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Changed Circ. Review  
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MEMORANDUM TO: James J. Jochum  
Assistant Secretary  
for Import Administration

FROM: Jeffrey May  
Deputy Assistant Secretary, Group I  
Office of AD/CVD Enforcement

DATE: November 28, 2003

SUBJECT: Issues and Decision Memorandum for the Changed Circumstances  
Review of Persulfates from the People's Republic of China

I. Summary

We have analyzed the comments of an interested party in the changed circumstances review of persulfates from the People's Republic of China (PRC). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from an interested party:

- Comment 1: Whether the Department Must Make a Successor-in-Interest Determination in this Changed Circumstances Review
- Comment 2: Whether Ai Jian May Use Reviews In Which it Sourced its Merchandise from AJ Works to Support a Revocation Request
- Comment 3: Whether Ai Jian is Subject to a Combination Antidumping Duty Rate Based on the Exporter-Producer Combination of Ai Jian and AJ Works

Background

On October 10, 2003, the Department published in the Federal Register a notice of preliminary results of changed circumstances review for persulfates from the People's Republic of China (PRC). See Persulfates from the People's Republic of China: Notice of Preliminary Results of Changed Circumstances Review, 68 FR 58658 (Oct. 10, 2003) (Preliminary Results). We gave interested parties 14 days to comment on our preliminary results. On October 24, 2003, the

petitioner, FMC Corporation (FMC), submitted a case brief. We received no other comments from interested parties on the Department's preliminary results.

### Discussion of the Issues

#### Comment 1: *Whether the Department Must Make a Successor-in-Interest Determination in this Changed Circumstances Review*

The petitioner argues that the Department should make a successor-in-interest determination that Degussa-AJ (Shanghai) Initiators Co., Ltd. (Degussa-AJ) is the successor-in-interest to Degussa AG. The petitioner claims that the Department acknowledged in the initiation notice and in the preliminary results that the purpose of this changed circumstances review is to make a successor-in-interest determination. Furthermore, the petitioner faults the Department for what it characterizes as a critical disconnect between the stated purpose of this changed circumstances review (*i.e.*, making a successor-in-interest determination) and the preliminary results that instead used a standard that focused on changes to the producer's factors of production.

#### Department's Position:

We disagree with the petitioner that we should decide whether Degussa-AJ is the successor-in-interest to Degussa AG. FMC notified the Department in January 2003 that Degussa AG, a German company, had purchased 70 percent of Shanghai Ai Jian Reagent Works (AJ Works), the supplying factory of Shanghai Ai Jian Import and Export Corporation (Ai Jian). FMC requested that we initiate this changed circumstances review to determine whether the newly named supplier (*i.e.*, Degussa-AJ) is, in fact, the successor-in-interest to AJ Works, and hence, whether it should be considered the same entity with regards to the pending revocation request. See Persulfates from the People's Republic of China: Notice of Initiation of Changed Circumstances Review, 68 FR 9637 (Feb. 28, 2003) (Initiation Notice). Therefore, we acknowledge that the nominal purpose of this changed circumstances review was to make a successor-in-interest determination.

However, we also noted in the initiation notice that because the circumstances in this changed circumstances review involve a change of ownership in a nonmarket economy (NME) country, the analysis applied and the relevant facts may differ from successor-in-interest determinations in other situations. See Initiation Notice, 68 FR at 9637. Furthermore, we noted at the preliminary results that the successor-in-interest framework is

tailored for exporters of subject merchandise, because any findings made pursuant to changed circumstances reviews are intended to apply to entities assigned their own specific cash deposit rates. Because the circumstances here involve a significant investment by a market economy company (*i.e.*, Degussa AG) in a producer (*i.e.*, AJ Works) located in an NME country, not an exporter assigned a separate cash deposit rate,

the analysis applied here differs from determinations in other changed circumstances reviews.

See Preliminary Results, 68 FR at 58659.

Consequently, we concluded at the preliminary results that it was inappropriate to apply here the successor-in-interest factors developed to determine if a change in ownership of a respondent exporter affected the rate assigned to that company. Instead, we concluded that a changed circumstances review of a supplier in an NME country must revolve around changes to the producer's factors of production. Because these factors form the basis for normal value, they are an essential component of the margin calculated for Ai Jian. For further discussion, see the October 3, 2003, memorandum to James J. Jochum, Assistant Secretary for Import Administration, from Jeffrey May, Deputy Assistant Secretary, Group I, entitled "Factors of Production Analysis With Respect to Merchandise Considered for Revocation" (Factors Memo).

The question of successorship here only has relevance, therefore, to the extent that it may affect the producer's factors of production. Having concluded that there were no significant changes to Degussa-AJ's factors of production as a result of Degussa AG's investment in AJ Works (see Comment 2 below and the Factors Memo at page 10), we determine that we have met our obligations with respect to the Department's review of changed circumstances.

Comment 2: *Whether Ai Jian May Use Reviews In Which it Sourced its Merchandise from AJ Works to Support a Revocation Request*

Reiterating arguments made in a letter submitted to the Department on May 1, 2003, the petitioner argues that the former AJ Works was effectively merged into the operations of Degussa AG after Degussa AG's investment in AJ Works.<sup>1</sup> The petitioner argues that, unlike AJ Works, Degussa-AJ is now controlled and dominated by a much larger company. The petitioner claims that, as a result, Degussa-AJ no longer operates as the same business entity as AJ Works, but rather operates as one arm of a large multinational corporation.

The petitioner contends that the "sheer size" of Degussa-AJ must influence the company's relationship with Ai Jian. According to the petitioner, the full extent of that impact, as it relates to Ai Jian's export conduct, cannot possibly be known until the Department has at least three years of experience reviewing the Ai Jian/Degussa-AJ chain. The petitioner notes that the Department, historically, has relied upon patterns of conduct, over a three-year period, as a basis for indicating anticipated future conduct by reviewed parties should an order be revoked. Therefore, the petitioner argues that the Department should have at least three years of

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<sup>1</sup> In its case brief, the petitioner refers to AJ Works as "Ai Jian." For purposes of clarity, we note that the Department uses the term "Ai Jian" in this proceeding to denote the exporter, Shanghai Ai Jian Import and Export Corporation, not AJ Works.

experience in which Degussa-AJ supplies Ai Jian before the Department considers a future revocation request based on this “new” exporter-producer combination.

Department’s Position:

We disagree with the petitioner. In order to evaluate whether Degussa AG’s investment in AJ Works impacts the Department’s consideration of previous dumping findings made with respect to Ai Jian, we focused our analysis on any changes to Degussa-AJ’s factors of production. To that effect, for the preliminary results, we examined Degussa-AJ’s production process, production facilities, suppliers, and management.

Degussa-AJ explained that AJ Works began to undertake two changes to its ammonium persulfate workshop in early 2002 (*i.e.*, before the change in ownership). Degussa-AJ has continued work on these improvements, which were ongoing as of the submission date of Degussa-AJ’s last questionnaire response. Specifically, Degussa-AJ is expanding its production capacity for producing ammonium persulfate and, in addition, is working on a process improvement to decrease the yield loss of one of the factors of production, ammonium sulfate, which should reduce the consumption of this material input in the production process. With the exception of these two ongoing changes to its ammonium persulfate workshop, Degussa-AJ has only evaluated, but not initiated, any other changes to its production facilities and production process. Because these changes were initiated before the change in ownership, they cannot be considered significant changes to Degussa-AJ’s factors of production as a result of the change in ownership.

In addition to an examination of any changes to the production facility and production process, we examined other changes at Degussa-AJ. Although there were changes to Degussa-AJ’s board of directors as a result of Degussa AG’s investment in AJ Works, the factory management team has remained largely intact, and those employees now serve in the same or similar capacities as before Degussa AG’s investment in AJ Works. Most importantly, we found no changes to the factors of production, which have been implemented to date, as a result of these management changes. Finally, there have been no changes to Degussa-AJ’s suppliers or supplier relationships since Degussa AG’s investment in AJ Works. In sum, we found that Degussa-AG’s investment in AJ Works has not changed the factors of production of merchandise sold by Ai Jian. For further discussion, see the Factors Memo.

Pursuant to 19 CFR 351.222(b)(3), the Department will partially revoke an order, with respect to a particular exporter (*e.g.*, Ai Jian), only with respect to subject merchandise produced or supplied by the producer(s) that supplied the exporter during the time period that forms the basis for the revocation (*i.e.*, three consecutive years). While we agree with the petitioner that historical experience and patterns of conduct are meaningful in assessing a company’s suitability for revocation, we note that in this case, Degussa-AJ’s pattern of conduct can already be determined meaningfully. Namely, we have found that the factors of production have not changed substantially since Degussa AG’s investment in AJ Works. Accordingly, we will

consider in any future revocation inquiry, if applicable, the results of prior administrative reviews in which Ai Jian procured its products exported to the United States from AJ Works.

Finally, we disagree with the petitioner that any possible direct or indirect influence Degussa-AJ may have over Ai Jian as a result of Degussa AG's investment in AJ Works is relevant here. The Department does not consider transactions between entities in an NME country (e.g., purchase prices to the exporter from the supplier) in its dumping analysis, and there is no evidence on the record demonstrating that Degussa AG has any influence over Ai Jian in setting the US export price for the subject merchandise.

Comment 3: *Whether Ai Jian is Subject to a Combination Antidumping Duty Rate Based on the Exporter-Producer Combination of Ai Jian and AJ Works*

The petitioner claims that, as of the date of the change in ownership, Ai Jian is no longer entitled to the Ai Jian-AJ Works exporter-producer combination rate because Degussa-AJ is no longer the same entity as AJ Works. The petitioner requests that the Department impose the China-wide rate of 119.02 percent on Ai Jian, retroactive to the date of the acquisition. In the alternative, the petitioner recommends that the Department impose the China-wide rate of 119.02 percent on Ai Jian effective with the date of the final results of this changed circumstances review after finding that Degussa-AJ is the successor-in-interest to Degussa AG.

Department's Position:

We disagree with the petitioner. We noted the following at the preliminary results:

(T)here is no basis for the petitioner to request a retroactive cash deposit rate for Ai Jian/Degussa-AJ. The Department does not establish retroactive cash deposit rates on past entries. In accordance with 19 CFR 351.221(b)(7), the Department will only revise cash deposit rates on future entries, as necessary. Furthermore, Ai Jian's cash deposit rate has never been based on a combination rate with AJ Works, as the petitioner claims. The Department does not create exporter-producer combination rates in an investigation or administrative review unless the exporter qualifies for exclusion from an antidumping order. See Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160 (Feb. 28, 1997). Even if an exporter sources from a different producer altogether and "fails to adjust prices accordingly, this will be reflected in the assessment and future cash deposits." See Notice of Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China, 62 FR 27222, 27228 (May 19, 1997). See Factors Memo.

Finally, we have not found that Degussa-AJ is the successor-in-interest to Degussa AG. As noted in Comment 2, the issue at hand is whether Degussa-AJ's factors of production have changed substantially as a result of Degussa AG's investment in AJ Works. As noted above, because: 1) the Department assigns cash deposit rates to exporters, and not exporter-producer

combinations, and 2) this changed circumstances review does not cover any change to the ownership of the exporter, there is no basis to assign the PRC-wide rate to Ai Jian.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

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James J. Jochum  
Assistant Secretary  
for Import Administration

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(Date)