

September 18, 2002

**MEMORANDUM TO:** Faryar Shirzad  
Assistant Secretary  
for Import Administration

**FROM:** Richard W. Moreland  
Deputy Assistant Secretary  
Import Administration, Group I

**SUBJECT:** Issues and Decision Memorandum for the Antidumping Duty  
Investigation of Sulfanilic Acid from Hungary: Final  
Determination

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## **SUMMARY**

We have analyzed the briefs of interested parties in the antidumping duty investigation of sulfanilic acid from Hungary. As a result of our analysis, we have made changes to the margin calculations from the Preliminary Determination. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is a complete list of the issues in this investigation for which we received comments by parties:

Comment 1: Use of adverse facts available for the entire response

Comment 2: Use of the verified cost of manufacture for the cost test

Comment 3: Use of adverse facts available for G&A and interest expenses

Comment 4: Use of adverse facts available in the COP analysis for the unreported adjustments to comparison market sales

Comment 5: Calculation of NV based on comparison market sales after disregarding sales below COP

Comment 6: Inclusion in the dumping margin calculation of certain sales to the United States

## BACKGROUND

On May 6, 2002, the Department of Commerce (“the Department”) issued the preliminary determination of this antidumping duty investigation of sulfanilic acid from Hungary. (See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Hungary, 67 FR 30358 (May 6, 2002) (“Preliminary Determination”).) The period of investigation (“POI”) is July 1, 2000 through June 30, 2001. We invited parties to comment. We received case briefs on July 31, 2002 from Nation Ford Chemical (the “petitioner”) and August 1, 2002 from Nitrokemia 2000 (the “respondent”). No rebuttal briefs were filed. No public hearing was held because none was requested.

## DISCUSSION OF ISSUES

Comment 1: Use of adverse facts available for the entire response

*Petitioner’s Argument:* The petitioner argues that the respondent’s questionnaire responses were incomplete and had insufficient data and, therefore, the Department should reject the company’s responses and resort to total adverse facts available. To substantiate its claim, the petitioner states that Nitrokemia 2000 never submitted its cost data for 2000, its general and administrative (“G&A”) expenses for 2001, its parent company’s (i.e., Nitrokemia Invest) financial statement for 2001 (for calculating interest expenses), or its credit expenses, inventory carrying costs and packing costs for 2000. The petitioner also notes that the Department discovered at verification (See Verification of Questionnaire Responses of Nitrokemia 2000 (July 1, 2002) (“Verification Report”)) that Nitrokemia 2000 used a related company for some freight service on export sales during the POI.

*Respondent’s Argument:* The respondent did not comment on this issue.

*Department’s Position:* We agree with the petitioner that the reported data was deficient. However, we disagree that total adverse facts available is warranted in this case. We note that the respondent did not provide the actual cost of manufacture (“COM”) it incurred during the POI. Specifically, Nitrokemia 2000 did not submit cost data for first six months of the POI (i.e., July through December 2000), but instead reported per-unit direct materials and labor costs for fiscal (Nitrokemia 2000 uses the calendar year) year (“FY”) 2001. Additionally, Nitrokemia 2000 did not provide its product specific overhead, general and administrative expenses, and parent company financial expenses for FY 2000 or FY 2001. Further, Nitrokemia 2000 did not submit packing costs for FY 2000.

Section 776(a)(2) of the Act provides that if “an interested party or any other person: (A) withholds information that has been requested by the {Department} . . . ; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested . . . ; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified . . . , the {Department} shall . . . use the

facts otherwise available” in reaching its determination. In this investigation, Nitrokemia 2000 failed to provide its reported costs in the form and manner requested by the Department.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and, to the extent practicable, shall provide that person the opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the administering authority shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements, if – 1) the information is submitted by the deadline established, 2) the information can be verified, 3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, 4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements, and 5) the information can be used without undue difficulties. The Department’s original questionnaire requested all of the above cited information. In supplemental questionnaires, we requested that the respondent provide the other missing data. We did so by directing them to complete the original questionnaire.

However, we disagree with the petitioner that we should apply adverse facts available in this case. Section 776(b) of the Act provides that, if the Department finds that an interested party “has failed to cooperate by not acting to the best of its ability to comply with a request for information,” the Department may use information that is adverse to the interests of the party as facts otherwise available. At verification it became apparent that the company officials did not understand the necessity of providing this information.<sup>1</sup> For example, the company officials explained that they do not normally include factory overhead costs as a product cost and therefore believed it should not be included. We note however that once it was explained to them that the dumping calculations required this data, the company official provided the verifiers with the necessary information. The company officials further explained that due to the adoption of a new accounting system as of FY 2001, they could no longer access product specific data for FY 2000. The Department verified these assertions. We also note that a comparison of the inventory value at December 2000 with December 2001 indicates that the material and labor costs for December 2001 were generally higher than for December 2000. Thus, given Nitrokemia 2000’s willingness to provide the data that it was able to access (i.e., product specific factory overhead costs for FY 2001, general and administrative expenses for FY 2001) and their computer program changes, we have determined that an adverse inference is not warranted and have thus used the verified information in our calculation of the cost of production (See, Comment 3 for a discussion of interest expense.)

For packing costs, we confirmed that due to the change in the computerized accounting system, detailed FY 2000 data were not available. However, it was possible to impute FY 2000 packing

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<sup>1</sup> At verification, we noted that the company officials were forthcoming with the data when they understood the information we were requesting. We also note that Nitrokemia was not represented by counsel.

costs from the respondent's FY 2000 and FY 2001 inventory records. With regard to direct selling expenses, we observed at verification that the respondent's accounting records classify these as indirect costs. We have used non-adverse facts available in calculating these expenses. See Verification Report and Final Determination Calculation Memorandum for Nitrokemia 2000 (September 18, 2002) ("Calculation Memorandum").

Regarding the related freight company, we observed at verification that this company did provide freight services on certain export sales by Nitrokemia 2000 to the U.S. and its comparison market, Germany. At verification, Nitrokemia 2000 stated that they found this company to be too expensive and they subsequently stopped using this company. We also verified that Nitrokemia 2000 has begun selling off this freight provider's assets. See Verification Report at 3. Because this freight company was involved in both U.S. and comparison (NV) sales, and because there was no evidence that it provided preferential rates to Nitrokemia 2000, we do not find that it is appropriate to apply facts available for services provided by this company.

Comment 2: Use of the verified cost of manufacture for the cost test

*Petitioner's Argument:* The petitioner notes that at verification the Department found that Nitrokemia 2000 improperly reported, or failed to report, certain direct and indirect costs of manufacturing which should be included in the cost of manufacturing. If the Department decides not to apply total adverse facts available, the petitioner argues that the Department should use the total revised cost of manufacture in accordance with the Department's verification findings.

*Respondent's Argument:* The Respondent did not comment on this issue.

*Department's Position:* The Department has used the verified data for certain direct and indirect costs of manufacturing as shown in the Verification Report at 23. See also Comment 1 above.

Comment 3: Use of adverse facts available for G&A and interest expenses

*Petitioner's Argument:* The petitioner argues that if the Department does not use adverse facts available for the entire case, but rather relies on verified direct and indirect cost of manufacturing, then the Department should use adverse facts available to fill in certain gaps in the data. Specifically, the petitioner states that the respondent never submitted G&A and interest expenses. Therefore, the petitioner argues that the Department should use the G&A ratio from the petition for the final determination. The petitioner also argues that the interest expense that the Department used in the preliminary determination, based on the respondent's unconsolidated financial statement, should be doubled for the final determination because there is no sound basis for estimating an interest expense without the consolidated financial statements of Nitrokemia 2000's parent company, Nitrokemia Invest.

*Respondent's Argument:* The respondent states, without elaboration, that in its normal course of business G&A expenses (indirect expenses) are not allocated to product lines.

*Department's Position:* As noted in Comment 1, above, the Department used verified data taken from the Nitrokemia 2000's FY 2001 financial statement to calculate G&A. See Verification Report at 22 and Calculation Memorandum.

In its questionnaires, the Department did not specifically request the consolidated financial statements for Nitrokemia 2000's parent company, Nitrokemia Invest. This information was requested during verification but Nitrokemia 2000 stated that it did not have access to this information and that it would have to be obtained directly from Nitrokemia Invest. Due to the timing of our request, Nitrokemia 2000 was unable to contact the appropriate officials at Nitrokemia Invest to obtain the requested financial report<sup>2</sup>. For the final determination, the Department has calculated the interest expense ratio using information from Nitrokemia 2000's financial report for 2001. See Verification Report at 4 and Exhibit 4 and Calculation Memorandum.

Comment 4: Use of adverse facts available in the COP analysis for the unreported adjustments to comparison market sales

*Petitioner's Argument:* The petitioner argues that if the Department does not use adverse facts available for the entire case, in conducting the COP test and in calculating NV, the Department should apply adverse facts available to account for any unreported adjustments to comparison market prices that were not reported. The petitioner maintains that such treatment is consistent with the preliminary determination where the Department made such adjustments to comparison market sales for inventory carrying costs and packing costs. The petitioner also states that the adverse adjustment amount should be based on any revisions to the reported adjustments resulting from verification.

*Respondent's Argument:* The respondent did not comment on this issue.

*Department's Position:* We have made adjustments to inventory carrying costs and packing costs based on our verification findings. We have recalculated inventory carrying costs using the short-term interest rate determined at verification. The adjustment for packing expenses is discussed in Comment 1 above. All other adjustments to U.S. or comparison market prices have been appropriately reported. See Verification Report.

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<sup>2</sup>We further note that based on findings at verification, we believe that the structure of the parent company is such that it is essentially individual shareholders and thus we believe that it is more appropriate to use the respondent's own financial expenses.

Comment 5: Calculation of NV based on comparison market sales after disregarding sales below COP

*Petitioner's Argument:* The petitioner argues that the Department should continue to disregard those sales found below COP that failed the cost test and continue to calculate normal value based on the remaining comparison market sales, as was done in the Preliminary Determination.

*Respondent's Argument:* The respondent did not comment on this issue.

*Department's Position:* The Department agrees with the petitioner and will continue to disregard those sales found below COP and continue to calculate normal value based on the remaining above cost comparison market sales, as was done in the Preliminary Determination and consistent with Department policy.

Comment 6: Inclusion in the dumping margin calculation of certain sales to the United States

*Petitioner's Argument:* The petitioner argues that the respondent had claimed that the date of purchase order or contract was its date of sale. At verification, the Department discovered that the invoice date was the date that the respondent actually used to report sales within the POI. The petitioner argues that this was done so that lower priced sales to a firm in the United States would fall outside of the POI even though there were contracts and purchase orders generated within the POI. The petitioner argues that these sales should be included in the calculations.

*Respondent's Argument:* The respondent maintains, without elaboration, that the reported date of sale is, in fact, the date of shipment.

*Department's Position:* The Department agrees with the petitioner that the contract date is the appropriate date of sale for Nitrokemia 2000's U.S. sales. Information provided by Nitrokemia 2000 in its responses and information obtained during verification shows that the material terms of sale, i.e., the product, price and quantity to be purchased were established in the contract or agreement between Nitrokemia 2000 and its U.S. customers. Accordingly, since all reported sales by Nitrokemia 2000 for the year 2000 had a date of sale prior to the POI, we have removed these sales from our fair value comparisons. For the contract covering the sales reported by Nitrokemia 2000 for the year 2001, we added to the fair comparisons those sales that initially were not reported by Nitrokemia 2000 because they were shipped after the POI. Finally, as the contract discovered by the Department at verification had a contract date within the POI, we have added sales (all shipped after the POI) made pursuant to the terms of this contract to our fair value comparisons. See Calculation Memorandum.

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins for all investigated firms in the Federal Register.

AGREE \_\_\_\_\_

DISAGREE \_\_\_\_\_

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Faryar Shirzad  
Assistant Secretary  
for Import Administration

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Date