger

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<sup>181</sup> See SAQR at 26; SuppA at 21.

<sup>182</sup> See Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China – Supplemental Section A, C, and Customer Questionnaire," dated March 28, 2016.

<sup>183</sup> See SuppAC at 8 and Exhibit SQ7-6.

<sup>184</sup> *Id.* at 8-9.

<sup>185</sup> See SuppC at 9 and Exhibit SQ3-8 and SQ3-12.

<sup>186</sup> See, e.g., SuppA at 18.

does not contain any reference to [ ].<sup>187</sup>

Similarly, the payment remittance documentation submitted by Jingmei for the sales under review fails to provide the level of detail needed to conclude that these payments are in fact related to these sales. The payment remittance documentation does not contain any reference to [ ].<sup>188</sup> Thus, accounting documentation from [ ] was necessary to evaluate both sides of the transactions under review and to provide objective evidence regarding the price and quantity of the sales. Yet, as indicated above, the lack of such accounting documentation foils Commerce's evaluation of these factors.

Jingmei argues that Commerce may not use sales of the customer or downstream customer of the new shipper to determine whether the price of the subject sale is indicative of the new shipper's future behavior.<sup>189</sup> Jingmei argues that, accordingly, Commerce cannot use the record's alleged lack of information on downstream sales by [ ] and [ ] as a basis for Commerce's inability to determine whether the price and quantity of Jingmei's sales are reflective of Jingmei's usual commercial practices and indicative of prices and quantities Jingmei will sell the subject merchandise in the future.<sup>190</sup>

Jingmei mischaracterizes Commerce's analysis. Here, we found the record lacks sufficient objective, verifiable evidence regarding Jingmei's sales to [ ], the sales of which are under review. As explained above, the available evidence on the record regarding Jingmei's sales to [ ] is not sufficient to support Jingmei's claim that the price and quantity of its sales are reflective of its usual commercial practices and indicative of prices and quantities it will sell the subject merchandise in the future. Accordingly, Jingmei's argument and

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<sup>187</sup> See SuppC at Exhibit SQ3-8 and SQ3-12.

<sup>188</sup> See SAQR at Exhibit A-7.

<sup>189</sup> See Draft Comments at 7.

<sup>190</sup> *Id.*

authority cited are not relevant to this case, as our finding relates to the lack of objective, record evidence regarding Jingmei’s sales to [ ], not the lack of record evidence regarding the customer or downstream customer’s sales.

Jingmei argues that the difference in prices between the two sales should not weigh against a *bona fide* finding, arguing that the first sale should be understood as a sample sale.<sup>191</sup> Jingmei states that the “first sale reflects a typical request at the beginning of a supplier-customer relationship in which the customer requests the supplier to supply a small amount of a product to test the quality of the merchandise and reliability of the supplier before committing to a more substantial order of the merchandise.”<sup>192</sup> Jingmei argues that Commerce must justify its treatment of sample sales as either non-reviewable transactions or as sales capable of *bona fide* consideration.<sup>193</sup>

We disagree with Jingmei’s contention that its first sale should be considered a sample sale because the record does not support and, in some instances, contradicts this assertion. In Commerce’s initial questionnaire, we asked Jingmei if it had any sample transactions and in its response, Jingmei did not indicate that it had any sales of samples.<sup>194</sup> In a supplemental questionnaire, we asked Jingmei to explain the price difference between the two sales, and it did not indicate that the first sale was a sample in its response.<sup>195</sup> The record also does not indicate that [ ] considered the first sale a sample sale because it resold what Jingmei characterizes as the sample product [ ] it sold what Jingmei characterizes as the more “substantial order.” [ ] submitted [ ] sample resale invoices and, according to

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<sup>191</sup> *Id.* at 9-10.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> See Letter re: “Calcium Hypochlorite from the People’s Republic of China Section C & D Response,” dated October 16, 2015.

<sup>195</sup> See SuppC at 5.

these invoices, product from Jingmei's first sale, which Jingmei's purports to be the sample product, was sold on [ ], [ ] sales of the product from Jingmei's second sale, had already occurred.<sup>196</sup> Accordingly, we disagree with Jingmei that its first sale should be considered a sample sale as the available information on the record does not support this contention.

### ***Timing of Payment***

Regarding Jingmei's argument that Commerce incorrectly determined that the 15-day late payment related to the first sale and the 75-day late payment related to the second sale indicates a departure from normal commercial business practices,<sup>197</sup> we disagree. In *TTPC*, we found allowing payment to go uncollected departs from normal commercial business practices.<sup>198</sup> We disagree with Jingmei's argument that *TTPC* is not applicable to facts here because *TTPC* concerned a late payment that occurred nine months after the due date, whereas the late payments here occurred 15 and 75 days after the due date. In *TTPC*, the CIT noted that, “{w}hile some *bona fides* issues may share commonalities across various Department cases, each one is company-specific and may vary with the facts surrounding each sale.”<sup>199</sup> The CIT also explained that given the unusual sale price involved in that case, it was not unreasonable for Commerce to look beyond the price to determine whether other characteristics of the sale demonstrated that the sale as a whole, was atypical.<sup>200</sup> The CIT explained that although late payment on its own might not be enough to support a finding of a non-*bona fide* sale, when the

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<sup>196</sup> See SuppAC at Exhibit SQ7-13.

<sup>197</sup> See Draft Comments at 12.

<sup>198</sup> See *TTPC*, 366 F. Supp. 2d at 1259, 1260.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*



late payment accompanies another unusual factor in the case, evidence of late payment may support a non-*bona fide* finding and is not irrelevant to the analysis.<sup>201</sup>

Here, as in *TTPC*, the sales under review also have other unusual characteristics. Namely, Jingmei [ ] made sales on [ ] terms; pursuant to the sales terms, [ ] for the sales of subject merchandise; and Jingmei is listed as the [ ] in the Chinese customs declaration documents even though it purports that [ ] is the exporter.<sup>202</sup> Further, as explained above, the available information on the record regarding the payment lacks significant details (*i.e.*, Jingmei's sales ledger purportedly showing the booked payment does not contain any reference to [ ], and the payment remittance documentation submitted on the record does not contain any reference to [ ]). Accordingly, under the specific facts surrounding these sales, it was not unreasonable for Commerce to take into consideration the late payments in its *bona fide* analysis. Similar to *TTPC*, we analyzed Jingmei's late-payment in the context of the two sales under review and found that under the circumstances of this case, including the lack of explanation from Jingmei, the late payments indicated a departure from normal commercial practice and weighed against a *bona fide* finding.

We also do not find Jingmei's reliance on *Huzhou Muyun Wood* persuasive.<sup>203</sup> In *Huzhou Muyun Wood*, the CIT considered the *bona fide* analysis of a single sale in an NSR, and disagreed with Commerce's determination that a nine-day late payment for a single sale in a NSR was atypical. Here, however, Commerce considers two sales under review, both of which

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<sup>201</sup> *Id.*

<sup>202</sup> See SuppAC at 2-3.

<sup>203</sup> See Draft Comments at 12 (*Huzhou Muyun Wood Co. v. United States*, Court No. 16-00245, Slip Op. 17-162 (December 11, 2017)).

were paid late and both of which were allowed to go uncollected for substantially different durations: 15 days and 75 days. Further, in *Huzhou Muyun Wood*, it was important to the CIT's analysis that Commerce itself found that none of the other factors, aside from the sale price and timing, under the statutory *bona fide* sale test indicated that the sale was not *bona fide*.<sup>204</sup> Unlike the facts of this case, the CIT noted that Commerce had found that Muyun Wood and its customer had sold the subject merchandise at a profit; the quantity of the sale was normal; the negotiation of the sale was not abnormal; expenses arising from the sale were not extraordinary or unusual; and the sale was at arm's length.<sup>205</sup>

### ***Expenses***

Jingmei argues that Commerce incorrectly claims that the ocean freight invoice for the second sale does not clearly identify the shipped product as the merchandise under review.<sup>206</sup> Jingmei argues that the bill of lading number on the invoice corresponds to the China Customs Export Declaration Form, the Ocean Bill of Lading, and the CBP Form Entry Summary, and that these documents together support the fact that the product shipped was subject merchandise.<sup>207</sup> However, the weights listed on the Ocean Bill of Lading or CBP Form Entry Summary do not correspond to the weight listed on Jingmei's commercial invoice for this sale.<sup>208</sup> Accordingly, although the ocean freight invoice contains a bill of lading number that ties to the ocean bill of lading and CBP Form Entry Summary, due to the weight discrepancies in the documentation on the record, it is not clear that that ocean freight invoice on the record is associated with the merchandise subject to this review.

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<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> See Draft Comments at 13-14.

<sup>207</sup> *Id.*

<sup>208</sup> See NSR Corrected Request at Exhibit 2 (compare Commercial Invoice to Ocean Bill of Lading and CBP Form Entry Summary).

Jingmei states that for the packing expenses for the second sale, the record includes the purchase order for the pails and a picture of the [ ] showing the subject merchandise packaged under the brand name [ ] and that this picture shows legibly that the main active ingredient is [ ].<sup>209</sup> However, as we explained above, the packaging does not appear to contain the subject merchandise under review. The image provided is of [ ], and lists [ ] as an active ingredient. However, [ ] resale invoice indicates that the subject merchandise purportedly sold in the [ ] is [ ].<sup>210</sup> By listing [ ] as an active ingredient, Jingmei suggests that the product may have components other than [ ], potentially calling into question whether the sale was [ ] at all, or instead, another product of which [ ] was an ingredient, albeit the active ingredient. Further, Jingmei does not address the fact that the record lacks invoices and packing images for the first sale.

Regarding [ ] purported payment of [ ], Jingmei argues that Commerce's consideration of [ ] deposit of high dumping duties as an indication of an atypical sale is misdirected, as this reasoning would disqualify all potential new shippers from making *bona fide* transactions because the current antidumping margin is a fixed circumstance of this proceeding.<sup>211</sup> Instead, Jingmei argues, the willingness of the customer to deposit the antidumping duties is an attestation to the sincerity and *bona fide* nature of the transaction.

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<sup>209</sup> See Draft Comments at 14-15.

<sup>210</sup> See SuppAC at Exhibit SQ7-10 and Exhibit SQ7-11, *compare* resale invoice at Exhibit SQ7-13.

<sup>211</sup> See Draft Comments at 15.

As explained above, we requested that [ ] submit documentation demonstrating its purported payment of the import duties, and to include broker invoices, accounting vouchers, and expense ledger documentation in its response. In response, [ ] only provided broker invoices and payment documentation, which appear to be two partial screen shots from a banking website that lack sufficient detail to conclusively support payment (*i.e.*, the payment documentation does not identify the remitter and does not appear to be a final transaction confirmation).<sup>212</sup> [ ] did not provide accounting vouchers or expense ledger documentation showing the booked payment for these purported expenses.

Our finding that the import expenses weighed against a *bona fide* finding was specific to the facts of this case. As explained above, we considered the lack of record evidence regarding [ ] purported payment of the import duties; the fact that the [ ] purportedly paid by [ ] were significantly [ ] than the value of the sales; and [ ] unwillingness to substantiate the payment of these purported duties and unwillingness to cooperate, despite warnings that a failure to provide requested information may affect Commerce's determination as to the *bona fide* nature of the sales.

### ***Profit***

Jingmei also argues that Commerce incorrectly concludes that [ ] failed to provide information about its downstream customers of subject merchandise, and failed to provide information regarding its other purchases from [ ], because this information was provided at exhibit SQ7-13 and SQ7-14, respectively.<sup>213</sup> Contrary to Jingmei's claim, Exhibit SQ7-13 does not provide Commerce with complete, objective information regarding [ ] resale of all merchandise subject to this review. At Exhibit SQ7-13,

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<sup>212</sup> See SuppC at Exhibit SQ7-8.

<sup>213</sup> See Draft Comments at 6-7.

[ ] submitted sample invoices accounting for a portion, but not all its resales of merchandise subject to this review, as requested.<sup>214</sup> Exhibit SQ7-14 also does not provide Commerce with complete, objective information regarding [ ] POR purchases from [ ]. Commerce requested that [ ] submit a sales listing of all purchases of subject merchandise, including invoice date, invoice number, supplier name and address, quantity, value, and sales terms.<sup>215</sup> At Exhibit SQ7-14, [ ] provided “a list of all purchases of subject merchandise {it} made during the POR” that only included the [ ] and no other information regarding date, invoice number, supplier name and address, or sales terms.<sup>216</sup> [ ] also failed to provide complete details of any purchases that [ ] made from [ ] subsequent to its purchase of the merchandise covered by this review, including providing relevant invoices, contracts, and any documents from sales negotiations regarding such sales.<sup>217</sup> Accordingly, Commerce was not provided the information necessary to evaluate whether the sales of the merchandise covered by this review were resold at a profit.

### ***Gross Weight Discrepancies***

Regarding Jingmei’s argument that Commerce’s conclusion that the gross weight discrepancies on the record for the two sales casts doubt on the *bona fide* nature of the sales is not supported by the record evidence,<sup>218</sup> we disagree. Jingmei argues that there exists other documentation on the record to substantiate the quantity reported on the invoice for the first sale, and that the discrepancy for the second sale should be attributed to a typographical error.

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<sup>214</sup> See SuppAC at Exhibit SQ7-13.

<sup>215</sup> *Id.* at 8.

<sup>216</sup> *Id.* at Exhibit SQ7-14.

<sup>217</sup> *Id.* at 13.

<sup>218</sup> See Draft Comments at 15-16.

Jingmei has not sufficiently explained the reasoning for the discrepancies in its submissions. In light of the facts of this case, it is not unreasonable for Commerce to consider these discrepancies in completing a *bona fide* analysis.

### ***Accounting Documentation***

Regarding Jingmei's argument that [ ] and [ ] accounting records are not necessary because the document paper trail on the record is sufficient to establish the *bona fide* nature of the sales, and the documentation submitted on the record is in exactly the form that Commerce requested in this review and normally accepts as evidence that procured goods and services were invoiced and paid,<sup>219</sup> we disagree. Contrary to Jingmei's assertion, and as we explained in Section II.C., *supra*, certain documentation necessary for Commerce to analyze the *bona fide* nature of the sales was not submitted in the form that Commerce requested, or not submitted on the record at all. Accordingly, due to the lack of necessary documentation on the record and the unreliability of certain documentation that is available on the record, we determine that the record does not contain a document paper trail sufficient to establish the *bona fide* nature of the sales.

Regarding Jingmei's argument that it is unreasonable for Commerce to require accounting documentation from [ ] and [ ], we disagree. Under the facts of this case, it was necessary for Commerce to request accounting documentation from [ ] and [ ] to provide information lacking from the record and needed to substantiate the purported sales terms and expenses incurred. As explained above, the sales under review had some unusual circumstances and they were Jingmei's [ ]

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<sup>219</sup> *Id.* at 3.

].<sup>220</sup> Further, the sales ledger submitted by Jingmei that purportedly recorded the two subject sales does not contain any reference to [

].<sup>221</sup> Accordingly, it was necessary to request accounting information from [ ] to obtain price and quantity information necessary to evaluate the sales.

Further, and as explained above, the documentation submitted on the record to support the movement, import, and [ ] expenses are incomplete and thus unreliable to substantiate the purported sales terms, and which parties incurred and paid for the purported expenses. Accordingly, in this case, it was necessary for Commerce to request accounting documentation from [ ] and [ ] to substantiate their payment of expenses.

Regarding Jingmei's argument that Commerce's requirement of accounting documentation from [ ] and [ ] indicates that Commerce is free to reject requested documents unless it has conducted on-site verification to authenticate the documents, we disagree. As explained above, before Commerce can calculate a dumping margin in a NSR, we must make an affirmative finding that the sales at issue are *bona fide*. This determination must be based on objective, verifiable factors.<sup>222</sup>

Here, the information submitted on the record either lacks sufficient detail to confirm, or simply does not provide sufficient support for the details of the sale and payment of expenses. Thus, the record does not contain the information necessary to verify Jingmei's claims. Accordingly, contrary to Jingmei's claim, we did not reject Jingmei's documentation because it had not been verified. Rather, we found that the record lacked objective and necessary

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<sup>220</sup> See *TTPC*, 366 F. Supp. 2d at 1249 (Commerce employs a "totality of the circumstances" test to determine if a sale involved in a NSR is "unrepresentative or extremely distortive).

<sup>221</sup> See SuppC at Exhibit SQ3-8 and SQ3-12.

<sup>222</sup> See *New Donghua*, 374 F. Supp. 2d at 1339.

documentation to complete a *bona fide* analysis and thus, the information that would allow us to verify the accuracy of Jingmei's claims has not been submitted to the record and verification would not be an opportunity for a company to submit new, previously-requested information.

Regarding Jingmei's argument that Commerce provides no support for the proposition that to perform a *bona fide* analysis, a respondent must provide customers' or downstream customers' accounting and financial documentation, we disagree.<sup>223</sup> Jingmei argues that *Honey NSR* and *Shrimp NSR* are not applicable to his case because the issues and decision memorandums (IDMs) do not indicate that Commerce requested accounting documentation from importers or downstream customers.<sup>224</sup> Although the IDMs in *Honey NSR* and *Shrimp NSR* may not identify the specific information requested from the importers in the supplemental questionnaire, both cases make clear Commerce's authority to conduct a full examination of companies on both sides of the transaction in a *bona fide* sales analysis. Further, each *bona fide* analysis is dependent on the facts specific to each case. Contrary to Jingmei's claim, it is not unprecedented for Commerce to request supporting accounting documentation from an importer or downstream customer in an NSR to evaluate both sides of the transaction and the purported expenses incurred.<sup>225</sup> Such documentation is necessary particularly where, as here, it is not clear from the record that Jingmei, [ ], and [ ] are unaffiliated.

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<sup>223</sup> See Draft Comments at 4-6.

<sup>224</sup> *Id.*

<sup>225</sup> See *Zhengzhou Huachao Industrial Co., Ltd. v. United States*, Court No. 11-00139, Slip Op. 13-61 (May 14, 2013) ("In addition to the irregularities in the purchase ledger, the Department did not receive all of the information it asked for. In particular, "[ ]lthough Commerce requested the importer{'s} bank statements covering the period August 1, 2009 through December 31, 2009, the importer could provide { }bank statement for the month of December 2009; the importer stated that it could not access the remaining statements because they were '{ }.'" Def.'s Mem. 6 (citation omitted). In the absence of this information 'the Department was unable to consider that information for purposes of corroborating the information provided by Huachao itself. {For example,} the missing bank information prevents the Department from checking how {the importer} paid the antidumping duty cash deposit and other aspects of the sales terms between the parties.' Bona Fides Mem. at 7.")



## Issue 2: Whether Jingmei's Sales Were Made at Arm's Length and Whether Commerce Can Attribute Lack of Cooperation to Jingmei

### *Jingmei's Comments:*

- Commerce's analysis of the relationship between the companies has not revealed substantial evidence that they are affiliated.<sup>226</sup>
- Commerce has obviated its requirement under 19 U.S.C. § 1677e(b), and avoided finding that Jingmei itself has failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information.<sup>227</sup> Jingmei argues that Commerce cannot use [ ] and [ ] supposed failure to cooperate to the best of their ability as an adverse inference as to their relationship with Jingmei, thereby finding that the parties are somehow affiliated and attributing their lack of cooperation to Jingmei.<sup>228</sup>
- Jingmei documented its efforts to urge [ ] and [ ] to submit the requested documents, but has no control over whether they participate and should not be punished for their refusal to provide unreasonably requested information.<sup>229</sup>
- The CIT has made clear in *Shantou* and *SKF* that Commerce cannot apply adverse inferences against a respondent when the record does not contain substantial evidence that a respondent failed to cooperate by not acting to the best of its ability.<sup>230</sup>

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<sup>226</sup> See Draft Remand Comments at 17.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.* at 18.

<sup>230</sup> See Draft Remand Comments at 19 (citing *Shantou Red Garden Foodstuff Co. v. United States*, 815 F. Supp. 2d 1311, 1323 (CIT 2012) (*Shantou*) and *SKF USA Inc. v. United States*, 675 F. Supp. 2d 1264, 1274-1275 (CIT 2009) (*SKF*)).

*Commerce's Position:*

By arguing that our analysis of the relationship between Jingmei, [ ], and [ ] has not revealed evidence that they are affiliated, Jingmei overlooks the fact that the record lacks sufficient documentation to confirm the veracity of the purported sales terms, and the obligations of the companies under the sales terms. Accordingly, we cannot, based on the record evidence, make a determination that the sales were made at arm's length.

We disagree with Jingmei's argument that Commerce has obviated its requirement under 19 U.S.C. § 1677e(b), and avoided finding that Jingmei itself has failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information. Contrary to Jingmei's assertion, and as explained above, we find that Jingmei, [ ], and [ ] have failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information. The NSR questionnaire sent to Jingmei required information from [ ] in order to provide Commerce with the facts needed to complete a *bona fide* sales analysis. Jingmei was instructed to answer the [ ]-specific questions or include [ ] responses in its submission. The submission provided was inadequate and elicited additional questions regarding [ ] and [ ] payment for the sales and certain expenses. The importer-specific questions are a part of the NSR questionnaire and information regarding both sides of the transaction is required to complete the *bona fide* analysis.<sup>231</sup> The information requested from Jingmei, [ ], and [ ] was material to the facts surrounding the construction of the two transactions under review. Jingmei cannot avoid the requirement to provide Commerce with this information by contending that it has no control over the importer. Commerce never received

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<sup>231</sup> See Letter re: "New Shipper Review of Calcium Hypochlorite from the People's Republic of China," dated August 26, 2015, at Appendix IX.

the complete requested information necessary to complete a *bona fide* sales analysis in this review, even after the issuance of multiple supplemental questionnaires to Jingmei, [ ], and [ ].

Jingmei's reliance on *Shantou* and *SKF* is misplaced, as those cases are distinguishable from the facts of this case because they concerned the non-cooperation of unaffiliated suppliers in submitting COP and FOP data in an investigation and an administrative review.<sup>232</sup> In *Shantou*, we applied AFA in calculating an antidumping duty margin in an investigation where an exporter failed to secure FOP data from a noncomplying supplier, and we had not asked the exporter to solicit the data from the supplier.<sup>233</sup> In *SKF*, the CIT held that Commerce could not use the unaffiliated supplier's failure to cooperate to affect adversely the dumping margin of a respondent whom Commerce did not make a finding of non-cooperation.<sup>234</sup>

This case, unlike *Shantou* and *SKF*, concerns a *bona fide* analysis in a new shipper review, not the application of AFA in calculating an antidumping duty margin. Under a *bona fide* sales analysis, Commerce examines the companies on both sides of the transaction to ensure that the companies are legitimate business entities, and on the importer end, not "corporate shells" chosen to simply act as the importer of record for a product under a dumping order, only to dissolve in the year after the shipment is made.<sup>235</sup> Further, in this case, unlike *Shantou* and *SKF*, we have made a finding that Jingmei failed to cooperate, rather than only making a finding that [ ] and [ ] failed to cooperate.

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<sup>232</sup> See *Shantou*, 815 F. Supp. 2d at 1319; *SKF*, 675 F. Supp. 2d at 1274-1275.

<sup>233</sup> See *Shantou*, 815 F. Supp. 2d at 1319.

<sup>234</sup> See *SKF*, 675 F. Supp. 2d at 1274-1275.

<sup>235</sup> See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007).

We also note that, in *Hyundai Steel*, the CIT recently held that Commerce has the authority to apply an adverse inference when a respondent fails to provide necessary information requested by Commerce and otherwise develop the administrative record.<sup>236</sup> In *Hyundai Steel*, the CIT upheld Commerce's application of partial AFA to a respondent's certain movement and insurance transactions because the respondent failed to provide requested information concerning these transactions between its affiliated service providers and their unaffiliated customers.<sup>237</sup> Similar to *Hyundai Steel*, although distinguishable in other aspects, Jingmei has failed to provide necessary information requested by Commerce to perform a *bona fide* sales analysis, despite multiple questionnaires and opportunities to otherwise develop the administrative record. Accordingly, and for the reasons explained above, we applied the facts otherwise available, with an adverse inference, to determine whether Jingmei's sales were indicative of *bona fide* transactions.

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<sup>236</sup> *Hyundai Steel Co. v. United States*, Slip Op. 17-173 (Ct. Int'l Trade 2017).

<sup>237</sup> *Id.* at 28 n.16.

## FINAL RESULTS OF REDETERMINATION

Pursuant to the Court's remand order, Commerce has completed a *bona fide* sales analysis of Jingmei's sales. In this final redetermination, Commerce makes no changes to the draft redetermination, and continues to find that Jingmei's sales are not indicative of *bona fide* sales, based on the totality of the circumstances surrounding the sales. Commerce finds that we cannot rely on these sales to calculate a dumping margin, and, therefore, there are no sales on which we can base this new shipper review (NSR). Consequently, for the purposes of these final results of redetermination on remand, we continue to determine that rescission is appropriate.

3/5/2018

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Signed by: GARY TAVERMAN

Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance