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Admin Review
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November 25, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Final Results of Antidumping Duty
Administrative Review: Chlorinated Isocyanurates from Spain;
2011-2012 Administrative Review

SUMMARY

We have analyzed the comments from interested parties in the 2011-2012 administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from Spain. As a result of this analysis, we have made no changes to our preliminary finding that Ercros, S.A. (Ercros) did not sell chlorinated isos in the United States below normal value (NV) during the period of review (POR).¹ In addition, we continue to find Ercros to be the successor-in-interest to Aragonesas Industrias y Energia S.A. (Aragonesas).²

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Background

On July 10, 2013, the Department of Commerce (the Department) published the Preliminary Results of this administrative review.³ The administrative review covers one producer and

¹ See Chlorinated Isocyanurates from Spain: Preliminary Results of the Antidumping Duty Administrative Review; 2011-12, 78 FR 41367 (July 10, 2013) (“Preliminary Results”), and the accompanying Decision Memorandum at 3-4; see also Memorandum to Neal M. Halper from Ernest Z. Gziryan, Cost of Production and Constructed Value Calculation Adjustments for the Final Results- Ercros, S .A. of Spain, dated November 25, 2013, noting that we have not made any additional cost adjustments for the final results.

² For the full successor-in-interest analysis and our conclusions, see Preliminary Results, and accompanying Decision Memorandum at 3-4.

³ See Preliminary Results.

exporter of the subject merchandise to the United States, Ercros. The POR is June 1, 2011, through May 31, 2012. We invited parties to comment on the Preliminary Results. We received comments from Clearon Corp. and Occidental Chemical Corporation (collectively, Petitioners), and respondent Ercros on August 26, 2013, and rebuttal comments from both parties on September 3, 2013.

On August 9, 2013, Ercros submitted a written request to reserve its right to participate in a hearing if one was requested by Petitioners. Petitioners made no request for a hearing. Thus, no hearing was held.

Scope of the Order

The products covered by the order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid (Cl₃(NCO)₃), (2) sodium dichloroisocyanurate (dihydrate) (NaCl₂(NCO)₃ 2H₂O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl₂(NCO)₃). Chlorinated isocyanurates are available in powder, granular, and tableted forms. The order covers all chlorinated isocyanurates. Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Discussion of the Issues

Comment 1: Whether Ercros Sales Were Bona Fide

Petitioners argue that Ercros’ reported U.S. sales are not bona fide and are inconsistent with usual “commercial realities” because the timing, prices, quantity, profits made, and expenses incurred do not reflect commercial reality. Accordingly, Petitioners conclude that these sales are unreliable for purposes of calculating an antidumping duty margin and the instant review should be rescinded in accordance with the Department’s practice.

Petitioners note that the Department’s practice is to not calculate dumping margins when sales are inconsistent with the usual “commercial realities.” In determining whether the sale is commercially reasonable, Petitioners note that the Department’s practice is to consider, among other factors, the timing of the sale; the price and quantity at which the sales are made; the expenses arising from the transaction; whether the goods were resold at a profit; and whether the

transaction was at an arm's length basis.⁴ According to Petitioners, even though the majority of the Department's practice in evaluating the bona fide nature of a U.S. sale generally applies to new shipper reviews, the same practice also holds true in an administrative review.⁵

Ercros argues that the court cases cited by Petitioners are factually removed from Ercros' situation. Specifically, in Hebei, Ercros argues that the new shipper had a single shipment that was not resold, and the new shipper's price was compared to other Chinese prices and not the prices charged by other world exporters.⁶ Similarly, Ercros notes that in Allied, the Department found a single sale to be bona fide based on its comparison to other Turkish export prices and not export prices from other countries.⁷ Likewise, Ercros notes that Petitioners' cite to Shandong and Tianjin were new shipper reviews that also involved comparing a single sale to other Chinese sales.

Timing of the Sale

The circumstances of Ercros' U.S. sales, Petitioners argue, do not reflect commercial reality. Petitioners note that the record evidence shows that Ercros, and not the customer, determined the date of shipment for the reported U.S. sales. Furthermore, the Census import statistics indicate that there were no imports of subject merchandise from Spain from the end of 2010 until April 2012, nor have there been any imports since May 2012. Although these sales transactions were to Ercros' previous customers, Petitioners note that these customers have not placed an order for several years and have not ordered after the end of the POR.

Petitioners argue that the circumstances surrounding the timing of Ercros' U.S. sales support finding these sales as not being made on reasonable commercial terms. In a similar finding in a new shipper review made by the Department and affirmed by the Court of International Trade (CIT), the Department rescinded the review because three sales made on nearly identical terms to three retailers on the same day, and having the same unusually high price for essentially the same quantities, were found to be suspicious and not likely repeated.⁸

Ercros counters that the circumstances behind its sales do reflect commercial reality. Ercros explains that chlorine sales are more likely to occur in the spring in preparation for the coming summer swimming pool season. According to Ercros, Petitioners own information shows that imports are generally high from February through June. The fact that Ercros' sales entered the United States prior to the end of the POR in the spring does not indicate that the sales were not

⁴ See Hebei New Donghua Amino Acid Co., Ltd. v. United States, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (Hebei); see also Allied Tube & Conduit Corp. v. United States, 31 CIT 1090, 1092 (2007) (Allied); see also Shandong Chenhe Int'l Trading Co. v. United States, Slip Op. 10-129 (CIT 2010) (Shandong); see also Tianjin Tiancheng Pharmaceutical Co., Ltd. V. United States, 366 F.Supp. 2d 1246 (CIT 2005)(Tianjin).

⁵ See FAG U.K. v. United States, 945 F. Supp. 260, 265 (CIT 1996)(FAG), citing Ipsco v. United States, 714 F. Supp. 1211, 1217 (CIT 1989) (Ipsco).

⁶ See Hebei, 374 F. Supp. 2d at 1336.

⁷ See Allied, 31 CIT at 1090, and the CIT's decision upholding the Department's remand determination that continued to find this sale to be bona fide at Allied Tube & Conduit Corp. v. United States, 556 F.Supp. 2d 1350, 1355 (CIT 2008).

⁸ See Fresh Garlic from the People's Republic of China, 76 FR 19322 (April 7, 2011); see also Jinxiang Chengda Imp. & Exp. Co., Ltd. v. United States, Slip Op. 13-40 at 25 (CIT 2013)(Jinxiang).

commercial in nature, according to Ercros. Ercros argues that it is standard practice for chlorine sales to be made in March and April (the two months that included Ercros' first and last shipments during the POR), when U.S. chlorine suppliers are preparing for the summer swimming pool season. This is further indication, Ercros states, that its sales were commercial in nature.

Furthermore, Ercros states that Petitioners' claim that Ercros dictated when the shipments to the United States would occur is unsupported, since petitioners simply do not know the reasoning for the customer's instructions. In addition, Petitioners' argument rests solely on the statement of one U.S. purchaser that had instructed Ercros to not ship the merchandise before March. Since the record does not indicate the reasoning behind this, Ercros argues that the Department should not read anything unfavorable into the request.

Price and Quantity

Petitioners argue that the Department's primary indicator of determining whether a sale is bona fide is based on evidence that the sales price is unusually high in comparison to the prices of other sales of subject merchandise. Citing to Jinxiang, Petitioners note that this type of sales inquiry is done because "a respondent might arrange for a high sales price in order to avoid the imposition of a significant antidumping duty margin."⁹

Ercros argues that Petitioners' reliance on Jinxiang is misplaced since it also involves a new shipper review where the question in consideration involves assigning a new shipper its own rate rather than the "all others" rate. According to Ercros, the facts in Jinxiang differ significantly from the facts in the instant review, because Jinxiang involved an atypical sale at an exceptionally high price as compared to other Chinese exporter prices, where the new shipper was not acting in a manner comparable to other Chinese exporters. Ercros further notes that in Jinxiang, commercial reasonableness was determined at the time the sale was made and not whether commercial prices may or may not change in the future.¹⁰

Ercros notes that Petitioners' only cite to a case supporting a bona fides analysis within the context of an administrative review is FAG, which Ercros argues, has no relevance or application to the issue of whether Ercros' sales were priced too high to be bona fide. Ercros points to the language made in this ruling which restricts the exclusion of a low-priced sale only when its inclusion would lead to an unrepresentative price comparison, noting that the "unrepresentative standard" for excluding sales made in Ipsco is stricter than the "outside the ordinary course of trade" standard. According to Ercros, this provides no support for Petitioners' claim that the foreign producer in an administrative review is no different than the foreign producer in the new shipper review.

Ercros counters that its U.S. prices are reasonable and consistent with past prices, and are not higher than market prices for comparable merchandise. Ercros maintains that its U.S. sales prices were not high and its quantities not low when compared to past and current market prices. Ercros adds that Petitioners have not provided information related to actual U.S. market prices or

⁹ Id., at 5.

¹⁰ Id., at 77.

commercial quantities that they were capable of providing. Rather, Petitioners have incorrectly relied on other country or aggregate average unit values (AUVs) instead of prices of subject merchandise exports from Spain. According to Ercros, it is inappropriate to consider these AUVs in this instance because the import classification for subject merchandise is a basket category. Ercros argues that using this basket category would result in an improper comparison since Ercros sold only supersacks of high quality granular trichlor with 90 percent chlorine content during the POR. Furthermore, Ercros notes that the Chinese and Japanese imports that Petitioners base their AUV calculations on could have been dumped and sold at artificially low prices, recognizing the recently filed antidumping duty petition filed against Japan and the countervailing duty petition filed against the People's Republic of China (the PRC) on imports of chlorinated isos.¹¹

Petitioners refute Ercros' argument that its sales prices during the POR are comparable to prices for sales made in 2008 and 2009, and cannot be compared to Chinese prices during the POR because it is an inferior product. According to Petitioners, the proper method for analyzing prices in 2008 and 2009 should not be made by isolating only Spanish prices, but by examining the price difference that existed between Spanish imports and all other world imports of subject merchandise in 2008 and 2009. Petitioners find that by analyzing the price differences between Spanish and Japanese imports of subject merchandise made during the POR, Ercros' prices, and subsequently, its price differences to Japanese imports made during the POR, are higher than those observed in 2008 and 2009.

Ercros states that Petitioners' argument relies on the claim that the relative price differences between Ercros' reported prices in the current review and Japanese AUVs are greater now than they were in the 2008 and 2009 reviews. However, petitioners fail to dispute the fact that Ercros' prices in the current review are in line with the prices it charged in 2008 and 2009 for 90 percent granular trichlor in supersacks, which was the only product sold in the United States during the POR. Ercros argues that Petitioners are wrongly comparing not just AUVs from different countries, but are also comparing AUVs from different years, which makes Petitioners' argument "relative differences" baseless. Aside from this flawed comparison, Ercros notes that if one analyzes Spain's AUVs rather than Ercros' reported prices for 2012, and compared these AUVs to the Japanese AUVs, the differences would be considerably less. Ercros adds that Petitioners did not do a "relative differences" analysis with respect to Chinese AUVs because the differences as compared to Spanish AUVs in 2012 were actually lower than the differences in 2008 and 2009, which further invalidates this type of analysis.

Ercros adds that Petitioners did not consider the AUVs for imports of subject merchandise from other countries that were higher than or almost the same price as Ercros' prices. According to Ercros, Petitioner's information shows that that in the spring of 2012, the AUV was \$9.55 for Ireland, \$3.09 for Canada, and \$2.24 for Italy, figures that should also be used for comparison purposes.

¹¹ See August 29, 2013 letter filed on behalf of Clearon Corp. and Occidental Chemical Corporation regarding the "Antidumping Duty Petition on Chlorinated Isocyanurates from Japan, and Countervailing Duty Petition on Chlorinated Isocyanurates from the People's Republic of China," filed electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System.

With regard to comparisons being made to Chinese prices, Petitioners state that Ercros ignores the commercial reality in a commodity industry and the inherent pricing pressure from Chinese competition. Petitioners challenge Ercros' statement that it has been able to make sales in the United States despite the competition by the PRC, noting that Ercros has not made any U.S. sales over the last three years. Further, Petitioners argue that contrary to Ercros' statement that it will make repeated sales to the United States, the Census import data show that no imports were made from Spain after May 2012.

Ercros clarifies that the reference it made regarding its U.S. sales as a "commodity" was made in the context of pricing its own bulk granular trichlor in supersacks, where the price for this product was not likely to vary from one customer to another. Ercros refutes Petitioners' argument that Ercros' sales were one-time transactions "designed" to achieve a zero cash deposit rate. The information on the record shows that "the email correspondence reflects that the customers were past customers of Ercros," contradicting Petitioners' claim that these are one-time sales. The fact that Ercros made several sales to several customers and not just one sale, Ercros adds that, contrary to petitioners claim, it intends to make future sales in the United States.

Ercros argues that contrary to Petitioners claim, Ercros continues to sell products in the United States, even after the PRC entered the market, because Chinese prices relative to Ercros' prices in 2008 and 2009 were much lower than they are now. Ercros states that Spain's AUVs for subject merchandise listed in the Census import data for the months October through December 2008 and all of 2009 are actually higher than the entered values for sales made in 2012. In addition, Table I-9 of the U. S. International Trade Commission's (the ITCs) report for the first sunset review of the order provides Spain's AUVs in 2008 and 2009, further demonstrating that the prices charged by Ercros in the current review are not unduly high when compared to prices charged by Ercros previously. According to Ercros, if adjustments for inflation are made, the prices charged in 2012, when converted into 2008 and 2009 constant dollars, would be less than what was charged previously for comparable product.

Petitioners argue that the import statistics that Ercros relies on from 2008 and 2009 do not account for the wide range of products that are included under the HTSUS subheading 2933.69.6015. Specifically, Petitioners note that these statistics include imports of dichlor and trichlor, as well as imports of tablets and quantities not sold in bulk. According to Petitioners, the ITC found in the investigation that prices for dichlor were generally higher than prices for trichlor, and that trichlor in tablet form was sold at prices 8 to 43 percent higher than bulk trichlor. The fact that Ercros' U.S. sales for trichlor are priced higher than imports from Japan and the PRC under HTSUS subheading 2933.69.6015, which includes trichlor and dichlor, is strong evidence that the prices are not bona fide. Furthermore, Petitioners note that these import statistics used by Ercros draws an incorrect comparison because it relies on 2008 and 2009 prices only for October through December.

Petitioners contend that the quantities of subject merchandise shipped by Ercros during the POR are indicative that the sales were not bona fide. According to Petitioners, Ercros could have shipped more than one container load at a time if the sale had been made for a larger quantity.

Petitioners note that in the last administrative review, Ercros' normal sales included quantities that exceeded 19 metric tons, or one container load.

Ercros argues that whether a sales quantity is considered commercial depends on whether the specific sale in question was sold in a commercial quantity. According to Ercros, it is irrelevant whether a higher quantity of sales could have been sold either by way of that one specific sale or more sales. Ercros notes that in prior periods, it reported numerous sales of one container load of 19 metric tons, making the current sales in the POR no less commercial. Furthermore, Ercros states that if the Department were to accept Petitioners' argument that these are not commercial transactions, the Department would make it virtually impossible for any exporter that receives a high antidumping duty to ever return to the market.

Profitability of Sales

Petitioners argue that the record evidence shows that Ercros' U.S. customers are unable to process and resell Ercros' imports at a profit if you factor in Ercros' own additional costs for tableting and packing. According to Petitioners, Ercros' U.S. customers could have purchased Chinese and Japanese material to make tablets at a lower cost. Petitioners state that Ercros concedes that there is no evidence concerning its own past sales or the profit earned by its customers on their resales.

Ercros counters that Petitioners' claim regarding Chinese material fails to address whether Ercros' customers did or did not make a profit on Ercros' material. Ercros notes that its customers still bought material from Ercros in 2008 and 2009 even though the relative difference between Chinese AUVs and Spanish AUVs was higher at that time than during the POR, further demonstrating that Petitioners' claim is based on pure supposition. Ercros further argues that this claim is purely hypothetical because it does not demonstrate whether these U.S. customers made a profit based on what the tablets sold for in the United States, but rather on what it might cost to tablet Chinese material.

Ercros notes that none of the customers it sold to during the POR are in anyway affiliated or related to Ercros. According to Ercros, these purchasers are established companies and prior customers that would not have purchased material if they did not expect to make a profit. Moreover, Ercros states, the prices charged to these customers were virtually the same as were charged previously.

Expenses Associated with Sale

Petitioners contend that the circumstances surrounding Ercros' travel costs associated with its U.S. sales differ from those expected in the industry, noting that in the original investigation, the ITC found that domestic producers and importers typically entered contracts for one year in which the price was fixed for a period of time. In the instant case, Petitioners argue Ercros' travel expenses were narrowly associated with particular sales and not incurred in the course of an effort to sell more volume in the U.S. market.

Ercros argues that Petitioners' claim that these travel expenses are not what is expected of contract sales has no relevance because Ercros' travel expenses are related to travel to the United States. According to Ercros, its reported travel expenses are not directly and narrowly associated with a particular sale as petitioners argue, but related to attending an annual pool exhibition in the United States that includes Canadian, Mexican, and U.S. customers. According to Ercros, this is far less expensive than visiting each customer at the customer's facility. Ercros states that the fact that it did not contract for further sales is in no way related to its travel.

Department's Position:

In evaluating whether a sale is bona fide, the Department considers the totality of the circumstances to determine whether the sales under consideration are atypical, distortive, or otherwise unrepresentative of normal business practices. Specifically, for the purpose of determining whether or not a sale subject to review is commercially reasonable, and therefore bona fide, the Department considers, inter alia, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis.¹² As noted by Petitioners, it is not usual for the Department to conduct a bona fides analysis within the context of an administrative review. In the instant case, we find that subjecting Ercros' sales to a heightened scrutiny is unwarranted, given that the company in question is an established, ongoing concern that has participated in numerous administrative reviews of this antidumping duty order. We have, however, examined the Petitioners' allegation that the sales were not bona fide and find that the Census data that Petitioners primarily rely upon to make their argument is incomplete, not meaningful, and inappropriate to use. In addition, Petitioners have failed to substantiate in their allegations the non-bona fide nature of the sales with sufficient evidence. Finally, we find the nature of Ercros' sales, notably, that they were made over a one month period to different unaffiliated customers who had purchased in the past, is highly indicative that its U.S. sales made during the POR are bona fide.

With respect to pricing, the Census data that petitioners rely on for its AUV analysis include only one of the three HTSUS numbers that subject merchandise can enter the United States. In addition, Petitioners' Census data capture only half of all sales made during the POR, because the remaining sales entered under different HTSUS numbers.¹³ While Census data reflect the only clean HTSUS number for subject merchandise, all of Ercros' U.S. sales made during the POR were for the same product as identified by its product control number (CONNUM). Since this particular product entered the United States under more than one HTSUS category, Petitioners' AUV analysis ignores one half of POR sales and arrives at conclusions with respect to only half of the sales made during the POR. Therefore, we find this AUV analysis to be incomplete and not meaningful since it does not account for all the HTSUS numbers for subject merchandise that entered the United States during the POR.

We also find that the Census data concerning Japanese and Chinese products that Petitioners rely on are inappropriate to use for comparison purposes in light of the ongoing antidumping

¹² See Tianjin, 366 F.Supp. 2d at 1246.

¹³ See the memorandum to the File from Sean Carey, International Trade Compliance Analyst, "Chlorinated Isocyanurates from Spain: U.S. Customs and Border Protection data (CBP Data)," dated June 19, 2013.

investigation of chloro isos from Japan and the countervailing duty investigation of chloro isos from the PRC, and potential findings that these imports are either being dumped or subsidized. In addition, we have an existing antidumping duty order on chloro isos from the PRC and a current administrative review that covers the same POR as this review, where the Department preliminarily found margins ranging from 33.75 to 68.49 percent.¹⁴ Accordingly, it would not be appropriate to compare the prices of Spanish products to prices of PRC imports of chloro isos that are continuing to be dumped and are possibly being subsidized, or to prices of Japanese products that are also subject to an antidumping investigation. Given this finding, Petitioners' argument regarding the profitability on the resale by U.S. customers after the additional costs of tableting and packaging is moot because the comparison is based on incomplete and inappropriate data related to Chinese and Japanese imports. Furthermore, there is no record evidence that the merchandise was not resold at a profit.

With respect to timing of the sales, the record evidence shows that Ercros' U.S. sales were made to several unaffiliated customers over a one month period in March and April. Given the seasonal nature of the swimming pool season in the United States, it is reasonable to expect that chlorine sales are more likely to occur in the spring in preparation for the coming summer swimming pool season. With respect to quantity, a comparison of the U.S. Customs and Border Protection (CBP) data (CBP Data) to Petitioners' Census data shows that the monthly quantity of Ercros' sales were consistent with those of other countries reflected in the Census data, specifically, Canada, Ireland, Italy, and Mexico.

We also do not find the travel expenses arising out of sales of subject merchandise in the U.S. market to be unusual. Petitioners argue that Ercros' travel expenses were narrowly associated with particular sales and not representative of contract sales, which was the industry practice during the original investigation by the ITC. However, Ercros argues that the expenses related to attending a convention that involved multiple customers and it was more cost-efficient to attend it rather than to visit each customer individually. We find that the record evidence shows that these expenses are related to travel to the United States and are not unusual in nature. Moreover, Petitioners' argument that these travel expenses should be reflective of contract sales and Ercros' intent for future sales is moot given that in recent and the current administrative reviews, we have determined that invoice date, not contract date, is the appropriate date of sale in both the U.S. and home markets. Therefore, we do not find anything unusual related to how these travel costs were incurred or Ercros' date of sale to be indicative of its plans for future sales.

Based on the totality of the circumstances in this case, the Department finds that there is insufficient information from which to determine Ercros' sales activities were unreasonable, and therefore the record does not support a finding that Ercros' sales transacted during the POR were not bona fide sales based upon the Department's criteria.

Comment 2: Adjustment to U.S. Prices for U.S. Duty Costs

Petitioners argue that Ercros failed to report and pay the required 3.5 percent U.S. duties owed on its imports. According to Petitioners, the Department is required by statute to reduce U.S.

¹⁴ See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-12, 78 FR 41364 (July 10, 2013).

price because U.S. customs duties were owed on these imports. Ercros stated that it submitted its CBP Form 7501 for each of its sales, which shows all the charges it incurred relating to import duties. According to Ercros, since it did not pay regular duty on certain sales, as reflected in the Customs form, there is no cost to be deducted. Ercros adds that trichlor products can be duty free pursuant to General Headnote 13 to the HTSUS.

Department's Position:

Section 772 (c)(2) of the Tariff Act of 1930, as amended (the Act) requires the Department to reduce the price used to establish export price and constructed export price by the amount, if any, included in such price, attributable to U.S. import duties. We reviewed the relevant documentation on the record and find that Ercros reported the actual normal (i.e., not antidumping or countervailing) U.S. duty paid on its imports of subject merchandise during the POR. The normal U.S. import duty was paid on some of Ercros' shipments of the subject merchandise, while Ercros did not pay such duty on other shipments, which Ercros asserts can be duty free pursuant to General Headnote 13 to the HTSUS. In the instant case, we have supporting CBP documentation on the record for all sales made during the POR that confirms the amount of normal U.S. duty paid for these sales, and therefore, have adjusted the U.S. price by the amount of normal U.S. duty paid, if any, as indicated in the CBP documentation.

Comment 3: Distinction Between Sales to Distributors and Industrial Users

Petitioners argue that the Department should include all home market sales in the margin calculation because the codes for "industrial user" and "distributor" do not describe distinct levels of trade, and these distinctions do not actually exist in Ercros' commercial practice. According to Petitioners, Ercros codes its customers according to the type of packaging based on volume. Petitioners contend that the record does not support this distinction and thus, the field CUSCODH should be ignored and all home market sales of a given CONNUM should be used to calculate the NV.

Ercros states that in its responses to the Department that it explained that company does not identify its customers by category in the normal course of business. Therefore, it provided customer categories based on what its customers had purchased, since those who purchase supersacks are most likely to be industrial users who further process the material. Ercros adds that it has used the same method for reporting customer categories in prior reviews. Finally, Ercros notes that the Department has in fact, used all home market sales of a given CONNUM to calculate NV because it found no differences in the home market level of trade and the U.S. level of trade.

Department's Position:

In the preliminary results, we found that a level of trade adjustment is not warranted because the selling activities performed by Ercros for industrial users in the U.S. market and industrial and distributor/retail customers in the home market are similar. This finding is unchanged for these final results. As a result, the starting price of home market sales represents the same stage in the marketing process, and is, thus, at the same level of trade. Therefore, the Department made no

distinction between these two customer categories in calculating NV. To the extent that the type of packaging was considered in matching these sales, the Department relied solely on the hierarchy assigned to packaging as one of the four product characteristics considered in the CONNUM.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review and the final dumping margin in the Federal Register.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

25 NOVEMBER 2013

Date