



A-570-806
Administrative Review
POR: 6/1/2017 – 5/31/2018
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August 6, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Rescission of the
Antidumping Duty Administrative Review of Silicon Metal from the
People's Republic of China; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that the sole company under review, Yunnan Fuyang Trade Co., Ltd. (Fuyang), did not make a *bona fide* sale during the period of review (POR), June 1, 2017 through May 31, 2018. As such, Commerce is preliminarily rescinding the administrative review of Fuyang.

Interested parties are invited to comment on the preliminary rescission of this review. We intend to issue the final results of this administrative review no later than 120 days from the date the preliminary results are published, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

On June 10, 1991, Commerce published the antidumping duty (AD) order on silicon metal from the People's Republic of China (China).¹ On June 1, 2018, Commerce published a notice of opportunity to request an administrative review of the *Order*.² On June 29, 2018, Fuyang

¹ See *Antidumping Duty Order: Silicon Metal from the People's Republic of China*, 56 FR 26649 (June 10, 1991) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 25429 (June 1, 2018).



requested a review of its sale during the POR.³ On August 10, 2018, Commerce initiated a review of Fuyang.⁴

On November 6, 2018 and April 1, 2019, we placed information on the record regarding the liquidation status of the sole entry of Fuyang's subject merchandise during the POR.⁵ On November 16, 2018, interested parties filed comments and factual information regarding the information that we placed on the record.⁶

On August 22, 2018, we issued an antidumping duty questionnaire (AD Questionnaire) to Fuyang.⁷ From September 12, 2018 through October 5, 2018, Fuyang timely submitted responses to sections A through D of Commerce's AD Questionnaire.⁸ In addition, in April and May 2019, we issued supplemental questionnaires to Fuyang. We received responses to these supplemental questionnaires from April through June 2019.⁹ Interested parties also filed surrogate country and surrogate value comments from April 25, 2019 to July 10, 2019.¹⁰ Fuyang and the petitioner (*i.e.*, Globe Specialty Metals, Inc.) submitted pre-preliminary comments on July 3, 2019.¹¹

³ See Fuyang's Letter, "Silicon Metal from the People's Republic of China: Yunnan Fuyang Trade Co., Ltd.'s Request for Administrative Review," dated June 29, 2018.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 39688 (August 10, 2018).

⁵ See Commerce's Letter, dated November 6, 2018; see also U.S. Customs and Border Protection (CBP)'s Letter, dated April 1, 2019 (CBP Letter).

⁶ See Petitioner's Letter, "Silicon Metal from the People's Republic of China; Globe Comments on Whether There Is a Reviewable Entry Exported by Yunnan Fuyang," dated November 16, 2018 (Petitioner Reviewable Entry Comments); see also Fuyang's Letter, "Silicon Metal from the People's Republic of China: Comments on Customs Data," dated November 16, 2018.

⁷ See Commerce's AD Questionnaire, dated August 22, 2018.

⁸ See Fuyang's Letter, "Silicon Metal from the People's Republic of China: Response to Section A of the Department's Questionnaire," dated September 12, 2018 (AQR); see also Fuyang's Letter, "Silicon Metal from the People's Republic of China: Response to Section C of the Department's Questionnaire," dated September 28, 2018 (CQR); and Fuyang's Letter, "Silicon Metal from the People's Republic of China: Response to Section D of the Department's Questionnaire," dated October 5, 2018.

⁹ See Fuyang's Letter, "Silicon Metal from the People's Republic of China: Response to the Initial Supplemental Questionnaire," dated April 29, 2019; Fuyang's Letter, "Silicon Metal from the People's Republic of China: Response to the Second Supplemental Questionnaire," dated May 14, 2019; Fuyang's Letter, "Silicon Metal from the People's Republic of China: Response to the Third Supplemental Questionnaire," dated May 21, 2019; and Fuyang's Letter, "Silicon Metal from the People's Republic of China: Response to the Fourth Supplemental Questionnaire," dated June 4, 2019.

¹⁰ See Petitioner's Letter, "Silicon Metal from the People's Republic of China; 2017-18 Administrative Review; Comments on Surrogate Country Selection," dated April 25, 2019; see also Fuyang's Letter, "Silicon Metal from the People's Republic of China: Surrogate Value Information," dated May 13, 2019; Petitioner's Letter, "Silicon Metal from the People's Republic of China; 2017-18 Administrative Review; Submission of Surrogate Value Data," dated May 13, 2019; Petitioner's Letter, "Silicon Metal from the People's Republic of China; 2017-18 Administrative Review; Surrogate Value Rebuttal Comments," dated May 23, 2019; and Petitioner's Letter, "Silicon Metal from the People's Republic of China; 2017-18 Administrative Review; Submission of Additional Surrogate Value Information," dated July 10, 2019.

¹¹ See Fuyang's Letter, "Silicon Metal from the People's Republic of China: Pre-Preliminary Results Comments of Yunnan Fuyang Trade Co., Ltd.," dated July 3, 2019; Petitioner's Letter, "Silicon Metal from the People's Republic of China; 2017-18 Administrative Review; Preliminary Results Comments Regarding Margin Calculation Issues," dated July 3, 2019; and Petitioner's Letter, "Silicon Metal from the People's Republic of China; 2017-18

On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the closure of the federal government from December 22, 2018 through January 28, 2019.¹² On March 12, 2019, Commerce extended the preliminary results deadline until August 9, 2019.¹³

III. SCOPE OF THE ORDER

The product covered by the order is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight, and silicon metal with a higher aluminum content containing between 89 and 96 percent silicon by weight. The subject merchandise is currently classifiable under item numbers 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to this order. This order is not limited to silicon metal used only as an alloy agent or in the chemical industry. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

The sole issue addressed in these preliminary results is whether Fuyang made a reviewable sale during the POR. In this administrative review, the petitioner alleges that Fuyang's single sale of subject merchandise to the United States during the POR is non-*bona fide*.¹⁴ To address this issue we conducted a *bona fide* sales analysis.¹⁵

When a respondent makes a single sale during the POR, it is appropriate for Commerce to evaluate whether the sale is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, in order to ensure that the respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the respondent's usual commercial

Administrative Review; Preliminary Results Comments Regarding the Absence of a *Bona Fide* Sale," dated July 3, 2019.

¹² See Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

¹³ See Memorandum, "Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated March 12, 2019.

¹⁴ See Petitioner's Letter, "Silicon Metal from the People's Republic of China: Antidumping Administrative Review; Request That the Department Perform a *Bona Fide* Sales Analysis," dated October 1, 2018.

¹⁵ Information obtained during the course of this review indicates that the entry of the subject merchandise sold by Fuyang during the POR was liquidated by CBP, and consequently the petitioner argued that the review should be rescinded for lack of a suspended entry. See AQR at Exhibit A-6; see also Petitioner Reviewable Entry Comments. However, record information also indicates that a protest was filed with CBP regarding this liquidation. See Fuyang's Letter, "Silicon Metal from the People's Republic of China: Notification of Customs Protest Filing with CBP," dated November 29, 2018. In its April 1, 2019, letter, CBP informed Commerce that it "will suspend the protest until Commerce issues liquidation instructions for this exporter." See CBP Letter. Consequently, we continued the review and conducted our *bona fide* sales analysis.

practice would dictate.¹⁶ While Commerce routinely conducts a *bona fide* sales analysis in new shipper reviews using a totality of the circumstances test based on the criteria enumerated in section 751(a)(2)(B)(iv) of the Act, it has previously found that the totality of the circumstances test is also applicable within the context of an administrative review¹⁷ and this application has been upheld by the Court of International Trade.¹⁸ Therefore, in this review, we have used as guidance for this examination the criteria laid out in section 751(a)(2)(B)(iv) of the Act to determine whether Fuyang's sole sale during the POR is a *bona fide* sale. Specifically, we examined: (a) the price of the sale; (b) whether the sale was made in commercial quantities; (c) the timing of the sale; (d) the expenses arising from the transaction; (e) whether the goods were resold at a profit; (f) whether the transaction was made on an arm's-length basis; and (g) any other factor that Commerce considers to be relevant to whether the sale at issue is "likely to be typical of those the exporter or producer will make after the completion of the review."¹⁹ Where Commerce finds that a sale is not *bona fide*, Commerce will exclude the sale from its dumping margin calculations,²⁰ and if it is the only sale under review, Commerce will rescind the review.²¹

Based on the totality of the circumstances surrounding the sole sale reported by Fuyang in this administrative review, we preliminarily determine that the sale is not a *bona fide* sale for purposes of the AD statute. In particular, we preliminarily find a number of relevant factors including, but not limited to, the sales price and quantity and other relevant factors of the sale indicates the sale is atypical of a sale likely to be made in the future. Because our analysis involves the discussion of business proprietary information, we have included a full discussion of our preliminary analysis in a separate *bona fide* sale memorandum.²²

¹⁶ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1344 (CIT 2005) (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)).

¹⁷ See *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind, in Part; 2013-2014*; 80 FR 18814 (April 8, 2015), and accompanying Preliminary Decision Memorandum at 1, 3-5, unchanged in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 62027 (October 15, 2015), and accompanying Issues and Decision Memorandum at Comment 5; see also *Certain Pasta from Turkey: Preliminary Results of Antidumping Duty Administrative Review*, 82 FR 36737 (August 7, 2017), and accompanying Preliminary Decision Memorandum at 1-3, unchanged in *Certain Pasta from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 6516 (February 14, 2018), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁸ See, e.g., *Evonik Rexim (Nanning) Pharm. Co. v. United States*, 253 F. Supp. 3d 1364, 1370-71 (CIT 2017) (sustaining Commerce's application of the totality of the circumstances test and partial rescission of an administrative review).

¹⁹ See section 751(a)(2)(B)(iv) of the Act; see also *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-50 (CIT 2005) (*Tianjin Tiancheng*).

²⁰ See *Tianjin Tiancheng* 366 F. Supp. 2d at 1249.

²¹ See, e.g., *Honey From the People's Republic of China: Preliminary Rescission of the Administrative Review*, 77 FR 7901 (January 3, 2012), unchanged in *Honey From the People's Republic of China: Final Rescission of the Administrative Review*, 77 FR 34343 (June 11, 2012).

²² See Memorandum, "2017-2018 Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Preliminary Bona Fide Sales Analysis for Yunnan Fuyang Trade Co., Ltd.," dated concurrently with this memorandum (*Bona Fide Sale Analysis Memorandum*).

Because we preliminarily find that the single POR sale is not a *bona fide* sale, we cannot rely on this sale to calculate a dumping margin in this administrative review. Given the determination that there was no *bona fide* sale during the POR, there is no sale upon which we can base this review. Accordingly, we are preliminarily rescinding this administrative review.

V. RECOMMENDATION

We recommend applying the above methodology for the preliminary results of review.

Agree

Disagree

8/6/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance