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MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen */s/ JMA*
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the December 1, 2007,
through November 30, 2008, 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 sole respondent, and the rebuttal brief submitted by Nation Ford Chemical Company and Sun Chemical Corporation, the petitioners, in the administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from India. As a result of our analyses, we have made changes in the margin calculation. We recommend that you approve the positions described in the *Discussion of Comments* section of this memorandum.

II. Background

On December 22, 2009, 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*, 74 FR 68038 (December 22, 2009) (*Preliminary Results*).

The period of review is December 1, 2007, through November 30, 2008. 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 21, 2010. The petitioners submitted a rebuttal brief on January 26, 2010. We did not receive a request for a hearing.

III. List of Issues

1. Countervailing-Duty Offset
2. Model-Match Methodology

IV. Discussion of Comments

Countervailing-Duty Offset

Background: Alpanil submitted data which indicated that the sole U.S. sale transaction entered the United States as a type 1 entry (not subject to an antidumping (AD) and/or countervailing duty (CVD) order) on October 29, 2008, and that this entry was liquidated on October 9, 2009. Because there was no evidence of any unliquidated entries on the record, there was a question of whether we should rescind the administrative review due to a lack of reviewable entries.

On November 3, 2009, we informed Alpanil that the sole U.S. sales transaction entered as an entry not subject to AD or CVD duties and provided Alpanil with an opportunity to provide evidence that there was an unliquidated entry of subject merchandise into the United States during the period of review. In response to our request, Alpanil indicated that the importer filed the entry erroneously as a type 1 entry (not subject to an AD and/or CVD order).

As a result, Alpanil explained, it protested the liquidation of the entry and requested that U.S. Customs and Border Protection (CBP) reclassify this entry as a type 3 entry (subject to an AD and/or CVD order). On November 16, 2009, we requested that CBP provide us with documentation related to the original entry and any corrections that have been made to this entry. Therefore, based on Alpanil's assertion that it was attempting to unliquidate this entry, we determined in the *Preliminary Results* (74 FR at 68039) that, if we were satisfied with documentation from CBP indicating it was changing the status to a type 3 entry, we would examine whether an adjustment under section 772(c)(1)(C) of the Tariff Act of 1930, as amended (the Act), to offset the collection of duties for export subsidies is appropriate.

Subsequent to issuance of our *Preliminary Results*, we received the Form 7501 from CBP for the sole entry during the period of review. On this Form 7501, CBP had written the word "Corrected" with a date stamp of December 9, 2009. We released the entry documents from CBP under administrative protective order to the eligible parties prior to the deadline for filing case briefs. The information from CBP indicates that the status of the entry was changed to a type 3 entry which included the requirement to pay estimated AD/CVD duties at the current deposit rates.

Comment 1: Alpanil asserts that the Department should increase export price by the amount of the CVD duties it paid on the sole U.S. entry during the period of review. Citing *Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 From India*, 69 FR 77995 (December 29, 2004), and section 772(c)(1) of the Act, Alpanil maintains that the Department is required to increase export price when a CVD order is in effect. Alpanil asserts further that there is evidence in the administrative record which demonstrates that it paid the CVD cash deposit for the subject merchandise entered and suspended during the period of review.

The petitioners argue that the Department should continue to determine that an adjustment to export price for export subsidies allegedly paid by the respondent is not appropriate. The petitioners state that there is no conclusive evidence in the administrative record which indicates that CBP has accepted Alpanil's payment for the CVD cash deposit. According to the petitioners, in *Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306 (November 17, 2004), and the accompanying Issues and Decision Memorandum at Comment 1 (*LTFV*), the Department determined that, where export subsidies such as Duty Entitlement Passbook Scheme (DEPB) credits are not included in the agreed-upon price, it is not appropriate to make an adjustment to increase export price. The petitioners state further that Alpanil has not made any effort to demonstrate that the DEPB credits it received are included in the agreed-upon price. Accordingly, the petitioners conclude, the Department should not increase export price.

Department's Position: In the *Preliminary Results*, we stated that, if we were satisfied with documentation from CBP indicating it was changing the status of the sole entry during the period of review to a type 3 entry, we would examine whether an adjustment to offset the collection of duties for export subsidies is appropriate. Based on the corrected Form 7501 and E-mail correspondence between the importer and counsel for Alpanil now on the record of the review, we are satisfied that the estimated CVD cash deposit was collected by CBP.

Section 772(c)(1) of the Act states the following:

- (c) Adjustments for Export Price and Constructed Export Price - The price used to establish export price and constructed export price shall be -
 - (1) increased by -
 - (A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States
 - (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and
 - (C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy, ...

Therefore, consistent with our practice and pursuant to section 772(c)(1)(C) of the Act, we have increased export price by 7.79 percent which is the amount attributable to export subsidies. This is the CVD rate to offset export subsidies most recently calculated as applicable to CVP 23 from India. See *Carbazole Violet Pigment 23 From India: Final Results of Countervailing Duty Administrative Review*, 75 FR 33243 (June 11, 2010). See also *Certain Lined Paper Product from India: Notice of Final Results of Antidumping Duty Administrative Review*, 75 FR 7563 (February 22, 2010), and the accompanying Issues and Decision Memorandum at Comment 4.

In response to the petitioners' argument concerning consideration of DEPB credits in the *LTFV*,

in that segment of the proceeding we did not increase U.S. price because DEPB credits were not included in U.S. price. Instead, for the purposes of the prospective cash-deposit rate, we decreased the dumping margin to account for the collection of CVD deposits as a result of the concurrent CVD investigation. See *LTFV* at Comment 1. Accordingly, as directed by section 772(c)(1)(C) of the Act, we determine that it is appropriate to increase U.S. price to reflect the imposition of a countervailing duty based on an export subsidy.

Model-Match Methodology

Background: For the *Preliminary Results*, we compared the product sold to the United States with the most similar merchandise sold in the home market based on the four physical characteristics established in the *LTFV*. Our January 26, 2009, questionnaire instructed Alpanil to report the physical characteristics in the following order: form, stability, dispersion, tone.

Under the Matching Control Number (CONNUM) field in its initial response, in addition to the characteristics we requested, Alpanil reported two additional characteristics, particle size and color strength. Alpanil stated that each of the listed physical characteristics has a significant impact on the cost, price, and end-use of CVP 23. See Alpanil's initial response dated March 26, 2009, at pages B-2, B-3, and C-3.

In developing the CONNUM for the sole product it sold to the United States, Alpanil deviated from the specified order for reporting the product's physical characteristics. In our July 28, 2009, supplemental questionnaire, we asked Alpanil to explain how the reported physical attributes affect the cost, price, and end-use of CVP 23. In its August 20, 2009, supplemental response at pages 6 and 7, Alpanil explained that, in some instances, CVP 23 sold in the home market incurs additional costs because customers order less than the standard lot and/or batch-size. Alpanil explained further that adjustments or customization may be required after a home-market customer has received the order.

In contrast, Alpanil stated, CVP 23 sold abroad incurs lower costs because less customization is necessary and customers usually order a larger batch-size. Although at verification company officials emphasized how the physical characteristics are important to the cost and value of the merchandise, Alpanil did not comment further on the Department's established model-match methodology until its January 21, 2010, case brief.

Comment 2: Alpanil claims that the Department's January 29, 2009, questionnaire requested that the product's physical characteristics be reported in the following order: form, product type, tone, stability, dispersion, particle size, and color strength. Alpanil argues that, in the *Preliminary Results* the Department abbreviated the CONNUM and scrambled the order of the physical characteristics without providing a rationale for its decision.

Alpanil argues further that the Department's analysis in the *Preliminary Results* is unfair because, in using only the four physical characteristics and by changing the order for developing the CONNUM, the Department's *Preliminary Results* did not take into account the appropriate

product characteristics for these sales. Alpanil asserts that, if the Department had not abbreviated the CONNUM, the Department would have been able to match the U.S. sale to several similar home-market sales which would demonstrate that Alpanil is not dumping subject merchandise. Alpanil maintains that the order of the physical characteristics listed in the CONNUM is important. Alpanil maintains further that all seven characteristics identified in the Department's questionnaire should be considered for the final results.

The petitioners rebut Alpanil's assertion, stating that Alpanil is mistaken in all of its claims. Citing to the *Preliminary Results*, the petitioners state that the Department explained its model-match methodology fully. The petitioners maintain that the model-match methodology used for this review remains unchanged from the original investigation. Citing *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbazole Violet Pigment 23 From India*, 69 FR 35293 (June 24, 2004), and the *LTFV*, the petitioners maintain further that no party challenged the model-match methodology used in the original investigation. The petitioners also cite *Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 69184 (December 7, 2007), unchanged in *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 73 FR 19811 (April 11, 2008), where the Department used the same uncontested model-match methodology in the first administrative review after the order went into effect.

The petitioners assert that, for the first time in this administrative review, Alpanil is requesting that the Department change the model-match methodology. The petitioners cite, among others, *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004), and the accompanying Issues and Decision Memorandum at Comment 15 to support their claim that Alpanil's request to incorporate the two additional physical characteristics (particle size and color strength) for the final analysis is untimely and, consequently, provides no opportunity for interested parties to comment on the proposed change.

The petitioners cite *Fagersta Stainless AB v. United States*, 577 F. Supp. 2d 1270, 1276-1277 (CIT 2008), and *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008), to emphasize the Department's practice with regards to changing the model-match methodology and to emphasize further that, if Alpanil is seeking to modify the existing model-match methodology, it did not provide clear and compelling evidence or valid reasons to warrant a change. Therefore, the petitioners conclude, the Department should adhere to its established model-match methodology in calculating the final results of review.

Department's Position: In our January 26, 2009, questionnaire, we requested that Alpanil report the CONNUM in a manner consistent with the *LTFV* (i.e., form, stability, dispersion, and tone). Therefore, Alpanil states incorrectly that our questionnaire requested it to report the CONNUMs according to each product's form, product type, tone, stability, dispersion, particle size, and color strength.

We agree with the petitioners that, in past cases, we have stated we will not modify the model-match criteria unless there is evidence demonstrating that (1) the current model-match criteria are not reflective of the subject merchandise, (2) there have been industry-wide changes to the product that merit a modification, or (3) there is some other compelling reason to change the current model-match criteria. See *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 72 FR 17834 (April 10, 2007), and the accompanying Issues and Decision Memorandum at Comment 1, and *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008), and the accompanying Issues and Decision Memorandum at Comment 1.

Inherent in this practice is the view that the model-match criteria should remain consistent across reviews so that parties may have a predictable means of determining possible product matches in current as well as future administrative reviews. See *Certain Frozen Warmwater Shrimp From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009), and the accompanying Issues and Decision Memorandum at Comment 3.

Alpanil has not demonstrated any compelling evidence that warrants a modification of the CONNUM hierarchy. We find that record evidence does not demonstrate that (1) the current model-match criteria are not reflective of subject merchandise, (2) there has been a change in industry practice, or (3) there is some other compelling reason to change the current model-match criteria. Therefore, consistent with our practice, we find that it is appropriate to continue to compare home-market and U.S. products based on the hierarchy using the four physical characteristics established in the *LTFV*.

In future reviews, if the facts on the record indicate that a proposed change to the model-match criteria is appropriate, we will consider a modification of the model-match criteria. In this regard, the Department regards a change in the model-match methodology to require compelling evidence and requires the placement of such evidence on the administrative record of the review at the earliest stage so that a thorough analysis of the issue, with the participation of all interested parties, is possible. See, e.g., *Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574 (September 15, 2004), and the accompanying Issues and Decision Memorandum at Comment 2.

V. Recommendation

Based on our analyses 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 margin in the *Federal Register*.

Agree X

Disagree _____

/s/ Paul Piquado

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

June 25, 2010
(Date)