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

A-533-823
Administrative Review
POR: 05/01/2013-04/30/2014
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November 24, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for Final Results of the 2013-2014 Antidumping Duty Administrative Review of Silicomanganese from India

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I. SUMMARY

We analyzed the comments from interested parties in the 2013-2014 administrative review of the antidumping duty order on silicomanganese from India. The period of review (POR) is May 1, 2013, through April 30, 2014. There was a single respondent in this review, Nava Bharat Ventures Limited (Nava), and we find that Nava made no sales at less than fair value during the POR. As a result of our analysis of comments submitted by interested parties in the case and rebuttal briefs, we have made no changes to the preliminary margin calculations for Nava. We recommend that you approve the position described in the "Discussion of the Issue" section of this memorandum.

II. BACKGROUND

On June 4, 2015, the Department published the *Preliminary Results* of this administrative review.[1] Subsequently, on August 24, 2015, we invited parties to comment on the *Preliminary Results*. Petitioners timely filed their case brief on September 4, 2015, and Nava timely filed its rebuttal brief on September 8, 2015.[2]

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[1] *See Silicomanganese From India: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 31891 (June 4, 2015) (*Preliminary Results*) and accompanying Preliminary Determination Memorandum.
[2] Petitioners are Eramet Marietta, Inc. and Felman Production, LLC.

III. SCOPE OF THE ORDER

The products subject to the order are all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading. This scope covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, our written description of the scope remains dispositive.

The low-carbon silicomanganese excluded from this scope is a ferroalloy with the following chemical specifications: minimum 55 percent manganese, minimum 27 percent silicon, minimum 4 percent iron, maximum 0.10 percent phosphorus, maximum 0.10 percent carbon and maximum 0.05 percent sulfur. Low-carbon silicomanganese is used in the manufacture of stainless steel and special carbon steel grades, such as motor lamination grade steel, requiring a very low carbon content. It is sometimes referred to as ferromanganese-silicon. Low-carbon silicomanganese is classifiable under HTSUS subheading 7202.99.8040.

IV. MARGIN CALCULATIONS

We calculated export price and normal value using the same methodology stated in the *Preliminary Results*, with no changes in these final results.

V. DISCUSSION OF THE ISSUE

Issue 1: *Bona Fides* of Nava's U.S. Sale

Petitioners' Comments

- The Department did not conduct a rigorous "totality of circumstances" *bona fides* analysis in the *Preliminary Results* and should do so for the final results of the instant review.
- A "totality of circumstances" examination will result in a finding that Nava's U.S. sale is not *bona fide*, which will require the Department to rescind this review and leave Nava's current cash deposit rate in place.
- When a respondent under review makes only one sale and the Department finds that transaction atypical, exclusion of that sale as not *bona fide* necessarily must end the review as no sales will be available for the antidumping duty calculation.

- The Court of International Trade (CIT) in *New Donghua Amino Acid* held that reviews with a single sale provide little data to understand future selling practices, leaving the door open to the possibility that the sale may not be typical.[3]
- Nava's sales price was significantly higher than other imports during calendar year 2014.
- The fact that Nava knows little about its U.S. customer suggests that the Department should closely consider whether this transaction is typical.
- The timing of the sale indicates that Nava managed the prices and costs in order to ensure a price that would result in a low cash deposit rate.
- Nava has made no further sales to the United States since the U.S. sale subject to this review, even though the company indicated that the pricing environment was favorable.

Nava's Rebuttal Comments

- The Department properly analyzed the U.S. sale in question in the *Preliminary Results* and correctly found the sale to be a *bona fide* transaction.
- Petitioners do not address the specific findings of the *Preliminary Results* or identify where the *Preliminary Results* erred in the *bona fides* analysis.
- For a *bona fides* analysis, the Department may exclude certain sales from the antidumping duty analysis when those sales are determined to be commercially unreasonable.[4]
- Petitioners arguments do not meet the standard for finding Nava's sale to be commercially unreasonable.
- The CIT has found that a single sale is a perfectly appropriate basis for an administrative review and the facts of each situation must be individually examined.[5]
- A lack of sales in a subsequent POR is not a criteria by which the *bona fides* of a single sale are analyzed.
- Contrary to Petitioners' arguments, a shortfall in supply of subject merchandise in the United States was a motivation of Nava making this sale.
- The Department correctly rejected Petitioners' argument in the *Preliminary Results* that Nava's sale was significantly higher than other imports at the time of entry and Petitioners do not now argue that the Department's conclusion was inaccurate.
- A respondent is not required to be knowledgeable about its U.S. customers' business activities or to have knowledge about the prices at which its customers resell the subject merchandise.
- Nava and its U.S. customer conducted the sale under normal, informed commercial conditions at a time when an optimal pricing situation arose.

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[3] Petitioners Case Brief citing *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1344 (CIT 2005) (*New Donghua*) (quoting *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1236, 1250 (CIT 2005) at 1263).

[4] Nava Rebuttal Brief citing *FAG U.K. v. United States*, 945 F.Supp. 260, 265 (CIT 1996) and *Windmill Int'l Pte. v. United State*s, 193 F.Supp. 2d 1303, 1313 (CIT 2002).

[5] Nava Rebuttal Brief citing *American Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 998 (CIT 2000) and *Stainless Steel Bar from Spain: Final Results of Antidumping Administrative Review;2012-2013*, 79 FR 63081 (October 22, 2014) (*SSB from Spain*).

Department's Position: The Department finds that Nava's sale of subject merchandise during the POR was *bona fide*.

As an initial matter, when the Department conducts a *bona fides* analysis, we determine whether the sale under consideration is atypical, distortive, or otherwise unrepresentative of normal business practices and, as such, whether the sale is structured in such as a way that it can be replicated.[6] The Department conducts this analysis through a "totality of circumstances" evaluation that has generally focused on the timing of the sale, the price and quantity, expenses related to the transaction, whether the goods were resold at a profit and whether the sale was made at an arm's length.[7] We note that the Department does not often conduct a *bona fides* analysis in administrative reviews. The issue normally arises in new shipper reviews. However, regardless of whether the review in question is a new shipper review or administrative review, a U.S. sale must be a *bona fide* commercial transaction to be a basis for a dumping margin, and therefore we apply the same test in administrative reviews and new shipper reviews. As a practical matter, in an administrative review, the Department requests somewhat different information than that requested in a new shipper review, where added scrutiny is placed on the U.S. importer and customer. As such, in this case, the Department conducted our *bona fides* analysis in the *Preliminary Results* based on information collected during our standard administrative review process, including supplemental information obtained in response to comments from Petitioners.

In their case brief, Petitioners contend that the Department did not conduct the rigorous "totality of circumstances" analysis that is required under these circumstances, where Nava had a single sale. Petitioners note that in *New Donghua*, the CIT held that "in one sale reviews, there is, as a result of the seller's choice to make only one shipment, little data from which to infer what the shipper's future selling practices would look like. This leaves the door wide to the possibility that the sale may not, in fact be typical . . ."[8] We agree that a single sale potentially provides little data for analysis and could facilitate the manipulation of the dumping margin calculations, leading to an unrealistic cash deposit rate. However, as Nava correctly points out, the CIT has also ruled that "single sales, even those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices atypical of the parties' normal selling practices."[9] On balance, while Nava's single sale requires that we engage in a very thorough analysis, it is not immediately indicative of an atypical or commercially-unreasonable sale that should be excluded from the dumping margin calculations.

In the *Preliminary Results*, we conducted a *bona fides* analysis based on record information collected from our normal administrative review process. As part of this, in accordance with 19 CFR 351.301(c)(4), we also placed price data of imports of subject or comparable merchandise into the United States during the POR on the record as a benchmark measure of commercial

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[6] *See, e.g., Shandong Chenhe Int'l Trading Co.* v. *United States*, No. 08–00373, slip op. at 19 (CIT 2010); *see also Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005); *New Donghua* at 1342.
[7] *See, e.g., Garlic From the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews*, 76 FR 19322 (April 7, 2011).
[8] *See* Petitioners' Case Brief at 3.
[9] *See* Nava's Rebuttal Brief at 2.

reasonableness. Although Petitioners allege that the timing was structured so as to permit the manipulation of the U.S. price, such that it would result in a favorable margin, our comparison of the U.S. price for this sale with the benchmark data indicates that it is reasonable. U.S. import price data on the record indicates that the price of the sale was within the range of prices for comparable goods entering the United States during the same time period as the POR. Likewise, the quantity is not reflective of a commercially-unreasonable quantity typically seen where parties attempt to "test the waters" or manipulate the dumping margin.

Petitioners also argue that Nava's lack of knowledge about its customer and the fact that it has not had another transaction since are reasons to be suspicious of the *bona fides* nature of the sale.[10] The Department disagrees. First, there is no evidence on the record which indicates that Nava's customer is not a trading company or that it has not dealt with this or similar merchandise in the past. As Nava correctly points out, it is not unusual for an informed buyer to find a seller where certain market opportunities exist.[11] Thus, the fact that Nava had never previously dealt with this customer and does not have broad knowledge of the customer's operations, does not lead us to conclude that the sale is not *bona fide*. Likewise, there may be many reasons why another transaction has not taken place between Nava and the customer (*e.g.*, the U.S. customer has no further need for the product, the U.S. customer was unable to find a resale customer). As such, neither of these facts cited by Petitioners indicates that Nava's sale is commercially unreasonable or otherwise not replicable. Accordingly, we find that there is no evidence that the interactions or relationship with the customer support a conclusion that the sale was not conducted on a commercially-reasonable basis.

In sum, our "totality of circumstances" review of Nava's sale leads to the conclusion that its sale is *bona fide*. Petitioners have not provided any new information or arguments which lead the Department to re-evaluate our conclusion in the *Preliminary Results*. Accordingly, we continue to find that Nava's sale during the POR is *bona fide* and we have therefore continued to calculate a dumping margin based on the sale.

[10] *See* Petitioners' Case Brief at 5-7.
[11] *See* Nava's Rebuttal Brief at 6.

VI. RECOMMENDATION

Based on our analysis of the comment received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of the review and the final weighted-average dumping margin in the *Federal Register*.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 NOVEMBER 2015
(Date)