
DEPARTMENT OF COMMERCE**International Trade Administration****[A-570-919]****Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 18, 2008.

SUMMARY: On March 26, 2008, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping ("AD") investigation of electrolytic manganese dioxide ("EMD") from the People's Republic of China ("PRC"). The period of investigation ("POI") is January 1, 2007, through June 30, 2007. We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculations for the mandatory respondent. We determine that EMD from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0414 or (202) 482-3434, respectively.

SUPPLEMENTARY INFORMATION:**Case History**

The Department published its preliminary determination of sales at LTFV on

March 26, 2008. *See Electrolytic Manganese Dioxide from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 15988 (March 26,

2008) (“*Preliminary Determination*”). Between April 21 and April 25, 2008, the Department conducted verification of Guizhou Redstar Developing Import and Export Company, Ltd. (“Redstar”). See Verification of the Sales and Factors Response of Redstar in the Antidumping Investigation of Electrolytic Manganese Dioxide from the People’s Republic of China, dated June 24, 2008 (“Redstar Verification Report”). See also the “Verification” section below for additional information.

We invited interested parties to comment on the *Preliminary Determination*. On May 22, 2008, multiple interested parties filed case briefs with respect to the scope of this AD and the concurrent countervailing duty (“CVD”) proceeding. On May 27, 2008, many of these same parties filed rebuttal comments regarding the scope of these two proceedings. In addition, on May 27, 2008, multiple interested parties filed case briefs with respect to issues specific to the AD proceeding. These same parties filed rebuttal briefs on June 2, 2008. The Department held two hearings on June 12, 2008, one solely related to the scope of the AD and CVD proceedings and the second to address issues related solely to the AD investigation.

Period of Investigation

The period of investigation (“POI”) is January 1, 2007, through June 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2007.¹

Scope of Investigation

The merchandise covered by this investigation 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 this investigation 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 this investigation is dispositive.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Redstar for use in our final determination. See the Redstar Verification Report on the record of this

investigation in the Central Records Unit (“CRU”), Room 1117 of the main Department building. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum for the Antidumping Duty Investigation of Electrolytic Manganese Dioxide from the People’s Republic of China, dated concurrently with this notice and, which is hereby adopted by this notice (“Issues and Decision Memorandum”). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file in the CRU, and is accessible on the Web at ia.ita.doc.gov/frn. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, we have made changes to the margin calculations for the final determination for all mandatory respondents.

General Issues

Based on an analysis of comments received, and the update of the PRC wage rate, the Department has made certain changes in the margin calculations. For the final determination, the Department has made the following changes with respect to Redstar:

- The Department is valuing the inputs manganese carbonate ore and manganese oxide ore using the publicly available price list from Manganese Ore India Ltd.’s (“MOIL”) website, and adjusting the value to account for the percentage of manganese content. See Electrolytic Manganese Dioxide from the People’s Republic of China: Surrogate Value Memorandum for the Final Determination (August 8, 2008) (“Surrogate Value Memo”); Issues and Decisions Memo at Comment 2.
- The Department is using the financial statements of MOIL to calculate the surrogate financial ratios. The Department is basing the overhead and profit on the EMD division of MOIL, and the selling,

general and administrative expenses ratio on the entire consolidated statements of MOIL. See Surrogate Value Memo; Issues and Decision Memorandum at Comment 3.

- The Department is valuing all steam used in the production of EMD, including that steam derived as a by-product from production of merchandise not under investigation. Electrolytic Manganese Dioxide from the People’s Republic of China: Analysis Memorandum for the Final Determination (August 8, 2008) (“Analysis Memo”); Issues and Decision Memorandum at Comment 4.
- The Department is using the Maharashtra Industrial Development Corporation (“MIDC”) updated water tariff schedule, effective June 1, 2007, to value water. See Surrogate Value Memo; Issues and Decision Memorandum at Comment 6.
- The Department is valuing Redstar’s coal using TERI data for grade C steam coal. See Surrogate Value Memo; Issues and Decision Memorandum at Comment 9.
- The Department is valuing labor using its revised labor rates published May 14, 2008. See Surrogate Value Memo; Issues and Decision Memorandum at Comment 10.
- The Department is including in its calculation of normal value (“NV”) the electricity consumed by lighting and appliances in Redstar’s workshops. See Analysis Memo; Issues and Decision Memorandum at Comment 11.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) it is a significant producer of comparable merchandise; (2) it is at a similar level of economic development comparable to that of the PRC; and (3) we have reliable data from India that we can use to value the factors of production. See *Preliminary Determination*. For the final determination, we received no comments and have made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving non-market-economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within

¹ See 19 CFR 351.204(b)(1).

the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *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).

In the *Preliminary Determination*, we found that Redstar demonstrated its eligibility for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by Redstar demonstrates both *de jure* and *de facto* absence of government control with respect to its exports of the merchandise under investigation, and therefore, Redstar is eligible for separate-rate status.

Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent

practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA)*, H.R. Rep. No. 103-316, Vol. 1 at 870 (1994).

For this final determination, in accordance with sections 773(c)(3)(A) and (B) of the Act and sections 776(a)(2)(A), (B) and (D) and 776(b) of the Act, we have determined that the use of adverse facts available ("AFA") is warranted for the PRC entity, as discussed below.

The PRC-Wide Rate

Because we begin with the presumption that all companies within an NME country are subject to government control and because only the company listed under the "Final Determination Margin" section below has overcome that presumption, we are applying a single antidumping rate - the PRC-wide rate - to all other exporters of subject merchandise from the PRC. *See, e.g., Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from Redstar.

In the *Preliminary Determination*, the Department found that the PRC-wide entity (including Xiangtan Electrochemical Scientific Ltd.) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, and otherwise impeded the proceeding. Therefore, in the *Preliminary Determination* we treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. No additional information was placed on the record with respect to these entities after the *Preliminary Determination*. In addition, because the PRC-wide entity did not provide the Department with the requested information, pursuant to section 776(a)(2)(A) and (C) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also*, SAA at 870. We have determined that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is warranted.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5554, 5568 (February 4, 2000); *see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*;

Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) (unchanged in the final results).

In the *Preliminary Determination*, we stated we used as AFA the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.² No parties commented

on the selection of the PRC-wide rate. In the instant investigation, as AFA for the final determination, we have assigned to the PRC-wide entity a margin of 149.92 percent, the highest calculated rate of any respondent in this proceeding, which is the calculated rate of the respondent Redstar. We determined that this information is the most appropriate from the available sources to effectuate the purposes of

AFA. Because the AFA rate for this investigation is a calculated rate from the respondent and is not based on secondary information, no corroboration is required within the meaning of section 776(c) of the Act.

Final Determination Margins

We determine that the following weighted-average percentage margin exists for the POI:

EXPORTER	PRODUCER	MARGIN
Guizhou Redstar Developing Import and Export Company, Ltd.	Guizhou Redstar Developing Dalong Manganese Industrial Co., Ltd.	149.92 %
PRC-Wide Entity		*149.92 %

* Xiangtan Electrochemical Scientific Ltd. is included in the PRC-wide entity

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all imports of subject merchandise entered or withdrawn from warehouse, for consumption on or after March 26, 2008, the date of publication of the *Preliminary Determination in the Federal Register*. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margins shown above. The suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC

determines that such injury does exist, the Department will issue an antidumping duty order and directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 8, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

Appendix

Comment 1: Valuation of Manganese

Ore as an Intermediate Input

Comment 2: Surrogate Value for Manganese Ore

Comment 3: Surrogate Financial Ratio Calculation

Comment 4: Steam Consumption

Comment 5: Electricity Inputs to Steam Production

Comment 6: Surrogate Value for Water

Comment 7: Surrogate Value Source for Truck Freight

Comment 8: Grinding Bars and Rings

Comment 9: Surrogate Value for Coal

Comment 10: Labor Wage Rate

Comment 11: Electricity used for Lighting and Appliances in Workshops
[FR Doc. E8-19099 Filed 8-15-08; 8:45 am]

BILLING CODE 3510-DS-S

² See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality*

Steel Products from the People's Republic of China, 65 FR 34660 (May 21, 2000), and accompanying

Issues and Decision Memorandum at "Facts Available."