These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final 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 notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1)(B) of the Act and 19 CFR 353.22.

Dated: September 25, 1996.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25245 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–423–602]

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

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 24, 1996, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on industrial phosphoric acid (IPA) from Belgium (52 FR 31439; August 20, 1987). The review covers one manufacturer, Société Chimique Prayon-Rupel (Prayon), and exports of the subject merchandise to the United States during the period August 1, 1994, through July 31, 1995.

We gave interested parties an opportunity to comment on the preliminary results of review. Based on our analysis of the comments received, we have not changed our analysis for the final results from that presented in the preliminary results of review.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: David Genovese or Joseph Hanley, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5254.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On August 25, 1995, FMC Corporation and Monsanto Company requested an administrative review of the antidumping duty order on IPA from Belgium with regard to Prayon. The Department initiated the review on September 15, 1995 (60 FR 47930), covering the period August 1, 1994, through July 31, 1995. On May 24, 1996, the Department published the preliminary results of review (61 FR 26160). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

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 number 2809.20. The HTS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Prayon and FMC Corporation and Monsanto Company, two domestic producers of industrial phosphoric acid.

Comment 1

Prayon argues that the Department does not have the legal authority to exclude from the home market sales listing Prayon's sales to Europhos, an affiliate which does not resell the IPA.

Prayon argues that section 773(a)(1)(B)(i) of the Act defines normal value (NV) as the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade. Prayon notes that section 771(15) of the Act specifies types of sales considered outside the ordinary course of trade (*e.g.*, sales made below the COP). Prayon further notes that section 773(a)(5) of the Act deals with sales through affiliates (*i.e.*, sales through affiliates can be disregarded and the price of the sale by the affiliated party may be used to determine NV). However, Prayon argues that, the Act makes no provision for excluding from the calculation of NV sales made to an affiliated party that are not for resale, but for consumption by that party.

Prayon further argues that the Department does not have the authority under section 353.45 of its regulations (''Transactions between related persons'') to disregard home market sales to affiliated parties for consumption by those parties. Prayon argues that section 353.45(b) merely reiterates the provisions of 773(a)(5) and that section 353.45(a) rests on the authority of 773(a)(5) and therefore only applies where there are sales made through affiliated parties, not to affiliated parties.

Prayon concludes that in the absence of any legal authority to exclude such sales, sales to Europhos must be considered in calculating NV.

Petitioner argues that it is a fundamental tenet that ''(t)the antidumping law attempts to construct value on the basis of arm's length transactions.'' *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1572 (Fed. Cir. 1983)(*Smith-Corona*). Thus, asserts Petitioner, the Department has routinely exercised the power to exclude sales between affiliated parties from its dumping margin calculations. Moreover, argues Petitioner, this power has, on a number of occasions, been reviewed and sanctioned by the courts.

Department's Position

We disagree with Prayon. Prayon's sales to Europhos have not been shown to be at arm's-length prices (*i.e.*, the weighted-average sales price to Europhos was less than 99.5 percent of the weighted-average sales price to unaffiliated parties); therefore, the Department must exclude them. See *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1004 (CIT 1994) (hereinafter *Usinor*).

While section 771 of the Act does specify certain types of sales which are considered outside the ordinary course of trade, this list is not exhaustive and

is meant only to provide examples. See section 771(15) (A) and (B). Specifically, section 771(15) states that the Department considers sales made below the COP and certain transactions used to determine COP and CV, among others, to be outside the ordinary course of trade and therefore excluded from the calculation of NV. Among other types of transactions considered by the Department to be outside the ordinary course of trade are sales *to* an affiliate that are determined not to be at arm's-length prices.

Furthermore, section 353.45(a) clearly states that the Department will consider a sale to an affiliate in determining NV ''only if satisfied that the price is comparable to the price at which the producer * * * sold such or similar merchandise to a person not related to the seller.'' This approach has been upheld by the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (Federal Circuit). See, *e.g., Conners Steel Co.* v. *United States*, 527 F. Supp. 350, 354 (CIT 1981) (hereinafter *Conners Steel*) (''it need only be stated that the law does not remove sales to a related purchaser from consideration as part of home market sales. Common sense, of course, would indicate that strictly by themselves sales to a related purchaser would be a questionable guarantee of a fair home market price. However, if they are made at the same price as sales to independent purchasers, there is no reason why they cannot form part of the total quantity of home market sales used as a benchmark.''); and *NEC Home Electronics, Ltd.* v. *United States*, 54 F.3d 736, 739 (Fed. Cir. 1995) (hereinafter *NEC*) (''There is a perceived danger that a foreign manufacturer will sell to related companies in the home market at artificially low prices, thereby camouflaging true [foreign market value] and achieving a lower antidumping duty margin * * *. Thus, regulation provides that the ITA will use the home-market, related-party sale in computing [NV] 'only if satisfied that the price is comparable to the price at which the [seller] sold such or similar merchandise to a person not related to the seller.' 19 CFR 353.45(a)(1994).'')

Therefore, in accordance with the Department's regulations, the Act and judicial precedent, the Department compared Prayon's weighted-average sales price to Europhos to its weighted-average sales price to unaffiliated parties in order to determine whether the sales to Europhos should be used when calculating NV. Because the weighted-average sales price to Europhos was less than 99.5 percent of the sales price to unaffiliated parties, the Department has continued to exclude sales to Europhos when calculating NV.

Comment 2

Prayon argues that even if the Department had the legal authority to disregard sales to Europhos, in this case they should not have been excluded because, contrary to the Department's determination in the preliminary results of review, such sales were made at arm's-length.

Prayon, quoting *British Steel PLC* v. *United States*, Slip. Op. 96–88 (CIT 1996) at 71 (quoting *NLRB* v. *Baptist Hosp., Inc.*, 442 U.S. 773,787 (1993)), argues that ''an agency presumption must be both consistent with the intent of the statute and based on a rational connection between the facts proven and the facts presumed.'' Prayon states that the arm's-length test applied by the Department is not consistent with the intent of the statute because the test distorts NV by excluding many transactions between affiliates at prices below the weighted-average price to unrelated parties but including all affiliated party transactions at prices above the weighted-average price to unaffiliated party sales. Prayon states that this practice does not permit a fair comparison between export price and NV as required by the Statute.

Furthermore, Prayon argues that the arm's-length test is not based on a rational connection between the facts considered (*i.e.*, that the weighted-average sales price to an affiliate is less than 99.5 percent of the weighted-average sales price to unrelated parties) and the facts presumed (*i.e.*, that the prices to the affiliate were not the result of arm's-length negotiations).

Moreover, Prayon argues that the Department cannot merely rely on a sales price comparison as a conclusive basis for excluding affiliated party sales from the NV sales base. See *NEC*. Prayon argues that in *NEC*, the Federal Circuit held that the Department must conduct an inquiry into other facts relevant to whether or not the sales concerned were at arm's-length. Accordingly, asserts Prayon, the Department should take into consideration the fact that (1) while Prayon holds a 50 percent stake in Europhos it is much smaller in size than its joint venture partner and is, therefore, unable to manipulate transactions with Europhos; (2) it is not in Prayon's interest to lower the price to Europhos in order to lower U.S. dumping margins since Prayon sells a large volume of IPA to Europhos; and (3) since Prayon wishes to maximize profits and Europhos wishes to minimize material costs, it follows that Prayon's prices to Europhos are the result of hard, arm's-length negotiations that took into consideration the large volume of IPA sold to Europhos and the long-term nature of the purchase contract.

Prayon claims that sales prices to Europhos were negotiated on an arm's-length basis, and that therefore the Department should include those sales in the home market sales base for the purposes of calculating NV in the final determination.

Petitioner argues that the Department's regulations permit sales between affiliated parties only if they are at arm's-length; and, that the Department's arm's-length test has been upheld by the Courts. Moreover, Petitioner asserts that the Department's use of sales price as a conclusive basis to judge the arm's-length nature of a transaction between affiliates has also been upheld by the Courts.

Department's Position

We disagree with Prayon. First, the Department's practice of excluding sales to affiliates that are less than 99.5 percent of the weighted-average sales price to unrelated parties does not violate the intent of the statute, which is to provide a fair comparison between the export price and NV. Rather, by ensuring that home market sales to affiliates are excluded if the price of such sales are not similar to the sale prices to unrelated parties, the Department's test promotes a fair comparison between the export price and NV.

Prayon's interpretation of the facts proven and the facts presumed is inaccurate. The fact presumed is that sales to an affiliate are a questionable guarantee of a fair home market price. The fact proven is that the weighted-average sales price to Europhos is well below the weighted-average sales price to unrelated parties and, therefore, not representative of a fair home market price. See *Conners Steel*, cited above.

In addition, contrary to Prayon's assertions, the Department's regulations make clear that we will use the price on a sale between affiliated parties in calculating dumping margins ''only if satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to a person not related to the seller.'' See section 353.45(a) of the Department's regulations. In short, the burden of satisfying the Department that the sales are at arm's-length is on Prayon.

It is not self-evident that the profit motive cited by Prayon will always

cause affiliated companies to use arm's-length transfer prices. Furthermore, since Prayon's sales price to Europhos were below the standard arm's-length price, the question of whether the transfer price was controlled by Prayon or Europhos is not useful to determine whether sales were made on an arm's-length basis. In addition, while the pricing arrangement between Prayon and Europhos may predominantly benefit either party or both parties, it does not indicate that transactions were made on an arm's-length basis.

Moreover, the Department's use of the price comparability test (*i.e.*, treating sales to affiliates as being at arm's-length only if the weighted average price to the affiliate is at least 99.5 percent of the price to an unrelated party) has been upheld by the CIT. See *Usinor Sacilor*, 872 F. Supp. at 1004.

Additionally, the CIT has upheld the Department's practice of using price rather than other factors as the basis for determining the arm's-length nature of a transaction. See *NTN Bearing Corp. of America* v. *United States*, 905 F. Supp. 1083 (CIT 1995) (hereinafter *NTN*). In *NTN*, the CIT stated that it ''disagrees with [respondent] that Commerce's arms-length test is flawed because Commerce did not take into account certain factors proposed by [the respondent].'' See *NTN* at 1099.

Moreover, in the *NEC* case cited by Prayon, the CIT did not state that the Department must always consider factors other than price comparisons in determining the arm's-length nature of a transaction between affiliates. Rather, the CIT remanded the case to the Department to address NEC's argument that compliance with the Japanese commodity tax law ensured that the transaction was at arm's-length. (*NEC*, 54 F.3d at 743, 744 (taking no position on the merits of NEC's argument but holding that the ITA's conclusion that NEC had not provided data indicating sales were at arm's length was not supported by substantial evidence because it did not address NEC's claim)). In the review underlying *NEC*, the Department did not make a statistical comparison between home market prices to related parties and those to unrelated parties because, in the home market, NEC sold only to related parties. In this review, in contrast, the Department addressed Prayon's Belgian law argument based on a comparison of prices on the record that shows, despite the Belgian law, that prices to Prayon's related party are not comparable to those of unrelated parties. Accordingly, the Department's practice continues to be compared to the price to affiliates with the price to unrelated parties in order to determine whether sales to affiliates are made at arm's-length.

Based on the foregoing, we have, in these final results, continued to exclude sales to Prayon's affiliate, Europhos, since the weighted-average price of such sales was less than 99.5 percent of the weighted-average price to unrelated parties.

Comment 3

Prayon argues that the Department is not justified in disregarding the discount taken by the affiliated coordination center to which Prayon sells its receivables, and that this discount should be considered Prayon's actual home market credit expense. Prayon states that the discount taken is required by Belgian law to reflect prevailing market interest rates. Therefore, Prayon asserts that there is no basis for disregarding the discount and substituting an artificial imputed credit expense.

Moreover, Prayon argues that if the Department uses an imputed credit expense, that expense should be recalculated using corrected interest rates. Prayon argues that the interest rates it provided to the Department were Belgian interbank rates (BIBOR), which by their nature are lower than the rates that would apply to commercial loans to non-bank parties. Additionally, Prayon claims that for short term borrowings, a lender would add a premium onto the BIBOR rate.

Petitioner argues that the Department's reliance on the imputed credit expense rather than the discount offered by Prayon's affiliated party is reasonable and fully consistent with prior practice. Petitioner asserts that Prayon has offered no justifiable reason why the Department should change its approach. Moreover, Petitioner argues that Prayon has had ample opportunity to submit information to the Department on its home market sales and credit expenses, and the Department should not, as suggested by Prayon, reopen the record to request additional information from Prayon.

Department's Position

We disagree with Prayon. The facts of this case are identical to the facts in the 1993/94 review. In the final determination for that review we stated that, ''the Department is not satisfied that the discount rate ''charged'' by Prayon Services, when factoring Prayon's accounts receivables, is representative of market rates.'' We noted that ''(i)n almost all home market observations, the credit expense calculated using the discount rate method is substantially higher than the imputed credit expense (*i.e.*, the market rate) Prayon would have incurred had it not sold its accounts receivable to Prayon Services.'' We concluded that:

> (D)ue to the substantial difference between the two methodologies, the Department is not satisfied that the discount rate ''charged'' by Prayon Service is representative of market rates. Moreover, since Prayon sold all of its accounts receivable to Prayon Services, the Department is unable to compare the discount rate charged by Prayon Services with a discount rate charged by an unrelated party to insure that the rate is comparable to market rates.
>
> Additionally, we are not convinced that Prayon Service's legal obligation under Belgian law is sufficient proof that Prayon Services actually charged an arm's-length discount rate to Prayon. Prayon states that Prayon Services was established under Belgian law, which provides certain tax benefits for companies organized and operated according to certain specified requirements. However, the requirement that the factoring of accounts meet Belgian law requirements in order to capture certain tax benefits may not be a reliable benchmark for U.S. antidumping purposes. This is supported by the Department's determination in Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 FR 37154, 37158 (July 9, 1993) (''There is no requirement that U.S. antidumping practice conform to Japanese antitrust laws or practices which have entirely different purposes and standards'').
>
> Therefore, because the standard established by Belgian law is not sufficiently similar to that established by the Department, as evidenced by the substantial difference between Prayon's discount rate and the Department's date of payment method, we cannot rely on Prayon's compliance with that law as evidence that the rate charged by Prayon Services to Prayon is at arm's-length. [footnote excluded]

Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review, 61 FR 20227, 20229–20230 (May 6, 1996).

Accordingly, for these final results, the Department, when determining credit expense incurred by Prayon on its home market sales, has relied upon the imputed credit expense incurred by Prayon as determined by the following formula: ((Pay date-Shipment date)/365)*short-term home market interest rates.

We also disagree with Prayon that the Department should reopen the record to ensure that the correct interest rates are used. In response to a request for information on the home market short-term interest rates used to calculate imputed inventory carrying costs in the home market, Prayon supplied the Department with the monthly average

short-term rates offered by Credit Lyonnais Belgium for loans in Belgian francs. *See* Prayon's submission of April 26, 1996. The Department used these rates to calculate the imputed credit expense incurred by Prayon for the preliminary results of review, and sees no reason not to use these rates in the final results of review.

Moreover, the Department's regulations permit factual information to be submitted for consideration in the final results of review up to the date of publication of the preliminary results of review or 180 days after the date of publication of the notice of initiation of the review, whichever comes first. See section 353.31(a)(1)(ii) of the Department's regulations. Both of these deadlines have passed (the preliminary results of review were published on May 24, 1996, and this review was initiated on September 15, 1995). Furthermore, it is the Department's stated practice to not consider in final results of review information untimely submitted. See section 353.31(a)(3).

Final Results of Review

Based on our analysis of the comments received, we have determined, as we did in the preliminary results, that a margin of 11.36 percent exists for Prayon for the period August 1, 1994 through July 31, 1995. The Department will issue appraisement instructions directly to the U.S. Customs Service.

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 these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Prayon will be 11.36 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the ''all others'' rate, as established in the original investigation, will be 14.67 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 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 notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–25241 Filed 10–1–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–485–602]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results and Rescission in Part of Antidumping Duty Administrative Review

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

ACTION: Notice of final results and rescission in part of antidumping duty administrative review.

SUMMARY: On April 8, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (TRBs), from Romania. This review covers the period June 1, 1994 through May 31, 1995.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

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's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On April 8, 1996, the Department published in the Federal Register (61 FR 15465) the preliminary results of its administrative review of the antidumping duty order on TRBs from Romania (52 FR 23320, June 19, 1987). We conducted a hearing on May 22, 1996. On July 30, 1996, we extended the time limit for the final results to September 25, 1996 (61 FR 39631). We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of TRBs from Romania. These products include flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00, 8482.99.30, 8483.20.40, 8483.30.40, and 8483.90.20. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

This review covers eight companies and the period June 1, 1994 through May 31, 1995. Of the eight companies for which petitioner requested a review, only Tehnoimportexport (TIE) made shipments of the subject merchandise to the United States during the period of review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the respondent, TIE, and the petitioner, The