

DATE:

MEMORANDUM TO: Faryar Shirzad  
Assistant Secretary  
for Import Administration

FROM: Bernard T. Carreau  
Deputy Assistant Secretary  
for Group II, Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Antidumping Duty Administrative Review: Furfuryl Alcohol from  
Thailand

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### **Summary**

We have analyzed the case brief received from the respondent for these final results of the antidumping duty review covering furfuryl alcohol from Thailand. No comments were received from the domestic producer that requested the review. We recommend that you approve the position we have developed in the Department Position section of this memorandum.

### **Background**

On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of the antidumping duty review of furfuryl alcohol from Thailand. The period of review (POR) is July 1, 2000, through June 30, 2001. The respondent in this proceeding is Indorama Chemicals (Thailand) Limited (Indorama). We gave interested parties an opportunity to comment on the preliminary results. On September 6, 2002, we received a case brief from Indorama. A hearing was not requested.

## **DISCUSSION OF ISSUES**

### **Comment: Sales Outside the Ordinary Course of Trade and Not in Usual Commercial Quantities**

Indorama claims that, contrary to section 773(a)(1)(B)(i) of the Tariff Act of 1930 (the Act), as amended, the Department included in its preliminary calculation of normal value certain home-market sales that were sold neither in usual commercial quantities nor in the ordinary course of trade.

In its case brief, Indorama reiterates its arguments regarding the end use, aggregate volume, transaction-specific quantities, price, and profit of the sales in question which, it maintains, leads to the conclusion that these sales were made outside the ordinary course of trade. To these arguments, Indorama adds the assertion that the infrequency of the sales in question, their unique delivery terms, and their immateriality to Indorama's financial position further support its claim.

Indorama also introduces the argument that the sales in question were not made in "usual commercial quantities" as demonstrated by the "clear two-tiered market of {furfuryl alcohol} pricing in the home market correlated to quantity." Indorama, therefore, requests that the Department exclude these sales from its final results.

### **Department Position:**

We agree with the respondent that the sales in question were not made in the usual commercial quantities and, therefore, should not be included in the calculation of normal value. Section 773(a)(1)(B) of the Act states that the normal value of the subject merchandise shall be "the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade. . . ." "Usual commercial quantities" is defined in section 771(17) of the Act, which states that "the term 'usual commercial quantities', in any case in which the subject merchandise is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity."

This definition establishes a two-step process for determining whether sales have been made in the usual commercial quantities. The first step requires that there be a clear price to quantity correlation among sales in the home market. This position was articulated in, among other cases, *Iron Construction Castings from Canada: Final Results of Antidumping Duty Administrative Review*, 56 FR 23274 (May 21, 1991) (*Castings from Canada*), in which the Department stated that it "must be satisfied that there is a positive correlation between different quantities and different prices." The Court of International Trade supported this interpretation in *NTN Bearing*

*Corp et al v. United States*,<sup>1</sup> in which it stated that “it is manifest that the application of the definition provided in 19 U.S.C. § 1677(17) is conditioned upon establishing a correlation between sales at different prices for different quantities.”

The second step of the process requires a comparison of the aggregate volumes of merchandise sold at each quantity, with the quantity at which the greatest aggregate volume of merchandise is sold being deemed “usual commercial quantities.” The other quantities sold, by logical inference, would not be considered usual commercial quantities. Although, prior to this case, the Department has not had the opportunity recently to apply this second step, it has nevertheless articulated it in several determinations. For example, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan: Final Determination of Sales at Less Than Fair Value*, 52 FR 30700 (August 17, 1987) the Department stated that “if the merchandise is sold ‘at different prices for different quantities,’ then the Department must identify the price or prices identified with that quantity that accounts for the greatest volume sold.” (See also, *Castings from Canada*, where the Department determined that first a price to quantity correlation must exist “before resorting to the price or prices of a specific aggregate quantity for the purpose of calculating [normal value]. . . .”)

We have evaluated Indorama’s claim that certain sales were not made in commercial quantities following the two-step process described above. With regard to the first step, an examination of Indorama’s home-market sales made during the POR reveals a clear price to quantity correlation. The record evidence shows that Indorama’s sales clearly fall into two categories, with the sales in question at quantities and prices substantially different from the quantities and prices of all other home-market sales. There is no overlap in either price or quantity between the two categories and only an insignificant amount of variability within each category. Furthermore, the difference in prices between the two categories and the difference in quantities sold between the two categories is large.<sup>2</sup>

Having satisfied the requirement of a price to quantity correlation, we then proceed to the second step of determining which of the home market sales were made in usual commercial quantities and, conversely, which sales were not. In comparing the aggregate volume of the sales in question with the aggregate volume of all other sales, we find that the latter is significantly greater than the former. We conclude, therefore, that the latter sales have been made in usual commercial quantities and the former sales, those in question, have not.

Because the sales in question have not been made in usual commercial quantities, we are excluding these sales from our analysis and basing our calculation of normal value on the price or prices of the remaining sales which were made in usual commercial quantities, in accordance

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<sup>1</sup>*NTN Bearing Corp. of America, American NTN Bearing Manufacturing Corp., and NTN Toyo Bearing Co., Ltd., Plaintiffs v. United States*, 14 C.I.T. 623, 642; 747 F. Supp. 726 (CIT, September 7, 1990).

<sup>2</sup>There are no differences in merchandise, packaging, or level of trade among Indorama’s home-market sales. In addition, a large difference in prices between the two categories exists after prices are adjusted for differences in movement expenses and circumstances of sale.

with section 773(a)(1)(B) of the Act. As a result of the fact that we are excluding the sales in question from our dumping analysis in this review, we find it is unnecessary to revisit the issue of whether these sales were also made outside the ordinary course of trade.

**Recommendation**

Based on our analysis of the comment received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results in the *Federal Register*.

AGREE\_\_\_\_\_ DISAGREE\_\_\_\_\_

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Faryar Shirzad  
Assistant Secretary  
for Import Administration

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Date