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February 5, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Potassium Permanganate from the People's Republic of China:
Decision Memorandum for the Preliminary Results of the 2014
Antidumping Duty Administrative Review

SUMMARY

Based on a request from one company, Pacific Accelerator Limited ("PAL"), the Department of Commerce (the "Department") is conducting an administrative review of the antidumping duty ("AD") order on potassium permanganate from the People's Republic of China ("PRC").¹ The Department preliminarily determines that PAL sold merchandise below normal value ("NV") during the period of review ("POR"), January 1, 2014, through December 31, 2014.

Case History

On March 2, 2015, the Department initiated this administrative review with respect to one company, PAL.² As such, PAL is the only company under review. Between April and September 2015, the Department sent AD questionnaires and supplemental questionnaires to PAL, to which it responded in a timely manner. On April 27, 2015, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value ("SV") data.³ Between May 2015 and January 2016, the Department received surrogate country comments, SV comments, and rebuttal comments from interested parties. On October 5, 2015, the Department partially extended the deadline for issuing the preliminary results until

¹ See *Antidumping Duty Order; Potassium Permanganate from the People's Republic of China*, 49 FR 3897 (January 31, 1984).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 11166 (March 2, 2015) ("Initiation Notice").

³ See Letter to All Interested Parties, "Antidumping Duty Administrative Review of Potassium Permanganate from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated April 27, 2015 ("Surrogate Country Memo").



November 2, 2015.⁴ On October 27, 2015, the Department fully extended the deadline for issuing the preliminary results until February 1, 2016.⁵ As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of this administrative review is now February 8, 2016.⁶

Scope of the Order

Imports covered by the order are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. Potassium permanganate is currently classifiable under item 2841.61.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS item number is provided for convenience and customs purposes, the written description of the merchandise remains dispositive.

DISCUSSION OF THE METHODOLOGY

NME Country Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a non-market economy (“NME”) country shall remain in effect until revoked by the Department. The Department considers the PRC to be an NME country.⁷ Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results. Accordingly, we calculated NV using the factors of production methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within an NME are subject to government control, and thus, should be assessed a

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Potassium Permanganate from the People’s Republic of China: Extension of Deadline for Preliminary Results of 2014 Antidumping Duty Administrative Review,” dated October 5, 2015.

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Potassium Permanganate from the People’s Republic of China: Extension of Deadline for Preliminary Results of 2014 Antidumping Duty Administrative Review,” dated October 27, 2015.

⁶ See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,” dated January 27, 2016.

⁷ See, e.g., *Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779 (August 26, 2015).

single rate.⁸ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.⁹ It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,¹⁰ as amplified by *Silicon Carbide*.¹¹ However, if the Department determines that a company is wholly foreign-owned by individuals or companies located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.¹²

In this review, in support of its claim for a separate rate, PAL reported that it is a wholly owned by a foreign-owned company registered and located in Hong Kong.¹³ Because there is no PRC ownership of PAL, and because the Department has no evidence indicating that PAL is under the control of the PRC government, no additional separate-rate analysis is necessary to determine whether PAL is independent from government control.¹⁴ Consequently, we preliminarily determine that PAL has met the criteria for a separate rate.

PRC-Wide Entity

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.¹⁵ Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate (*i.e.*, 128.94 percent) is not subject to change.

⁸ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006) ("*Lined Paper*"); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006) ("*Sawblades*").

⁹ See *Initiation Notice*.

¹⁰ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and 19 CFR 351.107(d).

¹¹ See *Silicon Carbide*, 59 FR at 22585.

¹² See, *e.g.*, *Certain Pneumatic Off-the-Road Tires from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in final affirmative determination, 73 FR 40485 (July 15, 2013).

¹³ See PAL's May 12, 2015 submission at 3 - 11.

¹⁴ See *Notice of Final Determination of Sales at Less than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996).

¹⁵ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

Surrogate Country

As noted above, on April 27, 2015, the Department sent interested parties a letter inviting comments on surrogate country selection and SV data.¹⁶ Also, as noted above, between May 2015 and January 2016, interested parties submitted comments and rebuttal comments on surrogate country selection and SVs.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued using the best available information in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (a) at a level of economic development comparable to that of the NME country; and (b) significant producers of comparable merchandise.¹⁷ Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data.¹⁸ Accordingly, we examine each factor below.

A. Comparable Level of Economic Development

Pursuant to section 773(c)(4) of the Act, using 2013 *per capita* gross national income ("GNI") data reported in the World Bank's *World Development Report*, the Office of Policy provided a memorandum that identified Bulgaria, Ecuador, Romania, South Africa, Thailand and Ukraine as being at the same level of economic development as the PRC.¹⁹ In addition, PAL submitted additional data, specifically surrogate country lists from other administrative reviews using 2014 GNI data from the World Bank, which indicates that Bulgaria, Ecuador, Mexico, Romania, South Africa and Thailand are at the same level of economic development as the PRC.²⁰ Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may make this determination, but it is the Department's long standing practice to use *per capita* GNI data reported in the World Bank's *World Development Report*.

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that such other considerations outweigh the difference in levels of economic development.²¹

¹⁶ See Surrogate Country Memo.

¹⁷ See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) ("Policy Bulletin").

¹⁸ *Id.*

¹⁹ See Surrogate Country Memo.

²⁰ See PAL's August 5, 2015 submission.

²¹ See Surrogate Country Memo.

As explained in the Department's *Policy Bulletin*, "{t}he surrogate countries on the (non-exhaustive) surrogate country list are not ranked."²² This lack of ranking reflects the Department's long-standing practice that, for the purpose of surrogate country selection, the countries on the list "should be considered equivalent" from the standpoint of their level of economic development, based on *per capita* GNI, as compared to the PRC's level of economic development.²³ This also recognizes that the "level" in an economic development context necessarily implies a range of *per capita* GNI, not a specific *per capita* GNI.²⁴ The Department's long-standing practice of selecting, if possible, a surrogate country from a non-exhaustive list of countries at the same level of economic development as the NME country, or another country at the same level of economic development, fulfills the statutory requirement to value FOPs using data from "one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country"²⁵ In this regard, "countries that are at a level of economic development comparable to that of the NME country" necessarily includes countries that are at the same level of economic development as the NME country.

The Department is relying on the surrogate country list reflecting 2014 GNI data because it is contemporaneous with the POR, contains the Department's most recent analyses of GNI data, and was placed on the record within the timeframe the Department specified for surrogate value submissions and with sufficient time remaining in this review for the Department to consider it in selecting a surrogate country.²⁶ Consistent with section 773(c)(4) of the Act, we find that Bulgaria, Ecuador, Mexico, Romania, South Africa and Thailand are at the same level of economic development as the PRC.

B. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value, to the extent possible, FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."²⁷ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.²⁸ Further, when selecting a surrogate country, the

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ See section 773(c)(4) of the Act.

²⁶ In other cases where a party has placed contemporaneous GNI data on the record in a timely fashion, the Department has found this data to be the most appropriate one to use for identifying countries that are comparable to the PRC in terms of level of economic development. See, e.g., *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1167 (January 11, 2016) and accompanying Issues and Decision Memorandum at Comment 1.

²⁷ See *Policy Bulletin* at 2.

²⁸ The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.

statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.²⁹ “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.”³⁰ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.³¹

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.³² Moreover, while the legislative history provides that the term “significant producer” includes any country that is a “significant net exporter,”³³ it does not preclude reliance on additional or alternative metrics. The *Policy Bulletin* provides that the “extent to which a country is a *significant* producer should not be judged against the NME country’s production level” or those countries on the surrogate country list, but rather “a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics).”³⁴

We note that Petitioner timely submitted 2014 United Nations Comtrade export data for HTS 2841.61, “Potassium Permanganate,” which indicates that Bulgaria (450 kilograms (“kg”)), Mexico (92 kg) and South Africa (65,992 kg) had exports of identical merchandise.³⁵ The *Policy Bulletin* states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.”³⁶ Here, because the record contains data for identical merchandise, and this has not led to data difficulties, we need not consider parties’ arguments for comparable merchandise. We further note that the United Nations Comtrade data indicate that Thailand did not have any exports of potassium permanganate during 2014.

We preliminary find that South Africa has met the significant producer of comparable merchandise prong of the surrogate country selection criteria. Although the United Nations Comtrade data indicated that Bulgaria and Mexico had relevant exports, the volumes are so low that they are not sufficient in themselves to support a determination that either country – or

²⁹ See *Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (Where the Department found that to “impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

³⁰ See *Policy Bulletin* at 2.

³¹ *Id.* at 3.

³² See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

³³ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

³⁴ See *Policy Bulletin* (emphasis in original).

³⁵ See Petitioner’s July 7, 2015 submission at Exhibit 2.

³⁶ See *Policy Bulletin* at 2.

Thailand, which had zero exports in 2014 – is a significant producer of comparable merchandise. Accordingly, we preliminarily find that Bulgaria, Mexico, and Thailand have not met the significant producer of comparable merchandise statutory criterion.

C. Data Availability

The *Policy Bulletin* states that, if more than one country is at the same level of economic development as the NME and is a significant producer, “then the country with the best factors data is selected as the primary surrogate country.”³⁷ Importantly, the *Policy Bulletin* explains further that “data quality is a critical consideration affecting surrogate country selection” and that “a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.”³⁸

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or a countries that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, represent a broad-market average, and are specific to the input.³⁹ The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.⁴⁰ Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.⁴¹ The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.⁴²

No party placed FOP information on the record for Bulgaria. Moreover, no party argued that Bulgaria be selected as the surrogate country, and we have preliminarily determined that Bulgaria is not a significant producer of comparable merchandise. As a result, we have not considered Bulgaria for surrogate country selection purposes.

Interested parties have placed SV data on the record for Mexico and South Africa. However, as noted above, we preliminarily determine that Mexico does not satisfy the significant producer of comparable merchandise prong of the surrogate country selection criterion. Furthermore, upon examining the available data with respect to Mexico and South Africa, we note that the record

³⁷ See *Policy Bulletin*.

³⁸ *Id.*

³⁹ See, e.g., *Lined Paper* at Comment 3.

⁴⁰ See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 2.

⁴¹ See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (“*Sixth Mushrooms AR*”) and accompanying Issues and Decision Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

⁴² See, e.g., *Sixth Mushrooms AR* at Comment 1.

contains South African SV data to value all factors and movement expenses, whereas the Mexican SV data does not cover all FOPs and movement expenses. The Department prefers to value all inputs in one primary surrogate country.⁴³ As expressed by the Department's regulations, pursuant to 19 CFR 351.408(c)(2), it is the Department's preference to value all factors of production from a single surrogate country when there is available data for doing so.⁴⁴ Selecting Mexico as the surrogate country would necessarily require the Department to depart from our regulatory preference under 19 CFR 351.408(c)(2) to value all FOPs in the primary surrogate country. Thus, because the record is complete with regard to South African SV data, it is the Department's preference to select South Africa as the primary surrogate country.⁴⁵

D. Conclusion

In light of the record evidence, the Department finds South Africa to be at a level of economic development comparable to the PRC based on contemporaneous GNI information, and is a significant producer of comparable merchandise and is a reliable source for SVs as it covers all SVs. Given the above facts, the Department has preliminarily selected South Africa as the primary surrogate country for this review. A detailed explanation of the SVs appears below in the "Normal Value" section of this notice.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether PAL's sales of the subject merchandise from the PRC to the United States were made at less than NV, the Department compared the export price ("EP") to NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export

⁴³ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review*, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision memorandum at Comment 2B; *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decision memorandum at Comment 3.

⁴⁴ See *Globe Metallurgical, Inc. v. United States*, 32 CIT 1070, 1076 (2008) ("*Globe Metallurgical*"); *Peer Bearing Co. Changshan v. United States*, 752 F. Supp. 2d, 1373 (CIT 2011); *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390, at *6 (CIT, February 20, 2013) ("deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {Commerce's} calculations").

⁴⁵ Moreover, we note that the South African data is more specific than the Mexican data, e.g., the Mexican data for manganese dioxide is for "electrical grade" and "others," however, there is no data for the "others" category. As such, the Mexican data for manganese dioxide is likely for use in battery production, and not the production of potassium permanganate. See PAL's August 5, 2015 submission at Exhibit RSV-1, *Manganese Material Flow Patterns*, by Thomas S. Jones, United States Department of the Interior, Bureau of Mines Information Circular/1992, which distinguishes between chemical and battery grade manganese dioxide, as well as other grades. See also Memorandum to the File, from Paul Walker, Program Manager, "Administrative Review of Potassium Permanganate from the People's Republic of China: Surrogate Values for the Preliminary Results," dated concurrently with and hereby adopted by this memorandum ("Prelim SV Memo").

prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁴⁶

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁴⁷ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or constructed export price) and NV for the individual dumping margins.

⁴⁶ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

⁴⁷ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); see also *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting

weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

For PAL, based on the results of the differential pricing analysis, the Department preliminarily finds that zero percent of the value of U.S. sales pass the Cohen's *d* test,⁴⁸ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for PAL.⁴⁹

Date of Sale

19 CFR 351.401(i) states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁰ The Court of International Trade ("CIT") stated that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."⁵¹ Alternatively, the Department may exercise its discretion to rely on a date other than invoice date if the Department "provides a rational explanation as to why the alternative date 'better reflects' the date when 'material terms' are established."⁵² The date of sale is generally the date on which the parties establish the material terms of the sale,⁵³ which normally includes the price, quantity, delivery terms and payment terms.⁵⁴

⁴⁸ See Memorandum to the File, from Paul Walker, "Analysis for the Preliminary Results of the Administrative Review of Potassium Permanganate from the People's republic of China," dated concurrently with this memo.

⁴⁹ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*"). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin. *Id.*

⁵⁰ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) ("*Allied Tube*") (quoting 19 CFR 351.401(i)).

⁵¹ See *Allied Tube*, 132 F. Supp. 2d at 1090 (brackets and citation omitted).

⁵² See *SeAH Steel Corp. v. United States*, 25 CIT 133, 135 (CIT 2001).

⁵³ See 19 CFR 351.401(i).

⁵⁴ See *USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).

PAL did not comment on the date of sale.⁵⁵ However, instead of relying on invoice date, given the circumstances present in this case, we have preliminarily used the entry dates reported by PAL to determine the date of sale. We note that PAL had an entry which was invoiced before the POR, but entered during the POR. In the last administrative review, the Department found that PAL made only one sale on the last day of the POR, which entered the United States five months after the end of the POR, *i.e.*, during the instant review.⁵⁶ Consequently, because PAL's sale in that review entered during this review period, we have included this sale in our analysis.

Export Price

Pursuant to section 772(a) of the Act, the EP is “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, the Department calculated EP because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted on those sales.⁵⁷ The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, brokerage and handling (“B&H”), and international movement expenses using the reported market economy expenses, where applicable.⁵⁸

Value Added Tax (“VAT”)

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any irrecoverable VAT in certain NME countries in accordance with section 772(c)(2)(B) of the Act.⁵⁹ The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.⁶⁰ Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.⁶¹

The Department's methodology, as explained above, incorporates two basic steps: (1) determine

⁵⁵ See PAL's June 4, 2015 submission at 4-5.

⁵⁶ See *Potassium Permanganate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2013, 80 FR 50264 (August 19, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁷ See, *e.g.*, PAL's October 28, 2015, submission.

⁵⁸ See Prelim SV Memo for details regarding the SVs for movement expenses.

⁵⁹ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).

⁶⁰ *Id.*; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5A.

⁶¹ *Id.*

the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. PAL provided limited information concerning its irrecoverable VAT. Although for the preliminary results we made no VAT adjustment in PAL's margin calculation, we intend to request more information from PAL after these preliminary results in order to fully evaluate this issue.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. This methodology ensures that the Department's calculations are as accurate as possible.⁶²

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs consumed by PAL's supplier of potassium permanganate, Chongqing Changyuan Chemical Corporation Ltd. ("Changyuan"), include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.⁶³ The Department based NV on Changyuan's reported FOPs for materials, energy, labor and packing.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise exported by PAL, the Department calculated NV based on the FOPs reported by Changyuan, PAL's supplier, for the POR. The Department used South African import data and other publicly available South African sources in order to calculate SVs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.⁶⁴

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to South African import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This

⁶² See, e.g., *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 19.

⁶³ See, e.g., PAL's October 28, 2015, submission.

⁶⁴ See, e.g., *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and converted all applicable FOPs to a per-kg basis.

Furthermore, with regard to the South African import-based SVs, consistent with Section 773(c)(5) of the Act, we disregarded import prices from countries that we have determined maintain broadly available export subsidies.⁶⁵ In prior proceedings, we determined India, Indonesia, South Korea, and Thailand maintain broadly available, non-industry-specific export subsidies.⁶⁶ Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an “unspecified” country from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.⁶⁷ Therefore, we have not used prices from these countries either in calculating the South African import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.⁶⁸ Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,⁶⁹ the Department uses the actual purchase prices to value the inputs. Information reported by PAL demonstrates that certain movement expenses were sourced from ME countries and paid for in ME currencies.⁷⁰

The Department used South African Import Statistics from the *Global Trade Atlas* (“GTA”) to value certain raw materials, certain energy inputs, and packing material inputs used to produce subject merchandise during the POR, except where listed below.

⁶⁵ See Section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015); *see also*, *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

⁶⁶ *See, e.g.*, *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4-5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19-20; *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013).

⁶⁷ *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People’s Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 24502 (May 10, 2005) (“Isos”).

⁶⁸ *See, e.g.*, *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

⁶⁹ *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (“Market Economy Inputs”).

⁷⁰ *See, e.g.*, PAL’s June 4, 2015, submission.

We valued electricity and water using values from South Africa. Specifically, we valued electricity using an average value from a South African electricity company, Eskom. We valued water using a value from a South African government publication, *South Africa Statistics*.⁷¹

We valued brokerage and handling (“B&H”) using a price list of export procedures necessary to export a standardized cargo of goods in South Africa. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in South Africa that is published in *Doing Business 2014: South Africa* by the World Bank.⁷²

We used South African transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *Doing Business 2014: South Africa*. This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container, weighing 10 metric tons, from the largest city in South Africa to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Johannesburg to the nearest seaport. We calculated a per-kg, per-kilometer surrogate inland freight rate based on the methodology used by the World Bank. We valued boat freight using South African data from the publication *The Impact of Transportation Pricing Practices in South Africa on Freight Transportation Costs*, published by the Human Science Research Council. We calculated a per-kg, per-kilometer surrogate boat freight rate using this data.⁷³

In NME AD proceedings, the Department prefers to value labor solely based on data from the primary surrogate country.⁷⁴ In *New Labor Methodology*, the Department explained that industry-specific wage data from the primary surrogate country was the best available information because it is consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation – the use of data from a primary surrogate country.⁷⁵ It is the Department’s practice to value labor using industry-specific data reported by the International Labor Organization’s (“ILO”) in Chapter 6A of the *Yearbook of Labor Statistics* (“ILO Chapter 6A”), which reflects all costs related to labor (i.e., wages, benefits, housing, training, etc.). It is the Department’s preference to value labor using ILO Chapter 6A data under the rebuttable presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs.⁷⁶ However, in this review, there is no ILO Chapter 6A data on the record from South Africa. As a consequence, for the *Preliminary Results*, the Department finds that the best available information for valuing labor is South African ILOSTAT data from 2010, covering manufacturing, because it is specific to the industry being examined, a broad-market average, and is the most contemporaneous information on the record for South Africa.⁷⁷

⁷¹ For more information on the electricity and water SV calculations, see the Prelim SV Memo.

⁷² For more information on the B&H SV calculation, see the Prelim SV Memo.

⁷³ For more information on the truck and boat freight SV calculations, see the Prelim SV Memo.

⁷⁴ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*New Labor Methodology*”).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ For more information on the labor SV calculation, see the Prelim SV Memo.

The Department's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.⁷⁸ Moreover, for valuing factory overhead, selling, general and administrative expenses ("SG&A"), and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.⁷⁹ In addition, the CIT held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producer's experience.⁸⁰ In this review, the producer of the subject merchandise, Changyuan, produces a variety of chemical products.⁸¹ The record contains financial statements from two South African chemical producers which produce a variety of chemical products.⁸² As such, to value SG&A and profit, the Department used the 2014 financial statements from South African chemicals producers Spanjaard Limited and Rolfes Holdings Limited.⁸³

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/>.

⁷⁸ See, e.g., *Isos* at Comment 3.

⁷⁹ See, e.g., *Sawblades* at Comment 2.

⁸⁰ See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

⁸¹ See, e.g., PAL's October 28, 2015 submission at Exhibit SA-1a.

⁸² See Petitioner's August 5, 2015 submission at Exhibit 12.

⁸³ For more information on the surrogate financial ratios calculations, see the Prelim SV Memo.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

5 February 2016
(Date)