



A-570-919
Administrative Review
10/01/2018 – 09/30/2019
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February 16, 2021

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

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

SUBJECT: Decision Memorandum for the Preliminary Results of the 2018-2019 Antidumping Duty Administrative Review of Electrolytic Manganese Dioxide from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that the sole respondent in this administrative review, Duracell (China) Limited (DCL) and its U.S. affiliates, did not have any sales of subject electrolytic manganese dioxide (EMD) during the period of review (POR) (*i.e.*, October 1, 2018, through September 30, 2019) and could not link subject EMD that entered the United States during the POR to post-POR U.S. sales. Therefore, Commerce is preliminarily rescinding this review.

II. BACKGROUND

On October 7, 2008, Commerce published in the *Federal Register* the antidumping duty (AD) order on EMD from the People's Republic of China (China).¹ On October 1, 2019, Commerce published the opportunity notice to request an AD administrative review of the *Order*.² On October 31, 2019, DCL requested that Commerce conduct an administrative review of its exports of subject merchandise covering the period October 1, 2018, through September 30, 2019.³ On December 11, 2019, Commerce published the initiation of the 2018 - 2019 administrative review of the *Order* with respect to DCL and the period October 1, 2018, through September 30, 2019.⁴

¹ See *Antidumping Duty Order: Electrolytic Manganese Dioxide From the People's Republic of China*, 73 FR 58537 (October 7, 2008) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 52068 (October 1, 2019).

³ See DCL's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Request for Administrative Review," dated October 31, 2019.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 67712 (December 11, 2019).



Commerce issued its standard non-market economy (NME) AD questionnaire to DCL on December 23, 2019.⁵

DCL submitted its separate rate application (SRA) on January 10, 2020.⁶ Between January 2020 and February 2021, DCL submitted responses to Commerce's AD Questionnaire and supplemental questionnaires.⁷ During this time period, Borman Specialty Materials and Prince Specialty Products LLC (the petitioners) also submitted comments on DCL's questionnaire and supplemental questionnaire responses.⁸

On June 9, 2020, Commerce invited, and provided a deadline for, interested parties to comment on surrogate country selection and submit surrogate values (SVs).⁹ In June and July 2020, the petitioner and DCL submitted surrogate country and SV comments and rebuttal comments.¹⁰ In July 2020 and January 2021, Commerce received SV information from DCL.¹¹

⁵ See Commerce's Letter, Antidumping Duty Questionnaire, dated December 23, 2019 (AD Questionnaire).

⁶ See DCL's January 10, 2020, SRA.

⁷ See DCL's January 30, 2020, Section A questionnaire response; *see also* DCL's February 18, 2020, Section C questionnaire response; DCL's February 21, 2020, supplemental questionnaire response; DCL's March 9, 2020, Section D questionnaire response; DCL's April 10, 2020, supplemental questionnaire response; DCL's June 3, 2020, supplemental questionnaire response; DCL's June 5, 2020, supplemental questionnaire response; DCL's September 14, 2020, Section D supplemental questionnaire response; DCL's September 21, 2020, Sections C and E supplemental questionnaire response; DCL's October 5, 2020, supplemental questionnaire response (Sales Trace Response); DCL's January 12, 2021, Section D supplemental questionnaire response; DCL's January 27, 2021, Sections C and E supplemental questionnaire response; DCL's February 2, 2021, Section D supplemental questionnaire response; and DCL's February 4, 2021, Sections C and D supplemental questionnaire response.

⁸ See Petitioners' Letters, "Electrolytic Manganese Dioxide from the People's Republic of China: Request that DCL File a Full Section E Questionnaire Response and Correct Deficiencies in its Section C Questionnaire Response," dated March 5, 2020; "Electrolytic Manganese Dioxide from the People's Republic of China: Requesting Commerce to Apply AFA to DCL, or Instruct DCL to Immediately Correctly Respond to Commerce's Sections A, C, and E Questionnaires," dated April 13, 2020; "Electrolytic Manganese Dioxide from the People's Republic of China: Comprehensive Deficiency Comments Concerning DCL's Questionnaire Responses," dated June 24, 2020; "Electrolytic Manganese Dioxide from the People's Republic of China: Domestic Producers' Reply to DCL's Rebuttal Concerning Deficiency Comments," dated July 8, 2020; and "Electrolytic Manganese Dioxide from the People's Republic of China: Request that Commerce Add Additional Questions to the January 20, 2021 Third Supplemental Section D Questionnaire," dated January 22, 2021.

⁹ See Commerce's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated June 9, 2020.

¹⁰ See Petitioners' Letters, "Electrolytic Manganese Dioxide from the People's Republic of China: Comments on Surrogate Country List & Request for Extension and Staggering of Deadlines for Submitting Surrogate Values," dated June 15, 2020; "Electrolytic Manganese Dioxide from the People's Republic of China: Submission of Surrogate Country Comments and Associated Surrogate Values," dated July 7, 2020; and "Electrolytic Manganese Dioxide from the People's Republic of China: Rebuttal Comments and Submission of Factual Information Concerning Surrogate Country Selection and Associated Surrogate Values," dated July 17, 2020; *see also* DCL's Letters, "Electrolytic Manganese Dioxide from the People's Republic of China: Rebuttal to Domestic Producer's Comments on Surrogate Country List," dated June 18, 2020; "Electrolytic Manganese Dioxide from the People's Republic of China: Comments on Primary Surrogate Country Selection and Surrogate Value Submission," dated July 7, 2020; and "Electrolytic Manganese Dioxide from the People's Republic of China: Rebuttal to Domestic Producers' Surrogate Country and Surrogate Values Comments," dated July 17, 2020.

¹¹ See DCL's letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Second Submission of Surrogate Values," dated July 22, 2020; *see also* DCL's letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Additional Submission of Surrogate Values," dated January 19, 2021. On January 29, 2021, the petitioners filed a submission containing untimely surrogate value information. On February 8, 2021, Commerce

In April 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these preliminary results of review until June 22, 2020.¹² In October 2020, Commerce extended the deadline to issue the preliminary results of this review by an additional 120 days.¹³ In July 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days, thereby extending the deadline for these preliminary results of review until February 17, 2021.¹⁴

Between December 2020 and February 2021, the petitioners submitted comments for consideration by Commerce in its preliminary results of review.¹⁵ Between December 2020 and February 2021, DCL rebutted the petitioners' comments.¹⁶

III. SCOPE OF THE ORDER

The merchandise covered by the order includes all manganese dioxide (MnO₂) that has been manufactured in an electrolysis process, whether in powder, chip, or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD).

The merchandise subject to the order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.00.00. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

rejected this submission. See Memorandum, "Electrolytic Manganese Dioxide from the People's Republic of China: Rejection of Untimely-Filed New Factual Information (Surrogate Value Submission)," dated February 8, 2021.

¹² See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

¹³ See Memorandum, "Electrolytic Manganese Dioxide from the People's Republic of China: Antidumping Duty Administrative Review; 2018-2019: Extension of Deadline for Preliminary Results," dated October 14, 2020.

¹⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

¹⁵ See Petitioners' Letters, "Electrolytic Manganese Dioxide from the People's Republic of China: Request to Rescind the Administrative Review, or In the Alternative, Issue Preliminary Results Applying Adverse Facts Available," dated December 4, 2020; "Electrolytic Manganese Dioxide from the People's Republic of China: Comments in Advance of the Preliminary Results Concerning DCL's Inability to Trace Subject Merchandise to U.S. Battery Sales and the *Bona Fides* of the Entry and Battery Sales," dated January 29, 2021; "Electrolytic Manganese Dioxide from the People's Republic of China: Comments in Advance of the Preliminary Results Addressing Certain Normal Value Issues and the Selection of Surrogate Values," dated January 29, 2021 (the petitioners' January 29, 2021, NV and SV submission); and "Electrolytic Manganese Dioxide from the People's Republic of China: Comments in Advance of the Preliminary Results Concerning DCL's Universe of Sales and Further Manufacturing Reporting," dated February 3, 2021. On February 8, 2021, Commerce rejected the petitioners' January 29, 2021, NV and SV submission because it contained untimely new factual information. On February 10, 2021, the petitioners' refiled the submission after redacting the untimely new information. See Petitioners' Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Resubmission of Comments in Advance of the Preliminary Results Addressing Certain Normal Value Issues and the Selection of Surrogate Values," dated February 10, 2021.

¹⁶ See DCL's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Response to Domestic Producers' Pre-Preliminary Comments," dated December 21, 2020 (DCL's December 21, 2020 submission); see also DCL's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Response to Domestic Producers' Pre-Preliminary Comments," dated February 10, 2021.

IV. PRELIMINARY RESCISSION OF THE REVIEW

DCL, and its affiliates, did not sell EMD to unaffiliated U.S. customers during the POR. DCL made one sale of EMD to Duracell Manufacturing Inc. (DML), its U.S. affiliate, during the POR,¹⁷ which it claimed was further manufactured into batteries after the end of the POR.¹⁸ DML then transferred the batteries to another affiliate, Duracell Distribution LLC (DDL), which sold the batteries to unaffiliated U.S. customers.¹⁹ There was only one entry of DCL's EMD during the POR, and all sales of the further manufactured products (*i.e.*, batteries) which purportedly contain subject EMD were made to unaffiliated U.S. customers after the end of the POR.²⁰

Section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), indicates that, if requested, Commerce shall conduct a review and determine the amount of any antidumping duty. Commerce's regulations at 19 CFR 351.213(e)(1)(i) stipulates that administrative reviews "normally will cover, as appropriate, entries, exports, or sales of the subject merchandise during the 12 months immediately preceding the most recent anniversary month." Regardless of which of these three events form the basis of a review, Commerce typically requires sales of subject merchandise to unaffiliated U.S. purchasers in order to calculate a dumping margin. Specifically, section 751(a)(2)(A) of the Act provides that Commerce shall determine the export price or constructed export price (CEP) of U.S. entries of subject merchandise and the dumping margin for such entries. Sections 772(a) and (b) of the Act explain that export price and CEP are based on sales (or agreements for sales) of subject merchandise to unaffiliated purchasers.

Commerce's general policy, as explained in the *Preamble* to its regulations, is to review CEP sales to unaffiliated U.S. purchasers that were made after importation but during the POR and to apply any margin of dumping calculated on those sales to the U.S. entries of subject merchandise during the POR.²¹ All of the U.S. battery sales reported by DCL are CEP sales made after importation, but none of those sales occurred during the POR. Moreover, neither DCL, nor any of its U.S. affiliates, sold subject EMD to unaffiliated U.S. purchasers during the POR. Consequently, Commerce could not follow its general policy of examining POR CEP sales in this review because there were no such sales.

However, Commerce is afforded discretion in defining the universe of sales to be reviewed.²² In particular, where the facts of the case permit, Commerce may use as the universe of sales all

¹⁷ See DCL's letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Response to Domestic Producers' Comprehensive Deficiency Comments," dated July 1, 2020 at 2 (public version).

¹⁸ See DCL's April 10, 2020, supplemental questionnaire response at 1 (public version); *see also* DCL's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Request for Modification of Reporting Requirement," dated May 22, 2020 at 2 (public version).

¹⁹ See DCL's April 10, 2020, supplemental questionnaire response at 4 (public version).

²⁰ *Id.* at 4 and 5 (public version); *see also* DCL's December 21, 2020 submission at 1 (public version).

²¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27314 (May 19, 1997) (*Preamble*) (emphasis added).

²² See *Hynix Semiconductor Inc v. U.S.*, 248 F. Supp. 2d 1297, 1304 (CIT 2003) (holding that 19 CFR 351.213(e)(1) accords Commerce flexibility to base its margin calculation on entries, exports, or sales, as appropriate.); *see also Helmerich & Payne, Inc. v. United States*, 24 F. Supp. 2d 304, 310 (CIT 1998) (holding that "because the statute is silent with respect to the universe of sales to be used in calculating dumping margins, the Court must defer to Commerce's interpretation of the statute as long as the interpretation is reasonable.").

entries of subject merchandise during the POR where such entries can be linked to sales of subject merchandise outside of the POR. Specifically, Commerce noted the following points in the *Preamble* to its regulations:

{Commerce} will generally assess duties on entries made during the period of review. . . . {h}owever, on a case-by-case basis, {Commerce} may consider whether the ability to link sales with entries should cause {Commerce} to base a review on sales of merchandise entered during the period of review, rather than on sales that occurred during the period of review. These two approaches differ, because, in the case of CEP sales, the delay between importation and resale to an unaffiliated customer means that merchandise entered during the review period often is different from the merchandise sold during that period. Because of the inability to tie entries to sales, {Commerce} normally must base its review on sales made during the period of review. Where a respondent can tie its entries to its sales, we potentially can trace each entry of subject merchandise made during a review period to the particular sale or sales of that same merchandise to unaffiliated customers, and we conduct the review on that basis. However, the determination of whether to {sic} a review sales of merchandise entered during the period of review hinges on such case-specific factors as whether a respondent has been able to link sales and entries previously for prior review periods and whether it appears likely that the respondent will continue to be able to link sales and entries in future reviews.²³

Central to the approach of reviewing sales of subject merchandise entered during the POR is the ability to link the sales of subject merchandise with the entries of that merchandise. Commerce made this clear in a number of proceedings. In *Korean Pipe 1998-1999*, Commerce explained that “basing a review on entries would be inappropriate where the respondent could not tie sales to entries . . . {t}herefore, under {Commerce’s} policy, a review of sales of merchandise entered during the POR could only be appropriate first when the respondent could tie sales to entries.”²⁴ Additionally, in *Korean Pipe 1998-1999*, Commerce noted that the “ability to tie sales to entries is a necessary pre-condition for basing a review on entries.”²⁵ In *Indian Pipes and Tubes 2008-2009*, Commerce stated that “{o}ur practice is to use entry date to establish the universe of sales only when sales can be linked to entries.”²⁶

Therefore, whether or not DCL can trace the entered EMD to downstream sales of batteries is essential in determining whether or not to conduct this review with respect to sales outside of the POR. As explained below, the record does not clearly demonstrate that DCL can perform this trace.

²³ See *Preamble*, 62 FR at 27314 (emphasis added).

²⁴ See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review*, 66 FR 18747 (April 11, 2001) (*Korean Pipe 1998-1999*), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

²⁵ *Id.*

²⁶ See *Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010) (*Indian Pipes and Tubes 2008-2009*), and accompanying IDM at Comment 2.

DCL explained that the subject EMD was blended with non-subject EMD and the blend was used to manufacture batteries.²⁷ Throughout this review, in multiple supplemental questionnaires, we requested that DCL demonstrate that it could trace the subject EMD entered during the POR to downstream sales of batteries.²⁸ DCL initially reported that it could not trace the subject EMD entered during the POR to particular downstream sales of batteries because the subject EMD is commingled in production with U.S.-sourced EMD.²⁹ Subsequently, DCL reported that DML can trace subject EMD to the finished product and identify the related sales.³⁰ Specifically, DCL reported, and provided documents that it claims demonstrated, that it could trace the subject EMD that entered during the POR to battery sales by tracking the raw material code of the imported subject EMD to specific batches of blends of EMD from various sources, to a cell code (unpackaged battery), then to a battery finished good code, and then to the sales invoice issued to the unaffiliated U.S. customer.³¹ However, we have determined that DCL has not sufficiently linked entries of subject EMD with all of the reported sales for the following reasons.

First, there is conflicting information in the supporting documentation provided by DCL. DCL reported that a batch of EMD comprises multiple lots of EMD.³² DCL identified the lot numbers that it claims contain subject EMD and cited a production process record to support its claim.³³ However, other reports on the record indicate that there were a fewer number of lots with subject EMD than contained in the production process report.³⁴ Commerce provided DCL with an opportunity to explain why the number of lots containing subject EMD varies by report.³⁵ However, DCL failed to provide a sufficient response regarding these differences, and noted that these differences cannot be reconciled.³⁶ Because the number of lots containing subject merchandise remains in question, DCL has not sufficiently demonstrated that it accurately traced the entered subject EMD to sales of batteries. Moreover, because there may have been fewer lots with subject EMD, certain sales reported in the U.S. sales database may be sales of batteries produced from lots that do not contain subject EMD. These sales should not be used to calculate a dumping margin. Because we are unable to identify and remove these sales

²⁷ See DCL's January 27, 2021, Sections C and E supplemental questionnaire response at 29, 30, and 41 (public version).

²⁸ See Commerce's Letters, "Electrolytic Manganese Dioxide from the People's Republic of China: Second Supplemental Questionnaire," dated March 27, 2020, at Question 2; "Electrolytic Manganese Dioxide from the People's Republic of China: Second Sections C and E Supplemental Questionnaire," dated September 15, 2020, at Question 1; "Electrolytic Manganese Dioxide from the People's Republic of China: Supplemental Questionnaire," dated October 1, 2020, at Questions 1 and 2; and "Electrolytic Manganese Dioxide from the People's Republic of China: Supplemental Questionnaire," dated January 13, 2021, under *Sales Trace* and *Quantity* sections.

²⁹ See DCL's February 21, 2020, supplemental questionnaire response at 1 (public version).

³⁰ See DCL's April 10, 2020, supplemental questionnaire response at 2 (public version); *see also* Sales Trace Response at Exhibit S-1 (public version).

³¹ See Sales Trace Response at Exhibit S-1 (public version).

³² See DCL's January 27, 2021, Sections C and E supplemental questionnaire response at 6 (public version).

³³ *Id.*

³⁴ See Memorandum "Proprietary Information for the Preliminary Results of the 2018-2019 Antidumping Duty Administrative Review of Electrolytic Manganese Dioxide from the People's Republic of China," dated February 17, 2021, at Note 1.

³⁵ See Commerce's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Supplemental Questionnaire," dated January 13, 2021, at Question 13.

³⁶ See DCL's January 27, 2021, Sections C and E supplemental questionnaire response at 8 (public version).

from the U.S. sales database, the database does not provide a reliable basis for calculating a dumping margin.

Second, DCL failed to respond directly to Commerce’s question as to whether it can identify the actual quantity of subject EMD in each battery for which it reported a U.S. sale.³⁷ In response to this request, DCL cited a previous answer in the same questionnaire response without responding to the question.³⁸ Thus, Commerce finds DCL’s answer non-responsive. DCL used an allocation methodology, which it modified during the course of the review, to determine the portion of EMD in each battery that is subject EMD.³⁹ While DCL considers its latest allocation methodology reasonable, it is based on certain assumptions regarding the mix of subject EMD and non-subject EMD. Given the importance of linking in this review in order to calculate an accurate dumping margin, we preliminarily have concerns about accepting DCL’s reporting methodology and concluding that each battery for which it reported a U.S. sale contains subject EMD. If we cannot, with an appropriate degree of certainty, link the entry of subject EMD to each reported sale, and we were to use the reported sales of batteries to calculate a dumping margin, we could be basing the dumping margin, in part, on sales of batteries with only non-subject EMD.

Based on the above, DCL did not meet the criteria set forth in the *Preamble* because it failed to link adequately the POR entry of subject merchandise to the post-POR sales reported in the U.S. sales database. Accordingly, Commerce finds that there are no reviewable sales with which it could calculate a dumping margin and thus no sales to review. Consequently, we are preliminarily rescinding this review.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

2/16/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

³⁷ See Commerce’s Letter, “Electrolytic Manganese Dioxide from the People’s Republic of China: Supplemental Questionnaire,” dated January 13, 2021 under Question 22; see also DCL’s January 27, 2021, Sections C and E supplemental questionnaire response at 16 (public version).

³⁸ See DCL’s January 27, 2021, Sections C and E supplemental questionnaire response at 16 (public version).

³⁹ *Id.* at 15 (public version).