



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

A-570-983
NSR: 10/4/12 - 10/14/13
Public Document
E&C AD/CVD OIII: JZ

September 23, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

SUMMARY

In response to a request from Hubei Foshan Success Imp. & Exp. Co. Ltd. ("Foshan Success"), the Department of Commerce ("the Department") is conducting a new shipper review ("NSR") of the antidumping duty order on drawn stainless steel sinks ("drawn sinks") from the People's Republic of China ("PRC") for the period of review ("POR") October 4, 2012 through October 14, 2013. As discussed below, the Department preliminarily determines that Foshan Success' sale under review is not *bona fide*. As such, the Department is preliminarily rescinding the NSR for Foshan Success.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intent to issue final results no later than 90 days from the date of publication of this notice, pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act").



Background

On November 27, 2013, the Department initiated an NSR of the antidumping duty order on drawn sinks from the PRC, exported by Foshan Success and produced by Jiangmen Xinhe Stainless Steel Products Co., Ltd.¹ On May 6, 2014, the Department extended the time period for issuing the preliminary results by 120 days until September 23, 2014.²

The Department sent an antidumping duty questionnaire to Foshan Success, to which it responded in a timely manner. Between January and August, 2014, the Department issued supplemental questionnaires to Foshan Success, to which they also responded in a timely manner. Between March and April 2014, the Department received surrogate country/surrogate value comments from interested parties.

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.

¹ See *Drawn Stainless Steel Sinks from the People's Republic of China: Initiation of New Shipper Review*, 78 FR 72864 (December 4, 2013).

² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: Extension of Deadline for Preliminary Results of New Shipper Review of Drawn Stainless Steel Sinks from the People's Republic of China, dated May 6, 2014.

DISCUSSION OF THE METHODOLOGY

Bona fides Analysis

Consistent with the Department's practice, we examined the *bona fides* of the sale by Foshan Success that is under review in this NSR.³ In evaluating whether a sale in an NSR is commercially reasonable or typical of normal business practices, and therefore *bona fide*, the Department considers, *inter alia*, such factors as (a) the timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made at an arm's length basis.⁴ Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."⁵ In *TTPC*, the Court of International Trade ("CIT") also affirmed the Department's decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,⁶ and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.⁷ Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding an NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.⁸ Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.⁹ When the respondent under review makes only one sale and the Department finds that transaction atypical, "exclusion of that sale as non-*bona fide* necessarily must end the review, as no data will remain on the export price side of {the Department's} antidumping duty calculation."¹⁰

Based on the totality of the circumstances, we preliminarily find that the sale made by Foshan Success during the POR was not a *bona fide* commercial transaction and should be excluded from the Department's calculations. The Department reached this conclusion based on the totality of circumstances, namely: (a) the price and quantity of Foshan Success' single sale; (b) the importer's failure to provide evidence that the subject merchandise was resold at a profit; and (c) expenses arising from making the transaction. Because much of the transaction involves business proprietary information, a full discussion of the basis for our preliminary finding that

³ See, e.g., *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

⁴ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) ("TTPC").

⁵ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) ("*New Donghua*") (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

⁶ See *TTPC*, 366 F. Supp. 2d at 1250.

⁷ See *id.*, 366 F. Supp. 2d at 1263.

⁸ See *New Donghua*, 374 F. Supp. 2d at 1344.

⁹ See *TTPC*, 366 F. Supp. 2d at 1249.

¹⁰ See *id.*

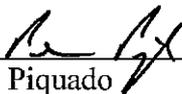
the sale is not *bona fide* is set forth in the Foshan Success *Bona Fides* Memorandum.¹¹ Because we find Foshan Success's sole sale not to be *bona fide*, we cannot rely on this sale to calculate a dumping margin and, therefore, there is no sale on which we can base this review. Consequently, we are preliminarily rescinding Foshan Success' NSR.¹²

For the foregoing reasons, the Department preliminarily finds that Foshan Success' sale is not *bona fide* and that this sale does not provide a reasonable, or reliable, basis for calculating a dumping margin. Because this non-*bona fide* sale was the only sale of subject merchandise during the POR, the Department is preliminarily rescinding the NSR of Foshan Success.

CONCLUSION

We recommend applying the above methodology for these preliminary results.

Agree Disagree



 Paul Piquado
 Assistant Secretary
 for Enforcement and Compliance

23 SEPTEMBER 2014

 Date

¹¹ See Memorandum to Melissa Skinner, Director, Office III, Antidumping and Countervailing Duty Operations, through Erin Begnal, Program Manager, Office III, Antidumping and Countervailing Duty Operations, from Joy Zhang, International Trade Analyst, titled "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 concurrently and hereby adopted by this memorandum.

¹² See, e.g., *TTPC*, 366 F. Supp. 2d at 1249.