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NSR: 5/27/2014 - 12/31/2015
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December 27, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement & Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for 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.

SUMMARY

In response to requests from Haixing Jingmei Chemical Products Sales Co., Ltd. ("Jingmei"), the Department of Commerce (the "Department") is conducting a new shipper review ("NSR") of the countervailing duty ("CVD") order on calcium hypochlorite from the People's Republic of China ("PRC") for the period of review ("POR") May 27, 2014, through December 31, 2015. As discussed below, after analyzing the information provided by parties and gathered by the Department, the Department preliminarily determines that we are unable to fully analyze the totality of the circumstances surrounding the sale subject to this NSR and, thus, the bona fides of the sale, pursuant to section 75l(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), because interested parties repeatedly refused to provide information necessary for our analysis and, thus, we are unable to determine whether, and that, the sale at issue were made in a bona fide manner. Because any countervailing duty rate determined in a new shipper review must be based solely on bona fide sales, the Department preliminarily intends to rescind this NSR for Jingmei.

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess countervailing duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on the preliminary intent to rescind. We intend to issue the final results no later than 90 days from the date we issue our preliminary results, pursuant to section 751(a)(2)(B)(iii) of the Act.

BACKGROUND

On January 30, 2015, the Department published in the Federal Register the Order.[1] On November 20, 2015, we received a request for a NSR from Jingmei, exporter of the subject merchandise produced by Haixing Eno Chemical Co., Ltd. ("Eno Chemical").[2] On March 4, 2016, the Department initiated a NSR of Jingmei's entry made during the POR[3] and issued the Government of China ("GOC") and Jingmei an initial questionnaire.[4] The GOC and Jingmei timely responded to the Department's initial questionnaire and subsequent supplemental questionnaires between March 2016 and November 2016.

SCOPE OF THE ORDER

The product covered by this order is calcium hypochlorite, regardless of form (e.g., powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10 percent available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation $Ca(OCl)_2$, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, $Ca(OCl)_2.CaCl_2.Ca(OH)_2.2H_2O$ or hemibasic calcium hypochlorite with the chemical formula of $2Ca(OCl)_2.Ca(OH)_2$ or $Ca(OCl)_2.0.5Ca(OH)_2$. Calcium hypochlorite has a Chemical Abstract Service ("CAS") registry number of 7778-54-3, and a U.S. Environmental Protection Agency ("EPA") Pesticide Code ("PC") Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods ("IMDG") code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.[5]

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[1] See Calcium Hypochlorite from the People's Republic of China: Countervailing Duty Order, 80 FR 5082 (January 30, 2015) ("Order").
[2] See Jingmei's letter to the Department regarding, "Calcium Hypochlorite from the People's Republic of China Entry of Appearance and Request for New Shipper Review," dated November 20, 2015 ("NSR Request").
[3] See Calcium Hypochlorite from the People's Republic of China: Initiation of Countervailing Duty New Shipper Review; 2014-2015, 81 FR 11516 (March 4, 2016) ("Initiation").
[4] See Letter to the GOC, re: "Calcium Hypochlorite from the People's Republic of China: Countervailing Duty Questionnaire," dated March 4, 2016.
[5] See Order.

DISCUSSION OF THE METHODOLOGY

Pursuant to section 751(a)(2)(B)(iv) of the Act, any individual countervailing duty rate determined in a new shipper review shall be based solely on bona fide United States sales. Section 751(a)(2)(B)(iv) of the Act also sets forth criteria for the Department's consideration in determining if sales, such as the sale by Jingmei under review in this new shipper review, are bona fide. In evaluating whether the sales in a NSR are commercially reasonable or typical of normal business practices, and therefore bona fide, the Department 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 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.[6]

Although some bona fide issues may share commonalities across various Department cases, the Department 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. Accordingly, the Department considers a number of factors in its bona fides analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."[7] In TTPC, the Court of International Trade ("CIT") also affirmed the Department's decision that any factor which indicated that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,[8] and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.[9] The Department's practice makes clear that the Department will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an order.[10] Thus, a respondent is on notice that it is unlikely to establish the bona fides of a sale merely by claiming to have sold in a manner representative of its future commercial practice.[11]

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[6] Section 751(a)(2)(B)(iv) of the Act.
[7] See Hebei New Donghua Amino Acid Co., Ltd. v. United States, 374 F. Supp. 2d 1333, 1342 (Ct. Int'l Trade 2005) ("New Donghua") (citing Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002)).
[8] See Tianjin Tiancheng Pharmaceutical Co. v. United States, 366 F. Supp. 2d 1246, 1250 (Ct. Int'l Trade 2005) ("TTPC").
[9] Id. at 1263.
[10] See New Donghua, 374 F. Supp. 2d at 1339.
[11] Id.

Because documentation and information requested in this new shipper review were required to complete the statutory bona fide analysis, but was not provided, or is insufficient,[12] we are unable to conduct a full analysis and preliminarily find that we are unable to make a determination as to whether, and conclude that, the sale made by Jingmei during the POR was a bona fide commercial transaction. Consequently, we preliminarily intend to rescind this review.[13] Because much of the factual information used in our analysis involves business proprietary information, a full discussion of our preliminary findings is set forth in the Jingmei bona fides Memo.[14]

RECOMMENDATION

We recommend applying the above methodology for the preliminary intent to rescind.

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Agree Disagree

12/27/2016

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Signed by: PAUL PIQUADO

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Paul Piquado
Assistant Secretary
for Enforcement and Compliance

[12] As explained in the Jingmei Bona Fides Memo, due to the failure and refusal of Jingmei's customers to provide necessary information, the Department is unable to substantiate incurred movement/other expenses and whether the sale was sold for a profit in the United States. See Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Catherine Bertrand, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Elizabeth Lobaugh, International Trade Analyst, titled "Bona Fide Nature of the Sale in the Countervailing Duty New Shipper Review of Calcium Hypochlorite from the People's Republic of China: Haixing Jingmei Chemical Products Sales Co., Ltd." dated concurrently with this notice ("Jingmei Bona Fides Memo") at 4-10.

[13] See, e.g., TTPC, 366 F. Supp. 2d at 1249.

[14] See Jingmei Bona Fides Memo.