

for this new shipper review of Cablesa is March 1, 1998 to February 28, 1999.

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the United States Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Cablesa, until the completion of this review.

Interested parties desiring disclosure under administrative protective order must submit applications in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221.

Dated: April 30, 1999.

**Roland MacDonald,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 99-11573 Filed 5-6-99; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-423-602]

#### Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of preliminary results of antidumping duty administrative review of industrial phosphoric acid from Belgium.

**SUMMARY:** In response to requests from petitioner and one domestic producer, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial phosphoric acid from Belgium. The period of review is August 1, 1997 through July 31, 1998. This review covers imports of industrial phosphoric acid from one producer, Societe Chimique Prayon-Rupel S.A. ("Prayon").

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument

(1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** May 7, 1999.

**FOR FURTHER INFORMATION CONTACT:** Frank Thomson or Jim Terpstra, AD/CVD Enforcement, Group II Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4793, and 482-3965, respectively.

#### SUPPLEMENTARY INFORMATION:

#### The 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 of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (1998).

#### Background

On August 20, 1987, the Department published in the **Federal Register** (52 FR 31439) the antidumping duty order on industrial phosphoric acid ("IPA") from Belgium. On August 11, 1998, the Department published in the **Federal Register** (63 FR 42821) a notice of opportunity to request an administrative review of this antidumping duty order. On August 27, 1998, in accordance with 19 CFR 351.213(b)(1), the petitioner FMC Corporation ("FMC"), and Albright & Wilson Americas Inc. ("Wilson"), a domestic producer of the subject merchandise, requested that the Department conduct an administrative review of Prayon's exports of subject merchandise to the United States. We published the notice of initiation of this review on September 29, 1998 (63 FR 51893).

#### Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 2809.2000 and 4163.0000. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

#### Product Comparisons

We calculated monthly, weighted-average normal values (NVs). The industrial phosphoric acid exported by

Prayon to the United States is PRAYPHOS P5, a refined industrial phosphoric acid, and is the identical merchandise sold by Prayon in its home market in Belgium. Therefore, we have compared U.S. sales to contemporaneous sales of identical merchandise in Belgium.

#### Export Price

Prayon sells to end-users in the United States through its affiliated sales agent. For these sales, we used export price (EP). In accordance with sections 772(a) and (c) of the Act, we calculated an EP because Prayon sold the merchandise directly to the first unaffiliated purchaser in the United States prior to importation. Additional factors used to determine EP include: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. affiliate was limited to that of a processor of sales-related documentation and a communications link with the unrelated buyer. Where the facts indicate that the activities of the U.S. affiliate were ancillary to the sale (e.g., arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. See, e.g., *Certain Corrosion Resistant Steel Flat Products From Canada: Final Results of Antidumping Duty Administrative Review*, 63 FR 12725, 12738 (March 16, 1998). The record in this case indicates that Prayon has correctly classified its U.S. sales as EP sales. Prayon's affiliated sales agent in the United States, Quadra Corporation (USA) ("Quadra"), served only as a processor of sales-related documentation.

EP was based on the delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs brokerage fees, merchandise processing fees, and U.S. inland freight expenses.

#### Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, in accordance with section 773(a)(1)(B) of the Act, we based NV on home market sales.

We also excluded from our NV analysis sales to affiliated home market customers where the weighted-average sales prices to the affiliated parties were less than 99.5 percent of the weighted-average sales prices to unaffiliated parties. See *Usinor Sacilor v. United States*, 872 F. Supp. 1000, 1004 (CIT 1994).

We made adjustments, consistent with section 773(a)(6)(B) of the Act, for inland freight. In addition, we made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

In calculating the credit expense on its home market sales, Prayon reported the discount on accounts receivable sold to its affiliated coordination center. Because Prayon did not submit any information which could serve as a benchmark to determine whether these affiliated party transactions were conducted at arm's-length, we must assume that they are not arm's-length transactions. Accordingly, we have used the standard credit calculation when calculating the amount of credit to deduct from normal value. We used the monthly home market short-term rates provided by Prayon for borrowing from unaffiliated entities in calculating inventory carrying costs as the basis for the monthly home market short-term interest rates used in the credit calculation. See Import Administration Policy Bulletin 98-2.

In calculating the credit expense on its U.S. sales, Prayon reported the discount on accounts receivable sold to its affiliated coordination center in Belgian francs. Because Prayon did not submit any information which could serve as a benchmark to determine whether these affiliated party transactions were conducted at arm's-length, we must assume that they are not arm's-length transactions. Therefore, we have disregarded the credit expenses reported by Prayon. Instead, we have utilized the weighted-average short-term dollar lending rates calculated by the Federal Reserve in calculating Prayon's imputed credit expense. See Import Administration Policy Bulletin 98-2.

No other adjustments were claimed or allowed.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or the constructed export price (CEP) transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is

based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997).

Prayon did not claim an LOT adjustment; however, we requested information concerning Prayon's distribution system, including selling functions, to determine whether such an adjustment was necessary. Prayon reported that all sales during the period of review (POR), in both the comparison market (the home market in this case) and the United States, were to end-users and distributors. In the U.S. market, Prayon sells to end-users through its affiliated sales agent. The subject merchandise is shipped from tankage in a storage facility in Canada directly to the customer. In the home market, Prayon sells through several channels of distribution. The first channel includes direct sales made to end-users. For the other channels, Prayon sells to either end-users or distributors through its affiliated sales agent. For all home market customers, Prayon ships the subject merchandise via independent carriers directly to the customer from its storage facilities at the plant. We have examined information provided by Prayon concerning these sales and determined that the selling functions are the same in the home market and U.S. market. Prayon negotiates all final prices and quantities, and bears the cost

of storage and handling, surveys and delivery to customer. Prayon does not maintain inventories for its customers, provide after-sales service, or offer advertising or other sales support activities to its customers in either market. Therefore, we preliminarily determine that sales in the home market and sales in the United States are at the same LOT and that no adjustment is warranted.

#### Commissions

The Department operates under the assumption that commission payments to affiliated parties (in either the United States or home market) are not at arm's length. The Court of International Trade has held that this is a reasonable assumption. See *Outokumpu Copper Rolled Products AB v. United States*, 850 F. Supp. 16, 22 (CIT 1994).

Accordingly, the Department has established guidelines to determine whether affiliated party commissions are paid on an arm's-length basis such that an adjustment for such commissions can be made. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 61 FR 57629 (November 7, 1996). First, we compare the commissions paid to affiliated and unaffiliated sales agents in the same market. If there are no commissions paid to unaffiliated parties, we then compare the commissions earned by the affiliated selling agent on sales of merchandise produced by the respondent to commissions earned on sales of merchandise produced by unaffiliated sellers or manufacturers. If there is no benchmark which can be used to determine whether the affiliated party commission is an arm's-length value (i.e., the producer does not use an unaffiliated selling agent and the affiliated selling agent does not sell subject merchandise for an unaffiliated producer), the Department assumes that the affiliated party commissions are not paid on an arm's-length basis.

In this case, Prayon used an affiliated sales agent in the home market and a different affiliated sales agent in the United States. In its December 16, 1998 response, Prayon submitted its commission rates with its affiliated sales agents in both the home and U.S. market. We issued a supplemental questionnaire to Prayon, requesting that it indicate whether the commissions were paid at arm's length by reference to commission payments to unaffiliated parties in the foreign market and other markets, and to submit evidence

demonstrating the arm's-length nature of the commissions. Prayon then submitted documentation indicating that its commission rates with unaffiliated parties in the foreign market and in other markets are comparable to its affiliated party commission rates.

Our preliminary analysis of the submitted documentation indicates that the affiliated commissions in both the home and U.S. market are made at arm's-length. Therefore, for purposes of the preliminary determination, we are accepting Prayon's reported home and U.S. market commissions. Accordingly, we preliminarily determine to make a circumstance of sale adjustment for commissions in both the home and U.S. market. However, we have asked for certain additional information in order to clarify the submitted documentation. This information will not be readily available for the preliminary determination. For further explanation of this issue, see *Memorandum from Analyst to Holly A. Kuga* ("Arm's Length Commission Memorandum"), dated May 3, 1999.

#### Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on rates certified by the Federal Reserve Bank in effect on the dates of U.S. sales. See *Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996).

#### Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period August 1, 1997 through July 31, 1998:

Manufacturer/exporter	Margin (percent)
Prayon .....	4.27

The Department will disclose calculations made in connection with its preliminary determination within five days of the date of publication of this notice. Interested parties may also request a hearing within 30 days of publication. If requested, a hearing will be held two days after the date of filing of rebuttal briefs, or the first work day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the date of filing of case briefs. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such

briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries of that particular company made during the POR. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of industrial phosphoric acid from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date of the 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 the rate established in the final results of this administrative review (except no cash deposit will be required where the weighted-average margin is *de minimis*, i.e., less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original investigation, the cash deposit rate will be 14.67 percent, the "all others" rate established in the LTFV investigation.

This notice serves as a preliminary reminder to importers of their responsibility 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 administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 1999.

**Robert S. LaRossa,**

*Assistant Secretary, Import Administration.*

[FR Doc. 99-11574 Filed 5-6-99; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-806]

#### Amended Final Results of Antidumping Duty Administrative Review: Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

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

**ACTION:** Amended final results of antidumping duty administrative review.

**SUMMARY:** On February 25, 1998, the United States Court of International Trade affirmed the Department of Commerce's remand determination results affecting the final assessment rates for Taiwan International Standard Electronics, Ltd. and Tecom Co., Ltd. in the first administrative review of the antidumping duty order on certain small business telephone systems and subassemblies from Taiwan. No parties have appealed this decision. The review covers the period August 3, 1989 through November 30, 1990. As there is now a final and conclusive court decision in this action, we are amending our final results of review and we will instruct the Customs Service to liquidate all appropriate entries.

**EFFECTIVE DATE:** May 7, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sanjay Mullick or Kris Campbell at (202) 482-0588 or (202) 482-3813, respectively, Group I, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### *The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act), in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations