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A-570-846
Changed Circumstances Review
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July 11, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Susan H. Kuhbach
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Changed
Circumstance Review: Brake Rotors from the People's Republic of China

SUMMARY:

We have analyzed the case briefs and rebuttal briefs of interested parties in the changed circumstances review in brake rotors from the People's Republic of China ("PRC"). As a result of our analysis, we have changed the preliminary results. See Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Brake Rotors From the People's Republic of China, 70 FR 25545 (May 13, 2005) ("Preliminary Results"). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this changed circumstance review:

- Comment 1: Whether Fengkun Foundry is the successor-in-interest to Fengkun Metallurgical
- Comment 2: Circumvention of the Antidumping Order
- Comment 3: Separate Rates

Background:

On May 13, 2005, the Department of Commerce ("Department") published the notice of preliminary results of its changed circumstances review examining whether Shanxi Fengkun Foundry Ltd., Co. ("Fengkun Foundry") is the successor-in-interest to Shanxi Fengkun Metallurgical Ltd., Co. ("Fengkun Metallurgical") by virtue of its name change. See Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Brake Rotors From the People's Republic of China, 70 FR 25545 (May 13, 2005) ("Preliminary Results"). In those Preliminary Results, the Department found that Fengkun Foundry is not the successor-in-interest to Fengkun Metallurgical.

DISCUSSION OF THE ISSUES:

Comment 1: Whether Fengkun Foundry is the successor-in-interest to Fengkun Metallurgical

Petitioner argues that the Department should not determine that Fengkun Foundry is the successor-in-interest to Fengkun Metallurgical. Petitioner asserts that Fengkun Foundry has not yet operated as an exporter and was not an exporter during the relevant time period of analysis of this review. Petitioner argues that Fengkun Foundry received its Certificate of Approval for Enterprises with Foreign Trade Rights (“Certificate of Approval”) on May 23, 2005, and that there is no link between that date and the effective date of the name change. Petitioner contends that the Department appears to indicate that the relevant period of consideration for this review starts in November 2003 and ends in March 2004. Petitioner states that this time period does not include events that occurred after the initiation of this review. Petitioner asserts that there is no support in previous changed circumstances cases for the Department in its determination to consider an event that occurred after the initiation of the review. Petitioner urges the Department to make a determination that Fengkun Foundry was not an exporter during the relevant period of this review. Petitioner further points to the Department’s policy of rescinding an administrative review if there are no shipments. Petitioner argues that the Department should extend the export shipment requirement to changed circumstance reviews.

Petitioner further asserts that the name change approval was contingent on obtaining an approval to export and quote the “Notice of Enterprise Name Change Approval” issued by the Shanxi Administrative Bureau of Industry and Commerce. Petitioner states that the provision requires the submission of the Certificate of Approval before the new name can be used. Petitioner asserts that Fengkun Foundry’s new name was not valid until it submitted a Certificate of Approval to the Shanxi Administrative Bureau of Industry and Commerce.

Petitioner also argues that Fengkun Foundry’s customer base is different from Fengkun Metallurgical’s customer base. Petitioner asserts that Fengkun Foundry made no sales to the United States or the PRC after the name change, and that this differs from Fengkun Metallurgical which sold brake rotors to the United States and the PRC. Petitioner contends that Fengkun Foundry did not submit any documentation showing that the customers of Fengkun Metallurgical would be also be customers of Fengkun Foundry. Petitioner states that the non-existence of long term contracts decreases the likelihood that the customers of Fengkun Metallurgical would also buy from Fengkun Foundry. Petitioner argues that brake rotors are in vast supply in China and it is very likely that Fengkun Metallurgical’s customers have found another supplier, as Fengkun Foundry has not yet shipped to the United States.

Furthermore, Petitioner contends that Fengkun Foundry’s production facilities and capacity are different than those of Fengkun Metallurgical. Petitioner argues that the Department should not view November 28, 2003, the date of the name change approval, as a rigid deadline when comparing the operations of the new and old company. Petitioner argues that even if the plan to

expand the company occurred before the name change approval, the Department still must consider whether the production facilities of the old and new company are similar. Petitioner argues that only Fengkun Foundry benefitted from the increase in capacity. Petitioner maintains that the facilities have changed substantially and the facilities are very different now.

Respondent argues that the Department should determine that Fengkun Foundry is the successor-in-interest to Fengkun Metallurgical because the totality of the record evidence shows that Fengkun Foundry is not materially dissimilar to Fengkun Metallurgical. Respondent asserts that Fengkun Foundry operates as essentially the same business entity as Fengkun Metallurgical. Respondent maintains that it submitted Fengkun Foundry's Certificate of Approval, which demonstrates that Fengkun Foundry has the right to export subject merchandise as of May 23, 2005. Respondent argues that Fengkun Foundry did not apply for a Certificate of Approval earlier because it was waiting for the Department to make a final determination in the successor-in-interest changed circumstance review, if it shipped prior to that decision it would have to ship at the PRC-wide rate. Respondent notes that the Department specifically provided it with the opportunity to supplement the record with a Certificate of Approval after the Preliminary Results. Furthermore, Respondent asserts that Petitioner did not provide any relevant authority for its contention that a changed circumstance review should be rescinded if there are no shipments, similar to the policy of administrative reviews. Respondent argues that administrative reviews are rescinded when there are no shipments because there are no shipments to review.

Respondent further argues that it has placed on the record evidence demonstrating that Fengkun Foundry has the same management, employees, board of directors, production facilities, and supplier relationships as Fengkun Metallurgical. In addition, Respondent argues that the business license registration number did not change and the bank accounts are the same before and after the name change. Respondent contends that there is no material difference between Fengkun Foundry and Fengkun Metallurgical and that the Department should grant the successor-in-interest. Respondent argues that Fengkun Foundry is both a producer and exporter of subject merchandise.

Department's Position: The Department determines that Fengkun Foundry is the successor-in-interest to Fengkun Metallurgical because the totality of the record evidence shows that Fengkun Foundry is not materially dissimilar to Fengkun Metallurgical. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review, 57 FR 20460 (May 13, 1992). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review, 59 FR 6944 (February 14, 1994); Canadian Brass; and, Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed

Circumstances Antidumping Duty Administrative Review, 63 FR 50880 (September 23, 1998).

The Department determined in the Preliminary Results that Fengkun Foundry has the same management, production facilities, and supplier as Fengkun Metallurgical. However, the Department determined that Fengkun Foundry had a different customer base than Fengkun Metallurgical and had not demonstrated that it could be both an exporter and producer of subject merchandise. Nevertheless, the Department indicated in the Preliminary Results that it would revisit its determination if Fengkun Foundry obtained a valid Certificate of Approval and otherwise demonstrated that it is both a producer and exporter of subject merchandise.

On May 31, 2005, Fengkun Foundry submitted on the record its Certificate of Approval which demonstrates that Fengkun Foundry has the right to export subject merchandise. By virtue of its receipt of the right to export, the Department considers Fengkun Foundry an exporter. Fengkun Foundry submitted its Certificate of Approval in a timely manner per the extended May 31, 2005, deadline set by the Department. The fact that Fengkun Foundry did not obtain the Certificate of Approval until May 23, 2005 is not relevant, as a successor-in-interest determination is effective upon publication of the final results and not effective upon the date of the name change. Based on our determination to accept the Certificate of Approval, we next consider its relevancy to our analysis of Fengkun Foundry's customer base.

We have determined that the customer base of Fengkun Foundry is the same as that of Fengkun Metallurgical because Fengkun Foundry has the right to export and still produces the subject merchandise. We also note that the one invoice placed on the record was to a customer that the Respondent listed as a prior customer. See Exhibit 1 of the March 30, 2005 response and Exhibit 6 of the August 27, 2004 response. Although the exact customers need not be the exactly same, the customer base is the same because Fengkun Foundry can still export subject merchandise to the same type of customers in the United States. The criteria for determining a successor-in-interest do not require a showing of current ongoing sales to previous customers. There is no information on the record to suggest that Fengkun Foundry could not sell to the same customer base, as it still produces the same merchandise, and has obtained a Certificate of Approval to allow it to export to the United States.

With respect to the production facilities, we continue to find that the production facilities of Fengkun Foundry are similar to those of Fengkun Metallurgical. Fengkun Foundry is still in the same business of producing and selling subject merchandise. Although, Fengkun Foundry focuses more on foundry operations than Fengkun Metallurgical did, the reported purpose of the shift in focus was to produce subject merchandise more efficiently. The changes in production operations consisted of additions in production lines which do not materially change the company's operations with regard to subject merchandise. Further, the plan to alter the production was agreed upon before the name change and was the reason for the name change. Therefore, we find that the changes in the company's production facilities do not materially alter the company's production of subject merchandise.

Thus, we find that Fengkun Foundry's customer base, ability to export, and production facilities are the same as those of Fengkun Metallurgical. We note that no party challenged our assessment that Fengkun Foundry management and suppliers are the same. We disagree with Petitioner's assertion that as Fengkun Foundry did not make a sale to the United States we should rescind this changed circumstance review, similar to the Department's practice of rescinding an administrative review if there are no shipments to review. There is no requirement in the criteria for a successor-in-interest changed circumstances review that the company must make a sale to the United States. In a successor-in-interest changed circumstance review, the Department determines whether the successor company is the same as the predecessor company. Unlike in an administrative review, the Department does not review sales during a specified time period in a changed circumstance review. Therefore, for reasons detailed above, we determine that Fengkun Foundry is the successor-in-interest to Fengkun Metallurgical.

Comment 2: Circumvention of the Antidumping Order

Petitioner argues that Fengkun Foundry made one sale to the United States under the Fengkun Metallurgical name after the name change occurred and that this is a form of circumvention of the dumping order. Petitioner asserts that Fengkun Foundry planned to avoid the imposition of antidumping duties which may have included the exportation of subject merchandise under the name of a company that may not have existed at the time of exportation.

Respondent argues that it has at all times cooperated with the Department's request for information and has disclosed information that clearly indicated no intent to circumvent the order on brake rotors. Respondent further argues that the Department has never required a company to make affirmative sales under the new name in order to qualify as a successor-in-interest.

Department's Position: The record indicates that the sale referenced by Petitioner was made prior to the date of the name change on December 3, 2003, as the invoice on the record is dated prior to December 3, 2003. See March 30, 2005 submission at exhibit 1. Because the sale was made prior to the name change, the appropriate rate applicable to the entry on this sale is Fengkun Metallurgical's. Respondent has cooperated fully with the Department and provided timely responses to all of the Department's supplemental questionnaires and requests for information. There is therefore no basis to find that Fengkun Metallurgical has attempted to circumvent the order.

Comment 3: Separate Rates

Petitioner argues that Fengkun Foundry is not entitled to a separate rate because separate rates are only granted to exporters of subject merchandise and Fengkun Foundry is only a producer. Petitioner argues that even if Fengkun Foundry proves its successor-in-interest claim, it still should not receive a separate rate.

Respondent argues that by virtue of its right to export granted by the Certificate of Approval, it is

an exporter and entitled to a separate rate.

Department's Position: In the Preliminary Results, the Department denied the successor-in-interest request because Fengkun Foundry did not have the right to export as it had not yet provided the Department with a copy of its Certificate of Approval. Therefore, the Department determined that since Fengkun Foundry could not export, and Fengkun Metallurgical did have the right to export, the two companies were substantially different.

As noted above, the Department determines that, pursuant to a name change only, Fengkun Foundry is the successor-in-interest to Fengkun Metallurgical. In the most recent administrative review of Fengkun Metallurgical, Fengkun Metallurgical received a separate rate. See Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review: Brake Rotors From the People's Republic of China, 68 FR 2586101 (May 14, 2003). As Fengkun Metallurgical had a separate rate and as Fengkun Foundry is its successor both the actual amount of the cash deposit rate, as well as its "separateness" are conveyed upon Fengkun Foundry. The issue as to whether Fengkun Foundry merits a separate rate on its own right is subject to review in the next administrative review.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions. If accepted, we will publish the final results of this changed circumstance review in the Federal Register.

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date