A-570-001
POR 1/1/15 - 12/31/15
Public Document
E&C/OV: KH

June 12, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Potassium Permanganate from the People's Republic of China: Issues and Decision Memorandum for the Final Results

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SUMMARY

The Department of Commerce (the Department) has analyzed the case and rebuttal briefs submitted by Pacific Accelerator Limited (PAL) and Carus Corporation (the petitioner), in the 2015 administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC).[1] Following the *Preliminary Results*,[2] and the analysis of the comments received, we have made changes for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

CASE ISSUES

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

2 *See Potassium Permanganate from the People's Republic of China: Preliminary Results of the 2015 Antidumping Duty Administrative Review*, 81 FR 89897 (December 13, 2016) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

BACKGROUND

This review covers one exporter of potassium permanganate from the PRC, PAL.[3] On December 13, 2016, the Department published the *Preliminary Results* of this administrative review. On January 17, 2017, PAL and the petitioner submitted case and rebuttal briefs, respectively.[4] On April 4, 2017, the Department held a public hearing regarding this review.

SCOPE OF THE ORDER

Imports covered by this 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 ISSUES

Comment I: International Movement Expenses

PAL's Comments:

- The Department claimed it valued PAL's international movement expenses[5] according to PAL's reported market economy (ME) purchase, but in the *Preliminary Results* the Department used a value different from the value reported in PAL's Section C narrative.[6] The international movement expense was a single charge in U.S. dollars (USD) from a ME supplier.[7]
- For the final results, the Department should calculate international freight using the actual amount incurred in U.S. dollars, which can be found in its narrative response, rather than in its database.[8] In essence, following the *Preliminary Results*, PAL discovered that it had over-reported its international movement expense in its Section C database, but correctly reported it in its narrative response. At the Department's public hearing, PAL demonstrated with reference to record evidence the proper calculation for its international movement expenses, and this calculation correlated with its narrative response.
- No currency conversion is necessary because the movement expense was reported in U.S. dollars. Conversion from another currency, such as Hong Kong (HK) dollars, is unnecessary.[9] Moreover, the Department incorrectly did not use a ratio in U.S. dollars on a kilogram basis to calculate the value of PAL's international movement expenses.

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[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 11179 (March 3, 2016) (*Initiation Notice*).
[4] *See* PAL's January 12, 2017; the petitioner's January 17, 2017, submission.
[5] We note that PAL reported a single value for international movement expense in its Section C database, which encompasses several different movement expenses such as international freight, truck freight, *etc*. *See*, *e.g.*, Comment III, below.
[6] *See* PAL's Case Brief at 2-3.
[7] *Id.* at 3.
[8] *Id.* at 5-6.
[9] *Id.*

The petitioner's Comments:

- Regarding international movement expenses for PAL's U.S. sales, the record demonstrates that the Department properly accounted for these expenses in its margin calculation.[10] The Department should reject PAL's proposed recalculation.[11]
- It is the Department's long-standing practice to calculate per-unit freight expenses based on the volume of the transaction[12] and, in fact, the Department did use a ratio in U.S. dollars on a kilogram basis to value PAL's international movement expenses.
- PAL claimed that its international movement expenses resulted from an ME purchase. PAL also raised a related issue regarding the appropriateness of adding movement expenses to surrogate values (SVs), which are valued using GTA data. Taking the second issue first, the Department properly added SV-based movement expenses to calculate the freight applicable to material inputs and, thus, derive an overall SV for every input reflecting a cost, insurance, & freight (CIF) value.[13] This correctly reflects that PAL reported FOPs based on the actual inputs used by Chongqing Changyuan Group Limited (Changyuan), PAL's affiliated supplier of subject merchandise, as maintained in Changyuan's accounting records.[14] Regarding the ME purchase issue, PAL's ME movement expenses are unrelated to the freight and movement expenses arising from Changyuan's purchases of inputs.[15] Further, no evidence exists that PAL or Changyuan sourced any inputs from ME suppliers in meaningful quantities paid for inputs in a ME currency or incurred any freight or movement expenses for those inputs in meaningful quantities in ME currencies.[16]

Department's Position: Regarding PAL's argument that the Department did not use PAL's reported international movement expenses, we disagree. In the *Preliminary Results*, we used the value for international movement expenses as reported by PAL in its Section C database.[17] We further disagree that we did not use a ratio in USD as reported by PAL. PAL reported its international movement expenses in USD, except marine insurance, which was incurred in HK dollars and, therefore, this expense was necessarily converted to USD in the SAS program. As such, PAL's assertion that the Department improperly converted the entirety of the international freight expenses, already denominated in USD, is without merit.

Upon further examination of PAL's Section C submission, it is clear that PAL made an error in copying the international movement expenses as shown in its narrative submission into its Section C database. In sum, PAL over-reported the value in its Section C database. However, in PAL's Section C narrative response, PAL provided a per kilogram calculation and supporting source documentation for its international movement expenses, consistent with the requirements for reporting these expenses as outlined in the Department's original antidumping duty (AD)

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10 *See* the petitioner's Rebuttal Brief at 7.
11 *Id.* at 9.
12 *Id.*
13 *Id.* at 7 (citing the Department's December 1, 2016, Preliminary Results Analysis Memo at attachment 1).
14 *Id.* at 8.
15 *Id.*
16 *Id.*
17 *See* the Department's Analysis Memorandum for the Preliminary Results.

questionnaire.[18] For the final results, we have used PAL's actual international movement expense, as reported in its Section C response.

During the Department's public hearing, PAL acknowledged that it had over-reported the international movement expense in its Section C database, as well as acknowledged that its case brief is vague and not specific as to whether its arguments concerned the Department's calculation of normal value (NV) or U.S. net price. [19] As such, with regard to the gist of the petitioner's comments on movement expenses added to SVs valued using GTA data, we agree with the petitioner that we used the correct movement-related SVs, and that the focus of PAL's arguments concerned SVs used for movement expenses with respect to PAL's sales.

Comment II: Brokerage and Handling and Truck Freight Calculations

PAL's Comments:

- The Department incorrectly calculated brokerage and handling (B&H) and truck freight expenses using a SV because the B&H and truck freight expenses incurred in the United States were paid to a ME supplier and paid in USD as part of a single charge. [20]
- The Department's use of a SV for these ME expenses, therefore, results in double counting.[21]

Department's Position: We disagree. In the *Preliminary Results*, we deducted B&H and truck freight incurred in the United States as reported by PAL in its U.S. sales database and, therefore, deducted the reported ME purchases with no double counting.[22]

Comment III: Marine Insurance Calculation

PAL's Comments:

- The Department departed from its practice to use the actual ME expense reported by PAL and, instead, used a SV to value marine insurance.[23]
- The PDM does not make clear the source of the data used for marine insurance.[24]
- Because PAL reported the actual cost of marine insurance to a ME supplier in ME currency, the Department should calculate the value as such rather than a generic value.[25]

Department's Position: Regarding PAL's argument that the Department used a SV for marine insurance, we disagree. We deducted PAL's marine insurance, as reported in its Section C database, from the U.S. gross unit price. As PAL reported marine insurance to its ME supplier in

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[18] *See* PAL's Case Brief at 5, citing the methodology for calculating international freight ratio; *see also*, the Department's Letter to PAL, dated March 23, 2016 (AD Questionnaire).
[19] The petitioner agrees with the Department that our NV was calculated correctly. During the Department's public hearing, PAL did not challenge this point.
[20] *See* PAL's Case Brief at 6 (citing the Department's PDM).
[21] *Id*.
[22] *See* PAL's Preliminary Analysis Memo at 7.
[23] *Id.*
[24] *Id.* at 8.
[25] *Id.*

HK dollars, we converted marine insurance to USD.[26] As such, we did not use a SV to value marine insurance.

Comment IV: Rail Expense

PAL's Comments:

- The Department should not calculate a rail expense, as none was incurred by PAL.[27]

Department's Position: Although PAL insists in its case brief that it did not incur a rail expense, the information PAL reported in its Section D questionnaire response and FOP database indicates otherwise. Specifically, in the Section D database, PAL lists the mode of transportation for the manganese input as rail.[28] PAL likewise, in its FOP database, lists the mode of transportation for Changyuan's manganese input as having been shipped via rail.[29] As such, we have continued to include rail freight in our margin calculation for the final results.

Comment V: Currency Conversion

PAL's Comments:

- The Department should confirm that it made a currency conversion, because the SV summary table for South African SV's indicates that the Department did not make a currency conversion.[30]
- As many movement expenses were from a ME supplier, no conversion should be made.[31]

The petitioner's Comments:

- The Department calculated nearly all material input, energy and transport SV in South African Rand (ZAR) and properly converted all SVs in ZAR to USD in the preliminary margin calculation.[32]

Department's Position: The Department confirms that all SVs denominated in ZAR were properly converted into USD in the SAS program. Specifically, there were 18 SVs denominated in ZAR, and each of these values was converted to USD.[33]

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[26] *See* Administrative Review of Potassium Permanganate from the People's Republic of China: Preliminary Results Analysis Memorandum for Pacific Accelerator Limited (December 1, 2016) (PAL Analysis Memo).
[27] *See* PAL's Case Brief at 9.
[28] *See* PAL's May 23, 2016, submission at Exhibit D-6.
[29] *See* PAL's May 23, 2016, submission at Exhibit FOP001.
[30] *Id.* at 10.
[31] *Id.*
[32] *See* the petitioner's Rebuttal Brief at 10.
[33] *See* Memorandum to The File, "Administrative Review of Potassium Permanganate from the People's Republic of China: Surrogate Values for the Preliminary Results," dated November 28, 2016 at Exhibit 1 (Surrogate Value Memo).

Comment VI: Drum FOP

PAL's Comments:

- A clerical error by PAL listed an erroneous weight of the drum in which potassium permanganate is shipped to the United States, which the Department should correct for the final results.[34]
- In *NTN Bearing Corp.*, the Court of Appeals held that it is the duty of the Department to determine dumping margins as "as accurately as possible."[35] Furthermore, in *NTN Bearing Corp.*, a respondent discovered clerical errors it had made after the preliminary results were released.[36] The court held that refusal to correct clerical errors would be an abuse of discretion.[37]
- PAL has appropriately provided notification and the Department should correct this error.[38]

The petitioner's Comments:

- PAL claims that it is clear it made a reporting error and, in accordance with *NTN Bearing Corp.*, the Department should correct the error for the final results.[39]
- PAL asserts that the net weight of the potassium permanganate as reported does not include packaging while the gross weight does include packaging weight. While the difference between gross and net weight is packaging weight, it is not evident from the record that this is the manner in which PAL reported the weights for this transaction.[40] At most, it appears that PAL may have erred in reporting the gross weight as the total weight.[41] PAL improperly relies on the cost reconciliation for support, because it only reconciles the cost, not the quantity.[42]
- PAL indicates that *NTN Bearing Corp.* addressed a "straight forward mathematical adjustment."[43] The Department's regulations defines a clerical error as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like and any other similar type of unintentional error which the Secretary considers ministerial."[44]

Department's Position: Similar to Comment 1, addressed above, PAL made a clerical error with respect to this FOP. In its case brief, PAL noted the erroneous total weight of the drums it used in calculating the FOP ratio in the *Preliminary Results*.[45] PAL provided the calculation that

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[34] *See* PAL's Case Brief at 11.
[35] *Id.* at 14 (citing *Chaparral Steel Co. v. United States*, 901 F. 2d 1097, 1103-1104 (Fed. Cir. 1990)). (*NTN Bearing Corp.*).
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *See* the petitioner's Rebuttal Brief at 11.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*, citing PAL's Case Brief at 14.
[44] *Id.*, citing 19 CFR 351.224(f).
[45] *Id.* at 11.

it should have performed in order to report the drum usage ratio accurately.[46] During the Department's public hearing, PAL also directed the Department to record evidence demonstrating that, in its initial calculation, PAL over-reported the drum usage ratio.[47] Therefore, we find that PAL made a clerical error in reporting its packing drum FOP, and because the information is on the record to correct this clerical error, for these final results, we used the weight of PAL's drum to calculate a usage ratio for this FOP.

Comment VII: Valuation of Manganese Dioxide

PAL's Comments:

- For the *Preliminary Results*, the Department should have used a SV for manganese ore rather than manganese dioxide. PAL reported manganese ore as the input to be valued.[48] Although the manganese dioxide is the important component, the actual input is manganese ore.[49]
- For the final results, the Department should use the correct SV for manganese ore, which was manganese ore in HTS 2602.00 (manganese ores and concentrates).[50]

The petitioner's Comments:

- The Department properly valued the FOP as manganese dioxide and not manganese ore.[51]
- In both the *2014 Final Results*[52] and the *Preliminary Results*, the Department found that manganese dioxide, not manganese ore, was the FOP consumed by Changyuan.
- PAL fails to address that no data exist on the record that tie purity amounts of ore to the manganese dioxide used to produce potassium permanganate.[53]
- Manganese dioxide provides a more specific standard than manganese ore for determining the SV, and better corresponds to the Department's practice of using the best available information.[54] The value in the South African HTS for manganese ore does not provide an accurate SV for the ore purchased by Changyuan, because it does not account for quality.[55]
- PAL stated that Changyuan purchases manganese ore from several sources and of varying quality.[56] PAL did not provide amounts of specific grades used in the production of potassium permanganate.[57] There are no SVs for values of various grades of ore used by Changyuan.
- The South African HTS for manganese dioxide closely matches the manganese dioxide used by Changyuan.[58]

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46 *See* PAL's April 6, 2017 Letter to the Department (citing PAL's May 20, 2016, submission at Exhibit D-8).
47 *Id.*
48 *See* PAL's Case Brief at 16.
49 *Id.* at 17.
50 *Id.*
51 *See* the petitioner's Rebuttal Brief at 2.
52 *See Potassium Permanganate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014, 81 FR 58476 (August 25, 2016) and accompanying Issues and Decision Memorandum (*2014 Final Results*).
53 *Id.*
54 *Id.* at 3.
55 *Id.*
56 *Id.* at 5.
57 *Id.*
58 *Id.*

- It is the Department's practice, where possible, to select values that are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and tax exclusive.[59]

Department's Position: We agree with the petitioner, and have continued to value this input using HTS 2820.10.00, which pertains to manganese dioxide. We note that, at times in its submissions, PAL has referred to manganese ore and manganese dioxide synonymously;[60] however, a careful review of the record indicates that this input is, in fact, manganese dioxide.

First, PAL described the production process of potassium permanganate in the following manner: "The three step chemical reaction production process for making potassium permanganate by Changyuan begins by reacting manganese dioxide (MnO_2) obtained from manganese ore, potassium hydroxide and compressed air with heat to produce potassium manganate."[61] Moreover, in responding to the Department's questionnaires regarding its factors of production, PAL was required to address fully any distinctions in its inputs, *e.g.*, whether manganese ore or manganese dioxide was the input used by Changyuan.[62] Additionally, if Changyuan, PAL's supplier of potassium permanganate, started with unrefined manganese ore, it failed to describe a step in the production process where it converted manganese ore to manganese dioxide. Furthermore, and importantly, an examination of PAL's submissions indicates that it used manganese dioxide, instead of manganese ore, in calculating the FOP ratio for this input.[63] To calculate the FOP usage ratio for this input, PAL used the amount of manganese dioxide consumed as the numerator for the FOP ratio calculation, and did not use the amount of manganese ore consumed.

Moreover, PAL reported the manganese ores of various purities consumed by Changyuan, and reported the amount of manganese dioxide consumed by Changyuan.[64] The quantities and values of the ores and the magnesium dioxide tie to their accounting documents as manganese dioxide.[65] However, PAL did not use the amount of manganese ore consumed to calculate its FOP usage ratio, let alone the amount of manganese ore broken down by the various purities so that suitably specific SVs could have been appropriately applied. Furthermore, PAL reported its consumption of manganese dioxide as the main input in its FOP database.[66] It is our practice to rely on the reported consumption ratio unless we find it to be unreliable. Accordingly, we find the FOP consumed by Changyuan to be manganese dioxide, and have continued to value this FOP with the appropriate South African HTS number, 2820.10.00, described as "manganese dioxide."

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[59] *Id.* at 4; *see also*, *Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 11513 (March 4, 2016) and accompanying Issues and Decision Memorandum (*Activated Carbon*).
[60] *See* PAL's August 16, 2016, submission at Exhibit V-B-1 (referring to manganese ore in the cost reconciliation); PAL's May 23, 2016, submission at 33-34 (referring to manganese dioxide in various accounting records).
[61] *See* PAL's May 20, 2016, submission at D-5.
[62] *See* PAL's October 18, 2017, submission at 15.
[63] *See* PAL's May 20, 2016, submission at Exhibit FOP001, see also, PAL's August, 2016, submission at Exhibit SD-1 for the numerator in calculating the manganese dioxide FOP ratio.
[64] *See* PAL's August 16, 2016, submission at Exhibit SD-1 and Exhibit SD-3E.
[65] *Id.; see also,* PAL's August 16, 2016, submission at 33.
[66] *See* PAL's May 20, 2016, submission at Exhibit FOP001.

Comment VIII: Deduction of VAT

PAL's Comments:

- The Department erred in deducting VAT from the U.S. price in the *Preliminary Results*.[67]
- The VAT paid to suppliers as part of the purchase price, and the credit of VAT at export, are based on two different pools.[68]
- Under PRC law, potassium permanganate exports are not subject to VAT.[69] If potassium permanganate were subject to VAT, it would be based on the value, but PAL is a HK entity and not subject to PRC VAT.[70]
- The sales value of the subject merchandise, as reported in its U.S. sales database, does not include a VAT subject to the tax authority.[71]
- China rebates the VAT, but the rebated VAT is paid for inputs purchased for producing the exported merchandise, not the VAT collected from the buyer of the subject merchandise.[72]
- In the PRC, the cost of the merchandise is constructed by taking the input amounts and applying SVs and the amount of VAT included in the manufacturing cost is irrelevant to the dumping margin, which is determined by the FOPs and SVs.[73] Furthermore, there is no direct correlation between the sale price and the price in the PRC of domestic sales subject to VAT.[74]
- VAT is not an export tax, as defined by the antidumping law.[75] In *Chevron U.S.A.*, the court provided the standard which the Department must follow in administering a statute.[76]
- In *Dorbest*, the Court directed, "where the intent of Congress is clear from the language used in a governing statute, neither the agency interpreting the statute nor this court may interpret the statute in such a way as to deviate from Congress's intent."[77]
- VAT levied on inputs purchased domestically is not an export tax or other charge "imposed by the exporting country on the exportation of the subject merchandise to the United States."[78] VAT is not imposed on exports of finished goods.
- The Interim Regulations of the PRC state that, with respect to VAT, "for taxpayers that export goods, the tax rate shall be zero."[79]
- Any adjustment to VAT must be made to the FOB price.[80]

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[67] *See* PAL's Case Brief at 18.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.* at 19.
[73] *Id.* at 20.
[74] *Id.*
[75] *Id.*
[76] *See* PAL's Case Brief at 21(citing, *Chevron U.S.A. Inc. vs. Natural Resources Defense Council, Inc.,* 467 U.S. at 837 (1984)). (*Chevron U.S.A.*).
[77] *See* PAL's Case Brief at 22 (citing, *Dorbest v. United States*, 604 F. 3d 1363, 13711372 (Fed. Cir. 2010).
[78] *See* PAL's Case Brief at 22 citing 19 U.S.C. 1677(c)(2)(b).
[79] *See* PAL's Case Brief at 23.
[80] *Id.*

- To the extent that the Department adjusted the customs value in the *Preliminary Results*, it is impermissible, as the customs value is determined by a separate law.[81] Adjusting the customs value would be assessing antidumping duties on antidumping duties.[82]

The petitioner's Comments:
- PAL has not demonstrated why the Department should deviate from its policy of deducting unrecovered VAT from the U.S. price.[83]
- In accordance with section 772(c)(2)(B) of the Act, the Department is required to deduct from PAL's U.S. prices an amount for irrecoverable VAT.[84]
- The U.S. price is not a constructed number but, rather, it reflects the actual selling price produced using inputs on which VAT is paid.[85] This is a cost to PAL and should be reflected in the U.S. price and should be calculated on the basis of FOB value.[86]

Department's Position: We agree with the petitioner and PAL that the VAT adjustment should be on an FOB basis, consistent with Department practice.[87] As such, for the final results, we made certain adjustments to PAL's U.S. price to ensure it is on a FOB basis before adjusting for the irrecoverable VAT.[88]

The Department's practice in certain NME cases is to adjust the export price (EP), or the constructed export price (CEP), for the amount of any unrefunded VAT, in accordance with section 772(c)(2)(B) of the Act.[89] 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 a 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.[90] Where the irrecoverable VAT is a fixed percentage of EP, or CEP, 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.[91]

In a typical VAT system, companies incur no VAT expense; they receive, on export, a full rebate of the VAT which they pay on purchases of inputs used in the production of exports (input VAT), and, in the case of domestic sales, the company can credit the VAT they paid on input

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[81] *Id.* at 24.
[82] *Id.*
[83] *See* the petitioner's Rebuttal Brief at 5.
[84] *Id. see also*; Methodological Change for Implementation of Section 772(c)(B) of the Tariff Act of 1930, as Amended In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481 (June 19,2012).
[85] *See* the petitioner's Rebuttal Brief at 6.
[86] *Id.*
[87] *See Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Rail Tie Wire*) and accompanying Issues and Decisions Memorandum at Comment 1, footnote 35.
[88] *See* Final Analysis Memo.
[89] *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) (*Methodological Change*).
[90] *See Methodological Change*; *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.
[91] *Id.; Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014) (*FSVs*) and accompanying Issues and Decision Memorandum at Comment 5.

purchases for those sales against the VAT they collected from customers.[92] This typical model stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company paid on purchases of inputs used in the production of exports is not refunded.[93] Thus, this amounts to an export tax, duty, or other charge imposed on exported merchandise that is not imposed on domestic sales and we, accordingly, disagree with PAL's assertions that irrecoverable VAT should not be deducted from its U.S. price. Where the irrecoverable VAT is a fixed percentage of the U.S. price, the final step in arriving at a tax-neutral comparison of NV with EP, or CEP, is to reduce the U.S. price by this same percentage.[94]

Irrecoverable VAT is (1) the FOB value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.[95] The first variable, export value, is unique to each respondent and sale while the rates in (2) and (3), as well as the formula for determining the amount of irrecoverable VAT, are each explicitly set forth in the PRC's laws and regulations.[96] PAL cites the *Interim Regulations* for support that the tax rate on subject merchandise should be zero, however, nowhere in the documents on the record does PAL demonstrate that exporters of potassium permanganate should not be liable for VAT upon export of the merchandise, and PAL does not point to a specific exhibit number or page number where this information can be found on the record. To the contrary, the record makes clear that producers of potassium permanganate pay a 17 percent VAT on inputs and receive no refund of VAT upon exporting potassium permanganate.[97]

PAL's reliance on *Chevron* is misplaced. In *Chevron*, the United States Supreme Court held that "{w}hen a court reviews an agency's construction of the statute which it administers, it is confronted with two questions."[98] The Supreme Court explained that the first question is "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter … the agency must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue . . . the question for the court is whether the agency's answer is based on a permissible construction of the statute."[99] We disagree with PAL's argument that section 772(c)(2)(B) of the Act does not authorize the Department to deduct from EP, or CEP, amounts of VAT not refunded.

Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP, or CEP, the amount, if included in the price, of any "export tax, duty, or other charge imposed by the

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[92] *See*, *e.g.*, *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*Diamond Sawblades*) and accompanying Issues and Decision Memorandum at Comment 6; *Methodological Change*, 77 FR at 36483.
[93] *See*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016) and accompanying Issues and Decision Memorandum at Comment 3. *See also Methodological Change*, 77 FR at 36483.
[94] *See Methodological Change*, 77 FR at 36483.
[95] *See Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Rail Tie Wire*) and accompanying Issues and Decisions Memorandum at Comment 1, footnote 35.
[96] *See* PAL's May 6, 2016 submission at Exhibit C-5.
[97] See PAL's August 16, 2016 submission at 22.
[98] *See Chevron*, 467 U.S. 837, 842-43 (1984).
[99] *Id*. at 843.

exporting country on the exportation" of the subject merchandise.

PAL's argument that irrecoverable VAT is not an export tax, and that under section 772(c)(2)(B) of the Act, the Department cannot adjust for taxes that are not export taxes, has misstated the issue. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[100] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[101] The statute does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise, and, thus, PAL's argument that the statute is unambiguous, based on step one of the *Chevron* analysis, is unavailing. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost imposed by the government that arises as a result of the exportation of the subject merchandise. The irrecoverable VAT is set forth in PRC law and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise.[102] Here, although PAL is a HK entity, the subject merchandise was produced in and exported from, the PRC. Thus, the irrecoverable VAT is a cost imposed by the PRC government on the merchandise PAL sells to the United States that was produced in the PRC.[103] An adjustment for irrecoverable VAT achieves what is described under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral, net price received by the seller. This deduction applied to PAL's U.S. price is consistent with our longstanding policy, and consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[104]

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[100] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) (*Graphite Electrodes*) and accompanying Issues and Decision Memorandum at Comment 7.

[101] *See*, *e.g.*, *Diamond Sawblades* at Comment 6; *FSVs* at Comment 5.

[102] *See Graphite Electrodes* at Comment 7.

[103] *See Potassium Permanganate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014*, 81 FR 58746 (August 25, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum at comment IV.

[104] *See* PAL's July 5, 2016 submission at Exhibit S3-2, *Notice of the Ministry of Finance and the State Administration of Taxation on the Policies of Value-added Tax and Consumption Tax Applicable to Exported Goods and Services*, Cai Shui {2012} No.39 (May 25, 2012) at Article 5(3), which states, "Where the Tax Refund Rate is lower than the applicable tax rate, the amount of tax calculated according to the difference in rates shall be included in the costs of the Exported Goods and Services." *See also Methodological Change*, 77 FR at 36483; *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27369 (May 19, 1997) (citing the SAA).

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results of review and the final dumping margins in the *Federal Register*.

☒ ☐

Agree____________ Disagree____________

6/12/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

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Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance