



C-570-072
Investigation
Public Document
POI: 1/1/16 – 12/31/16
E&C/IV: RG/TT

DATE: September 17, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of the Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Countervailing Duty Investigation of Sodium
Gluconate, Gluconic Acid and Derivative Products from the
People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of sodium gluconate, gluconic acid and derivative products (GNA products) from the People's Republic of China (China) within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties¹:

- Comment 1: Application of Total Adverse Facts Available to Hongyu Chemical, Kaison, and Qingdao Dongxiao
- Comment 2: Application of Total Adverse Facts Available to Fuyang
- Comment 3: Whether the Scope of the Investigation Should be Modified

¹ PMP Fermentation Products, Inc. (the petitioner) was the only party to submit a case brief in this investigation. See Letter from the petitioner, "Countervailing Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Petitioner's Case Brief," dated June 21, 2018 (Petitioner's Brief).



II. BACKGROUND

A. Case History

The mandatory respondents are Qingdao Dongxiao Enterprise Co., Ltd. (Qingdao Dongxiao), Shandong Fuyang Biotechnology Co. (Fuyang), Shandong Kaison Biochemical Co Ltd (Kaison), and Tongxiang Hongyu Chemical Co., Ltd. (Hongyu Chemical).

On May 23, 2018, we published our *Preliminary Determination* in this investigation and applied total adverse facts available to Fuyang, Hongyu Chemical, Kaison, and Qingdao Dongxiao, pursuant to sections 776(a)-(b) of the Act.² In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request, we aligned the final countervailing duty determination with the final determination in the companion antidumping duty investigation of GNA products from China.³ At that time, we also stated our intention to issue a preliminary decision regarding the scope of the antidumping and countervailing duty investigations in the *Preliminary Determination* of the companion antidumping investigation.⁴ We also stated our intent to incorporate the scope decisions from the antidumping duty investigation into the scope of the *Final Determination* of the countervailing duty investigation after considering any relevant comments in case and rebuttal briefs.⁵ In the *Preliminary Determination* of the antidumping proceeding, we addressed scope comments from interested parties, and did not make any modifications to the scope.⁶

On May 24, 2018, Fuyang submitted a letter requesting that we reconsider our decision not to conduct an on-site verification of Fuyang due to the application of total adverse facts available to the company in the *Preliminary Determination*.⁷ On May 29, 2018, the petitioner submitted a response in opposition to Fuyang's request for reconsideration.⁸ On May 30, 2018, Fuyang

² See *Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Preliminary Affirmative Countervailing Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 23888 (May 23, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

³ See PDM at 5; see also Letter from the petitioner, "Countervailing Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: PMP's Request to Align the Countervailing Duty Final Determination with the Companion Antidumping Final Determination," dated April 12, 2018.

⁴ See PDM at 4.

⁵ *Id.*

⁶ See *Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 83 FR 31949 (July 10, 2018) and accompanying Preliminary Decision Memorandum at 5 (AD PDM). As discussed in Comment 3, below, we continue to find that modifications to the scope are not appropriate.

⁷ See Letter from Fuyang, "Countervailing Duty Investigation on Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Request for Reconsideration of Non-Verification," dated May 24, 2018. See also 83 FR at 23889.

⁸ See Letter from the petitioner, "Countervailing Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Petitioner's Response to Fuyang Bio-tech's Request for Reconsideration of Non-Verification," dated May 29, 2018.

submitted a letter notifying Commerce of its decision to cease participation in this investigation.⁹

B. *Period of Investigation*

The period of investigation (POI) is January 1, 2016, through December 31, 2016.

III. SCOPE OF THE INVESTIGATION

The scope of this investigation covers sodium gluconate, gluconic acid and derivative products. The complete description of the scope of this investigation is contained in Appendix I of the final determination *Federal Register* notice.¹⁰

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In the *Preliminary Determination*, we relied on facts available and, because the mandatory respondents did not respond, or did not act to the best of their ability in responding to, our requests for information, we drew adverse inferences in selecting from among the facts otherwise available, pursuant to sections 776(a)-(b) of the Act.¹¹ Accordingly, we calculated subsidy rates based on adverse facts available for Fuyang, Hongyu Chemical, Kaison, and Qingdao Dongxiao.¹²

We have not made any changes to our decision to rely on adverse facts available in this *Final Determination*, and we have not modified our calculation of subsidy rates since our *Preliminary Determination*.¹³ Additional discussion relating to our continued application of adverse facts available is provided below in Comments 1 and 2.

V. ANALYSIS OF COMMENTS

Comment 1: Application of Total Adverse Facts Available to Hongyu Chemical, Kaison, and Qingdao Dongxiao

The Petitioner's Comments

- In the *Preliminary Determination*, Commerce correctly applied total adverse facts available to the three non-participating mandatory respondents, *i.e.*, Hongyu Chemical, Kaison, and Qingdao Dongxiao. By providing no response to Commerce's questionnaire, these respondents withheld necessary information that was requested of them, failed to provide information within the deadline established, and significantly impeded this proceeding.¹⁴

⁹ See Letter from Fuyang, "Countervailing Duty Investigation on Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China: Notice of Non-Participation in Investigation," dated May 30, 2018 (Fuyang Withdrawal Letter).

¹⁰ For a discussion of scope-related arguments, see Comment 3, below.

¹¹ See PDM at 7-19.

¹² See *id.* at 19-23.

¹³ See *id.* at 7-23.

¹⁴ See Petitioner's Brief at 5.

- Total adverse facts available continues to be warranted, and nothing has changed since the *Preliminary Determination*.¹⁵

No other interested party commented on this issue.

Commerce Position: We agree with the petitioner that the continued application of total adverse facts available is warranted with respect to Hongyu Chemical, Kaison, and Qingdao Dongxiao. At the outset of this investigation, we issued initial countervailing duty questionnaires to Hongyu Chemical, Kaison, and Qingdao Dongxiao. None of the companies provided a response. Therefore, the parties withheld necessary information that was requested of them, significantly impeded this proceeding, and failed to act to the best of their ability in complying with our request for information. We described the legal standard for the application of adverse facts available, and our process for calculating subsidy rates based on adverse facts available, in our *Preliminary Determination*.¹⁶ We continue to rely on adverse facts available to calculate subsidy rates for Hongyu Chemical, Kaison, and Qingdao Dongxiao, in the manner described in the PDM.¹⁷

Comment 2: Application of Total Adverse Facts Available to Fuyang

The Petitioner's Comments

- Application of total adverse facts available with respect to Fuyang is warranted, because the company formally withdrew from this investigation. Therefore, Commerce was not able to conduct verification of, or otherwise address the serious issues with, Fuyang's responses, as detailed in the *Preliminary Determination*.¹⁸
- Commerce correctly determined that the application of total adverse facts available was appropriate in the *Preliminary Determination* for a myriad of reasons, most of which would have been sufficient, individually, to support the application of adverse facts available.¹⁹

No other interested party commented on this issue.

Commerce's Position: We agree with the petitioner that continued application of total adverse facts available to Fuyang is warranted. As detailed in the PDM, Fuyang failed to cooperate to the best of its ability by withholding necessary information we requested of it and providing submissions that conflicted with record evidence, thereby impeding this investigation.²⁰ Additionally, following issuance of our *Preliminary Determination*, Fuyang withdrew from the

¹⁵ See *id.*

¹⁶ See PDM at 7-23.

¹⁷ See *id.*

¹⁸ See Petitioner's Brief at 6.

¹⁹ See *id.* at 6-7.

²⁰ See PDM at 9-19; see also Memorandum, "Sodium Gluconate, Gluconic Acid, and Derivative Products from the People's Republic of China - Countervailing Duty Investigation: Business Proprietary Information (BPI) Addendum," dated May 2, 2018.

investigation.²¹ For these reasons, continued application of total adverse facts available to Fuyang is warranted.²²

Comment 3: Whether the Scope of the Investigation Should be Modified

The Petitioner's Comments

- In its *Preliminary Determination*, Commerce correctly determined to maintain the scope of the investigation, as it was published in the *Initiation Notice*.²³ The only party to submit comments ostensibly related to the scope was Jungbunzlauer S.A. (JBL), a respondent in the companion antidumping investigation of GNA products from France, that is no longer a party to this investigation and whose comments focused only on irrelevant domestic like product issues.²⁴
- Moreover, all GNA products are of the same class or kind of merchandise because they share the same basic chemistry, differing only in water and sodium content. Thus, they are interchangeable and nearly identical with respect to physical characteristics, expectations of ultimate customers, ultimate use, channels of trade, and manner of display.
- Accordingly, Commerce should continue not to modify the scope as it was published in the *Notice of Initiation*.

No other interested party commented on this issue.

Commerce's Position: We agree with the petitioner. In accordance with the *Preamble* to Commerce's regulations,²⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²⁶ In response, on January 9, 2018, we received comments regarding domestic like product from JBL, the mandatory respondent in the antidumping investigation on GNA products from France.²⁷ On January 19, 2018, we received rebuttal comments from the petitioner.²⁸ In the *Preliminary Determination*, we cited our explanation in the *Initiation Notice* that section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Because section 771(4)(A) of the Act defines "industry" as the producers as a whole of a domestic like product, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and

²¹ See Fuyang Withdrawal Letter.

²² Given the findings in our *Preliminary Determination*, and the fact that Fuyang is no longer participating in this investigation, the petitioner's arguments regarding additional inconsistencies in Fuyang's responses concerning Dezhou Huiyang, as well as Fuyang's failure to respond to certain questions, are moot.

²³ See PDM at 5; see also 83 FR at 31949.

²⁴ The petitioner cites to the PDM at 5, in which we noted that although it "... evaluates domestic like product issues when determining the sufficiency of a petition, once an investigation is initiated, Commerce does not revisit the definition of domestic like products. Accordingly, we have not considered JBL's arguments."

²⁵ See *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

²⁶ See *Initiation Notice*, 83 FR at 517.

²⁷ See Letter from JBL, "*Investigations of Sodium Gluconate, Gluconic Acid, and Derivative Products from France and China—Jungbunzlauer's Comments regarding Scope*," dated January 9, 2018 (JBL Scope Comments).

²⁸ See Letter from the petitioner, "*Countervailing and Antidumping Duty Investigations of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China: Petitioner's Rebuttal Comments on Scope Comments*," dated January 19, 2018

workers who produce the domestic like product.²⁹ We also stated that, although we evaluate domestic like product issues when determining the sufficiency of a petition, once an investigation is initiated, we do not revisit the definition of domestic like product. No party has argued that we reconsider this decision. Accordingly, we continue to decline consideration of JBL's domestic like product arguments and have not modified the scope from the *Notice of Initiation*.

VI. RECOMMENDATION

We recommend approving the above positions and applying the countervailable subsidy rates as calculated in the *Preliminary Determination*. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the International Trade Commission of our determination.

Agree

Disagree

9/17/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

²⁹ See *Initiation Notice*, 83 FR at 518.