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February 2, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Potassium Permanganate from the
People's Republic of China

SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China ("PRC") for the period of review ("POR") January 1, 2013, through December 31, 2013. The Department has preliminarily determined that Pacific Accelerator Limited ("PAL") had no reviewable entries of subject merchandise during the POR.

If these preliminary results are adopted in our final results of review, we will issue appropriate instructions to U.S. Customs and Border Protection ("CBP"). Interested parties are invited to comment on these preliminary results. We will issue our final results no later than 120 days from the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

Background

On February 28, 2014, based on a timely request for review by PAL¹, the Department initiated an administrative review of the antidumping order on potassium permanganate from the PRC.² On March 20, 2014, the Department issued Section A, C, and D questionnaires to PAL.³ On

¹ See letter from Pacific Accelerator Limited entitled, "Request for Administrative Review of the Antidumping Duty Order on Potassium Permanganate from the People's Republic of China," dated January 30, 2014.

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 11401 (February 28, 2014) ("*Initiation Notice*").

³ See the Department's letter to Pacific Accelerator Limited entitled, "Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China: Questionnaire," dated March 20, 2014 ("*Questionnaire*").

April 24, May 16, and May 23, 2014, we received Section A, C and D questionnaire responses from PAL, respectively. PAL's Section C response indicated that PAL made only one sale on the last day of POR, which entered into the United States five months after the end of the review period.⁴ On July 10, 2014, the Department issued a supplemental questionnaire asking PAL to confirm whether it had any entries of subject merchandise during the POR.⁵ On July 17, 2014, PAL reported having no entries during the POR, but stated that the review should proceed because it made a sale during the POR.⁶ Carus Corporation ("Petitioner") submitted comments on July 24, 2014, in response to PAL's supplemental, and stated that the review should be rescinded since there are no reviewable entries during the POR.⁷ On July 28, 2014, PAL submitted comments in response to Petitioner's July 24, 2014, submission.⁸ Petitioner submitted additional comments in response to PAL on July 31, 2014.⁹ PAL submitted a final set of comments on August 6, 2014.¹⁰

On August 5, 2014, we asked CBP to conduct a query on potential shipments of subject merchandise made by PAL during the POR, in accordance with our practice. On August 13, 2014, we received the requested CBP data query information, which confirmed that PAL had no entries of the subject merchandise during the POR.¹¹

On September 5, 2014, we extended the preliminary results to December 3, 2014.¹² On November 18, 2014, we fully extended the preliminary results to February 2, 2015.¹³ After reviewing PAL's submission and CBP data, which confirms that PAL had no entries during the POR, we preliminarily determine that PAL did not have any reviewable entries during the POR.

Scope of the Order

Imports covered by the order are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. Potassium permanganate is currently classifiable under item 2841.61.00 of the Harmonized Tariff Schedule of the United

⁴ See PAL's May 16, 2014, submission at Exhibit C-6.

⁵ See the Department's letter to Pacific Accelerator Limited entitled, "Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China: Supplemental Section C Questionnaire," dated July 10, 2014 ("Section C Supplemental").

⁶ See PAL's July 17, 2014, submission at 11.

⁷ See Petitioner's July 24, 2014, submission at 1.

⁸ See PAL's July 28, 2014, submission.

⁹ See Petitioner's July 31, 2014, submission.

¹⁰ See PAL's August 6, 2014, submission.

¹¹ See Memorandum to the File, from Alexander Montoro, International Trade Compliance Analyst entitled, "CBP Data Query Results," dated concurrently with this with this memorandum.

¹² See Memorandum to Christian Marsh, Deputy Assistant Secretary, through James Doyle, Office Director, from Alexander Montoro, International Trade Compliance Analyst, "Potassium Permanganate from the People's Republic of China; Extension of Deadline for Preliminary Results of the 2013 Antidumping Duty Administrative Review," dated September 5, 2014.

¹³ See Memorandum to Christian Marsh, Deputy Assistant Secretary, through James Doyle, Office Director, from Alexander Montoro, International Trade Compliance Analyst, "Potassium Permanganate from the People's Republic of China; Second Extension of Deadline for Preliminary Results of the 2013 Antidumping Duty Administrative Review," dated November 18, 2014.

States (“HTSUS”). Although the HTSUS item number is provided for convenience and customs purposes, the written description of the merchandise remains dispositive.

Preliminary Finding of No Reviewable Entries

At the outset, we note that the Department has refined its assessment practice in non-market economy (“NME”) cases. Given our refined assessment practice, if we conclude that there was not a reviewable entry for PAL during the POR, it would not be appropriate to rescind the review; instead the Department would complete the review with respect to PAL and issue appropriate instructions to CBP based on the final results of the review.¹⁴ While we have in the past rescinded reviews, in full or in part, our current practice in NME antidumping duty cases is to make a determination of no reviewable entries, consistent with the *NME Reseller Policy* and recent determinations.¹⁵

With respect to the timing of PAL’s entry, the CBP data examined by the Department show that the entry date of PAL’s merchandise entered¹⁶ long after the end of the POR.¹⁷ This date is consistent with the information provided by PAL in its response.¹⁸

PAL has argued that the Department’s practice, regulations, and the *Preamble*¹⁹ require it to review sales during the POR, even though there is no entry of subject merchandise during the POR, but we disagree. According to section 751(a) of the Tariff Act of 1930, upon the receipt of a request for administrative review and the publication of an initiation notice in the *Federal Register*, the Department will conduct a review and determine the amount of antidumping duties due for entries of subject merchandise during a given 12-month period. Section 751(a)(2) of the Act directs the Department to determine the normal value and export price (“EP”) or constructed export price (“CEP”) of each entry of the subject merchandise. Section 751(a)(2)(C) of the Act provides that the “determination under this paragraph {i.e., an administrative review} shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated antidumping duties.” (emphasis added). Consistent with this statutory directive, the Department’s policy is to conduct administrative reviews only where there exists at least one POR entry of subject merchandise. Simply put, while the Department has the discretion to calculate the weighted-average dumping

¹⁴ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) (“*NME Reseller Policy*”).

¹⁵ See *NME Reseller Policy*; see also *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 80 FR 2394, (January 16, 2015) (“*Fish Fillets from Vietnam*”); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments*; 2012-2013, 80 FR 1021, (January 8, 2015) (“*Solar Cells from China*”); see also *Certain Steel Threaded Rod from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 21101 (April 9, 2013) (“*Steel Threaded Rod from the PRC*”).

¹⁶ Due to the business proprietary nature of information regarding the entry date in question, we are withholding the specific date of entry. See PAL’s May 16, 2014 submission at Exhibit C-6.

¹⁷ See Memorandum to the File, from Alexander Montoro, International Trade Compliance Analyst entitled, “CBP Data Query Results,” dated concurrently with this notice.

¹⁸ See PAL’s May 16, 2014, submission at Exhibit C-6.

¹⁹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997) (“*Preamble*”).

margin on the basis of POR sales, there must be suspended POR entries on which duties may be assessed in order to meet the requirements of section 751(a)(2)(C) of the Act.²⁰

This practice has been upheld by the courts. In *Allegheny Ludlum Corp. v. United States*, 346 F.3d 1368, 1373 (Fed. Cir. 2003) (“*Allegheny*”), for example, the Court of Appeals for the Federal Circuit (“CAFC”) stated: “we hold lawful Commerce’s regulatory policy of rescinding annual administrative reviews where there are no entries during the period of review and where all in-period sales can be linked to pre-period-of-review entries.”²¹ In this case, similarly, there are no POR entries, despite the fact that the respondent had a single POR sale.²²

The regulation at 19 CFR 351.213(e)(1) further gives the Department the discretion to base a review on either entries, exports, or sales, as appropriate.²³ In determining the appropriateness of conducting a review, the Department must find that there was at least one of the following: no entries, no exports, or no sales. The Department does not need to find that all three did not occur during the POR in order not to conduct the review. Thus, the fact that PAL reported its date of sale as within the POR does not necessarily require the Department to conduct a review if there is no POR entry to which antidumping duties can be assessed.²⁴ The Department’s policy of requiring entries during the POR in order to conduct an administrative review has been approved by the CAFC in *Allegheny*.

In addition, the *Preamble* imposes no preference for reviewing sales during the POR. Although the *Preamble* identifies a limitation applicable to most CEP sales – the “inability to tie entries to sales” – and notes, because of this limitation, “the Department normally must base its review on sales made during the period of review,” the *Preamble* further states that, where a respondent “can tie its entries to its sales, we potentially can trace each entry of subject merchandise made during a review period to the particular sale or sales of that same merchandise to unaffiliated customers, and we conduct the review on that basis.”²⁵ In this review, PAL reported its sale on an EP basis.²⁶ For that same reason, prior determinations cited by PAL as establishing an agency practice for conducting a review based on the date of sale are inapposite because the sales in those cases were CEP sales.²⁷

²⁰ See, e.g., *Steel Threaded Rod from the PRC*.

²¹ See also *Chia Far Indus. Factory Co. v. United States*, 343 F. Supp. 2d 1344, 1369 (CIT) (stating “Commerce correctly decided to rescind Ta Chen’s review based on the fact that there were no entries of the merchandise during the POR, regardless of whether there were sales”).

²² See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 21634, 21635 (May 1, 2002) (where the Department rescinded the administrative review for an exporter which had a POR sale of subject merchandise but no POR entries).

²³ See, e.g., *Allegheny*, 346 F.3d 1373.

²⁴ PAL cites to the Department’s Antidumping Manual (2009) for the proposition that “the date of sale controls which U.S. and comparison market sales are within the POR,” Chapter 8, page 11, but, consistent with 19 CFR 351.213(e)(1), a review is not mandated or possible simply because a sale was made within a particular POR, particularly if there are no suspended POR entries on which duties can be imposed.

²⁵ See *Preamble*, 62 FR at 27314

²⁶ See PAL’s May 16, 2014 submission at Exhibit C-17 and PAL’s April 24, 2014 submission at A-1.

²⁷ See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value*, 74 FR 10543 (March 11, 2009); see also *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany*, 61 FR 38166, 38182 (July 23, 1996).

With respect to conducting a review to calculate cash deposits, section 751 of the Act directs the Department to determine the amount of any antidumping duty to be assessed, estimated duty to be deposited, or investigation to be resumed. Section 751(a)(2)(C) of the Act specifically provides that the “determination under this paragraph {i.e., an administrative review} shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated antidumping duties.” (emphasis added).

The Department’s practice to require a reviewable entry in conducting an administrative review was upheld by the CAFC in *Allegheny*. In that case, the CAFC concluded that “the statutory commands that an annual review ‘shall’ take place where requested, ... and that the review ‘shall be the basis for . . . deposits of estimated duties,’ ... do not preclude {the Department’s} policy here.”²⁸ The statute indicates that where requested, Commerce must initiate a review. In this case, however, there are no POR entries or unlinked sales, and, therefore, “nothing to review and no basis for revising cash deposit rates.”²⁹

In summary, it is not the Department’s practice to conduct a review solely for the purpose of revising an existing cash deposit rate. Section 751 of the Act establishes a process for keeping cash deposit requirements accurate and current, and we are statutorily required to follow this process. Specifically, section 751 of the Act requires the Department to conduct an administrative review when a respondent has entries during a POR and requests a review, and we intend to follow this requirement at the earliest possible moment (*i.e.*, in the next review period, if a review is requested by a company that has reviewable entries in that POR). For purposes of this review, however, we preliminarily determine that PAL had no reviewable entries during the POR for the reasons noted above.

²⁸ See *Allegheny*, 346 F.3d at 1372 (internal citations omitted).

²⁹ *Id.*

Recommendation

We recommend applying the above methodology for these preliminary results.

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

2 FEBRUARY 2015
(Date)