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Australian Government
**Australian Customs and
Border Protection Service**

TRADE MEASURES BRANCH CONSIDERATION REPORT NO. 161

CONSIDERATION OF AN APPLICATION FOR THE REVIEW OF ANTI-DUMPING MEASURES

**SODIUM HYDROGEN CARBONATE
(SODIUM BICARBONATE)**

EXPORTED FROM

THE PEOPLE'S REPUBLIC OF CHINA

10 May 2010

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1 Summary and recommendations

This report provides the results of our consideration of an application lodged by Penrice Soda Products Pty Ltd (Penrice) for the review of anti-dumping measures that apply to sodium hydrogen carbonate (sodium bicarbonate) exported to Australia from the People's Republic of China (China). The applicant has applied for a review of all variable factors – non-injurious price, export price and normal value.

1.1 Recommendations

We recommend that the delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) decide not to reject the application.

If the delegate accepts this recommendation, to give effect to that decision, the delegate must publish the attached notice at **Appendix A** indicating that it is proposed to review the measures covered by the application.

1.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901* (the Act¹) sets out, among other things, the procedures to be followed by the CEO in dealing with an application for the review of measures.

The Division empowers the CEO to reject or not reject an application for review of anti-dumping measures.

Depending on the CEO's decision, it may be necessary for the CEO to publish a notice indicating that it is proposed to review the measures covered by the application.

The CEO's powers have been delegated to certain officers of Customs and Border Protection.

1.3 Findings and conclusions

We have examined Penrice's application for review of anti-dumping measures applying to sodium bicarbonate exported to Australia from China.

We are satisfied that the application lodged by Penrice complies with the requirements of s. 269ZB.

We are also satisfied, having regard to the applicant's claims and other relevant information, that there appears to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed. Our reasons for being satisfied are based on the applicant's demonstration of changes in variable factors - the non-injurious price, export price and normal value - since the measures were last revised in 2007.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

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2 Background

On 20 April 2010, Penrice, the sole Australian manufacturer, lodged an application requesting a review of anti-dumping measures² applying to sodium bicarbonate exported to Australia from China. This meets the requirements under s. 269ZA(2) because more than 12 months has lapsed since the publication of the last notice.

2.1 Existing measures

On 16 March 2005, Customs and Border Protection gave public notice that it had initiated an investigation into sodium bicarbonate exported from China, following an application by Penrice.

In Trade Measures Report No. 98, Customs and Border Protection recommended to the Minister that anti-dumping measures be imposed on the goods exported from China.

On 2 November 2005, the Minister accepted Customs and Border Protection's recommendation and published a dumping duty notice for sodium bicarbonate exported to Australia from China. Notification of the Minister's decision was given in Australian Customs Dumping Notice No. 2005/39.

On 20 July 2006, Customs and Border Protection initiated a review of the measures on sodium bicarbonate at the request of the Minister. As a result of the review the measures were varied. Notification of the revised measures was published on 14 May 2007 after the Minister accepted the recommendations of Trade Measures Report No. 119.

On 30 April 2010, Customs and Border Protection initiated a continuation inquiry in regards to measures on sodium bicarbonate. The current measures are due to expire on 2 November 2010.

2.2 The current review application

Penrice lodged an application for review of the measures on 20 April 2010. Section 269ZA(2) states, inter alia, that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a notice declaring the outcome of the last review of the anti-dumping notice. More than 12 months has lapsed since the publication of the last notice and therefore affected parties are entitled to apply for a review of the measures.

Pursuant to s. 269ZC(1) the CEO must examine the application and, within 20 days after the lodgement date, decide whether to reject the application. The decision must be made no later than 10 May 2010.

Section 269ZC(2) specifies the matters which must be considered in making a decision whether to reject the application. These matters are:

- the application complies with s. 269ZB; and
- there appear to be reasonable grounds for asserting either:

² In accordance with s.269ZA.

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(i) that the variable factors relevant to the taking of anti-dumping measures have changed; or

(ii) that, if the anti-dumping measures to which the application relates had not been taken, the Minister would not be entitled to take such measures.

If the CEO is not satisfied, having regard to the application and to any other relevant information, of one or more matters referred to in s. 269ZC(2) the application must be rejected.

2.3 The goods subject to the measures

The goods subject to measures (the goods) are sodium hydrogen carbonate, which is also known as sodium bicarbonate or baking soda.

Sodium bicarbonate is a downstream product of the soda ash manufacturing process. It is manufactured using two different production methods. The first is the Natural Alkali method in which alkali is mined, purified, filtered, carbonised and dried before packing. The second method is the Solvay method, which is a synthetic process that includes crude bicarbonate formation, filtration, light ash finishing and refining.

The sodium bicarbonate exported from China to Australia is manufactured by both the Natural Alkali and Solvay methods.

In the original investigation it was found that the majority of sodium bicarbonate exported from China to Australia was packaged in 25 kg bags or bags containing one tonne or more of the goods, referred to as 'regular packs'. These goods can be used in a range of applications including agriculture, food and general purpose.

A small quantity of sodium bicarbonate was exported with features including high quality packaging materials, end users' brand graphics, tamper evident caps and zip locks. These packs were general purpose/industrial grade sodium bicarbonate destined for use in swimming pools and are referred to as 'speciality packs'.

2.3.1 Imports

Since the last revision of measures, Chinese exporters have continued to supply the Australian market with sodium bicarbonate. Customs and Border Protection's import database details imports of sodium bicarbonate from China. Details of the imports for the period 1 April 2009 to 31 March 2010 are at **confidential attachment 1**.

Penrice has provided names and addresses of exporters and manufacturers from China and key importers and sellers of like goods who are likely to have an interest in the current review.

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2.4 Tariff classification of the goods

The goods are classified to tariff subheading 2836.30.00, statistical code 27 in Schedule 3 of the *Customs Tariff Act 1995*. The rate of duty is 'free' from all sources.

2.5 Australian industry producing like goods

Penrice is the sole manufacturer of sodium bicarbonate in Australia at its production facility in Osborne, South Australia, using the Solvay method of manufacture.

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3 Compliance with Section 269ZB

We are satisfied that the application lodged by Penrice complies with the requirements of s. 269ZB.

3.1 Legislative framework

Subsection 269ZB(1) requires that the application be in writing, be in an approved form, contain such information as the form requires and be signed in the manner indicated by the form.

Section 269ZB(2) requires an applicant to provide:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount.

Section 269ZB(3) and (4) cover procedural matters in relation to lodgement of the application.

3.2 Our assessment

The application lodged by Penrice was in writing, in the approved form, contained such information as the form required and was signed in the manner indicated in the form.

The applicant also provided non-confidential versions of the application for distribution to interested parties. The non-confidential version of the application adequately reflects the reasons for seeking a review of the anti-dumping measures.

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4 Consideration of reasonable grounds

We are satisfied, having regard to the applicant's claims and other relevant information, that there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed.³

4.1 Legislative framework

Customs and Border Protection must consider whether there appear to be reasonable grounds for asserting either:

- that the variable factors relevant to the taking of anti-dumping measures have changed; or
- that, if the anti-dumping measures to which the application relates had not been taken, the Minister would not be entitled to take such measures.

The applicants have asserted that the non-injurious price, export price and normal value have increased since measures were imposed.

4.2 Grounds for asserting variable factors have changed

4.2.1 Non-Injurious price

Applicant's Claims

In Trade Measures Report 119, which detailed Customs and Border Protection's finding in regard to the last revision of measures, Customs and Border Protection based the non-injurious price on the Australian industry's weighted average selling prices over the period 1 September 2005 to 30 June 2006.

Penrice states that its selling price in 2009 has increased from the September 2005 to June 2006 period and that this has resulted in a change in the non-injurious price for the Australian industry. Penrice provided selling price information in its cost to make and sell (CTMS) to support this claim (**confidential attachment 2**).

Our assessment

Based on the sales data provided by Penrice, we were able to chart the trend in the Australian industry's selling prices from the September 2005 quarter to the March 2010 quarter (**confidential attachment 3**). It is evident that selling prices have increased.

We then charted the trend in the Australian industry's costs for the same period and found that costs had also changed since the last review period (**confidential attachment 4**).

The non-injurious price is generally derived from the Australian industry's selling prices at a time unaffected by dumping, or from a constructed price. Deductions

³ In accordance with s.269ZC(2)

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for post-exportation costs are made from this price to arrive at a non-injurious price. Penrice did not provide details of relevant deductions, however, we consider the change in sales price and costs sufficient to demonstrate that the non-injurious price has changed.

4.2.2 Export Price

Applicant's claims

Penrice claims that the price of sodium bicarbonate exported from China has fluctuated and is now higher than during the previous review period.

Penrice provided average Chinese sodium bicarbonate export prices for the 2009 calendar year (for natural ash process), based on the Australian Bureau of Statistics (ABS) import data, to demonstrate that, since last revised, export prices have increased (**confidential attachment 5**).

Our assessment

We were able to reconcile the export prices in the application with the ABS import data provided and noted the increased unit values. We then referred to Customs and Border Protection's import database to ascertain the average export price for the 2009 calendar year. We found that the export price had increased from the figure established in the last review in 2007. An analysis of export price changes based on Customs and Border Protection's import database is at **confidential attachment 6**. We are satisfied that there has been a change in the export price of sodium bicarbonate from China.

4.2.3 Normal value

Applicant's claims

Penrice claims that Chinese normal values for sodium bicarbonate in 2009 were higher than the last revised levels determined by Customs and Border Protection.

Penrice considers that the increasing cost of soda ash, which is the key raw material in the production of sodium bicarbonate, should result in higher Chinese sodium bicarbonate costs and selling prices in 2010. Penrice asserts that the "Global Soda Ash Service" published by CMAI Global confirms that Chinese costs and prices for soda ash are continuing to increase in 2010.

Penrice provided data from the "Global Soda Ash Service" (issue 20 dated 16 March 2010) to demonstrate the increasing cost of production for the Solvay method in China since 2009. Penrice argues that in 2009 Chinese producers were selling soda ash produced via the Solvay method below cash cost levels, and that production costs for soda ash were in excess of costs, as last revised, with an increase of US\$40 per metric tonne.

Penrice claimed the impact of increasing soda ash production costs would therefore have a flow-on effect in sodium bicarbonate production costs.

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Penrice constructed Chinese selling prices for sodium bicarbonate that was produced both by the Solvay and the Natural Alkali production methods. Penrice used information from commentaries such as the CMAI Global Soda Ash Service and, where no independent information was available, its own costs. Penrice then added a ten percent profit margin to these cost calculations to allow for reasonable return on investment (**confidential attachment 7**). The calculations demonstrate that normal value has increased from the last review.

Market Situation

Penrice claimed that Chinese soda ash and sodium bicarbonate is sold at artificially low prices domestically. The applicant further submits that a 'market situation' exists in respect of sodium bicarbonate sold in China due to a number of factors including:

- *'Significant government ownership in the industry sector'. The soda ash industry is a 'pillar industry' – the Government of China (GOC) maintains control over the principal companies in the sector, which is a minimum 50 per cent GOC in principal enterprises in the industry group;*
- *'Significant government control in the sector via the government-run CSAIA and CSA';*
- *'A range of government policies and taxation programs which provide benefits to Chinese producers in the sector (including, but not limited to, government price controls on electricity, salt, water and gas)';*
- *The cost of salt, electricity and dry coke accounts for 32 per cent of production costs of the goods under consideration (GUC) at government determined or influenced prices;*
- *The range of subsidies applicable to entities in the soda ash and sodium bicarbonate industry.*

Penrice argues the combined effect of the various benefits provided above permit Chinese manufacturers of soda ash and sodium bicarbonate to sell at prices which are less than they would be in a competitive market. Penrice claims that domestic selling prices in China should not be used as the basis for determining normal values for exports to Australia.

Our assessment

We have assessed the information provided by Penrice regarding changes in the soda ash price in China. We acknowledge that changes in raw material costs are likely to have an effect on the prices of finished goods. Given the lack of information available on manufacturing costs and prices in China, Penrice's demonstration of a change in their costs and a change in soda ash prices since the 2007 review provides reasonable grounds for asserting Chinese costs for sodium bicarbonate, and therefore normal value, has changed.

In relation to Penrice's market situation allegations, we consider that the nature of the claims in relation to the first four points listed at the section above are not new, and have been investigated by Customs and Border Protection in the past. In Report No. 119, Customs and Border Protection examined such matters and concluded:

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“While many assertions about the market situation were made by the various parties there was little evidence to support the claims. Having had regard to all relevant information available, Customs is not satisfied that the sodium bicarbonate market situation in China is such that sales of sodium bicarbonate in that market are not suitable for use in establishing normal value under s. 269TAC(1).”⁴

We are therefore of the view that the information provided in the application in support of the market situation claims is not sufficient to demonstrate that the situation in the market of China is such that sales of sodium bicarbonate in that market are unsuitable for determining normal value. However, consideration of market situation claims can be undertaken during the course of the review.

In relation to the government assistance programs alleged by Penrice, we do not consider they are necessarily relevant to the application for review of anti-dumping measures. This is because the allegations relate to potentially countervailable subsidies. A review of anti-dumping measures is not an appropriate means for establishing the existence of a countervailable subsidy, which is governed by a separate process under a separate international agreement (the WTO Agreement on Subsidies and Countervailing Measures).

We assume Penrice consider the government assistance programs relevant to a review in the context of a question as to whether such programs have materially affected the domestic selling prices of sodium bicarbonate in China. We consider the application does not contain reasonable grounds for such an assertion.

4.3 Conclusion on “reasonable grounds”

We are satisfied that there appears to be reasonable grounds for asserting the non-injurious price, export price and normal value have changed.

Accordingly we recommend that you as delegate of the CEO decide not to reject the application.

You will need to publish a notice indicating that it is proposed to review the measures covered by the application⁵.

⁴ Trade Measures Report No. 119 – Review of anti-dumping measures applying to sodium bicarbonate from China – p. 14.

⁵ s. 269ZC(4)

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5 List of Attachments

Appendix A	Public notice under s. 269ZC(4)
Confidential Attachment 1	Details of imports from Customs and Border Protection database – 1 Jan 2009 to 31 Mar 2010
Confidential Attachment 2	Penrice's Cost to Make and Sell (CTMS) data
Confidential Attachment 3	Analysis of Australian Industry selling prices
Confidential Attachment 4	Analysis of Australian Industry CTMS data
Confidential Attachment 5	ABS import data
Confidential Attachment 6	Analysis of export prices
Confidential Attachment 7	Penrice's constructed Chinese normal value