UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-557-816
CCR (Inmax Industries)
Public Document
AD/CVD OPS, OVI: MYS

November 16, 2016

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

THROUGH: Scot Fullerton SF
Director
Antidumping and Countervailing Duty Operations, Office VI

FROM: Moses Song MS
International Trade Compliance Analyst
Antidumping and Countervailing Duty Operations, Office VI

SUBJECT: Decision Memorandum for the Preliminary Results of the Antidumping Duty Changed Circumstances Review of Certain Steel Nails from Malaysia

---

I. Summary

Mid Continent Steel & Wire, Inc. (Petitioner) requested that the Department of Commerce (the Department) initiate a changed circumstances review (CCR) of the antidumping duty (AD) order on certain steel nails (nails) from Malaysia to determine that Inmax Sdn. Bhd. (Inmax Sdn) and Inmax Industries Sdn. Bhd. (Inmax Industries) (collectively, Inmax) should be collapsed and assigned the same AD cash deposit rate.[1] We preliminarily find that Inmax Sdn and Inmax Industries are affiliated. We further find that Inmax Sdn and Inmax Industries have preliminarily met the criteria to be collapsed as a single entity.

If these preliminary results of review are adopted in our final results of review, entries of subject merchandise produced by Inmax Sdn and Inmax Industries will be subject to the current AD cash deposit rate assigned to Inmax Sdn (*i.e.*, 39.35 percent).

---

[1] *See* Letter from Petitioner to the Department, regarding "Certain Steel Nails from Malaysia: Request for Changed Circumstances Review," dated September 2, 2015 (CCR Request).

II. Background

On June 25, 2014, we initiated an AD investigation covering nails from Malaysia and selected Inmax Sdn as a mandatory respondent.[2] During the period of investigation (POI), April 1, 2013 through March 31, 2014, Inmax Holding Co., Ltd. (Inmax Holding), a parent company that maintains 100 percent ownership of Inmax Sdn, was constructing Inmax Industries, another wholly-owned subsidiary of Inmax Holding, and requested that the Department collapse Inmax Sdn and Inmax Industries.[3] In the *Preliminary Determination*, we did not collapse Inmax Industries with respondent Inmax Sdn, noting that Inmax Industries had not yet produced or sold any merchandise.[4] As the Inmax Sdn Sales Verification Report and Questionnaire Response noted, Inmax Industries had become operational only after the POI.[5] As indicated in Inmax Industries' January 19, 2016, Comments, Inmax Sdn shifted some production capabilities to Inmax Industries in late 2014.[6] However, at the time of the Department's verification in January 2015, it was reported that Inmax Industries did not have its own employees and that certain of Inmax Sdn's management and staff continued to perform services on behalf of both Inmax Industries and Inmax Sdn.[7]

We published our *Final Determination* on May 20, 2015.[8] In the *Final Determination*, we assigned a dumping margin of 39.35 percent to Inmax Sdn, after finding that the application of total adverse facts available (AFA) was warranted.[9] In the *Final Determination*, we affirmed our determination in the *Preliminary Determination* that we would not collapse Inmax Industries and Inmax Sdn. Thus Inmax Industries was subject to the all others rate of 2.66 percent.[10]

---

[2] *See Certain Steel Nails From Malaysia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 79 FR 78055 (December 29, 2014) (*Preliminary Determination*).

[3] *See* CCR Request, at Exhibit 1 (citing Inmax Sdn's Section A questionnaire response, dated September 2, 2014 (Section A Questionnaire Response), at 7).

[4] *See Preliminary Determination* and accompanying memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Steel Nails from Malaysia," dated December 17, 2014 (Investigation Preliminary Decision Memorandum), at 12-13.

[5] Earlier in January 2015, the Malaysian government had provided a letter indicating that Inmax Industries was authorized for operation and some nails had been produced at Inmax Industries in January 2015. *See* CCR Request, at Exhibit 3 (citing Memorandum from Steve Bezirganian, Senior International Trade Compliance Analyst, and Edythe Artman, International Trade Compliance Analyst, Office VI, through Angelica L. Townshend, Program Manager, Office VI, to the File, regarding "Verification of the Sales Response of Inmax Sdn. Bhd. in the Less-Than-Fair-Value Investigation of Certain Steel Nails (Nails) from Malaysia," dated March 9, 2015 (Inmax Sdn Sales Verification Report), at 4); Inmax Industries began commercial production of nails in June 2015. *See* Letter from Inmax to the Department, regarding "Certain Steel Nails from Malaysia: Changed Circumstances Review Questionnaire Response of Inmax Industries," dated December 30, 2015 (Questionnaire Response), at 2.

[6] *See* Letter from Inmax Industries to the Department, regarding "Certain Steel Nails from Malaysia; Changed Circumstances Review: Response to Petitioner's Comments of January 7, 2016," dated January 19, 2016 (January 19, 2016, Comments), at 5.

[7] *See* Inmax Sdn Sales Verification Report, at 4.

[8] *See Certain Steel Nails From Malaysia; Final Determination of Sales at Less Than Fair Value*, 80 FR 28969 (May 20, 2015) (*Final Determination*).

[9] *Id*.

[10] We published the AD *Order* (*see Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (the

On September 2, 2015, Petitioner requested that the Department conduct a CCR pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 to determine that Inmax Sdn and Inmax Industries should be collapsed and assigned the same AD cash deposits rate.[11] In its CCR Request, Petitioner provided information indicating that since the *Order* was imposed, there had been a change in the trading patterns and activities of Inmax Sdn and Inmax Industries.[12] Petitioner asserted that the information provided demonstrates that the *Orde*r is being evaded.[13]

On October 15 2015, Inmax submitted comments opposing initiation of this review, contending that Petitioner failed to cite any new facts which would warrant a CCR or would demonstrate that good cause exists to review a final determination in an investigation less than 24 months after the date of publication of notice of the final determination under 19 CFR 351.216.[14]

On November 17, 2015, the Department initiated a CCR pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(c) and (d).[15] On December 9, 2015, the Department issued a questionnaire to Inmax Industries and received a response on December 30, 2015.[16] Petitioner submitted comments on January 7, 2016[17] to which Inmax Industries responded on January 19, 2016.[18] Petitioner submitted additional comments on February 4, 2016.[19] We issued supplemental questionnaires to Inmax Industries on February 16 and February 25, and received responses to both supplemental questionnaires on March 8, 2016.[20] Petitioner submitted additional comments on March 17, 2016,[21] to which Inmax Industries responded on March 28, 2016.[22] We issued our

---

Order)) on July 13, 2015, and the all others rate changed to 2.66 percent because of the revised rate assigned to the other mandatory respondent (*i.e*., Region System Sdn. Bhd. and Region International Co., Ltd. (collectively, Region)) in our amended final determination of the investigation. *See Certain Steel Nails From Malaysia: Amended Final Determination of Sales at Less Than Fair Value*, 80 FR 34370 (June 16, 2015).

[11] *See* CCR Request.

[12] *Id*.

[13] *Id*.

[14] *See* Letter from Inmax to the Department, regarding "Certain Steel Nails from Malaysia; Opposition to Request for Changed Circumstances Review filed by Mid Continent Steel & Wire, Inc.," dated October 15, 2015 (CCR Request Opposition), at 2-3 and 11-12.

[15] *See Certain Steel Nails From Malaysia: Initiation of Antidumping Duty Changed Circumstances Review*, 80 FR 71772 (November 17, 2015) (*CCR initiation*)

[16] *See* Questionnaire Response.

[17] *See* Letter from Petitioner to the Department, regarding "Certain Steel Nails from Malaysia: Comments on Inmax Industries' Changed Circumstances Review Questionnaire Response," dated on January 7, 2016 (Petitioner's January 7, 2016, Comments).

[18] *See* January 19, 2016, Comments.

[19] *See* Letter from Petitioner to the Department, regarding "Certain Steel Nails from Malaysia; Changed Circumstances Review: Comments on Inmax Industries' January 19, 2016 Response to Petitioner's January 7, 2016 Comments," dated February 4, 2016 (Petitioner's February 4, 2016, Comments).

[20] *See* Letter from Inmax Industries to the Department, regarding "Certain Steel Nails from Malaysia: Changed Circumstances Review First Supplemental Response of Inmax Industries," dated March 8, 2016 (First Supplemental Questionnaire Response); *see also* Letter from Inmax Industries to the Department, regarding "Certain Steel Nails from Malaysia: Changed Circumstances Review Second Supplemental Response of Inmax Industries," dated March 8, 2016 (Second Supplemental Questionnaire Response).

[21] *See* Letter from Petitioner to the Department, regarding "Certain Steel Nails from Malaysia, Changed Circumstances Review: Comments on Inmax Industries' First and Second Supplemental Questionnaire Responses," dated March 17, 2016 (Petitioner's March 17, 2016, Comments).

third supplemental questionnaire to Inmax Industries on March 31, 2016, and received a response from Inmax Industries on April 14, 2016.[23]

On August 9, 2016, pursuant to 19 CFR 351.302(b), the Department extended the final results of a CCR to December 9, 2016.[24]

III. Scope of the Order

The merchandise covered by the *Order* is certain steel nails having a nominal shaft length not exceeding 12 inches.[25] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: (1) builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and

---

[22] *See* Letter from Inmax Industries to the Department, regarding "Certain Steel Nails from Malaysia; Changed Circumstances Review: Response to Petitioner's Comments of March 17, 2016," dated March 28, 2016 (March 28, 2016, Comments).

[23] *See* Letter from Inmax Industries to the Department, regarding "Certain Steel Nails from Malaysia: Changed Circumstances Review Third Supplemental Response of Inmax Industries," dated April 14, 2016 (Third Supplemental Questionnaire Response).

[24] *See* the Memorandum from Moses Song, International Trade Compliance Analyst, Office VI, through Scot Fullerton, Director, Office VI, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Certain Steel Nails from Malaysia: Extension of Deadline for Final Results of Antidumping Duty Changed Circumstances Review," dated August 9, 2016.

[25] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.*, furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to this changed circumstances review are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to this changed circumstances review also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this changed circumstances review is dispositive.

IV. Preliminary Results of the Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department shall conduct a CCR upon receipt of a request from an interested party or receipt of information concerning an AD order which shows changed circumstances sufficient to warrant a review of the order. Normally, in accordance with

19 CFR 351.216(c), the Department will not review a final determination in an investigation less than 24 months after the date of publication of notice of the final determination unless we find that good cause exists. However, upon finding that Petitioner provided sufficient information and good cause regarding new trading patterns and possible evasion of the *Order* to warrant a CCR, we initiated this CCR. Since that time, Inmax submitted information which supports this preliminary finding that Inmax Sdn and Inmax Industries are affiliated and should be collapsed because there is a significant potential for future manipulation. A discussion of the Department's methodology and preliminary findings regarding the CCR request follows.

A. Affiliation

Legal Standard

Section 771(33) of the Act provides that:

> The following persons shall be considered to be "affiliated" or "affiliated persons":
> (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
> (B) Any officer or director of an organization and such organization.
> (C) Partners.
> (D) Employer and employee.
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
> (G) Any person who controls any other person and such other person.

The Act further states that "a person shall be considered to control another person if the person is legal or operationally in a position to exercise restraint or direction over the other person."[26] "Person" is defined to include any interested party as well as any other individual, enterprise, or entity, as appropriate."[27] Furthermore, "Affiliated Persons" and "affiliated parties" have the same meaning as in section 771(33) of the Act.[28] In determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships.[29] The Department will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.[30]

[26] *See* section 771(33) of the Act.
[27] *See* 19 CFR 351.102(b)(37).
[28] *See* 19 CFR 351.102(b)(3).
[29] *Id*.
[30] *Id*.

Analysis

Under section 771(33)(E) of the Act, any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization, are considered affiliated or affiliated persons. The Act further states that "a person shall be considered to control another person if the person is legal or operationally in a position to exercise restraint or direction over the other person." Additionally, 19 CFR 351.102(b)(3) states that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will consider factors such as corporate or family groupings. Moreover, under section 771(33)(F) of the Act, two or more persons directly or indirectly controlled by any person are considered affiliated or affiliated persons.

Inmax reported that Inmax Sdn and Inmax Industries are wholly owned by Inmax Holding and submitted an organizational chart which was supported by information in its financial statements.[31] Inmax further provided that a president of Inmax Holding is also a director and president of Inmax Sdn and Inmax Industries.[32] Thus, we find that control exists on the basis of corporate groupings because Inmax Holding is in a position to exercise restraint or direction over Inmax Sdn and Inmax Industries, and this relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product of Inmax Sdn and Inmax Industries. Thus, we determine that Inmax Sdn and Inmax Industries are directly controlled by Inmax Holding, and as a result, Inmax Sdn and Inmax Industries are affiliated.

Recommendation

We recommend preliminarily finding that Inmax Sdn and Inmax Industries are affiliated parties, in accordance with sections 771(33)(E) and (F) of the Act. Inmax Holding's 100 percent ownership of Inmax Sdn and Inmax Industries meets the five percent or more shareholding requirement set forth in section 771(33)(E) of the Act for finding affiliation between a shareholder of an organization and the organization. Additionally, Inmax Sdn, Inmax Industries, and Inmax Holding share a common president. As such, we preliminarily find that Inmax Holding is in a position to control (*i.e.*, exercise restraint or direction over) Inmax Sdn and Inmax Industries. Therefore, we find that Inmax Sdn and Inmax Industries meet our affiliation criteria, pursuant to section 771(33)(F) of the Act.

✓

_____	_____
Agree	Disagree

[31] *See* Questionnaire Response, at 5 and Exhibit 2; *see also* First supplemental Response, at Exhibits 4 and 6.
[32] *See* Questionnaire Response, at Exhibit 4; *see also* First Supplemental Response, at Exhibits 1, 2, and 6.

B. Collapsing

Legal Standard

In *Certain Fresh Cut Flowers From Colombia; Final Result of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996), the Department detailed the concerns underlying its practice of collapsing affiliates:

> Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely a part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department normally examines the question of whether reviewed companies "constitute separate manufactures or exporters for purposes of the dumping law."[33] Where there is evidence indicating a significant potential for the manipulation of price and production, the Department will "collapse" related companies; that is, the Department will treat the companies as one entity for purposes of calculating the dumping margin.[34]

The Court of International Trade (CIT) expressly affirmed the Department's authority to collapse affiliated parties for purposes of its AD analysis in *Queen's Flowers*:[35]

> Commerce's authority to ignore the separate legal existence of some parties for purposes of calculating dumping margins arises out of the "basic purpose of the statute – determining current margins as accurately as possible,"[36] as well as the Department's responsibility to prevent circumvention of the AD law.[37]

The Department's practice of collapsing affiliated producers is codified in 19 CFR 351.401(f), which states:

> (1) In general. {T}he Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
>
> (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
>
> (i) The level of common ownership;

[33] *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996) (*Fresh Cut Flowers From Colombia*) (citing *Final Determination of Sales at Less Than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988)).
[34] *See Fresh Cut Flowers From Colombia*, 61 FR at 42853 (citing to *Nihon Cement Co., Ltd. v. United States*, Slip Op. 93-80 (CIT May 25, 1993)).
[35] *See Queen's Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (CIT 1997) (*Queen's Flowers*).
[36] *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).
[37] *See Mitsubishi Electric Corp. v. United States*, 700 F. Supp. 538, 555 (CIT 1998).

(ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and

(iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

The *Preamble* to the Department's regulations clarifies how the Department should apply the significant potential for manipulation factors in its collapsing analysis, explaining that this list of factors is "non-exhaustive"[38] and that not all of the factors identified in paragraph (f)(2) need be present in order to collapse affiliated producers.[39] The *Preamble* also states that "{t}he Department has not adopted the suggestion that it will collapse only in 'extraordinary' circumstances. A determination of whether to collapse should be based upon an evaluation of the factors listed in {19 CFR 351.401(f)}, and not upon whether fact patterns calling for collapsing are commonly or rarely encountered."[40] However, the Department must still find that the potential for manipulation of price and production is "significant."[41]

Additionally, the CIT has recognized that when determining whether there is a significant potential for the manipulation of price or production, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse affiliated producers/exporters.[42]

Furthermore, while 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.[43]

[38] *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27345 (May 19, 1999) (*Preamble*).
[39] *See Preamble*, 62 FR at 27346.
[40] *Id.*, 62 FR at 27345.
[41] *Id*., 62 FR at 27345-46; *see also* 19 CFR 351.401(f)(2).
[42] *See Kayo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007) (*Kayo Seiko*) (citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum, at Comment 10).
[43] *See e.g., Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 10, 2012), unchanged in *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5. The U.S. Court of International Trade (CIT) has found that collapsing exporters is consistent with a "reasonable interpretation of the antidumping duty statute." *See Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1338 (CIT 2003).

Analysis

1. Affiliation

As described above, we find that Inmax Sdn and Inmax Industries are affiliated producers within the meaning of sections 771(33)(E) and (F) of the Act. Consequently, the first collapsing criterion has been satisfied.

2. Substantial Retooling of Manufacturing Facilities

Inmax Industries states that "the vast majority of each company's product line is common with few products that can be made exclusively by one company and not the other."[44] Additionally, Inmax Sdn and Inmax Industries each already produces merchandise that falls within the scope of the *Order*.[45] Thus, these producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities. Therefore, the criterion under 19 CFR 351.401(f)(1) has been met.

3. Significant Potential for Manipulation of Price or Production

Regarding whether there is a "significant potential for the manipulation of price or production," the Department notes that the factors listed in 19 CFR 351.401(f)(2) are "non-exhaustive," and that not all of the factors identified in paragraph (f)(2) need be present in order to collapse affiliated producers.[46] Additionally, the CIT has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse affiliated producers/exporters.[47]

In examining factors that pertain to a significant potential for manipulation, the Department considers both actual manipulation in the past and the possibility of future manipulation.[48] The *Preamble* underscores the importance of considering the possibility of future manipulation: "…a standard based on the potential for manipulation focuses on what may transpire in the future."[49] We have, therefore, examined all three factors enumerated in 19 CFR 351.401(f)(2) with respect to past, present, and the potential for future, manipulation of price or production.

[44] *See* Questionnaire Response, at 8; *see also Id.*, at 13 ("There are few products that can currently be produced exclusively by either Inmax Sdn. or Inmax Industries.").
[45] *See* January 19, 2016, Comments, at 3 ("Neither Inmax Industries nor Inmax Sdn. have ever contested that the two companies meet the criteria for collapsing affiliated companies. Neither company has ever refuted that the two companies: (1) are affiliated; (2) produce the subject merchandise…"); *see also Id.*, at 6 ("Inmax Industries never refuted that it has the ability to produce subject merchandise…").
[46] *See Preamble*, 62 FR at 27346.
[47] *See Kayo Seiko*, 516 F. Supp. 2d at 1346 (CIT 2007).
[48] *See Preamble*, 62 FR at 27346.
[49] *Id*.

i. Level of Common Ownership

Inmax reported that Inmax Sdn and Inmax Industries have common ownership (*i.e.*, both are 100 percent owned by Inmax Holding).[50] Therefore, we find that there is a high level of common ownership between Inmax Sdn and Inmax Industries.

ii. Managerial Overlap

In addition to the president that Inmax Holding, Inmax Sdn, and Inmax Industries share, as described above, Inmax Sdn and Inmax Industries share managerial employees. Specifically, Inmax reported that Inmax Sdn and Inmax Industries share an additional director.[51] Furthermore, there is one additional individual that is both a manager at Inmax Sdn and a director at Inmax Industries.[52] Therefore, we find that there is managerial overlap between Inmax Sdn and Inmax Industries.

iii. Intertwined Operations

Section 351.401(f)(2)(iii) of the Department's regulations directs the Department to consider whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

The record indicates that the sales teams of both companies interact with each other by sharing market information, and if one company receives an order for merchandise that can only be produced by the other company, that company will then inform the other company to contact the prospective customer.[53] Because Inmax Sdn and Inmax Industries *do* share sales information, we find that their operations are intertwined, pursuant to section 351.401(f)(2)(iii).

C. Whether the Department Should Collapse Affiliated Parties After the Final Determination of an Investigation and Prior to the First Administrative Review

Inmax argues that Petitioner failed to cite any new factual information which would warrant a CCR and which demonstrates that good cause exists to review a final determination in an investigation less than 24 months after the date of publication of notice of the final determination under 19 CFR 351.216.[54] It further argues that a CCR is not the proper procedural segment in which to address the issue of collapsing and that the time and context for the Department to address the collapsing issue properly will arise in the first administrative review.[55]

Petitioner argues that on May 19, 2015, five days after the release of the *Final Determination*, Inmax Holding publicly announced that it would ship subject merchandise through Inmax

[50] *See* Questionnaire Response, at 5 and Exhibit 2; *see also* First supplemental Response, at Exhibits 4 and 6.
[51] *See* Questionnaire Response, at 9 and Exhibit 4; *see also* First Supplemental Response, at Exhibits 1 and 2.
[52] *See* Questionnaire Response, at Exhibit 4.
[53] *See* First Supplemental Questionnaire Response, at 5.
[54] *See* CCR Request Opposition, at 2-3 and 11-12.
[55] *See* January 19, 2016, Comments, at 3-4.

Industries to avoid or evade duties by manipulating production in a manner that would directly and immediately undermine the efficacy of the *Order*.[56] In particular, relying on publicly available inbound shipment manifest data detailing shipments of subject merchandise from Inmax Sdn and Inmax Industries in 2015, Petitioner noted a shift in shipments in mid-July 2015 whereby Inmax Sdn was no longer listed as the shipper.[57] In addition, Petitioner argues that the shipments from Inmax Industries consist nearly entirely of types of nails (*e.g.*, plastic strip and wire coil collated nails) that Inmax Industries was not created to produce.[58]

In the *Preliminary Determination*, although Inmax requested that the Department collapse Inmax Sdn and Inmax Industries because "they are affiliated with each other and the latter will soon be able to produce subject merchandise," we declined to collapse the two companies, explaining that "the record indicates Inmax Industries is not yet able to produce subject merchandise, and did not make any sales during the POI."[59] We indicated that collapsing Inmax Sdn and Inmax Industries would have been inconsistent with the requirements of the collapsing regulation during the investigation for that reason. However, as detailed herein, the record of this CCR reflects a different fact pattern. Specifically, record evidence clearly demonstrates that Inmax Industries is now both producing and selling subject merchandise. Accordingly, we have determined that it is now appropriate to analyze Inmax Industries' production and commercial behavior, and to consider whether circumstances have changed as to warrant collapsing Inmax Sdn and Inmax Industries in this segment of the proceeding.

We initiated this CCR based on the information provided by Petitioner regarding new trading patterns and possible evasion of the *Order*.[60] To determine whether there are new trading patterns, we conducted a query of U.S. Customs and Border Protection (CBP) import data for entries of merchandise under review from the *Federal Register* publication date of the *Preliminary Determination* (*i.e.*, December 29, 2014) to March 31, 2016. The CBP data clearly demonstrate that new trading patterns have emerged since the *Order* was imposed in July 2015. Due to the proprietary nature of the CBP data, please *see* the Memorandum to the File, through Scot Fullerton, Director, Antidumping and Countervailing Operations, Office VI, from Moses Song, International Trade Compliance Analyst, entitled, "Certain Steel Nails from Malaysia: Release of U.S. Customs and Border Protection Import Data Accompanying the Preliminary Decision Memorandum for the Antidumping Duty Changed Circumstances Review of Certain Steel Nails from Malaysia," dated concurrently with this memorandum. New trading patterns are also evident in Inmax's response to the Department's third supplemental questionnaire.[61] Thus, we conclude that there are new trading patterns since the *Order* was issued, which would, and could, undermine the efficacy and integrity of the *Order*.

Although Inmax Industries began production and sales in June 2015,[62] Inmax Industries was incorporated on May 15, 2012, which was prior to the POI.[63] Additionally, in the investigation,

[56] *See* CCR Request, at 5-6 and Exhibit 4.
[57] *Id.*, at 7 and Exhibit 5.
[58] *Id.*, at 3 and 7 and Exhibit 5.
[59] *See* Investigation Preliminary Decision Memorandum, at 12-13, unchanged in *Final Determination*.
[60] *See CCR Initiation*, 80 FR at 71772.
[61] *See* Third Supplemental Questionnaire Response, at Exhibits 1 and 2.
[62] *See* CCR Request Opposition, at 9; *see also* Questionnaire Response, at 2.
[63] *See* Section A Questionnaire Response, at 4; *see also* Questionnaire Response, at 2.

Inmax Sdn reported that Inmax Industries was authorized for operation by the Malaysian government in January 2015, and that some nails had been produced at the Inmax Industries' factory in January 2015.[64] Inmax also reported that, at the time of verification, some machinery had been installed at Inmax Industries' factory and some other machinery had been moved to the Inmax Industries facility from Inmax Sdn.[65] Moreover, during the investigation, Inmax Sdn reported that Inmax Sdn and Inmax Industries are affiliated and requested that the Department "collapse these two companies in the preliminary and final determinations, thereby issuing one rate applicable to both" since "Inmax Industries will soon have the ability to manufacture subject merchandise."[66] Finally, in this review, Inmax stated that it never refuted that the two companies meet the criteria for collapsing affiliated companies and "have always maintained that collapsing is appropriate."[67]

Regarding whether there is a "significant potential for the manipulation of price or production," the Department notes that the factors listed in 19 CFR 351.401(f)(2) are "non-exhaustive."[68] Additionally, the CIT has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of *the totality of the circumstances*; no one factor is dispositive in determining whether to collapse affiliated producers/exporters (emphasis added).[69] Furthermore, as stated above, in examining factors that pertain to a significant potential for manipulation, the Department considers both actual manipulation in the past and the possibility of future manipulation.[70] The *Preamble* also underscores the importance of considering the possibility of future manipulation: "…a standard based on the potential for manipulation focuses on what may transpire in the future."[71]

On the record of the instant proceeding, Inmax also reported that certain machinery had been moved to Inmax Industries from Inmax Sdn in late 2014, and that this machinery was physically located at Inmax Industries even though the ownership of these assets remained with Inmax Sdn.[72] Inmax explained that all merchandise produced by this machinery was treated and sold as Inmax Sdn's production.[73] This adds further support to our analysis of whether there is a possibility of future manipulation. Inmax also reported that since the investigation, Inmax Industries has developed the ability to manufacture and export subject merchandise.[74] Moreover, the record indicates that Inmax Industries is currently producing subject merchandise,[75] and that the vast majority of both companies' product line is common.[76] Lastly, the CBP data referenced above and Inmax Industries' monthly volume and value of subject merchandise produced and

[64] *See* Inmax Sdn Sales Verification Report, at 4.
[65] *See* Inmax Sdn Sales Verification Report, at 14.
[66] *See* Section A Questionnaire Response, at 7.
[67] *See* January 19, 2016, Comments, at 3.
[68] *See Preamble*, 62 FR at 27346.
[69] *See Kayo Seiko*, 516 F. Supp. 2d at 1346.
[70] *See Preamble*, 62 FR at 27346.
[71] *Id*.
[72] *See* January 19, 2016, Comments, at 5.
[73] *Id.*, at 5-6.
[74] *See* CCR Request Opposition, at 11.
[75] *See* January 19, 2016, Comments, at 3 and 6.
[76] *See* Questionnaire Response, at 8.

exported to the United States[77] indicate that Inmax Industries is exporting subject merchandise. Considering these facts, we determine that there is a significant potential for the future manipulation of price or production of subject merchandise between Inmax Sdn and Inmax Industries.

In light of this evidence, we conclude that collapsing Inmax in this CCR is appropriate given the totality of the circumstances and distinct fact patterns based on these findings.

Recommendation

We recommend preliminarily collapsing Inmax Sdn and Inmax Industries based upon consideration of the factors in 19 CFR 401(f) and in light of record evidence. Inmax Sdn and Inmax Industries are affiliated because they are directly controlled by Inmax Holding. Further, the affiliated producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities because the vast majority of each company's product line is common and each already produces merchandise that falls within the scope of the *Order*. Moreover, record evidence demonstrates that there is a significant potential for the manipulation of price or production between Inmax Sdn and Inmax Industries because of the level of common ownership, common managers, and intertwined operations. Thus, the criteria outlined in 19 CFR 351.401(f) have been met. Lastly, record evidence shows that there have been new trading patterns since the *Order* was issued, which can undermine the efficacy of the *Order*. Therefore, we recommend preliminarily collapsing Inmax Sdn and Inmax Industries. If these preliminarily results of this review are adopted in our final results of this review, entries of subject merchandise produced and exported by Inmax Industries will be subject to the current AD cash deposit rate assigned to Inmax Sdn (*i.e.*, 39.35 percent).

✓

_____ _____

Agree Disagree

11/16/2016

X 

Christian Marsh
Deputy Assistant Secretary for Antidumping a…
Signed by: CHRISTIAN MARSH

November 16, 2016

_____

Date

[77] *See* Third Supplemental Questionnaire Response, at Exhibit 2.