

merchandise, a new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

In its March 28, 2003, request for a changed circumstances review, TIL advised the Department that, on December 31, 2002, it purchased NEC's (a wholly owned subsidiary of ICI) INC and energetic technologies businesses. TIL notes that the energetic technologies business is unrelated to INC. NEC was the sole producer of INC in the United Kingdom, and therefore, the only respondent in prior administrative reviews. TIL was formed to acquire NEC's INC and energetic technologies businesses.

According to TIL, the transfer of ownership of the INC business resulted in no material changes in the management, production facilities, suppliers of raw materials, or customers of NEC's former INC business. While the managing director of NEC's INC business has been replaced, TIL states that all of the other management personnel of the former entity are now employed by TIL. See TIL's March 28, 2003 submission to the Department at 5. Also, TIL notes that it operates the factory formerly operated by NEC using the same equipment and production process used by NEC. Furthermore, TIL reports that it uses the suppliers of raw materials used by NEC (and currently plans no changes to those suppliers) and sells to the former customers of NEC, in the United States and the United Kingdom, on the same basis as NEC sold to these customers. See TIL's July 18, 2003 questionnaire response at 4-5. TIL notes that there have been no changes in the customer base since the acquisition and none are currently anticipated. See TIL's March 28, 2003 submission to the Department at 7. Moreover, TIL points out that since the acquisition, there have been no changes in INC sales personnel, no material changes in the marketing of INC in the United States and the United Kingdom, and no systemic modifications in INC selling prices in either the U.S. or U.K. market. See *id.*

In its April 11, 2003, submission, the petitioner contends that the change in ownership of the INC business has resulted in a change in the business' cost of capital (which affects the Department's interest expense calculation), management, and sales distribution channels. Specifically, the petitioner points out that, recently, in addressing whether NEC's cost of production should include its interest expenses or those of its parent, the

Department found that NEC's parent, ICI, "determined the capital structure of its group companies involved in the production of the subject merchandise." See *Industrial Nitrocellulose From the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 67 FR 77747 (December 19, 2002) and accompanying Issues and Decision Memorandum. Thus, the petitioner concludes that the cost of capital for the new entity will differ from that of its predecessor. In addition to different capital costs, the petitioner points out that, under TIL, the managing director of the INC business is not the managing director formerly employed by NEC. The petitioner finds this significant because it is the managing director who has decision-making authority. Further, the petitioner states that with new ownership and senior management, there can be no assurance that pricing will have the same objectives or follow the same pattern as when NEC was owned by ICI. Finally, the petitioner claims that the sales structure changed after TIL acquired the INC business. Specifically, the petitioner notes that NEC's U.S. affiliate, ICI Americas, Inc., carried out many sales functions for NEC. Based on the foregoing, the petitioner contends that TIL should not be allowed to take advantage of ICI's current cash deposit rate.

As noted above, in determining whether a new company's operations are essentially the same as those of its predecessor, the Department examines whether there have been changes in management, production facilities, supplier relationships, or the customer base. Our review of the record indicates that the change in ownership of the INC business has not resulted in changes to the production facilities or production processes used to manufacture INC, nor has it resulted in material changes in supplier relationships or customer base. Although TIL replaced the managing director of the INC business, there is no indication that this action resulted in significant changes to the INC operations. Furthermore, while the petitioner expressed concern over a possible difference between the cost of capital for the new entity and its predecessor, the record indicates that many of the significant factors that affect costs, with the possible exception of those that affect capital costs, have not changed (e.g., no changes in production process, suppliers of raw materials, and management and sales personnel). Finally, even though there has been a change in the legal entity performing U.S. selling functions (i.e.,

ICI Americas Inc. has ceased performing selling functions), with respect to U.S. sales of INC, the record indicates that there have been no significant changes in the order process, movement of INC from the United Kingdom, customer base, or sales terms, and no systematic price changes. See TIL's July 18, 2003 submission at 6. Thus, the record shows that TIL's operations are essentially the same as those of its predecessor. Therefore, we preliminarily determine that TIL is the successor-in-interest to ICI and should receive the same antidumping duty cash deposit rate as ICI, i.e., 3.06 percent. As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct the U.S. Bureau of Customs and Border Protection to suspend shipments of subject merchandise made by TIL at ICI's cash deposit rate (i.e., 3.06 percent). Until that time, the cash deposit rate assigned to TIL's entries is the rate in effect at the time of entry (i.e., the "all others" rate).

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. See 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated. We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: October 9, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

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