



A-570-008


NSR: 7/25/2014 - 6/30/2015

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June 20, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement & Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the
Antidumping Duty New Shipper Review of Calcium Hypochlorite
from the People's Republic of China: Haixing Jingmei Chemical
Products Sales Co., Ltd.

SUMMARY

In response to a July 17, 2015 request from Haixing Jingmei Chemical Products Sales Co., Ltd. ("Jingmei"), and its affiliated producer, Haixing Eno Chemical Co., Ltd. ("Eno"),¹ the Department of Commerce ("Department") is conducting a new shipper review ("NSR") of the antidumping duty order on calcium hypochlorite from the People's Republic of China ("PRC") for the period of review July 25, 2014, through June 30, 2015.² As discussed below, after analyzing the information provided by parties and gathered by the Department, the Department preliminarily determines that we are unable to fully analyze the totality of the circumstances surrounding the sales subject to this NSR pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act"), because interested parties repeatedly refused to provide information necessary for our analysis and, thus, we are unable to determine whether the sales at issue were made in a bona fide manner. As such, the Department is preliminarily rescinding this NSR for Jingmei.

If these preliminary results are adopted in our final results, 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 will issue the 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 Act.

¹ See Letter to the Secretary of Commerce from Jingmei "Entry of Appearance and Request for New Shipper Review" (July 17, 2015) ("NSR Request").

² See Calcium Hypochlorite From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2014–2015, 80 FR 51774 (August 26, 2015).



Interested parties are invited to comment on the preliminary results of this review. We intend to issue the final results of the review no later than 90 days from the date the preliminary results are issued, pursuant to section 751(a)(2)(B)(iv) of the Act.

BACKGROUND

In response to a July 17, 2015 request from Jingmei and its affiliated producer Eno,³ on August 26, 2015, the Department published notice of initiation of new shipper review of calcium hypochlorite for the period July 25, 2014, through June 30, 2015.⁴ On November 5, 2015, the Department extended the deadline for issuing the preliminary results by 120 days to June 14, 2016.⁵ On January 27, 2016, the Department tolled the deadline for these preliminary results by an additional four business days as a result of the Government closure due to Snowstorm “Jonas.”⁶ The revised deadline for the preliminary results of this new shipper review, which is affected by this tolling, is June 20, 2016.

The Department sent the NSR antidumping duty questionnaire to Jingmei on August 26, 2015,⁷ to which it responded in a timely manner.⁸ Between September 2015 and April 2016, the Department issued supplemental questionnaires to Jingmei, to which it responded in a timely manner.⁹ Petitioner submitted comments on Jingmei’s questionnaire responses between January and February 2016.¹⁰

SCOPE OF THE ORDER

The product covered by the order is calcium hypochlorite, regardless of form (e.g., powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with

³ See NSR Request.

⁴ See Calcium Hypochlorite From the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review; 2014–2015, 80 FR 51774 (August 26, 2015).

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations “Extension of Deadline for Preliminary Results of New Shipper Review; 2014-2015” (November 5, 2015).

⁶ See Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm ‘Jonas’” (January 27, 2016).

⁷ See Letter to Jingmei from Catherine Bertrand, Program Manager, Office V “New Shipper Review of Calcium Hypochlorite from the People’s Republic of China” (August 26, 2016).

⁸ See Letter to the Secretary of Commerce from Jingmei “Section A Response” (September 16, 2015).

⁹ See, e.g., Letter to the Secretary of Commerce from Jingmei “Supplemental Questionnaire Response” (April 20, 2016). Although Jingmei submitted its questionnaire responses in a timely manner, we preliminarily determine that its responses were deficient to the extent that we are unable to determine whether the sales at issue were made in a bona fide manner. See Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Catherine Bertrand, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Kabir Archuleta, Senior International Trade Analyst, titled “Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Calcium Hypochlorite from the People’s Republic of China: Haixing Jingmei Chemical Products Sales Co., Ltd.” dated concurrently with and hereby adopted by this memorandum (“Jingmei Bona Fides Memo”).

¹⁰ Petitioner is Arch Chemicals, Inc. See, e.g., Letter to the Secretary of Commerce from Petitioner “Comments on Respondent’s Supplemental Section D Questionnaire Response” (February 29, 2016).

other materials, containing at least 10% available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation $\text{Ca}(\text{OCl})_2$, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, $\text{Ca}(\text{OCl})_2 \cdot \text{CaCl}_2 \cdot \text{Ca}(\text{OH})_2 \cdot 2\text{H}_2\text{O}$ or hemibasic calcium hypochlorite with the chemical formula of $2\text{Ca}(\text{OCl})_2 \cdot \text{Ca}(\text{OH})_2$ or $\text{Ca}(\text{OCl})_2 \cdot 0.5\text{Ca}(\text{OH})_2$. Calcium hypochlorite has a Chemical Abstract Service (“CAS”) registry number of 7778-54-3, and a U.S. Environmental Protection Agency (“EPA”) Pesticide Code (“PC”) Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods (“IMDG”) code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.¹¹

DISCUSSION OF THE METHODOLOGY

Section 751(a)(2)(B)(iv) of the Act was recently amended¹² to set forth the criteria the Department will examine to determine if sales, such as the sales by Jingmei under review in this new shipper review, are bona fide. Any weighted average dumping margin determined in a new shipper review shall be solely based on bona fide sales during the period of review.¹³ In evaluating whether the sales in a NSR are commercially reasonable or typical of normal business practices, and therefore bona fide, the Department considers, “depending on the circumstances surrounding such sales”:

(I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.¹⁴

¹¹ See Calcium Hypochlorite From the People’s Republic of China: Antidumping Duty Order, 80 FR 5085 (January 30, 2015).

¹² See Section 433 of the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (Feb. 24, 2016) (adding a new section 751(a)(2)(B)(iv) entitled, “Determinations based on bona fide sales”).

¹³ Section 751(a)(2)(B)(iv) of the Act.

¹⁴ Id.

Although some bona fide issues may share commonalities across various Department cases, the Department examines the bona fide nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale. 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.”¹⁵ In TTPC, the Court of International Trade (“CIT”) also affirmed the Department’s decision that any factor which indicated that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,¹⁶ and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.¹⁷ Finally, in New Donghua, the CIT affirmed the Department’s practice of evaluating the circumstances surrounding a new shipper review 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.¹⁸ The Department’s practice makes clear that the Department will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order.¹⁹ Thus, a respondent is on notice that it is unlikely to establish the bona fides of a sale merely by claiming to have sold in a manner representative of its future commercial practice.²⁰ Where the Department finds that a sale is not bona fide, the Department will exclude the sale from its export price calculations.²¹

Because a substantial portion of the documentation and information requested in this new shipper review required to complete an analysis of the statutory bona fide analysis was not provided,²² we are unable to conduct this analysis and preliminarily find that we are unable to make a determination as to whether the sales made by Jingmei during the POR were bona fide commercial transactions. Because these transactions involve business proprietary information, a full discussion of our preliminary findings is set forth in the Jingmei Bona Fides Memo.²³ The Department preliminarily finds that we cannot rely on these sales to calculate a dumping margin and, therefore, there are no sales on which we can base this review. Consequently, we are preliminarily rescinding this review.²⁴

¹⁵ 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)).

¹⁶ See Tianjin Tiancheng Pharmaceutical Co. v. United States, 366 F. Supp. 2d 1246, 1250 (CIT 2005) (“TTPC”).

¹⁷ Id. at 1263.

¹⁸ See New Donghua, 341 F. Supp. 2d at 1344.

¹⁹ See New Donghua, 374 F. Supp. 2d at 1339.

²⁰ Id.

²¹ See TTPC, 366 F. Supp. 2d at 1249.

²² As explained in the Jingmei Bona Fides Memo, due to the failure and refusal of Jingmei’s customers to provide necessary information, the Department is unable to substantiate the prices paid to Jingmei for the subject merchandise, and which parties incurred movement/other expenses and antidumping duties. See Jingmei Bona Fides Memo at 4-10.

²³ See Jingmei Bona Fides Memo.

²⁴ See, e.g., TTPC, 366 F. Supp. 2d at 1249.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

June 20, 2016

(Date)