



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

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NSR: 10/4/12 - 10/14/13  
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January 21, 2015

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**Subject:** Issues and Decision Memorandum for Final Results of  
Antidumping Duty New Shipper Review: Drawn Stainless Steel  
Sinks from the People's Republic of China

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## SUMMARY

The Department of Commerce (“the Department”) analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty new shipper review (“NSR”) of drawn stainless steel sinks (“drawn sinks”) from the People’s Republic of China (“PRC”) for Hubei Foshan Success Imp. & Exp. Co. Ltd. (“Foshan Success”). Based on our analysis of the comments, we recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

### Background

The Department published its *Preliminary Rescission* of this NSR on September 30, 2014.<sup>1</sup> On October 22, 2014, Foshan Success submitted a case brief. On November 4, 2014, Petitioner (*i.e.*, Elkay Manufacturing Company) submitted a rebuttal brief. On December 12, 2014, the

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<sup>1</sup> See *Drawn Stainless Steel Sinks from the People’s Republic of China: Preliminary Intent To Rescind Antidumping Duty New Shipper Review; 2012–2013*, 79 FR 58743 (September 30, 2014) (“*Preliminary Rescission*”).



Department extended the time period for issuing the final results by 30 days until January 21, 2015.<sup>2</sup>

### Scope of the Order

The products covered by the scope of the order are drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks. For purposes of this scope definition, the term “drawn” refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as “zero radius” or “near zero radius” sinks.

The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under statistical reporting numbers 7324.10.0000 and 7324.10.00.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

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<sup>2</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: Extension of Deadline for Final Results of New Shipper Review of Drawn Stainless Steel Sinks from the People’s Republic of China, dated December 12, 2014.

## DISCUSSION OF THE ISSUES

### **Comment 1: Whether Foshan Success' Sale Is *Bona Fide***

#### *Foshan Success' Arguments:*

- The Department's preliminary determination that Foshan Success' sale was not *bona fide* and its preliminary decision to rescind the NSR are unreasonable because the Department's analysis of the sale was distorted.
- Foshan Success provided evidence that the price and quantity of the sale it made during the period of review ("POR") are within the range of similar sinks as advertised on an online marketplace.
- The information provided by Foshan Success demonstrates that the sinks were sold at a profit, and that the importer paid the negotiated price.
- Foshan Success provided the Department with complete data, including an income statement and ledgers. The Department should make a rate determination in the final results based on the data Foshan Success provided on the record.

#### *Petitioner's Rebuttal Arguments:*

- The Department should rescind Foshan Success' NSR in the final results because the single POR sale was not *bona fide*.
- Foshan Success fails to cite to any record evidence to support its argument that its single POR sale was *bona fide*. On the contrary, the record evidence discussed by the Department in its *Bona Fides* Memorandum demonstrates that Foshan Success's single sale was not *bona fide*.
- The U.S. Customs and Border ("CBP") data that the Department used in its *bona fide* analysis demonstrates that the quantity and value of Foshan Success's single U.S. sale were aberrational.
- Record evidence does not demonstrate that Foshan Success or the importer made a profit on the sale of subject merchandise. Thus, the subject sale does not represent Foshan Success' or the customer's future behavior.
- Foshan Success failed to reconcile its U.S. sale to its financial statements.

**Department's Position:** Foshan Success states that it provided evidence that the price and quantity of its POR sale reflect normal market conditions, but it failed to cite a single piece of record evidence to support its claim in its case brief. Foshan Success had one export price sale of subject merchandise during the POR to its U.S. customer. Foshan Success claimed that the sinks it sold were high-end models (double bowls, punch for bowls and welded together with top, top thickness 1.5mm, bowl thickness 1.2mm)<sup>3</sup> and submitted the price quotes of similar sinks (in size, thickness and tier) of other suppliers from the B2B website "Alibaba."<sup>4</sup> However, the Alibaba per-sink price quotes range from \$16-80 for similar double-bowl sinks,<sup>5</sup> and therefore, they indicate that the same product can be sold at a price as low as \$16 per sink. With

<sup>3</sup> See Letter from Foshan Success: "New Shipper Review 10/4/12 – 10/14/13 – Drawn Stainless Steel Sinks from the People's Republic of China; Foshan Success' Rebuttal Comments to Petitioner's Pre-Preliminary Results Comments," dated September 17, 2014, at 3.

<sup>4</sup> See Foshan Success' Second Supp. QR at 3 and Appendix Supp-3.

<sup>5</sup> *Id.* at Appendix Supp-3.

such a wide-range of price differences, the online advertisement information, in fact, does not support Foshan Success' argument, particularly given that the quantity of Foshan Success' subject sale was lower than the minimum quantity order of the online advertisements.

Online advertisements are not actual arm's length transactions; therefore we find them to be an unreliable source to compare and determine whether there exists a *bona fide* basis for the review.<sup>6</sup> Furthermore, unless demonstrated to be inaccurate, it is the Department's practice, in conducting a *bona fide* analysis, to base the price and quantity comparisons on other U.S. entries of subject merchandise during the POR, as reported by CBP, when available.<sup>7</sup>

A comparison of Foshan Success' POR sale and the CBP data of all other entries of drawn sinks does not lead us to conclude that Foshan Success' sale is reflective of normal business practices, nor is it indicative of future selling practices. Specifically, we continue to find the average unit value and the quantity of Foshan Success' sale to be atypical and, thus, commercially unreasonable.<sup>8</sup> In particular, we find Foshan Success' entry prices to be high in comparison to other entries of the subject merchandise during the POR.<sup>9</sup> Also, we continue to find that its entry quantities are lower than other POR entries during the POR.<sup>10</sup> High price and low quantity relative to other sales have been used in other non-*bona fide* determinations as an indicator of a sale made on a non-*bona fide* basis.<sup>11</sup>

We also disagree with Foshan Success that the subject merchandise was sold at a profit. As detailed in the *Bona Fides* Memorandum, we gave the importer three opportunities to respond to the importer-specific appendix included in the original questionnaire, but the importer failed to provide the required information.<sup>12</sup> As a result, and as further detailed in the *Bona Fides* Memorandum, there is no evidence that Foshan Success or its importer sold the subject merchandise at a profit.<sup>13</sup> Accordingly, we continue to find that the importer failed to provide evidence that the subject merchandise was resold at a profit.

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<sup>6</sup> See *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comments 3 and 4.

<sup>7</sup> See, e.g., *Honey from the People's Republic of China: Final Results and Rescission of Antidumping Duty New Shipper Reviews*, 76 FR 4289 (January 25, 2011) ("*Honey NSR 2011*"), and accompanying Issues and Decision Memorandum at Comment 4; see also *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Intent To Rescind Antidumping Duty New Shipper Review; 2012-2013*, 79 FR 40710 (July 14, 2014) (unchanged in the final notice of *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Rescission of Antidumping Duty New Shipper Review*, 79 FR 71748 (December 3, 2014)).

<sup>8</sup> Due to the proprietary nature of this information, see Memorandum entitled "Antidumping Duty New Shipper Review of Drawn Stainless Steel Sinks from the People's Republic of China: *Bona Fide* Sales Analysis for Hubei Foshan Success Imp. & Exp. Co., Ltd.," ("*Bona Fides* Memorandum"), dated September 24, 2014.

<sup>9</sup> *Id.* at 6-7.

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

<sup>11</sup> See, e.g., *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, 52051 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 16.D; see also *Honey NSR 2011*, 76 FR 4289 (January 25, 2011), and Issues and Decision Memorandum at Comment II, and *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Intent To Rescind Antidumping Duty New Shipper Review; 2012-2013*, 79 FR 40710 (July 14, 2014).

<sup>12</sup> See *Bona Fides* Memorandum at 8-10.

<sup>13</sup> *Id.* at 10.

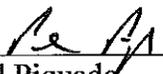
In *Foshan Nanhai*, the court upheld the Department's finding that Foshan Nanhai's lone sale to the United States did not constitute a *bona fide* commercial transaction based on "the totality of circumstances." Those circumstances included inconsistent and conflicting statements that the importer made as to how it disposed of the subject sale and insufficient evidence as to its ongoing interest in the subject merchandise, thus preventing the Department from concluding that the sale represented the U.S. importer's future commercial behavior.<sup>14</sup> We continue to find that this case is analogous to this NSR because several aspects of Foshan Success' sale demonstrate, in their totality, that the sale under review was not reflective of normal business practices and is not indicative of future selling practices, including: (1) record evidence shows that Foshan Success' single sale of subject merchandise is uncharacteristically low in quantity and high in price; (2) the importer's failure to provide necessary resale information prevented the Department from concluding that the sale represented the U.S. importer's future commercial behavior or to conclude that the goods was sold at profit; and (3) there is no record evidence that either Foshan Success or the U.S. importer made a profit from the transactions.

Thus, based on the totality of the circumstances in this review, the Department finds that Foshan Success' single NSR sale is not *bona fide*, and thus we are rescinding this NSR.

#### CONCLUSION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final rescission of this NSR in the *Federal Register*.

Agree  Disagree

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

21 JANUARY 2015  
Date

<sup>14</sup> See *Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory v. United States*, 920 F. Supp. 2d 1350, 1360 (CIT 2013) ("*Foshan Nanhai*"); see also *Uncovered Innerspring Units From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review*, 76 FR 80337 (December 23, 2011).