

a statement of the petitioners' position as to whether the product is included within the order, as required by 19 CFR 353.29(b). Based on our evaluation of the petition (see Memorandum, Joseph A. Spetrini to Robert S. LaRussa, December 19, 1996, on file in Room B-099 of the Main Commerce Building), we determine that a formal inquiry is warranted.

Accordingly, we are initiating a circumvention inquiry concerning the antidumping duty order on standard pipe from Mexico, pursuant to section 781(c) of the Tariff Act. In accordance with 19 CFR 353.29(j), we will not instruct the Customs Service to suspend liquidation and require a cash deposit of estimated duties on the merchandise which is the subject of this inquiry unless and until we issue an affirmative preliminary determination.

The Department will, following consultation with the interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with section 781(c) of the Tariff Act (19 U.S.C. 1677j(c)) and 19 CFR 353.29.

Dated: December 20, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97-632 Filed 1-9-97; 8:45 am]

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[A-403-801]

### **Fresh and Chilled Atlantic Salmon From Norway; Final Results of New Shipper Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of new shipper antidumping duty administrative review.

**SUMMARY:** On October 4, 1996, the Department of Commerce (the Department) issued preliminary results in the 1995 new shipper administrative review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (61 FR 51910). The review covers one manufacturer/exporter Nordic Group A/L (Nordic) of the subject merchandise to the United States. The period of review (POR) is May 1, 1995, through October 31, 1995.

We gave interested parties an opportunity to comment on our

preliminary results and received a case brief from petitioner and a rebuttal brief from respondent. The final results remain unchanged from the preliminary results. The final dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review".

**EFFECTIVE DATE:** January 10, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Todd Peterson or Thomas Futtner, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4195 or (202) 482-3814, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

**Background**

On October 4, 1996, the Department issued preliminary results (61 FR 51910) of its new shipper review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway. The preliminary results indicated that Nordic sold subject merchandise at not less than normal value during the POR. We invited parties to comment on the preliminary results.

The Department has now conducted this review in accordance with section 751 of the Act and section 353.22 of its regulations (19 CFR 353.22).

**Scope of the Review**

The merchandise covered by this review is fresh and chilled Atlantic salmon (salmon). It encompasses the species of Atlantic salmon (*Salmo salar*) marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (chilled). Excluded from the

subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on our preliminary results. We received a case brief from petitioner and a rebuttal brief from respondent.

*Comment 1:*

Petitioner contends that Nordic's one sale was made prior to the POR on April 28, 1995, and not on June 30, 1995, as claimed by respondent. Petitioner argues that the essential terms (i.e. price and quantity) of Nordic's sale to its U.S. customer were set in a letter dated April 28, 1995, and not changed substantially before completion of the transaction two months later. Based on this argument, petitioner maintains that the respondent entered into a binding agreement on April 28, 1995, and that this constitutes the correct date of sale.

Respondent contends that the reported sale date of June 23, 1995, (i.e. date of shipment) is correct. Respondent argues that it is the Department's established practice to rely on date of shipment as the date of sale when the quantity of the sale is not fixed until date of shipment. See *Cold-Rolled Steel Flat Products from Korea*, (60 FR 65284) December 19, 1995.

Respondent points to the Department's termination of the first new-shipper review of Nordic where the petitioner successfully argued that April 28, 1995, was not the date of sale for the same transaction reported in this review because the price and quantity differed materially between April 28, 1995, and the date of shipment. See *Fresh and Chilled Atlantic Salmon from Norway: Termination In-Part of New Shipper Antidumping Duty Review*, 60 FR 53162, (October 12, 1995).

**Department's Position**

We agree with respondent. The Department terminated Nordic's first new shipper review, at the request of the petitioner, because the Department determined that Nordic made the U.S. sale to the first unrelated customer based on the invoice date of June 30, 1995, which was outside the POR of November 1, 1994, through April 30,

1995. In making this determination, we concluded that April 28, 1995, was not the correct date of sale because Nordic's April 28, 1995, letter did not identify the unrelated customer in the U.S. We also concluded that there were differences in the price and quantity specified in Nordic's April 28, 1995, letter and the June 30, 1995, invoice date. Accordingly, the Department determined the June 30, 1995, date of invoice to be the correct date of sale. See Memorandum from Joseph Spetrini to Susan Esserman, September 20, 1995.

#### Comment 2

Petitioner argues that Nordic's sole U.S. sale cannot be the basis for Nordic's dumping margin because it is not a *bona fide* sale. Petitioner states that in such situations, the U.S. Court of International Trade (CIT) has recognized that the Department has the authority to disregard U.S. sales that are not the result of a *bona fide* transaction to "prevent fraud upon its proceedings." See *Chang Tieh Industry Company, Ltd. v. United States*, 840 F. Supp. 141-46 (CIT 1993). In addition, petitioner points to *Sulfanilic Acid from Hungary*, (58 FR 8257) to demonstrate that the Department has a history of disregarding U.S. sales where it is established that such sales are not *bona fide* transactions.

Petitioner argues that there is abundant evidence to demonstrate that Nordic's single sale under review is not a *bona fide* transaction but rather is a transaction that was contrived for the purpose of escaping dumping liability. As support for this allegation, petitioner offers several arguments. Petitioner asserts that Nordic did not follow its own sales procedure in making this sale. According to petitioner, it is highly unusual for the U.S. customer to have traveled to Norway to arrange this transaction. In addition, there is no evidence of a written order confirmation produced by the U.S. customer that is typically the first document produced in the sales process.

Petitioner contends that Nordic should not qualify as a new entrant into the fresh Atlantic salmon market based on making only one U.S. sale of the subject merchandise during the period November 1994 through October 1995. During this period, petitioner claims that there were no other sales of the subject merchandise to other markets. Rather, petitioner charges that respondent will enter the U.S. market after obtaining a zero dumping margin for its contrived sale.

Petitioner contends that Nordic's U.S. customer, a smoker, paid an above market price for the sale under review.

In support of this allegation, petitioner submitted an affidavit from a large U.S. salmon smoker that states that smokers can use frozen salmon at a price far less than the price incurred to Nordic for fresh salmon. The U.S. smoker also states that his company has not had an order for the covered merchandise because it is too expensive as a result of the antidumping duties and high movement charges. Petitioner points to U.S. import statistics which show that Nordic's U.S. smoker could have purchased frozen salmon at a price far below the price commanded by the fresh salmon it purchased from Nordic.

Petitioner insists that the sale in question was not based on commercial considerations, but rather, Nordic's illegitimate purpose of achieving a zero rate. Petitioner supports this by pointing to the fact that less than one-half of one percent of Nordic's total sales to the U.S. customer were fresh salmon; the rest were frozen salmon. Petitioner further points out that Nordic has never sold fresh salmon to any other U.S. smoker. Petitioner argues that there is nothing on record to support why the U.S. customer would purchase such a small amount of fresh salmon.

Petitioner provides documentation to demonstrate that Nordic's U.S. customer could have purchased fresh salmon from alternative sources such as Canada, Maine and Chile at significantly lower prices. Petitioner insists that not only was the sale in question priced higher than other comparable U.S. sales, but it was also priced higher than other world sales of fresh Norwegian salmon. Petitioner provides documentation to support his assertion that the European price is higher than the price paid in the sale under review.

Petitioner insists that in order for the Department to accept the *bona fide* nature of this sale, the Department must investigate Nordic's U.S. customer. Petitioner points to *PQ Corporation v. United States*, 652 F. Supp. 724 (CIT 1987) (*PQ Corporation*), to demonstrate that when there is a question pertaining to the *bona fide* nature of U.S. sales, the Department vigorously investigates to determine whether the U.S. sales are indeed *bona fide* sales. Thus, petitioner advocates a thorough investigation of the U.S. customer.

Respondent contends that there is nothing on record to support the argument that the sale in question is not a *bona fide* transaction. The respondent points to *Chang Tieh Industry Co., Ltd. v. United States*, 840 F. Supp. 141, 145 (CIT 1993) to show that the CIT has noted that antidumping laws do not contain provisions to disregard U.S. sales in the same manner that the statute

directs the Department to disregard home market sales intended to establish a fictitious market. Therefore, respondent states *arguendo*, even had this one U.S. sale been considered outside the ordinary course of trade, the Department is not required by statute to disregard that sale. However, respondent concedes that the Department has the discretion, citing to *Ipsco, Inc. v. United States*, 714 F. Supp. 1211 (CIT 1989), to disregard U.S. sales that are considered to be atypical and not representative of a respondent's U.S. sales. Because there was only one sale, this standard cannot be relied on as the one sale is entirely representative of all U.S. sales. Respondent refutes the applicability of *Sulfanilic Acid from Hungary*, 58 FR 8256 February 12, 1993, where U.S. sales were disregarded because of fabricated verification documents. Similarly, respondent refutes the applicability of *Manganese Metal From the People's Republic of China*, 60 FR 56045 November 6, 1995 (Manganese). Unlike this review, in the *Manganese* investigation, the Department disregarded sales based on the suspicious timing of the petition filing relative to the sales being made and the "significantly higher prices reported for this fungible commodity."

Respondent argues the fact that there was one sale cannot form the basis for a determination that the sale is not a *bona fide* transaction. In *PQ Corporation*, the CIT found it proper for the Department to review the respondent's one sale to the United States with the intention of eliminating a dumping margin. Respondent points to the Memorandum from Holly Kuga to the File of July 26, 1995, stating that "a new shipper review for salmon based on one sale would be consistent with prior practice."

Respondent further substantiates the *bona fide* nature of the transaction under review, contending that the record evidence demonstrates that its U.S. sale was made in the ordinary course of trade. Respondent argues that it followed customary sales procedures for this sale. Part of the customary procedure is for the President of Nordic Group, Inc. (the U.S. subsidiary) to travel back to Norway, often with U.S. customers as a means to educate the U.S. customer. See Sales Verification report.

Respondent argues that petitioner is wrong in its claim that Nordic is not a new entrant to the U.S. fresh Atlantic salmon market because Nordic has made only one sale during the POR. Respondent states that by definition, to qualify for a new shipper review, Nordic did not sell any salmon prior to the

POR. Since Nordic is currently assessed an "all-others" rate of 23.80 percent, U.S. customers are difficult to attract. Thus Nordic's one sale is justifiable and does not disqualify Nordic as a new shipper in the U.S. market.

Respondent argues that Nordic's price for fresh Norwegian salmon is within the price range charged by others for fresh Norwegian salmon sold to the United States. Nordic claims that it was aware of the antidumping duty order and did its best to negotiate a price that would not violate U.S. antidumping laws. Respondent argues that in alleging Nordic's U.S. customer paid an above market price for the sale under review, the petitioner incorrectly compared the price of frozen salmon from other countries to that of fresh salmon from Norway. Frozen salmon is outside the scope of the order. The International Trade Commission found that fresh salmon is more expensive than frozen and that Norwegian Atlantic salmon is also considered by purchasers to be a higher priced product and is typically more expensive than U.S. produced salmon. Thus, the price of Norwegian Atlantic salmon cannot be compared to world market prices. Respondent dismisses the U.S. smoker's claim that the U.S. smoker cannot profitably purchase premium Norwegian Atlantic salmon because he either sells "low end" salmon or he runs an inefficient, high cost operation.

Respondent states that to the extent price is relevant to determine the *bona fide* nature of the U.S. transaction, the comparison should be limited to the prices of subject merchandise sold in the United States in June 1995. According to the June 1995 Report IM 145, Department of Commerce, Bureau of the Census, Foreign Trade Division, Trade Data Services, Washington, D.C. (IM 145 Report), the price of Nordic's sale is consistent with other contemporaneous sales of fresh Norwegian salmon sold in the United States.

Respondent argues that *PQ Corporation* does not compel the Department to investigate the U.S. customer to verify the *bona fide* nature of a transaction simply because a petitioner thinks the U.S. price is too high. Rather the result of *PQ Corporation* is that an administrative review could be based on one sale even though the importation was made for the purpose of adjusting the antidumping cash deposit rate.

#### *Department's Position*

We disagree with petitioner. While there is no specific statutory or regulatory provision for the exclusion of

U.S. sales as "outside the ordinary course of trade," the Department's authority to prevent fraud upon its proceedings has been recognized. See *Chang Tieh*, 840 F. Supp. at 146. The Department may disregard a U.S. sale if it is determined that the sale is not the result of a *bona fide* arm's length transaction. *PQ Corp.*, 652 F. Supp. at 729. We are very mindful of this issue, especially in the context of new shipper reviews, and take appropriate steps to investigate credible allegations. Based on our review of this here, we conclude that there is no evidence on the record to indicate that the single U.S. sale under review was not a *bona fide* transaction or that the transaction was in any way fraudulent. Further, insofar as there was no written order confirmation for the transaction under review, we relied on Nordic's June 30, 1995, invoice to determine the date of sale. See Department's position on Comment 1.

At the outset, we note that the fact that there is only one U.S. sales transaction does not suggest that the transaction is not *bona fide*. As reflected in the Department's practice, the dumping analysis may be based upon a single sale even where the sale is designed for the express purpose of reducing the cash deposit rate. See *P.Q. Corp.*, 652 F. Supp. at 729. This may be even more true in the context of a new shipper review, where new entrants into the market are likely to assess (based on the Department's antidumping analysis) whether they can sell on a sustained basis. In this case, the Department advised that such a review could be based on one sale provided that the transaction be completed and all relevant data available prior to verification. See July 26, 1995 Memorandum from Holly Kuga to File. Moreover, the fact that the quantity involved in this transaction represents a small fraction of Nordic's total sales is not a determining factor in our analysis of the *bona fide* nature of the sale of subject merchandise. Thus, the fact that Nordic engaged in only one transaction cannot detract from the *bona fide* nature of the transaction.

We also disagree with petitioner's assertion that Nordic employed an unusual sales procedure with respect to this transaction. At verification, we confirmed that the President of Nordic Inc. (the U.S. subsidiary) often traveled to Norway with U.S. customers. See Nordic Sales Verification Report at 3. Nordic officials indicated that they were expanding their relationship with the U.S. customer which had previously focused on frozen salmon. *Id.* There is no evidence on the record to contradict

this statement. Moreover, we are not persuaded by the statement submitted by a U.S. salmon smoking operation that it would not use fresh salmon as an input. As Nordic explained in its October 7, 1996, supplemental questionnaire response, the U.S. customer could be expected to keep both fresh and frozen salmon on hand in order to serve a range of customers.

With regard to petitioner's comments on the price of the sale, according to the IM 145 Report, the price Nordic charged was within the range of prices of other sales of the subject merchandise from Norway during the relevant June 1995 time period. Petitioner incorrectly compared prices of the subject merchandise to that of non-subject merchandise (frozen salmon) or salmon from other countries. Given evidence that Norwegian salmon is typically a higher priced product due to it being considered a premium product, we determine that the use of fresh salmon prices from other producing countries is an inaccurate basis for comparison.

Finally, we disagree with petitioner's suggestion that the Department has not sufficiently investigated this transaction. Based on the Department's review of Nordic's initial and supplemental questionnaire responses, its on-site verification of Nordic's records, and other information of record, we conclude that there is no evidence on record to indicate that the single U.S. sale under review was not a *bona fide* transaction or that the transaction was in anyway fraudulent.

#### *Comment 3*

Petitioner contends that the Department's constructed value methodology is improper given the facts of this review. In past reviews of this proceeding, petitioner contended that the third-country export prices used as foreign market value were made at prices below the cost of production. Thus, petitioner argued for use of the salmon farmers' actual cost of production as opposed to the acquisition prices paid by the exporters to the farmers. In this review, however, there are no home market or third country sales. Therefore, the petitioner argues that these different circumstances require foreign market value to be based on constructed value using the price Nordic actually paid for the merchandise. Petitioner argues that by using the actual price paid, the Department would fulfill the original concern of petitioner.

Respondent contends that the Department correctly determined constructed value on the basis of cost of cultivation. Respondent argues that

petitioner's argument is essentially a middleman dumping argument and should be rejected. The Department is not free to choose the higher of fish farmer cost or exporter acquisition price. The Department's policy for using the fish farmers' cost of production rather than the exporter's acquisition price was established in the Memorandum from David Mueller, dated December 18, 1990, and has been used as the basis for determining cost of production in all salmon reviews.

#### *Department's Position*

We agree with respondent. We consider the live salmon produced by the fish farmers and sold to the exporters to be the same merchandise covered by the antidumping duty order, but at an earlier stage of production. Accordingly, we consider the live salmon produced by the fish farmers to be the identical merchandise and not an input of the subject merchandise. As we found in all prior administrative reviews of this proceeding, the responding exporter is not transforming the merchandise. To determine the cost of producing salmon, the Department properly reviewed respondent's costs as well as the fish farm cost of cultivation.

Insofar as the Department used the same methodology described in the preliminary results, the final results remain unchanged from the preliminary results. As a result of our comparison of constructed export price (CEP) and normal value (NV), we determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin
Nordic Group A/L.	5/1/95-10/31/95	0.00

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. The posting of a bond or security in lieu of a cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and section 353.22(h)(4) of the Department's regulations, will no longer be permitted for this firm. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1)

The cash deposit rate for the reviewed company will be zero percent; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 23.80 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 353.22(h).

Dated: December 30, 1996.  
Robert S. LaRussa,  
Assistant Secretary for Import Administration.  
[FR Doc. 97-634 Filed 1-9-97; 8:45 am]  
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[A-570-832]

#### **Pure Magnesium From the People's Republic of China (PRC): Rescission of Notice of Initiation of New Shipper Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** January 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Everett Kelly or Dorothy Tomaszewski, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4194 or 482-0631, respectively.

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

#### **SUPPLEMENTARY INFORMATION:**

##### Background

In accordance with section 751(a)(2)(ii) of the Act and 19 CFR 353.22(h)(6) Taiyuan Heavy Machinery Import and Export Corporation (Taiyuan) requested a new shipper administrative review of the antidumping duty order on pure magnesium from the PRC. The Department of Commerce (the Department) inadvertently published two notices of initiation, one on December 30, 1996 (*Notice of Initiation of New Shipper Antidumping Duty Administrative Review: Pure Magnesium from the People's Republic of China* (60 FR 68712, 68713 December 30, 1996) and one on December 31, 1996 (*Notice of Initiation of New Shipper Antidumping Duty Administrative Review: Pure Magnesium from the People's Republic of China* (61 FR 69067 December 31, 1996).

##### Rescission of Initiation of Review

The December 30, 1996, notice of initiation was published in error and is hereby rescinded. We are proceeding to conduct a review of Taiyuan for the period May 1, 1996 through October 31,