Scope of the Review

The imports covered by this review are shipments of barium chloride, a chemical compound having the formulas BaCl2 or BaCl2–2H2O, currently classifiable under item number 2827.38.00 of the Harmonized Tariff Schedule (HTS). Although the HTS item number is provided for convenience and for Customs purposes, the written description remains dispositive.

Background

On July 12, 1999, we published in the **Federal Register** (64 FR 37498) the preliminary results of the review of this order. We gave interested parties an opportunity to comment on our preliminary results. We received no comments. In the preliminary results, we determined that it was appropriate to use, as adverse facts available for the PRC-wide rate, the highest rate from this or previous segments of the proceeding. We selected Sinochem's rate of 60.84 percent from *Barium Chloride From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 57 FR 29467 (July 2, 1992). The Department has now completed the administrative review in accordance with section 751 of the Act.

Final Results of Review

Because we received no comments from interested parties, we have determined that no changes to the preliminary results are warranted for purposes of these final results. The weighted-average dumping margin for the period October 1, 1997 through April 30, 1998 is as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
PRC-wide Rate	60.84

The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of barium chloride from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters will be the rate established in the final results of this review; and (2) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to their PRC suppliers. These deposit requirements, when imposed, 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double 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 19 CFR 351.305(a)(3). 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 section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. section 1677f(i)), and 19 CFR 351.221.

Dated: November 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29909 Filed 11–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–801]

Electrolytic Manganese Dioxide From Greece: 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 10, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece. The review covers one producer/exporter, Tosoh Hellas A.I.C., during the period of review April 1, 1997, through March 31, 1998.

We gave interested parties an opportunity to comment on the preliminary results. After our analysis of the comments received, we made no changes for the final results.

EFFECTIVE DATE: November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4477, 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, as amended (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 19 CFR part 351 (1998).

Background

On May 10, 1999, we published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. *Preliminary Results of Antidumping Duty Administrative Review: Electrolytic Manganese Dioxide from Greece*, 64 FR 25008 (preliminary results). Kerr-McGee Chemical LLC and Chemetals, Inc. (collectively the petitioners), submitted their case brief on August 10, 1999. Tosoh Hellas A.I.C. (Tosoh), the sole respondent in this review, did not submit a case brief. Tosoh submitted its rebuttal brief on August 17, 1999. The Department has conducted this administrative review in accordance with section 751(a) of the Act.

Scope of Review

Imports covered by this review are shipments of EMD from Greece. EMD is manganese dioxide (MnO_2) 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. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule (HTS) of the United States. The HTS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

Selection of Comparison Market

Prior to the issuance of the preliminary results, the petitioners alleged that, although viable, Tosoh's home market is not a suitable market in which to establish normal value. The petitioners also alleged that the EMD grade Tosoh sold in the home market is not a foreign like product as set forth in section 771(16)(B) of the Act and that a particular market situation exists which warrants the rejection of home market sales for consumption as the basis for normal value.

For our preliminary results we determined that Tosoh's home market was appropriate to use in the determination of normal value. In the interest of full consideration, however, we requested additional information from Tosoh to determine whether the two products in question are commercially comparable. See preliminary results. Our analysis and conclusions with regard to these issues have been addressed below.

Analysis of Comments Received

Issues raised in the briefs by the petitioners and Tosoh are addressed below.

Comment 1: Foreign Like Product—Like in Component Material

The petitioners argue that the EMD (i.e., zinc-chloride-grade EMD) Tosoh sold in the home market is not a foreign like product as defined in section 771(16)(B) of the Act because it is not ''like the exported product in component material or materials.'' The petitioners assert that the raw materials used in the manufacture of the home market product are unlike the raw materials used in the manufacture of the merchandise sold to the United States. They argue that the difference arises because Tosoh includes the cost of a certain item (the identity of which is proprietary information) in its home market variable cost of manufacture whereas it does not include the cost of a corresponding item in its U.S. variable cost of manufacture. The petitioners contend that the Department's 20-percent difference-in-merchandise test will not address the differences in materials adequately. In sum, they argue that the difference in component materials is such that the merchandise is not ''like in component materials'' as required under section 771(16)(B)(ii) of the Act.

Tosoh argues that the two types of EMD are ''like'' in component materials since they have the same physical structure, are manufactured using the same component materials, and meet the same minimum chemical-property specifications. In addition, according to Tosoh, both types of EMD are produced using the same basic production process on the same production line. Furthermore, Tosoh contends that the item of concern to the petitioners is not a component material and has very little bearing on the cost of production of EMD, as demonstrated by the fact that the difference in cost of the two EMD types at issue here is well within the Department's 20-percent difference-in-merchandise standard. Therefore, according to Tosoh, the Department concluded correctly that the two EMD types are ''like'' in component materials.

Department's Position: We continue to find, as we stated in our April 29, 1999, Memorandum (see Memorandum to Richard W. Moreland, available in our Central Records Unit, Room B–099 (April 29 Memorandum)), that the product sold in the home market is a foreign like product on which we can base normal value under section 771(16)(B) of the Act. First of all, the most important component materials (i.e., manganese ore, heavy oil, sulfuric acid, etc.) of the U.S. and home market products are the same.

Further, the difference identified by the petitioners is not a difference in component materials but rather a difference in the equipment used in the manufacturing processes. Although Tosoh listed the equipment as a ''raw material,'' this designation was solely for accounting purposes because the useful life of the equipment is less than one year.

Finally, our difference-in-merchandise adjustment is based on actual physical differences in the products and is calculated on the basis of variable manufacturing costs. We include the cost of materials, labor, and variable factory overhead as direct manufacturing costs in our difference-in-merchandise adjustment, and any distinction in such costs between the subject merchandise and the foreign like product will be subject to our 20-percent difference-in-merchandise test. See Import Administration Policy Bulletin, No. 92.2 (July 29, 1992). The differences in direct manufacturing cost of the two products at issue here, zinc-chloride-grade and alkaline-grade EMD, meet our 20-percent guideline.

In conclusion, for these reasons, we find that the subject merchandise sold in the home market meets the foreign-like-product criterion at section 771(16)(B)(ii) of the Act.

Comment 2: Foreign Like Product—Purposes for Which Used

The petitioners contend that the home market product is not a foreign like product as defined in section 771(16)(B) of the Act because it is not ''like in the purposes for which used.'' According to the petitioners, the Department made two fundamental errors in addressing this question in its April 29 Memorandum.

First, the petitioners assert, the Department erred by considering the relevant use to be the common use of the home market product rather than the use of particular sales. In this case, the petitioners claim, the EMD sold in the home market was used as an additive in battery cells in which natural manganese dioxide (NMD) is the principal cathode material. According to the petitioners, in this application, the EMD does not act as the principal cathode material but as an enriching agent to improve the performance of NMD in these old-fashioned cells. Therefore, according to the petitioners, the EMD Tosoh sold in the home market is of a lower quality and sells for a lower price than the EMD exported by Tosoh to the United States, and was not sold for the same purposes for which the EMD sold to the United States was used.

The petitioners assert that the Department's second error was in considering any use as a cathode material in battery applications to be sufficient to establish that the exported and home market products are alike in the purposes for which used. The petitioners argue that the April 29 Memorandum cites no evidential basis or rationale for this finding. According to the petitioners, it is the difference in the ways in which the types of EMD are used in battery cathodes that substantially affects their commercial value.

Tosoh argues that the petitioners' assertion that the home market EMD type is used as an additive to the cathode material and that the U.S. EMD type is used unadulterated as the cathode material is inaccurate and also irrelevant. Tosoh asserts that, in its questionnaire, the Department describes the product covered simply as an intermediate product used in the production of dry-cell batteries. According to Tosoh, this is how customers use the EMD it sells both in the United States and in the home market. In addition, Tosoh asserts that, on April 6, 1999, it submitted a letter from its home market customer confirming that it used the home market EMD type as 100 percent of the cathode material in several types of batteries it

produces. According to Tosoh, even if EMD sold in the home market were never used as 100 percent of the cathode material, that would still not suffice to demonstrate that the two EMD grades are not ''like'' in the ''purposes for which used.'' Citing *Koyo Seiko* v. *United States*, 66 F.3d 1204, 1210 (Fed. Cir. 1995), Tosoh asserts that the court held unequivocally that ''it is not necessary to ensure that home market models are technically substitutable, purchased by the same type of customers, or applied to the same end use as the U.S. model.'' In this case, according to Tosoh, its home market customer uses Tosoh's EMD in the cathode mixture of dry-cell batteries, either as 100 percent of the cathode or as a component of the cathode mixture. Tosoh asserts that the EMD performs essentially the same function in both types of batteries. In closing, Tosoh contends that the petitioners have offered nothing to undermine the Department's decision in the preliminary results that the two types of EMD have like uses.

Department's Position: As we stated in our April 29 Memorandum, Tosoh's customers use both types of EMD grades as a cathode material, which provides the electric charge needed for a battery to perform. The petitioners have not brought forth any substantial evidence to contradict this fact. Whether Tosoh's home market customer uses its EMD in the cathode mixture of dry-cell batteries as 100 percent of the cathode or as a component of the cathode mixture is irrelevant. The fact still remains that the EMD produced by Tosoh for sale in the home market is an intermediate product used in the production of dry-cell batteries. Specifically, both products are used as a cathode material in dry-cell batteries. See *United States International Trade Commission's Determination of Electrolytic Manganese Dioxide from Greece and Japan*, USITC Pub. 2177 (April 1989) at page 3.

In addition, there is no evidence on the record, nor do the petitioners cite to any evidence, that suggests that EMD as a cathode material can only have one particular use in battery applications. Therefore, our rationale in this regard conforms with the express language of section 771(16)(B)(ii) of the Act, and we find that, based on the reasons set forth above, the home market product meets the foreign-like-product criterion at section 771(16)(B)(ii) of the Act.

Comment 3: Foreign Like Product—Commercial Value Criterion

The petitioners argue that the home market product is not a foreign like product under section 771(16)(B) of the Act because it is not ''approximately equal in commercial value to'' the exported product. The petitioners argue first that the Department should find that the home market product is not approximately equal in commercial value to the exported product as facts available because Tosoh did not respond fully to the Department's request for information regarding its sales of all alkaline-grade and all zinc-chloride-grade EMD in the three largest markets in which it sold both grades of EMD. According to the petitioners, Tosoh interpreted the Department's request too narrowly in its May 5, 1999, submission by not including the three largest third-country markets to which it sold both any type of zinc-chloride-grade EMD and any type of alkaline-grade EMD. The petitioners contend that Tosoh reported only one third-country market in which it sold one particular type of alkaline-grade EMD and one particular type of zinc-chloride-grade EMD. According to the petitioners, Tosoh manufactures several types of both zinc-chloride-grade EMD and alkaline-grade EMD. The petitioners assert that, in view of the limited number of battery producers, the chances of there being markets in which Tosoh sold any one of its alkaline-grade EMD and any one of its zinc-chloride-grade EMD are much higher than the chances of there being markets in which Tosoh sold any two specific designations (*i.e.*, EMD sub-grades) of its EMD. Therefore, according to the petitioners, because Tosoh did not respond adequately to the Department's request, the Department should use as facts available the petitioners' information, which, the petitioners claim, demonstrates that zinc-chloride-grade EMD is not approximately equal to alkaline-grade EMD in commercial value.

Second, the petitioners contend that, even if the Department accepts Tosoh's May 5, 1999, response, the record demonstrates that the two products in question are not ''approximately equal in commercial value.'' According to the petitioners, the record demonstrates that the particular type of zinc-chloride-grade EMD Tosoh sold to its third-country customer is not sold for use as the cathode in dry-cell batteries. The petitioners contend that this is significant to the Department's assessment of the evidence of the third-country sales information Tosoh provided.

Tosoh argues that it has supplied the Department with conclusive evidence that the two types of EMD at issue here, when sold in a third-country market, are equal in commercial value. Tosoh argues that the petitioners' complaint regarding its submission of third-country price information is unfounded. According to Tosoh, the Department addressed the petitioners' assertions fully and correctly in its July 27, 1999, Memorandum, in which the Department reaffirmed its preliminary decision that the two types of EMD at issue here ''are commercially comparable'' and stated that the information Tosoh submitted on May 5, 1999, supports the Department's preliminary results.

In addition, Tosoh contends that the petitioners have attempted to read the Department's third-country sales information request more broadly than it was written, asserting that the Department's request should be read to ask for sales data for countries in which any combination of Tosoh's grades of EMD are sold. According to Tosoh, such a reading flatly contradicts the Department's and the petitioners' own stated intention in requesting third-country sales information, which was to determine the price comparability of the type of EMD sold to the United States vis-à-vis the home market, which the petitioners were questioning with respect to the sales in Greece and the United States during the review period. Tosoh asserts that the Department requested information regarding ''both types of grades'', which refers to the types of EMD grades sold in the U.S. and home markets during the review period. Morever, Tosoh contends that no other types of EMD are really relevant from the standpoint of testing whether the types of EMD sold in Greece and to the United States during the review period are ''approximately equal in commercial value.''

Tosoh asserts further that, because it has provided complete and accurate information in response to the Department's requests regarding the sole market in which both types of EMD grades were sold during the review period, there is no basis for the application of facts available in this case. Furthermore, Tosoh contends that, because it has cooperated fully with the Department's information requests, there is also no basis for the application of an adverse inference in this case.

Department's Position: We continue to find, as we stated in our July 27, 1999, Memorandum (see Memorandum to Richard W. Moreland, available in our Central Records Unit, Room B–099 (July 27 Memorandum)), that the two EMD grades (*i.e.*, alkaline and zinc-chloride) are ''approximately equal in commercial value'' as set forth in section 771(16)(B)(iii) of the Act. We find that Tosoh responded appropriately

to our April 28, 1999, request concerning whether the two products (*i.e.*, alkaline-grade and zinc-chloride-grade EMD) are commercially comparable. Per our request, Tosoh provided us with information concerning the quantity and value of two specific EMD grade types sold in one third-country market. The two specific EMD grade types are identical to the EMD grade types sold in the U.S. and home markets during the review period. Therefore, since the two EMD grades types reported by Tosoh are relevant for our purpose in considering whether the two products in question are commercially comparable, we did not request additional information. See July 27 Memorandum. Moreover, given the fact that, in this review, we were addressing the issue of whether these two specific EMD grades were commercially comparable, we find that Tosoh's response to our request was reasonable. Thus, we find that Tosoh complied fully with our request for third-country information. In addition, since Tosoh complied with our request, we find no reason to apply facts available in this regard.

Moreover, we are not persuaded by the petitioners' assertion and evidence that Tosoh's zinc-chloride-grade EMD sales to its third-country customer were not used as a cathode mixture in the production of dry-cell batteries. As we stated in our July 27 Memorandum, Tosoh provided an affidavit from its Director of Sales in which he states that, during the review period, Tosoh's third-country customer purchased EMD from Tosoh for use as a cathode mixture in the manufacture of primary (*i.e.*, non-rechargeable) dry-cell batteries.

In addition, the information Tosoh submitted on May 5, 1999, in response to our questions indicates that the prices of the two products are comparable and therefore are approximately equal in commercial value. See July 27 Memorandum. For these reasons, we find that the home market product meets the foreign-like-product criterion at section 771(16)(B)(iii) of the Act.

Comment 4: Home Market Viability/ Particular Market Situation

The petitioners argue that the five-percent viability test should not be regarded as conclusive of home market viability in this case because of the very small volume of U.S. sales in the review period. The petitioners assert that, in reflexively applying the five-percent test without further analysis in these circumstances, the Department ignored its own regulations and the Statement of Administrative Action (SAA), H. Doc. 103–316, vol. 1, 103d Cong., 2d sess., 822 (1994), both of which state that the five-percent test is not conclusive in every case. According to the petitioners, the SAA states that use of the five-percent viability test is particularly inappropriate where there are ''thin'' home market sales. The petitioners argue that, for the final results, the Department must address the following considerations: the Department cannot apply the difference-in-merchandise test as contemplated by the statute to adjust for differences in the physical characteristics of the product sold in Greece; the home market sales involve sales of EMD for an unusual use; Tosoh's home market is so small that sales in the market can have no material effect on the company's profitability and therefore are incidental to Tosoh. These facts, according to the petitioners, coupled with the export orientation of Tosoh, provide another basis for finding a particular market situation and relying on third-country sales in the determination of normal value.

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 31418 (June 9, 1998) (*Salmon from Chile*), the petitioners contend that, like the Chilean salmon producers, Tosoh was established to make export sales and, as the Department found of the Chilean salmon industry, Tosoh's growth has been almost entirely export driven. According to the petitioners, the Department did not address this consideration in its April 29 Memorandum. Furthermore, the petitioners contend that the record demonstrates that the home market sales are in fact not representative and not an appropriate basis for determining normal value because they consist of a very small percentage of Tosoh's reported production volume and sales volume. According to the petitioners, this sales base is too small to constitute a viable home market.

Finally, according to the petitioners, the SAA notes that the change in the viability test from a comparison between home market sales volume and third-country sales volume to a comparison between home market sales volume and the U.S. sales volume was made to prevent the use of ''thin'' home markets as the basis for identifying dumping. According to the petitioners, such a ''thin'' home market clearly exists in this case and it should not be used as the basis for determining normal value. Therefore, the petitioners request that the Department find that Tosoh's home market sales in the review period are not viable, in spite of meeting the five-percent test.

Tosoh asserts that the petitioners' argument that the Department should depart from its statutory test and instead judge the viability of the home market based on the size of the Greek market relative to sales to third countries is incorrect under current law. Tosoh argues that the petitioners' citation of the SAA at 821 is misplaced. According to Tosoh, contrary to the petitioners' assertion, the SAA makes clear that it is precisely the new law's requirement of using U.S. sales as the viability benchmark that will prevent the use of ''thin'' home markets as the basis for identifying dumping. Moreover, Tosoh contends that the ''thinness'' discussed in the SAA refers to a situation where a high volume or value of home market sales compared to third-country sales would, under the old law, lead to a finding of viability even though home market sales were very small relative to U.S. sales and thus could interfere with a reasonable comparison of U.S. prices to home market prices. Thus, according to Tosoh, the SAA makes clear that the shift to U.S. sales as the viability benchmark solves the ''thinness'' problem the petitioners suggest in this case.

According to Tosoh, contrary to the petitioners' assertions, no such unusual situation is present in this case. In addition, Tosoh argues that the vast number of cases in which a single U.S. sale forms the basis for an administrative review indicates that there is nothing unusual about the size of the U.S. sale here that would justify a departure from the normal statutory test. Tosoh contends that the petitioners have not cited a single case in which the Department determined that a small volume of U.S. sales warranted rejection of an otherwise viable home market.

In addition, Tosoh argues that there is nothing unusual or extraordinary about the Greek market that does not permit a proper price comparison. Tosoh asserts that the petitioners have not provided any evidence that a particular market situation exists in this case to warrant rejecting its viable home market. Tosoh argues further that the petitioners raise no concerns regarding the difference-in-merchandise adjustment, the home market uses of EMD, or the size and nature of home market sales that establish a particular market situation in this case. For these reasons, Tosoh requests that the Department disregard the petitioners' request that the five-percent home market viability test be abandoned in this administrative review.

Department's Position: We continue to find, as we stated in our preliminary results, that there is no particular

market situation within the meaning of section 773(a)(1)(C)(iii) of the Act which would prevent a proper price comparison nor is there any situation which warrants a departure from the normal statutory five-percent viability test. The petitioners have conflated two separate issues: (1) Whether the normal five-percent threshold is the proper test in this case, and (2) whether there is a particular market situation that justifies rejecting the home market even though it meets the five-percent threshold. Under section 773(a)(1)(C)(ii) of the Act, the five-percent benchmark shall be applied in ''normal'' situations. As noted in the SAA, ''(i)n unusual situations, however, home market sales constituting less than five-percent of sales to the United States could be considered viable and home market sales constituting more than five-percent of sales to the United States could be considered not viable.'' SAA at 821. While we agree with the petitioners' assertion that our five-percent viability test is not conclusive in every case, we find that in this case there is no unusual situation which makes application of our normal statutory five-percent viability test inappropriate. See SAA at 821. Nor have we found any evidence of a particular market situation that would prevent a proper comparison with export price or constructed export price. See section 773(a)(1)(C)(iii) of the Act. As we stated in our April 29 Memorandum, pursuant to section 773(a) of the Act, we 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) of the Act applies, in which case we may use third-country sales as a basis for normal value. We have not found that any one of the conditions stipulated in section 773(a)(1)(C) of the Act applies in this case.

In addition, we are not persuaded by the petitioners' argument that Tosoh's home market consists of a very small percentage of the total volume and value of Tosoh's sales. The petitioners' argument relies on the old statutory viability test, comparing home market to third-country sales, despite the fact that Congress eliminated this language from the new statute. Under the new statute, for viability purposes, the relevant comparison is between home market and U.S. sales. Because Congress removed the old test, it would make no sense to allow the petitioners to revive it merely by using the language of ''particular market situation.'' Such a reading would be inconsistent with the express language of the SAA and the statute. See SAA at 821 and section 773(a)(1)(C) of the Act.

Furthermore, as we stated in our April 29 Memorandum, unlike our findings in *Salmon from Chile,* the record in this case does not demonstrate that the EMD which Tosoh sold in its home market has severe defects or is of poor quality. In addition, in *Salmon from Chile,* the Department found that the home market producers sold the salmon directly from the factory on an ''as available'' basis; in other words, there was not a regular market for the ''off-quality'' salmon in Chile. See *Salmon From Chile,* 63 FR 31418 (June 9, 1998). That situation simply does not exist in this case, where both zinc-chloride-grade and alkaline-grade EMD are sold through similar channels of distribution and are used exclusively in dry-cell batteries. Moreover, Tosoh guarantees the quality of its products, regardless of EMD grade, and EMD grades meet the general specifications customers require. Therefore, we continue to find no evidence to suggest that the home market sales are incidental to Tosoh.

Regarding the petitioners' assertion that we are unable to rely on our difference-in-merchandise adjustment because of differences between the products, see our response to comment 1. With respect to the petitioners' assertion that the home market product has an unusual use, see our response to comment 2.

In conclusion, based on the reasons set forth above, we find that the market for EMD in Greece is viable within the meaning of section 773(a)(1)(C)(ii) of the Act. In addition, we find that there is no particular market situation within the meaning of section 773(a)(1)(C)(iii) of the Act which warrants a departure from our normal statutory five-percent viability test.

Comment 6: U.S. Price

The petitioners assert that Tosoh has not provided the amount of a post-sale rebate contemplated by the sales contract with the unaffiliated U.S. purchaser. According to the petitioners, the amount the Department deducted as a price adjustment in its preliminary calculation is not an amount provided by Tosoh and it assumes that no change in the dumping margin will be made in the final results or as a result of any court's review of the final results. Moreover, the petitioners argue that the Department cannot base its determination on such an assumption, which pre-judges the results of the Department's proceedings and the court's review. According to the petitioners, Tosoh's pricing provision is designed to allow a subsequent price change that would not be considered in the calculation of the dumping margin and therefore is designed to subvert the antidumping law. The petitioners contend that the Department must find that the U.S. price in the review period is indeterminate and that it therefore must use facts available to determine the dumping margin. The petitioners suggest that the Department use the margin it established in the underlying antidumping investigation as facts available for this review.

Tosoh argues that the petitioners' assertion that the U.S. sales price is ''indeterminate'' and that the Department should therefore use facts available to determine the dumping margin is erroneous. Tosoh contends that it has submitted all the information necessary for the Department to calculate the U.S. sales price. Tosoh argues further that the petitioners have distorted the clear meaning of the express terms of the U.S. sale in this case. According to Tosoh, under those terms, the U.S. customer retains the right to a refund of the antidumping duty deposit up to the amount by which the net U.S. price is determined in this review to exceed normal value but in no event in an amount greater than the deposit itself. According to Tosoh, the contract provision ensures that, after any refund is paid, the transaction will be completed at a non-dumped price.

Tosoh asserts that, in reaching the preliminary results, the Department simply reduced the U.S. sales price by the maximum possible antidumping duty deposit refund amount, treating the reduction as a price adjustment. Thus, according to Tosoh, the U.S. sales price is final and determinate and there is no basis for resorting to facts available as the petitioners suggest.

Department's Position: Using the information Tosoh submitted on July 7, 1998, and on September 14, 1998, we established Tosoh's U.S. price to the unaffiliated U.S. purchaser. In addition, since we also identified the maximum antidumping duty amount Tosoh agreed to refund the U.S. purchaser, we reduced Tosoh's U.S. price by this amount in our calculations to arrive at a U.S. price net of any adjustments. Since we deducted the maximum possible refundable antidumping duty amount stipulated in the contract from the U.S. gross unit price, our calculation reflects the most conservative approach in deriving U.S. price. Therefore, we find that the U.S. price is not an ''indeterminate'' price as the petitioners contend.

In addition, since Tosoh has reported all the necessary information needed to calculate U.S. price accurately and

cooperated fully with our requests for information, we find no reason to apply facts available in this regard.

Comment 8: Sample U.S. Transaction

The petitioners claim that Tosoh did not provide the Department with information regarding the consideration paid with respect to a U.S. sample transaction. According to the petitioners, the record demonstrates that the purchaser made payments to Tosoh or its related trading company in connection with a sample transaction. The petitioners assert that, because Tosoh did not provide information regarding the payments made in connection with this transaction, the Department should use the margin found in the original investigation as facts available to establish the dumping margin on this shipment.

Tosoh argues that, to the best of its knowledge, the merchandise involved in the sample shipment was destroyed in its entirety during testing by the customer and, as reported in Tosoh's July 7, 1998, questionnaire response, the gross unit price for this transaction was zero. Citing *NSK, Ltd.* v. *United States*, 115 F. 3d 965 (Fed. Cir. 1997), Tosoh argues that such a transaction is considered a sample sale under existing law and therefore is not included in the calculation of U.S. price. Tosoh argues further that it has provided the Department with full, accurate, and certified information regarding these transactions, including a description of the transaction process and documentation of the terms of the transaction. Therefore, according to Tosoh, there is no basis for the Department to apply facts available or make any adverse inference in its final results of review with regard to this transaction.

Department's Position: Based on the information Tosoh provided in its responses, we have determined that no consideration was provided for Tosoh's reported U.S. zero-priced transaction. Although the customer was required to pay the cost of certain services related to the sample transaction in question (the nature of these services is proprietary information), this does not constitute consideration with respect to the subject merchandise itself. In addition, the small quantity involved and the fact that Tosoh's sample transaction was used for testing purposes and destroyed in the process supports Tosoh's claim that this was a sample transaction. Therefore, because Tosoh responded fully to our supplemental questions regarding a zero-priced sample transaction and we find no reason to apply facts available to this shipment, we did not calculate a margin on the U.S. sale which Tosoh designated as a zero-priced sample.

Comment 9: Credit Expense

The petitioners argue that Tosoh did not provide a credit expense calculation using the number of days between date of shipment to the customer and date of payment as directed by the Department in its questionnaire. According to the petitioners, the calculation Tosoh provided takes into account only the number of days from the date of entry into the United States to the date of payment. Therefore, according to the petitioners, the Department should recalculate the reported credit expense, adding to the reported credit days the number of days from shipment from Greece to date of entry.

Tosoh argues that the petitioners' proposed methodology for calculating credit expenses should be rejected because it would count certain imputed expenses that are not associated with commercial activity in the United States (*i.e.*, the expense associated with the time between date of shipment from Greece and the date of entry into the United States) and, therefore, result in an improper calculation.

Department's Position: In this case, the record indicates that the invoice date postdates the date of shipment of the merchandise from Greece to the unaffiliated U.S. customer. Consistent with our decision in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 12927, 12935, March 16, 1999 (*Steel from Korea*), we have used the date of shipment as the date of sale. Furthermore, we have calculated credit expense based on the time between date of shipment and payment by the unaffiliated U.S. customer (*see Steel from Korea*).

Comment 10: Inventory Carrying Costs

The petitioners argue that, in its preliminary results, the Department accounted for Tosoh's inventory carrying costs in calculating normal value but disregarded those same costs in calculating CEP. According to the petitioners, the result of this disparate treatment is an unbalanced comparison and they request that the Department treat inventory carrying costs the same in both markets for the final results of this review.

Tosoh responds that the petitioners' assertion that the Department should deduct from the U.S. price the inventory carrying costs incurred in Greece is incorrect as a matter of law since the regulations state that only those expenses associated with commercial activities occurring in the United States are deducted from the U.S. price. Tosoh argues that the expenses to which the petitioners refer (*i.e.*, inventory carrying costs incurred in Greece) were not associated with economic activities occurring in the United States and thus the Department determined properly not to deduct such expenses from the U.S. price. Tosoh argues further that all indirect selling expenses associated with home market sales, including inventory carrying costs, were deducted from normal value correctly as part of the CEP offset.

Department's Position: As we stated in our response to comment 9, section 351.402(b) of the regulations directs us to make adjustments to CEP for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. It also states that we will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States. Therefore, since this expense (*i.e.*, inventory carrying costs incurred in Greece) was not associated with commercial activities in the United States, we did not deduct it from U.S. price.

Comment 11: Level of Trade

The petitioners argue that no level-of-trade adjustment is appropriate in this case because the CEP deductions do not remove all the selling functions related to the sale in the U.S. market. The petitioners assert that, because Tosoh did not report selling functions provided by its parent company in Japan, the Department cannot make a level-of-trade adjustment in this case.

Tosoh argues that it reported all appropriate selling expenses. According to Tosoh, its parent company in Japan did not incur any direct selling expenses associated with Tosoh's sale of EMD in the United States during the review period.

Tosoh argues further that any involvement by its parent company in Japan in price discussions would be reported as indirect selling expenses, which the Department would disregard in the margin calculation. For these reasons, according to Tosoh, the Department should disregard the petitioners' assertions regarding level of trade.

Department's Position: We find no indication that Tosoh did not report all the selling expenses it incurred during the review period properly. Any selling functions which Tosoh's parent company in Japan may have provided

were reported as indirect selling expenses incurred in the country of manufacture and not related to commercial activities for sales made in the United States. In addition, we did not make a level-of-trade adjustment in our calculations as the petitioners contend. As we stated in our analysis memorandum for the preliminary results, since Tosoh's CEP sales constitute a different level of trade from its home market level of trade, we could not match Tosoh's CEP sales to the same level of trade in the home market nor could we determine a level-of-trade adjustment based on Tosoh's home market sales of merchandise under review. Furthermore, since we have no other information that provides an appropriate basis for determining a level-of-trade adjustment, we made a CEP offset adjustment to normal value. The CEP offset was the sum of indirect selling expenses incurred on the home market sales up to the amount of indirect selling expenses deducted from the U.S. sale under section 772(a)(1)(D) of the Act. See Analysis Memorandum dated April 29, 1999.

Comment 12: Direct Selling Expenses

The petitioners contend that Tosoh has not reported all the direct selling expenses related to the U.S. sale. According to the petitioners, the Department has not made the necessary inquiries to determine all the direct selling expenses that relate to the sale concerned.

Tosoh argues that the petitioners' speculation that it has not reported all selling activities is without merit. Tosoh contends that it has reported all applicable expenses to the best of its ability. Therefore, according to Tosoh, no further inquiry by the Department is necessary.

Department's Position: We find no indication to suggest that Tosoh did not report all the direct selling expenses it incurred during the review period properly. In addition, the petitioners have not provided any evidence to suggest otherwise. Therefore, we have accepted Tosoh's reported direct selling expenses.

Comment 13: Indirect Selling Expenses

The petitioners argue that the Department should make deductions from U.S. price for expenses incurred by Tosoh's affiliated parties in Japan that are not deductible as direct selling expenses.

Tosoh argues that the petitioners' assertion that the Department should deduct indirect selling expenses from CEP is incorrect. According to Tosoh, the petitioners' suggested methodology would require the deduction of indirect expenses not associated with commercial activity in the United States and, therefore, is impermissible under the Department's practice.

Department's Position: As we stated in our response to comment 9, section 351.402(b) of the regulations directs us to make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. It also states that we will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States. Therefore, since this expense (*i.e.*, indirect selling expenses incurred by affiliated parties in Japan) was not associated with commercial activities in the United States, we did not deduct it from U.S. price under section 772(a)(1) of the Act.

Final Results of Review

As a result of our analysis of the comments received, we determine a weighted-average margin of 0.00 percent for Tosoh for the period April 1, 1997, through March 31, 1998. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of EMD from Greece, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash-deposit rate for Tosoh will be 0.00 percent; (2) for previously investigated or reviewed 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 or any previous reviews or the original less-than-fair value (LTFV) 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 review, the cash-deposit rate will continue to be 36.72 percent, the ''all-others'' rate established in the LTFV investigation (54 FR 15243, April 17, 1989).

The 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 double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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.

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

Dated: November 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Tape From Italy: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of the Antidumping Duty Administrative Review of Pressure Sensitive Plastic Tape from Italy.

SUMMARY: On July 12, 1999, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on pressure sensitive plastic tape (PSPT) from Italy. This review covers one manufacturer/exporter, Autoadesivi Magri s.r.l. The period of review (POR) is October 1, 1997 through September 30, 1998. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. Therefore, these final results of review have not changed from those presented in the preliminary results of review, in which we applied total adverse facts available.