

Notices

Federal Register

Vol. 64, No. 89

Monday, May 10, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-484-801]

Electrolytic Manganese Dioxide From Greece: Preliminary Results of Antidumping Duty Administrative Review and Extension of Final Results

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

ACTION: Notice of preliminary results of antidumping duty administrative review and extension of final results.

SUMMARY: In response to a request by a respondent, Tosoh Hellas A.I.C., and an interested party, Eveready Battery Corporation, the Department of Commerce is conducting an administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece.

We have preliminarily determined that sales by Tosoh Hellas A.I.C. have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to refund the amount of estimated antidumping duties that it collected on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

The 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 (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (1998).

Background

On April 17, 1989, the Department published in the **Federal Register** (54 FR 15243) the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. On April 13, 1998, the Department published a notice of "Opportunity to Request Administrative Review" with respect to the antidumping duty order on EMD from Greece. Tosoh Hellas A.I.C. (Tosoh) requested a review on April 29, 1998, and Eveready Battery Company requested a review on April 30, 1998. In response to these requests, the Department published a notice of initiation of administrative review on May 29, 1998, in accordance with 19 CFR 351.213(b) (63 FR 29379). Although we initiated on both companies (*i.e.*, Tosoh and Eveready Battery Company), we are conducting an administrative review only of Tosoh because Eveready Battery Company is an importer and not a foreign manufacturer/exporter. On January 4, 1999, we extended the deadline for the preliminary results of the review until April 29, 1999 (see 64 FR 85). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of EMD from Greece. This merchandise is currently classifiable under HTS item number 2820.10.0000. EMD is manganese dioxide (MnO₂) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the order. The written product description remains dispositive.

Extension of Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the foregoing time, the Department may extend the 120-day period for making a final determination to 180 days.

We determine that it is not practicable to issue the final results of this review within 120 days for the reasons contained in the Memorandum from Richard W. Moreland to Robert S. LaRussa, April 29, 1999, on file in Room B-099 of the Main Commerce Building. Therefore, we are extending the due date for the final results of review to 180 days after the publication of these preliminary results of review.

Period of Review

The period of review (POR) is from April 1, 1997, through March 31, 1998.

Product Comparability and Home Market Viability

In an October 16, 1998, submission, and in several subsequent submissions from Kerr-McGee Chemical LLC and Chemetals Inc. (collectively "Petitioners"), the Petitioners allege three points concerning the selection of comparable merchandise: (1) the EMD grade Tosoh sold in the home market is not a foreign like product under the definition set forth in sections 771(16)(B) or (C) of the Act; (2) the market for EMD in Greece is not viable within the meaning of section 773(a)(1)(C)(ii) of the Act; and (3) a particular market situation exists which warrants rejection of home market sales for comparison purposes.

We have preliminarily determined the following: (1) the subject merchandise sold in Greece is a foreign like product as defined under section 771(16)(B) of the Act; (2) the home market is viable within the meaning of section 773(a)(1)(C)(ii) of the Act; and (3) a particular market situation does not exist within the meaning of section 773(a)(1)(iii) of the Act.

First, we examined whether the EMD grade sold in the home market met the standards of section 771(16)(B) of the Act. Specifically, pursuant to section 771(16)(B) of the Act, we evaluated the following criteria: (1) whether the

foreign like product was produced in the same country and by the same person as the subject merchandise; (2) whether the merchandise in question is like in component material or materials and in the purposes for which used; and (3) whether the two grades (*i.e.*, zinc-chloride and alkaline) of EMD are approximately equal in commercial value.

Based on the information provided on the record we found that the merchandise in question is produced in the same country and by the same person as the subject merchandise. In addition, we found that both grades of EMD are produced using the same component materials and both grades are used in the production of dry-cell batteries.

With regard to the commercial-value criterion, we preliminarily determine that the two products are "approximately equal in commercial value" as set forth in section 771(16)(B)(iii) of the Act, based on Tosoh's statement that "there is no significant disparity between the grades that would prevent their being used for a proper price-to-price comparison." See Tosoh's January 25, 1999, submission at page 14. In addition, the products satisfy our twenty-percent difference-in-merchandise test which we generally apply to evaluate the commercial-value criterion of the statute. We have solicited additional information on this issue, however, and will analyze the issue further before making our final determination.

Based on the reasons stated above, we determined that zinc-chloride-grade EMD is a foreign like product as defined under section 771(16)(B) of the Act. For a detailed explanation of our analysis, see the Decision Memorandum from Office Director to Deputy Assistant Secretary dated April 29, 1999.

Second, we analyzed whether the home market for EMD is viable within the meaning of section 773(a)(1)(C)(ii) of the Act. Section 773(a)(1)(B)(i) of the Act identifies normal value as the price at which the foreign like product is first sold for consumption in the exporting country. Pursuant to section 773(a) of the Act, the Department will use sales in the home market as the basis for calculating normal value unless one of the conditions in section 773(a)(1)(C) applies, in which case the Department may use third-country sales as a basis for normal value. Where the home market is not viable, the Department calculates normal value based on sales to a viable third-country market or on constructed value. Under section 773(a)(1)(C)(ii) of the Act, the home market is viable where the Department

determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by an exporter or producer in a country is five percent or more of the aggregate quantity (or value) of its sales of the like product to the United States. The statute provides further that, where the aggregate quantity (or value) of the foreign like product sold in the home market is below five percent of the aggregate quantity (or value) of sales of the subject merchandise in the United States, this amount will normally be considered to be insufficient. See section 773(a)(1)(C) of the Act.

To determine whether sales of the foreign like product in the home market are in sufficient quantity to form the basis for normal value, we compared Tosoh's aggregate quantity of sales of the foreign like product in the home market to the aggregate quantity of its sales of the subject merchandise to the United States. Based on the information submitted by Tosoh, we determined that Tosoh's home market sales exceed the five-percent threshold required to find them viable as defined in section 773(a)(1)(C)(ii) of the Act.

In their October 16, 1998, submission, the Petitioners note that section 773(a)(1)(C)(iii) of the Act authorizes the Department to use third-country sales for its price-to-price comparison when a particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price. Citing the Department's decision to use third-country sales in the *Final Determination of Sales at Less Than Fair Value; Fresh Salmon From Chile*, 63 FR 31411 (June 9, 1998) (*Salmon from Chile*), the Petitioners contend that there are several similarities between that case and this one. For example, they assert that the key factors in the Department's particular-market-situation determination in *Salmon from Chile* were that the home market sales involved almost exclusively "off-quality" grades of salmon that were not sold in the United States and such sales were incidental to respondents. According to the Petitioners, comparable factors are also present in this case: (1) Tosoh's home market sales during the review period consisted solely of a grade of EMD for which there is no market in the United States; and (2) the home market sales are for an aberrant use and of such small volume as to be incidental to Tosoh. The Petitioners rely on the Statement of Administrative Action (SAA) that accompanied the URAA, H. Doc. 103-316, vol. 1, 103d Cong., 2d Sess. at 822 (1994), which, they assert, establishes

that a particular market situation might exist where a single sale in the home market exceeds the quantitative viability threshold of five percent or where there is government control over pricing to such an extent that home market prices cannot be considered to be set competitively. In addition, the Petitioners contend, the SAA also mentions situations in which demand patterns are different in the foreign market and the United States as a possible circumstance for finding a particular market situation and basing normal value on sales to a different market.

We have found no evidence of a particular market situation, within the meaning of section 773(a)(1)(C)(iii) of the Act, which would prevent a proper price comparison and which warrants a departure from the normal five-percent viability test. For example, there is no evidence to suggest that a single sale in the home market constitutes five percent of sales to the United States, that there are extensive government controls over pricing in the Greek home market, or that there are differing patterns of demand for EMD in the United States and in the home market. For a detailed explanation of our analysis, see our Decision Memorandum.

Regarding the Petitioners' reliance on *Salmon from Chile*, in that case the Department determined that a particular market situation existed because the home market was incidental to the respondents' operations. The Department found that the merchandise sold in the home market was comprised mostly of "industrial" or "off-quality" grade salmon (*i.e.*, salmon with severe defects or of poor quality) sold directly from the factory depending on availability whereas the merchandise sold in the U.S. market was comprised of "premium" grade sold through distributors. The record in this case does not demonstrate that the EMD Tosoh sold in the home market had severe defects or was of poor quality. In addition, unlike in *Salmon from Chile*, the respondent in this case guarantees the quality of its products, regardless of EMD grade, and both types of EMD grades meet the general specifications customers required. Also, we have not found any evidence to suggest that home market sales are incidental to Tosoh.

Therefore, we have used Tosoh's home market sales in our determination of normal value for these preliminary results.

Constructed Export Price

For the price to the United States, we used constructed export price (CEP) as defined in section 772(b) of the Act. We calculated CEP based on packed, carriage and insurance, or delivered price to unaffiliated purchasers in the United States. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA (at 823-824), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses, and indirect selling expenses incurred in the United States.

With respect to CEP profit, section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling and further-manufacturing activities in the United States. Section 772(f) of the Act provides the rule for determining the amount of CEP profit to deduct from the CEP starting price. In this review, since we do not have any cost information to calculate CEP profit, we determined that the best available sources of profit information are the 1997 financial statements which the respondent and its U.S. affiliate submitted in response to section A of our questionnaire. See Analysis Memorandum dated April 29, 1999.

Normal Value

In calculating normal value, as we stated above, we determined that the quantity of foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act because the quantity of sales in the home market was greater than five percent of the sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the price at which the foreign like product was for consumption in the exporting country. See Analysis Memorandum dated April 29, 1999.

We calculated monthly, weighted-average normal values. Because identical merchandise was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the most similar foreign like product in accordance with section 771(16)(B) of the Act.

Home market prices were based on packed, free-on-truck prices to the

unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales in accordance with section 773(a)(1)(B) of the Act. The normal value level of trade is that of the starting-price sales in the home market, as adjusted under section 772(d) of the Act. See 19 CFR 351.412(c)(ii).

To determine whether home market sales were at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Tosoh reported one channel of distribution in the home market. Therefore, we found that the one home market channel constituted one level of trade. All of Tosoh's U.S. sales were CEP sales. In this case, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act. Based on our analysis, we considered CEP sales to constitute a single level of trade. Based on the record, we found that there were significant differences between the selling activities associated with the home market level of trade and those associated with the CEP level of trade. Therefore, we determined that CEP sales are at a different level of trade than the home market sales. Consequently, we could not match U.S. sales to sales at the same level of trade in the home market. Moreover, data necessary to determine a level-of-trade adjustment was not available. Therefore, because home market sales were made at a more advanced stage of distribution than that of the CEP level, we made a CEP-offset adjustment when comparing CEP and home market sales in accordance with section 773(a)(7)(B) of the Act. For a more detailed description of our analysis, see the Level-of-Trade section of our Analysis Memorandum dated April 29, 1999.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period

April 1, 1997, through March 31, 1998 to be as follows:

Company	Margin (Percent)
Tosoh	0.00

Public Comment

Because we are requesting additional information, we will establish a briefing schedule at a later date. Parties should contact the Department within 15 days of the date of publication of this notice for the briefing and hearing schedule. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed.

Oral presentations will be limited to issues raised in the briefs. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B-099 of the main Department of Commerce building. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 180 days of publication of these preliminary results.

Upon completion of the final results of this administrative review, if there is no change from our preliminary results, we will instruct the U.S. Customs Service to liquidate all appropriate entries at without regard to antidumping duties.

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 the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rate for Tosoh will be the rate established in the final results of this review (except that no deposit will be required if the firm has a zero or *de minimis* margin, i.e., a margin less than 0.5 percent); (2) for previously reviewed or investigated companies not listed

above, 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, a prior review, or the original less-than-fair-value investigation (LTFV), 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 be 36.72 percent. This is the "all others" rate from the LTFV investigation which we are reinstating in accordance with the decisions by the Court of International Trade in *Floral Trade Council v. United States*, Slip Op. 93-79 (May 25, 1993), and *Federal-Mogul Corporation and The Torrington Company v. United States*, Slip Op. 93-83 (May 25, 1993). These cash-deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 29, 1999.

Richard W. Moreland,
Acting Assistant Secretary for Import Administration.

[FR Doc. 99-11723 Filed 5-7-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-501]

Final Results of Expedited Sunset Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China

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

ACTION: Notice of final results of expedited sunset review: natural bristle paintbrushes and brush heads from the People's Republic of China.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on natural bristle paintbrushes and brush heads from the People's Republic of China (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-6397 or (202) 482-1560, respectively.

EFFECTIVE DATE: May 10, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping order is natural bristle paint brushes and brush heads from the People's Republic of China. Natural bristle "bristle packs," which are groups of natural bristles held together at the base with glue that closely resemble a traditional paintbrush head are within the scope of the order.¹ Excluded from the order are paintbrushes with a blend

of 60 percent synthetic and 40 percent natural fibers.² The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers imports from all manufacturers and exporters of Chinese natural bristle paintbrushes and brush heads.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping order on natural bristle paintbrushes and brush heads from the People's Republic of China (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Paint Applicator Division ("PAD") of the American Brush Manufacturers Association and its participating members on January 19, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. PAD claimed interested party status under 771(9)(E) of the Act as a trade association, the majority of whose members manufacture, produce, or wholesale a domestic like product in the U.S. The member companies of PAD also claimed interested party status under 771(9)(C) of the Act as U.S. producers of a domestic like product.³ In addition, PAD indicated that five of its member companies were among the original petitioners in the proceeding.⁴ We received a complete substantive response from PAD on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation

² See *Scope Rulings*, 59 FR 25615 (May 17, 1994).

³ The members of PAD are: EZ Painter Corporation, Bestt Liebeco, Wooster Brush Company, Purdy Corporation, Tru*Serv Manufacturing and Linzer Products Corporation.

⁴ These five companies are: EZ Painter Corporation, Bestt Liebeco (formerly Joseph Lieberman & Sons, Inc.), Wooster Brush Company, Purdy Corporation, Tru*Serv Manufacturing (formerly Baltimore Brush & Roller Co., Inc.).

¹ See Memo to Joe Spetrini, Re: Final Scope Ruling on Antidumping Duty Order on Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China (May 12, 1997).