

DEPARTMENT OF COMMERCE

International Trade Administration

[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 of Industrial Phosphoric Acid from Belgium.

SUMMARY: On May 7, 1999, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping order on industrial phosphoric acid ("IPA") from Belgium. This review covers imports of IPA from one producer, Societe Chimique Prayon-Rupel S.A. ("Prayon") and the period of review (POR) is August 1, 1997, through July 31, 1998.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised the results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Jim Terpstra, AD/CVD Enforcement, Office IV, Group II, 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:**Background**

On August 20, 1987, the Department published in the **Federal Register** (52 FR 31439) the antidumping duty order on 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 section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.213(b), FMC Corporation ("FMC"), and Albright & Wilson Americas, Inc. ("Wilson"), both domestic producers 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). On May 7, 1999, the Department published the *Notice of Preliminary Results of Antidumping Duty Administrative Review of Industrial Phosphoric Acid from Belgium*, 64 FR 24574 (Preliminary Results). On May 12, 1999, Prayon submitted a response to our supplemental questionnaire of April 21, 1999, in which we asked for certain additional information regarding Prayon's reported home market and U.S. market commissions. We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Prayon and the domestic producers on June 9, 1999, and June 16, 1999, respectively. We did not receive any request from interested parties for a hearing. The Department has now completed this review in accordance with section 751 of the Act.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions as of 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's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

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 U.S. Customs Service (Customs Service) purposes. The written description remains dispositive.

Analysis of Comments Received

Comment 1: Sales commissions
Prayon argues that the Department erroneously treated its home and U.S. market commission payments to affiliated parties as arm's-length transactions. Prayon claims that the commission it paid to its affiliated sales agent in the United States, Quadra Corporation (USA) ("Quadra"), is not comparable to the commissions it paid to its non-affiliated sales agents in third countries.

Specifically, Prayon asserts that the commission paid to Quadra was significantly higher than those paid to non-affiliated sales agents in all other countries except one. According to Prayon, the only commission rate comparable to the one it pays Quadra is

the rate it pays to Quadra Chimie Limite ("QCL"), with which Prayon claims to be affiliated. Prayon asserts that this is not an appropriate comparison, and thus, the Department does not have an appropriate basis for concluding that the commission to Quadra was made at arm's-length. Prayon concludes that the Department should find that its commission payment to Quadra was not at arm's-length.

Regarding commission payments in the home market, Prayon points out that its home-market sales agent (Zinchem Benelux) is virtually wholly owned by Prayon, and that the Department has, in past segments of this proceeding, treated this commission as not being at arm's-length (see *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 63 FR 55087 (October 14, 1998) (*Final Results 1996-1997*); *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 62 FR 41359 (August 1, 1997) (*Final Results 1995-1996*); *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 61 FR 51424 (October 2, 1996) (*Final Results 1994-1995*); *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 61 FR 20227 (May 6, 1996) (*Final Results 1993-1994*)). Prayon also points to the original investigation, where the Department determined that these payments were not made at arm's-length (see *Notice of Final Determination of Sales at Less Than Fair Value: Industrial Phosphoric Acid from Belgium*, 52 FR 25436 (July 7, 1987) (*LTFV*)). Prayon asserts that since the completion of those segments, there has been no change in the circumstances of this commission arrangement, and thus no reason for the Department's reversal of its treatment in the current review.

The domestic producers agree with the Department's treatment of these commissions in the preliminary results of review, and assert that the commission Prayon paid to QCL represents a valid basis for comparison and, furthermore, is consistent with the commission paid to Quadra. The domestic producers disagree with Prayon's contention that these commission payments were not at arm's-length. First, the domestic producers assert that the Department's comparison of commission payments using QCL is valid because QCL received them for sales made directly to specific customers on its own, not for sales jointly made with Quadra. Second, QCL ran its business operation

independently from Prayon, also an indication of the arm's-length nature of the commission payments, according to the domestic producers.

In further support for finding that the commission paid to Quadra was at arm's-length, the domestic producers point out that Prayon, as a minority shareholder in Quadra, is not in a position to freely set commission rates to Quadra, benefit from paying out unduly high commissions to it, or have negotiating power over Quadra. The domestic producers conclude that the commission payment in question reflects an open market rate negotiation.

Finally, the domestic producers assert that, even were the Department to disregard the commission paid to QCL, the commissions paid by Prayon to non-affiliated sales agents in other countries are sufficiently similar to that paid to Quadra to support the Department's finding of the arm's-length nature of this commission.

Department's position: During the POR, Prayon used an affiliated sales agent in the home market and a different affiliated sales agent in the United States. For the preliminary results, we compared the commission rates Prayon submitted for its affiliated sales agents in both the home and U.S. market, with the rates paid to unaffiliated parties in other markets. Since the preliminary results were published, Prayon submitted additional documentation regarding these commission rates. As discussed in the preliminary results of review, we have applied the Department's guidelines for determining whether affiliated party commissions are paid on an arm's-length basis. 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: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding*, 61 FR 57629 (November 7, 1996). Accordingly, because Prayon did not use an unaffiliated sales agent in either the U.S. or home market, we compared the affiliated commission rates with rates Prayon paid to unaffiliated parties in other markets. Based on our comparison of commission rates for affiliated and unaffiliated parties, we find that Prayon's affiliated commission rates in all markets are reasonably similar to the range of commission rates Prayon paid to unaffiliated sales agents, such that we conclude that the affiliated commissions were arm's-length transactions.

As to Prayon's assertion that the Department, in the four previous reviews, treated Prayon's commissions to its affiliated sales agent in the home market as not being at arm's-length, we agree. However, in those reviews the Department found that Prayon did not use unaffiliated sales agents. Thus, no information existed that would allow the Department to establish a benchmark against which to compare the arm's-length nature of the commission payments from Prayon to its affiliated home market sales agent. The Department was therefore unable to carry out an analysis as to the arm's-length nature of Prayon's commission payments. Accordingly, the Department's treatment of home market commissions in those reviews is not dispositive of the arm's-length nature of the transactions. See *Final Results 1996-1997; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 25830, 25832 (May 11, 1998); *Final Results 1995-1996; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 31073, 31074 (June 6, 1997); *Final Results 1994-1995; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 26160, 26161 (May 24, 1996); *Final Results 1993-1994; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 57398 (November 15, 1995). Prayon's reliance on the previous reviews, therefore, is misplaced.

As to Prayon's assertion that the Department, in the original investigation, determined that Prayon's commissions to its affiliated sales agent in the home market were not at arm's-length, our analysis indicates otherwise. At the time of the investigation, the Department considered Prayon's commission payments to be "part of the general expenses of the company, and [thus] not costs directly related to particular sales." See *LTFV* at 25439. In addition, at the time of the *LTFV* investigation, the Department did not have a practice or policy with respect to considering commissions paid to unaffiliated sales agents in other (i.e., third country) markets in determining whether a respondent's affiliated commission rates were at arm's-length, since we considered such transactions to be intracompany transfers of funds. *Id.* Consequently, Prayon's argument is not supported by the *LTFV*.

Since the time of the investigation, the Department has changed its practice regarding the arm's-length nature of commissions paid to affiliated selling agents. Under guidelines the Department subsequently developed, the Department compares the commission paid to affiliated selling agents with the commission paid by the respondent to any unaffiliated selling agents in the same market, (i.e., home or U.S.) or in any third country market to determine the arm's-length nature of the affiliated commissions. See *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from the United Kingdom*, 56 FR 56403, 56405-06 (November 4, 1991) (*Paper from United Kingdom*); see also *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56371-72 (November 4, 1991) (*Paper from Finland*); *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Germany*, 56 FR 56385, 56389 (November 4, 1991) (*Paper from Germany*). Pursuant to the current practice, the Department will make an adjustment for commissions between affiliated parties where we find the commissions paid to such parties to be at arm's-length. See *Paper from United Kingdom*, 56 FR at 56406; *Paper from Finland*, 56 FR at 56372; *Paper from Germany*, 56 FR at 56389.

In the present review, Prayon used the services of unaffiliated agents and provided detailed information on the record regarding the commission rates it paid to these unaffiliated sales agents, (see "Background" section, above). Consequently, in this review, the Department does have information appropriate for use as a benchmark in establishing the arm's-length nature of Prayon's affiliated commission rates.

Since the Department has determined that the commissions paid to affiliated selling agents are comparable to the commissions paid by the respondent to unaffiliated selling agents in third country markets, for purposes of these final results we continue to find that the affiliated commissions in both the home and U.S. market are made at arm's-length and, for these final results, we are accepting Prayon's reported home and U.S. market commissions. Accordingly, we have continued to make a circumstance of sale adjustment for commissions in both markets.

Comment 2: Prayon argues that, even were the Department to continue to treat its U.S. market commission payments as having been made at arm's-length, the Department committed a clerical error

in deducting U.S. commission expense from U.S. price, instead of adding it to normal value (NV).

The domestic producers disagree with Prayon and assert that in conducting an administrative review, the Department considers individual U.S. sales, and thus it is proper that the commission expense associated with each U.S. sale be deducted from U.S. price.

Department's position: We agree with Prayon that this was a clerical error. For the final results we have added U.S. commissions to NV as is our normal practice in the treatment of circumstances of sale adjustments for export price (EP) transactions.

Final Results of Review

As a result of our review, we have determined that the following weighted-average dumping margin exists for the period August 1, 1997 through July 31, 1998:

Manufacturer/exporter	Margin (percent)
Prayon	3.92

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries by that particular importer made during the POR. The Department will issue appraisal instructions directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of IPA from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a) of the Act: (1) for the company named above, the cash deposit rate will be the rate listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results which covered that manufacturer or exporter; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results

which covered that manufacturer; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 14.67 percent, the "all others" rate established in the *LTFV*.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely 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 sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 1, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-401-040]

Stainless Steel Plate From Sweden: Notice of Recission of Antidumping Duty Administrative Review

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

ACTION: Notice of Recission of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from petitioners, the Department of Commerce ("the Department") initiated an administrative review of Uddeholm Tooling AB on July 29, 1999. The

review covered one manufacturer/exporter of the subject merchandise to the United States, Uddeholm Tooling AB and its U.S. sales subsidiary (Bohler-Uddeholm Corporation). The period of review is June 1, 1998 through May 31, 1999. The Department received a timely request for withdrawal on August 10, 1999 from petitioners. In accordance with 19 CFR 351.213(d)(1), the Department is now terminating this review because the petitioner has withdrawn their request for review and no other interested parties have requested a review.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons or Chris Cassel, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0374 or 482-0194, respectively.

SUPPLEMENTARY INFORMATION:

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 by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998).

Background

The Department of the Treasury published an antidumping finding on stainless steel plate from Sweden on June 8, 1973 (38 FR 15079). The Department of Commerce published a notice of "Opportunity To Request Administrative Review" of the antidumping finding for the 1998-1999 review period on June 9, 1999 (64 FR 30962). On June 30, 1999, the petitioners, Allegheny Ludlum Steel Corp., G.O. Carlson, Inc., and Lukens, Inc. filed a request for review of Uddeholm Tooling AB ("Uddeholm"). No other interested party requested review of this antidumping duty order. We initiated the review on July 29, 1999 (64 FR 41075). On August 10, 1999 petitioners withdrew their request for review.

Section 19 CFR 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case, petitioners have withdrawn their request for review within the 90-