

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Administrative Review
of the Antidumping Duty Order on Carbazole Violet Pigment 23
from India

I. Summary

We have analyzed the comments in the case brief submitted by Alpanil Industries (Alpanil), the respondent, and the rebuttal briefs submitted by Nation Ford Chemical Company and Sun Chemical Corporation, the petitioners, and Clariant Corporation (Clariant), a domestic interested party, in the administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from India. As a result of our analysis, we have made changes in the margin calculation. We recommend that you approve the positions described in the Recommendation section of this memorandum.

II. Background

On December 7, 2007, the Department of Commerce (the Department) published in the Federal Register the preliminary results of the administrative review of the antidumping duty order on CVP 23 from India. See Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 69184 (December 7, 2007) (Preliminary Results).

The period of review (POR) is December 1, 2005, through November 30, 2006. The review covers one respondent, Alpanil. We invited interested parties to submit comments to the Preliminary Results. In response, Alpanil filed a case brief with the Department on January 10, 2008. The petitioners and Clariant submitted rebuttal briefs on January 15, 2008.

III. List of Issues

1. Reported U.S. Sales and Sales That Entered the United States
2. Countervailing Duty Offset

IV. Discussion of Comments

Comment 1: Alpanil reported five sales it made to the United States during the POR. On October 5, 2007, we informed Alpanil that U.S. Customs and Border Protection (CBP) records indicate that only a certain number of the five reported sales entered the United States and were suspended by CBP during the POR. We requested that Alpanil provide information on additional reported U.S. sales that entered the United States and were suspended by CBP during the POR. In response to our request, Alpanil provided bills of lading for all five sales but explained that it is not aware of the status of the entries and suspension by CBP of its reported U.S. sales. In the Preliminary Results, in accordance with section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), we limited our analysis to Alpanil's reported U.S. sales of subject merchandise that entered the United States during the POR and for which liquidation was suspended.

Alpanil argues that the Department's margin calculation based only on the sales that entered the United States and for which liquidation was suspended by CBP is contrary to law. According to Alpanil, section 751(a)(2)(A) of the Act requires that the Department base its analysis on each entry of the subject merchandise, not just those entries for which liquidation has been suspended. Alpanil claims that all five U.S. sales are entered sales.

Alpanil argues that the Department's selective use of reported U.S. sales is also contrary to the Department's administrative practice. Alpanil claims that, in the Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 71 FR 74900 (December 13, 2006) (Steel Bars from Latvia), the Department used all reported sales even though CBP treated some of the reported sales as non-subject merchandise and did not impose any antidumping-duty cash deposits or suspend liquidation of the entries.

Alpanil requests that the Department recalculate the margin based on all five "entries"¹ of the subject merchandise. Alpanil asserts that the calculation of the overall margin and the future duty-deposit rate to be applied to entries of subject merchandise produced and/or exported by Alpanil after the publication of the final results of this review should be based upon all entries of Alpanil merchandise that entered during the POR.

The petitioners claim that Alpanil's reading of section 751(a)(2)(A) the Act is truncated and incorrect. According to the petitioners, while Alpanil is quick to quote the statute verbatim in finding that it requires the Department to calculate the dumping margin for each entry of subject merchandise, Alpanil does not provide the statutory definition of "subject merchandise." The petitioners argue that "subject merchandise" means "the class or kind of merchandise that is within the scope of . . . a review" under section 771(25) of the Act. Based on court precedents, citing Allegheny Ludlum Corp. v. United States, 240 F. Supp. 2d 1262 (CIT 2002), *aff'd*, Allegheny Ludlum Corp. v. United States, 346 F.3d 1368 (CAFC 2003), and Allegheny Ludlum Corp. v. United States, 276 F. Supp. 2d 1344, 1356 (CIT 2003), the petitioners argue that the

¹ In its case brief, Alpanil characterized its five U.S. sales as entered sales.

only entries that are within the scope of a review are those that enter during the POR and for which liquidation of the entries is suspended under the antidumping duty order.

The petitioners state that Alpanil's reliance on Steel Bars from Latvia is misguided and misplaced because the Department did not discuss this issue in its published notices and no interested parties raised this issue for deliberation and decision by the Department in the Issues and Decision Memorandum for Steel Bars from Latvia. The petitioners assert that, even if Steel Bars from Latvia supports Alpanil's argument, the final results of one review cannot establish an administrative practice. The petitioners state that the Department addressed this issue expressly in the Preliminary Results and express their hope that the Department can confirm and further explain its position on this issue in the final results of review.

According to Clariant, the Department has no jurisdiction over liquidated entries because liquidation of entries is final for all parties unless protested within the prescribed period, pursuant to section 514(a)(5) of the Act. Clariant opposes the use of liquidated entries in the dumping calculation because it reduces the antidumping duty margin artificially for the unliquidated entries. Citing Portable Electric Typewriters from Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 14072 (April 5, 1991), Clariant states that the use of liquidated entries in the calculation serves only the purpose of reducing the cash-deposit rate on future entries of the subject merchandise.

While the Department has included liquidated entries in its calculations in some prior cases, *e.g.*, Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review, 57 FR 3167 (January 28, 1992), Clariant maintains that such an approach is inappropriate in this review because Alpanil has not made any allegation that the dumping margin calculated in the Preliminary Results is unrepresentative of Alpanil's pricing practices during the POR. Moreover, Clariant argues that the Department should not conclude that CBP liquidated by mistake entries that should have been subject to this review because Alpanil did not provide import documentation demonstrating evidence of an entry of subject merchandise into the United States during the POR.

Clariant submits that the importers have a responsibility to pay the correct cash deposits and inform CBP that their merchandise is subject to antidumping and countervailing duty orders. Clariant requests that the Department inform CBP that there has been a violation of U.S. law so that redress can be sought against the violating importers.

Department's Position: In the Preliminary Results, we explained that Alpanil had at least one POR entry of subject merchandise corresponding to its POR sales for which there was a suspension of liquidation in place by CBP. Subsequent to the Preliminary Results, we obtained information from CBP indicating that additional POR sales² of subject merchandise reported by

² In contrast to Alpanil's unsupported characterization of its five U.S. sales as "entries," we use the term "sales" and "entries" separately where the word "entry" refers to customs entries of subject merchandise. There continued to be no POR entries for a number of sales of subject merchandise Alpanil reported.

Alpanil also entered the United States during the POR. Therefore, consistent with the Preliminary Results and pursuant to section 751(a)(2)(A) of the Act, we have limited our final results of review to only those sales of subject merchandise that entered the United States during the POR, even though the record indicates that CBP has not suspended liquidation of these additional POR entries.

As our review of these entries results in a revision of the weighted-average margin and, therefore, the cash-deposit rate for antidumping duties, pursuant to section 751(a)(2)(C) of the Act, we will instruct CBP to collect cash deposits at the revised rate on future entries. Further, pursuant to section 751(a)(2)(C) of the Act, our final results will be the basis for the assessment of antidumping duties. For the importer with both liquidated and suspended entries, we have calculated the per-unit assessment rate to take into account the antidumping duty liability for the subject merchandise that entered and whose entry was liquidated without regard to antidumping duties. See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 70 FR 72789 (December 7, 2005), and the accompanying Issues and Decision Memorandum at Comment 7. For the importer with only liquidated entries, we have calculated an assessment rate by dividing the dumping duties due for the entries by the total quantity for the same entries in the event CBP has an opportunity to seek payment of such duties.

Comment 2: Alpanil requests that the Department establish the applicable cash-deposit rate by subtracting the countervailing duty rate attributable to export subsidies from the final margin for this review, even if the Department makes no adjustment to the margin for the final results of this review. Alpanil stresses that an adjustment must be made to the instructions concerning the future antidumping duty deposit to take into account the countervailing duty deposit requirement currently in effect. Alpanil states that the countervailing duty rate attributable to export subsidies is 15.75 percent, according to Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 From India, 69 FR 67321 (November 17, 2004). Alpanil claims that the Department made this adjustment to the cash-deposit rate for the original antidumping duty investigation in Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India, 69 FR 67306 (November 11, 2004).

The petitioners do not object to Alpanil's request for recalculation of the cash-deposit rate with an appropriate adjustment for countervailing duty deposits attributable to export subsidies. The petitioners expect that the cash-deposit rate, if adjusted, would be published in the Federal Register notice as was done in Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 From India, 69 FR 77988 (December 29, 2004). Clariant opposes adjusting the cash-deposit rate to account for export subsidies found in the original investigation on the ground that such adjustment would be contrary to the statute and the Department's past practice. According to Clariant, in Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review, 70 FR 8072 (February 17, 2005), and the accompanying Issues and Decision Memorandum at Comment 10 (PET Film from India), the Department faced the same facts and refused to take export subsidies into account in setting the cash-deposit rate because the statute requires the review results be the basis for deposits of estimated duties, pursuant to

section 751(a)(2)(C) of the Act. Clariant comments that, in PET Film from India, the Department did not offset countervailing duties in the calculation of the cash-deposit rate but the Department stated that if, in future administrative reviews, the facts on the record indicate that it is appropriate to offset countervailing duties on export subsidies, the Department will do so and both the assessment and cash-deposit rates established in those reviews will reflect the countervailing-duty offset.

Department's Position: Section 751(a)(2)(C) of the Act states that "determinations under this paragraph shall be the basis for the assessment of countervailing and antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties." For the final results of this review, we did not make any adjustment to offset countervailing duties in the calculation of the assessment rates. See Preliminary Results, 72 FR at 69185, and PET Film from India. Therefore, pursuant to section 751(a)(2)(C) of the Act, the cash-deposit rate will be the revised rate we have established in the final results of the review. In future reviews, if facts on the record indicate that it is appropriate to offset countervailing duties on export subsidies, we will offset the countervailing duties in the calculation of the assessment rate and the cash-deposit rate. Due to the business-proprietary nature of our decision, please see the Alpanil preliminary analysis memorandum dated December 3, 2007, at 4, for details on our decision to find that no adjustment to offset countervailing duties on export subsidies is appropriate.

V. Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margins in the Federal Register.

Agree_____

Disagree_____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)