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A-570-825
Administrative Review
POR: 07/01/00 - 6/30/01
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MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary, Group I
Office of AD/CVD Enforcement

DATE: November 07, 2002

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Sebacic Acid from the People's
Republic of China

Summary

We have analyzed the comments of interested parties in the 2000-2001 antidumping duty administrative review of sebacic acid from the People's Republic of China. As a result of our analysis, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: Universe of Sales
Comment 2: Valuation of Activated Carbon
Comment 3: Partial Revocation

Background

On August 6, 2002, the Department of Commerce (the Department) published the preliminary results in this administrative review. See Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke, 67 FR 50870 (Aug. 6, 2002)(Preliminary Results). On August 26, 2002, the respondents submitted additional surrogate data with which to value activated carbon and macropore resin.

We invited parties to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results. The period of review (POR) is July 1, 2000, through July 31, 2001.

Margin Calculations

We calculated export price and normal value using the same methodology stated in the preliminary results, except as follows:

1. We corrected a programming error and have now included in our analysis all entries of subject merchandise made during the POR. See Comment 1.
2. We revalued activated carbon and macropore resin using the data provided by the respondents on August 6, 2002. See Comment 2.
3. We revalued labor based on the regression-based wage rate for 2000 in accordance with 19 CFR 351.408(c)(3).

Discussion of the Issues

Comment 1: Universe of Sales

There are two respondents participating in this administrative review, Guangdong Chemicals Import and Export Corporation (Guangdong) and Tianjin Chemicals Import and Export Corporation (Tianjin). Both of these exporters made only export price sales during the POR. In their case brief, these companies assert that the Department improperly excluded certain sales from each company's margin calculations because the Department based the universe of sales on the sales invoice dates rather than entry dates. According to the respondents, it is the Department's normal practice to base its margin calculations for export price transactions upon sales of merchandise that entered the United States during the POR. See American Silicon Technologies v. United States, 1999 Ct. Intl. Trade LEXIS 38; SLIP OP. 99-34 at 12. The respondents note that, in this case, the entry dates for each sales transaction reported during the POR is on the record of this proceeding. Therefore, the respondents contend that the Department must correct its margin calculations to base the universe of sales on dates of entry rather than invoice dates, in accordance with its practice.

Department's Position:

In this case, it is possible to base the universe of export price transactions on all sales of subject merchandise which entered the United States during the POR. Therefore, we agree that the universe of sales for each company should be based on the dates of entry of the subject merchandise into the United States. Although the dates of invoice for certain of these sales were prior to the POR, we note that these sales were reviewed for the first time in this administrative

review period. Accordingly, we have included in our calculations for purposes of the final results all sales of subject merchandise which entered the United States during the POR for both Guangdong and Tianjin.

Comment 2: Valuation of Activated Carbon

For purposes of the preliminary results, we valued activated carbon using Indian import statistics obtained from the Monthly Statistics of Foreign Trade of India (Monthly Statistics). Because Handan Shan Xiang Chemical Co., Ltd., one of the producers of subject merchandise, uses macropore resin (an input similar to activated carbon) rather than activated carbon in the production of sebacic acid, we also valued macropore resin using the activated carbon surrogate value in accordance with our practice in previous reviews of sebacic acid from the PRC. See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 49537 (Aug. 14, 2000) and accompanying decision memorandum at Comment 4 (Sebacic Acid 98-99 Final).

The respondents claim that the Indian import statistics used by the Department to value activated carbon and macropore resin are not reflective of the type of activated carbon used in their production of subject merchandise (i.e., liquid-phase (powder)), but rather are reflective of a more expensive form of activated carbon (i.e., gas phase). The respondents note that in Sulfanilic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 48597, 48600 (Sept. 16, 1997) (Sulfanilic Acid), the Department determined that a major price disparity existed between Indian import statistics, Indian export prices, and price quotes for activated carbon. According to the respondents, the Department found that this disparity appeared to be due to a difference in the type of activated carbon. Specifically, respondents note that the Department determined that the relatively high-priced Indian import statistics appeared to be for gas-phase activated carbon instead of the liquid-phase, powder form of activated carbon used in the production of the subject merchandise. See Sulfanilic Acid, 62 FR at 48600. The respondents note that they have placed on the record of this review Indian export prices for activated carbon from the Indian publication Chemical Weekly and a price quote for activated carbon powder as alternatives for valuing the type of activated carbon powder used by the Chinese producers.¹

The Department's Position:

In valuing the factors of production in a nonmarket economy case, the Department must use the best available information. See section 773(c)(1) of the Act. For purposes of selecting surrogate

¹ The respondents provided quantity and price amounts from Chemical Weekly for each of nine Indian export sales of activated carbon during the POR. According to the respondents, two of these export transactions on one particular date are aberrational, as evidenced by the fact that the public price quote for the same material around the same time period differs markedly from the published price.

values, the Department chooses the data that represent the best available information on a case-by-case basis.

For the final results of this administrative review, we have on the record of this proceeding three sources of publicly available price data on activated carbon: Indian import statistics from the Monthly Statistics, Indian export values from Chemical Weekly, and a public price quote obtained from an Indian company. Neither the import statistics nor the export values indicate the type of activated carbon, whereas the price quote from an Indian producer specifies the same type of activated carbon used in the production of subject merchandise during the POR.²

Furthermore, regarding the import statistics, we found in both prior segments of this proceeding and in other proceedings that these statistics appear to relate to a type of activated carbon not used in the production of the subject merchandise. After analyzing the data from this review period, we find that the same conclusion is warranted in this case, and thus we find that the Indian import statistics are not an appropriate source of surrogate value data here.³

Therefore, because both the import statistics and the export values are not product-specific or are otherwise unuseable in this case, we find the price quote represents the best information available to the Department with which to value activated carbon. Consequently, we have valued activated carbon and macropore resin using this price quote for the final results.

We note our choice of a public price quote is consistent with our selection of the appropriate surrogate value for activated carbon in the most recently completed review of this proceeding. See Sebacic Acid 98-99 Final at Comment 4. Specifically, in the final results of the 1998-1999 administrative review, the Department determined that an Indian producer price quote was the more appropriate surrogate value for activated carbon instead of Chemical Weekly export prices placed on the record by respondents, in part, because the more contemporaneous price quote was product-specific, while the Chemical Weekly export prices were not. Id. at Comment 4.

² Moreover, the export values varied widely from day to day, ranging from Rps. 10 per kilogram to Rps. 165 per kilogram during the POR. Thus, we find that these export values do not appear to be an appropriate source for surrogate value data.

³ In examining the data, we found a major price disparity between the import statistics and both the export values contained in Chemical Weekly and the price quote. Specifically, the import statistics contained in Monthly Statistics reflected a price of Rps. 137.03 per kilogram, approximately three to six times the per kilogram price of either the average export price (i.e., Rps. 56.93 per kilogram) or the price quote (i.e., Rps. 21 per kilogram). In the final results of the 1997-1998 administrative review, the Department determined that such a major price disparity between the import prices for activated carbon contained in Monthly Statistics and other surrogate value sources suggested differences in the type of activated carbon being valued. See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69503, 69506 (Dec. 13, 1999).

Comment 3: Partial Revocation

Tianjin argues that, if it receives a zero or *de minimis* dumping margin in these final results, it is entitled to revocation of the antidumping order, pursuant to section 751(d)(1) of the Tariff Act of 1930, as amended (the Act). Tianjin contends that, in accordance with 19 CFR 351.222(b)(2), the Department may revoke an antidumping order, in part, if it concludes that one or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years. Tianjin maintains that, in its request for revocation, Tianjin certified the following: (1) it sold the subject merchandise at not less than normal value during the POR described in 351.213(e)(1), and that in the future, it will not sell the merchandise at less than normal value; (2) during each of the consecutive years referred to in paragraph (b) of this section, it sold the subject merchandise to the United States in commercial quantities; and (3) it agreed to reinstatement of the order as described in paragraph (b)(2)(iii) of this section. Therefore, Tianjin argues that, if it receives a *de minimis* margin in these final results, it has met all the requirements under section 751(d) of the Act and 19 CFR 351.222(b) and (e) with respect to revocation. Consequently, Tianjin contends that the Department should revoke the antidumping order with respect to its exports of subject merchandise.

Department's Position:

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following:

- (1) a certification that the company has sold the subject merchandise at not less than normal value in the current review period and that the company will not sell subject merchandise at less than normal value during the future;
- (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and
- (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than normal value.

See 19 CFR 351.222(e)(1).

Upon receipt of such a request, the Department will consider:

- (1) whether the company in question has sold subject merchandise at not less than normal value for a period of at least three consecutive years;

(2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than normal value; and

(3) whether the continued application of the antidumping order is otherwise necessary to offset dumping.

See 19 CFR 351.222(b)(2)(i).

Furthermore, 19 CFR 351.222(b)(3) specifies that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

In the preliminary results of this review, we noted our intention not to revoke the antidumping duty order with respect to Tianjin because we preliminarily found that a dumping margin of greater than 0.5 percent existed for this exporter. However, in these final results, we find that Tianjin has not sold subject merchandise below normal value during this POR. Additionally, in the 1998-1999 administrative review, we also found that Tianjin had not sold subject merchandise below normal value.⁴

Furthermore, at verification, we examined the quantity and value of sales for all three years that form the basis for the request, and we confirmed that Tianjin's aggregate sales to the United States have been made in commercial quantities during each of these years. See the July 10, 2002, memorandum to Louis Apple from Shawn Thompson and Patrick Connolly entitled "Verification of the Sales Responses of Tianjin Chemicals Import and Export Corporation in the Antidumping Duty Administrative Review on Sebacic Acid from the People's Republic of China" at pages 7-8. See also the November 07, 2002, memorandum to the file from Patrick Connolly entitled "Analysis of Commercial Quantities for Tianjin Chemicals Import and Export Corporation's Request for Revocation."

Tianjin has also agreed to the immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that Tianjin, subsequent to the revocation, sold the subject merchandise at less than normal value. Finally, based on our review of the record, we find that there is no basis to find continued application of the antidumping order

⁴ We note that the Department did not conduct an administrative review of the antidumping duty order on sebacic acid for the 1999-2000 review period. However, pursuant to 19 CFR 351.222(d), we are not required to conduct a review of the intervening year so long as we conduct a review in the first and third years of the three year consecutive time period.

necessary to offset dumping with regard to subject merchandise exported by Tianjin and manufactured by its supplier, Hengshui Dongfeng Chemical Co., Ltd.(Hengshui)⁵

Therefore, pursuant to 19 CFR 351.222(b)(2) and 19 CFR 351.222(e)(1), we find that Tianjin has met all the requirements for revocation. Accordingly, we are revoking the antidumping duty order on sebacic acid with respect to exports made by Tianjin of subject merchandise produced by Hengshui. Therefore, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2001 (i.e., the first day of the POR).

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree _____

Disagree _____

Faryar Shirzad
Assistant Secretary
for Import Administration

(Date)

⁵ On October 18, 2002, Tianjin certified that Hengshui was its only supplier during all three years that form the basis for the revocation request.