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October 15, 2019

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review: Hydrofluorocarbon Blends from the
People's Republic of China; 2017-2018

I. Summary

We analyzed the case brief submitted by Weitron International Refrigeration Equipment (Kunshan) Co., Ltd., an exporter of the subject merchandise, and its affiliated U.S. reseller, Weitron Inc. (collectively, Weitron). For the final results, we determine that Weitron made no shipments of subject merchandise during the period of review (POR). Therefore, as discussed in the Comment below, we find that arguments made by Weitron are moot.

Comment: Rescission of Weitron's Review

II. Background

The POR is August 1, 2017 through July 31, 2018.¹ On June 14, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of the 2017-2018 administrative review of the antidumping duty order on HFCs from China.²

We invited parties to comment on the *Preliminary Results*. On July 15, 2019, we received a case brief from Weitron and a request that Commerce hold a public hearing.³ No other interested

¹ See 19 CFR 351.213(e)(1)(i).

² See *Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2017–2018*, 84 FR 27752 (June 14, 2019) (*Preliminary Results*).

³ See Weitron's Letters, "Weitron Administrative Case Brief: Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China," dated July 15, 2019 (Weitron's Case Brief); and, "Weitron Hearing Request Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China," dated July 15, 2019.



parties submitted case or rebuttal briefs. On August 23, 2019, Weitron withdrew its request that Commerce hold a hearing.⁴

III. Scope of the Order

The products subject to this order are HFC blends. HFC blends covered by the scope are R-404A, a zeotropic mixture consisting of 52 percent 1,1,1-Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R-407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R-407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R-410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R-507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R-507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.

Any blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a is excluded from the scope of this order.

Excluded from this order are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from this order are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-422D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B.

HFC blends covered by the scope of this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

IV. Discussion of the Issue

Comment: Rescission of Review for Weitron

In the *Preliminary Results*, based on the withdrawal of review requests for all companies other than Weitron, we rescinded the review with respect to all companies other than Weitron and preliminarily determined that Weitron had no shipments of subject merchandise during the POR.⁵ We also found that it was appropriate to complete the review with respect to Weitron and

⁴ See Weitron's Letter, "Weitron Hearing Request Withdrawal Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China," dated August 23, 2019.

⁵ See *Preliminary Results* at 27752.

issue instructions to U.S. Customs and Border Protection (CBP) based on the final results of the review, consistent with our longstanding practice.⁶

Weitron's Arguments

- Commerce should have rescinded its review of Weitron at the *Preliminary Results* based on the following facts: (1) Weitron timely filed a no-shipment certification; (2) CBP data on the record show no entries of subject merchandise;⁷ (3) Commerce's No-Shipment Inquiry with CBP indicated that there were no entries under Weitron's case numbers;⁸ and (4) Commerce determined in the *Preliminary Results* that Weitron had no shipments of subject merchandise.⁹ Therefore, Commerce should continue to find that Weitron had no shipments or entries of subject merchandise and rescind the review with respect to Weitron.
- Commerce's practice of rescinding the review in the face of no shipments¹⁰ has been upheld by the Court of Appeals for the Federal Circuit.¹¹ Commerce should follow that practice here.
- Weitron recognizes that, if entries are not reported in a company's U.S. sales database or otherwise are determined not to be covered by the review,¹² Commerce's instructs CBP to liquidate entries at the non-market economy (NME)-wide entity rate. However, this practice only applies in circumstances in which there are entries during the POR, which is not the case here.

Commerce's Position

For these final results, we determine that Weitron made no shipments of subject merchandise. In accordance with our practice in NME proceedings, as articulated in the *NME Assessment Practice*, we will not rescind the review for Weitron but, instead, will complete the review and issue appropriate instructions to CBP. As stated in the *NME Assessment Practice*:

⁶ See *Preliminary Results* at 27753-54.

⁷ See Weitron's Case Brief at 2 (citing Memorandum, "Release of Customs Entry Data from U.S. Customs and Border Protection," dated October 24, 2018).

⁸ *Id.* at 1 (citing Memorandum, "No shipments inquiry for hydrofluorocarbon blends from the People's Republic of China exported by Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. (A-570-028)" dated April 11, 2019) (No-Shipment Inquiry).

⁹ *Id.* (citing *Preliminary Results* at 27752, 27753).

¹⁰ *Id.* at 3-4 (citing *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Rescission of Antidumping Duty Administrative Review, 2016-2017*, 83 FR 54084, 54085 (October 26, 2018); *Certain Preserved Mushrooms from India: Notice of Rescission of Antidumping Duty Administrative Review*, 79 FR 52300 (September 3, 2014); *Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review; 2012-2013*, 78 FR 30272 (May 22, 2013); *Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review*, 77 FR 65532 (October 29, 2012); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review*, 76 FR 42679 (July 19, 2011); *Certain Cut-to-Length Carbon-Quality Steel Plate Products from Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 39299, 39302 (July 12, 2006)).

¹¹ See *Allegheny Ludlum Company v. United States*, 346 F.3d 1368 (Fed. Cir. 2003).

¹² See Weitron's Case Brief at 2 (citing *Non-Market Economy Proceedings: Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) (*NME Assessment Practice*)).

In AD proceedings, the Department establishes a cash deposit rate for each company subject to the investigation or review. In NME cases, if an exporter does not receive a separate rate, the NME-wide rate applies as the cash deposit rate at the time of entry to entries of merchandise it exports. Previously, for merchandise entered at the separate rate applicable to a reviewed exporter, but which were not reported to the Department in the review and thus not covered by the final results of the review, the Department instructed CBP to liquidate such entries at the cash deposit rate in effect at the time of entry.

With the publication of this notice, the Department implements a policy refinement regarding the rate at which it will instruct CBP to liquidate such non-reviewed entries. For entries that are not reported in the reviewed company's U.S. sales databases submitted to the Department during an administrative review, or otherwise determined not covered by the review (*i.e.*, the reviewed exporter claims no shipments), the Department will instruct CBP to liquidate such entries at the NME-wide rate as opposed to the company-specific rate declared by the importer at the time of entry.¹³

As demonstrated by the above language, this practice is applicable in NME proceedings in which the reviewed exporter claims no shipments,¹⁴ which is the case here. Weitron has not pointed to any NME proceeding in which Commerce found no shipments and declined to apply the *NME Assessment Practice* because of a lack of entries. Therefore, we disagree with Weitron that the practice is inapplicable in this situation, and that the cases cited by Weitron (which are not NME proceedings) require a different result. Furthermore, Weitron continues to argue that it had no shipments, and it did not timely withdraw its request for review. Therefore, we find that it is inappropriate to rescind the review with respect to Weitron. Nonetheless, we note that whether we rescind the review with respect to Weitron or we continue to find that it made no shipments, the outcome for Weitron is the same and it has not identified any adverse consequences which may arise if we continue to apply our *NME Assessment Practice*, as opposed to rescinding the review. Therefore, it is not clear what interest Weitron has in pursuing this issue, which appears to be moot. Lastly, if Weitron wished to have the review rescinded, it could have timely withdrawn its request for review, which it did not do. Therefore, we find that it is inappropriate to rescind the review with respect to Weitron. Thus, we find that Weitron's arguments are moot.

¹³ *NME Assessment Practice*, 76 FR at 65694.

¹⁴ See, e.g., *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Preliminary Determination of No Shipments*; 2018, 84 FR 54589, 54591-54590 (October 10, 2019); *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke the Order (in Part)*; 2011-2012, 78 FR 15686 (March 12, 2013) and accompanying Issues and Decision Memorandum at 7-8, unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part)*; 2011-2012, 18 FR 42497 (July 16, 2013) at the section, "Rescission, in Part;" and *Silicomanganese From India: Preliminary Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 28826 (May 10, 2016) and accompanying Issues and Decision Memorandum at 3.

V. Recommendation

Based on our analysis of the comment received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of the administrative review in the *Federal Register*.

Agree

Disagree

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Signed by: CHRISTIAN MARSH
Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance