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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-847]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a timely request by one manufacturer/exporter, Aquapharm Chemicals Pvt., Ltd. (Aquapharm), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on 1-hydroxyethylidene-1, 1–diphosphonic acid (HEDP) from India with respect to Aquapharm. The review covers the period April 1, 2010, through March 31, 2011. We preliminarily determine that Aquapharm did not make sales below normal value (NV).

If the preliminary results are adopted in our final results of the administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP).

FOR FURTHER INFORMATION CONTACT: David Goldberger or Brandon Custard, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-4136 or (202) 482-1823, respectively.

SUPPLEMENTARY INFORMATION:

Background

In response to a timely request by Aquapharm, on April 29, 2010, the Department published in the Federal Register a notice of initiation of an administrative review of the antidumping duty order on HEDP from India with respect to Aquapharm covering the period April 1, 2010, through March 31, 2011. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 76 FR 30912 (May 27, 2011).

On May 31, 2010, we issued the antidumping duty questionnaire to Aquapharm. On August 5, 2011, we received a response to section A (i.e., the section covering general information about the company), section B (i.e., the section covering comparison-market sales) and section C (i.e., the section covering U.S. sales) of the antidumping duty questionnaire from Aquapharm.

On September 19, 2011, we issued to Aquapharm a supplemental questionnaire regarding its responses to sections A, B, and C of the original questionnaire, and received a response to this supplemental questionnaire on October 12, 2011.

Scope of the Order

The merchandise covered by this order includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid[1], also referred to as hydroxethlylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809-21-4. The merchandise subject to this order is currently classified in the Harmonized Tariff

[1] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$

Schedule of the United States (HTSUS) at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this order is dispositive.

Period of Review

The period of review (POR) is April 1, 2010, through March 31, 2011.

Comparisons to Normal Value

To determine whether Aquapharm's sales of HEDP from India to the United States were made at less than NV, we compared the export price (EP) or constructed export price (CEP) to NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the EPs and CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade. See discussion below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Aquapharm covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared Aquapharm's U.S. sales of HEDP to its sales of HEDP made in the home market. Where there were no contemporaneous sales within the definition of 19 CFR 351.414(e)(2)(i), pursuant to 19 CFR 351.414(e)(2)(ii) and (iii), we compared sales within the contemporaneous window period, which extends from three months

prior to the month of the U.S. sale until two months after the sale. In making the product comparisons, we matched foreign like products based on their aqueous concentration. Aquapharm reported that, pursuant to section 771(16)(A) of the Act, all of its U.S. sales during the POR were identical based on the product matching criterion (i.e., aqueous concentration) to contemporaneous sales in the home market. Accordingly, in calculating Aquapharm's NV, we made product comparisons without having to account for cost differences associated with differences in the physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, we calculated EP for those sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. We based EP on the packed delivered price to unaffiliated purchasers in the United States. Where appropriate, pursuant to 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, U.S. brokerage and handling, international freight, U.S. inland freight to the customer, marine insurance, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees).

Pursuant to section 772(b) of the Act, we calculated CEP for those sales where the subject merchandise was first sold or agreed to be sold in the United States before or after the date of importation by or for the account of the producer or exporter or by a seller affiliated with

the producer or exporter, to a purchaser not affiliated with the producer or exporter. We based CEP on the packed ex-U.S. warehouse prices to unaffiliated purchasers in the United States. Where appropriate, pursuant to 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, U.S. brokerage and handling, international freight (inclusive of U.S. port to U.S. warehouse transportation), marine insurance, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (i.e., credit expenses, commissions, and bank charges), and indirect selling expenses (including inventory carrying costs). We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act. In accordance with sections 772(f)(1) and (f)(2)(C)(iii) of the Act, we calculated the CEP profit percentage using information from Aquapharm's audited financial statement. See Memorandum entitled "Aquapharm Preliminary Results Margin Calculation," dated contemporaneously with this notice, for further discussion of the CEP profit calculation.

Normal Value

A. Home Market Viability and Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the

foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), Aquapharm had a viable home market during the POR. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales of the foreign like product at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stages of marketing. See id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997) (Plate from South Africa). To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e., the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison-market sales (i.e., where NV is based on either home market or third country prices),[2] we consider the starting prices before any adjustments. For CEP sales, we consider

[2] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative expenses, and

only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See Micron Tech., Inc. v. United States, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001). When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See Plate from South Africa, 62 FR at 61732-33.

In this administrative review, we obtained information from Aquapharm regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by Aquapharm for each channel of distribution.

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profit for CV, where possible. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 47081 (August 4, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004).

Aquapharm reported that during the POR it sold HEDP to end-users, distributors, and end-users/distributors through three channels of distribution in the United States, and to end-users and traders through two channels of distribution in the home market.

Aquapharm made CEP sales in the U.S. market through one channel of distribution: sales through an unaffiliated U.S. selling agent to unaffiliated U.S. distributors/end-users of HEDP maintained in inventory at an unaffiliated U.S. warehouse (Channel 1). In addition, Aquapharm made EP sales in the U.S. market through two channels of distribution: direct sales/shipments to unaffiliated U.S. end-users (Channel 2); and direct sales/shipments to unaffiliated U.S. distributors (Channel 3).

We examined the selling activities performed for the three U.S. sales channels and found that Aquapharm performed the following selling functions for each channel: sales forecasting, order input/processing, direct sales personnel, packing, freight and delivery services, inventory maintenance, technical assistance, payment of commissions, warranty service, and provision of guarantees. These selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery; (3) warehousing and inventory; and (4) warranty and technical support. Accordingly, based on the four selling function categories, we find that Aquapharm performed primarily sales and marketing, freight and delivery services, and warranty and technical services for U.S. sales. Although Aquapharm performed additional freight and delivery functions (such as repacking) and warehousing functions for its U.S. sales through Channel 1, we do not find that these selling functions constitute a substantial difference in selling functions which are significant enough to warrant a separate LOT in the U.S. market. As explained in the Department's regulations at 19 CFR

351.412(c)(2), "{s}ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing." Therefore, we preliminarily determine that there is one LOT in the U.S. market because Aquapharm performed essentially the same selling functions for all U.S. sales.

With respect to the home market, Aquapharm made sales through the following channels of distribution: (1) sales to unaffiliated end-users (Channel 1); and (2) sales to unaffiliated traders (Channel 2). We examined the selling activities performed for each home market sales channel and found that Aquapharm performed the following selling functions for sales made through both channels: sales forecasting, sales promotion, distributor/dealer training, order input/processing, direct sales personnel, sales/marketing support, market research, packing, freight and delivery services, inventory maintenance, technical assistance, warranty service, and provision of guarantees. Accordingly, based on the four selling function categories described above, we find that Aquapharm performed primarily sales and marketing, freight and delivery services, and warranty and technical services for home market sales. Moreover, we did not find any significant distinctions between the selling functions Aquapharm performed for each home market channel to warrant a separate LOT in the home market. Therefore, we preliminarily determine that there is one LOT in the home market because Aquapharm performed essentially the same selling functions for all home market sales.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for home market sales are either performed at the same degree of intensity as, or vary only slightly from, the selling functions performed for U.S. sales. Specifically, we found that with respect to the four selling function categories, there are only slight differences in

the level of intensity between the home and U.S. markets, and have preliminarily determined that these slight differences do not provide a sufficient basis to find separate LOTs between the two markets. Therefore, we find that the single home market LOT and single U.S. LOT are the same and, as a result, no LOT adjustment or CEP offset is warranted. Accordingly, we matched U.S. and home market sales at the same LOT.

C. Calculation of Normal Value Based on Comparison-Market Prices

We based NV for Aquapharm on delivered prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for discounts, inland freight expenses and inland insurance expenses, under section 773(a)(6)(B)(ii) of the Act. Where appropriate, we also added freight and insurance revenue to the starting price, and capped it by the amount of freight and insurance expenses incurred, in accordance with our practice. See, e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part, 74 FR 44819 (August 31, 2009), and accompanying Issues and Decision Memorandum at Comment 7.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments for imputed credit expenses and bank charges. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: (1) the amount of the commission paid in the U.S. market; or (2) the amount of the indirect selling

expenses incurred in the comparison market. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for Aquapharm for the period April 1, 2010, through March 31, 2011:

Manufacturer/Exporter	Percent Margin
Aquapharm Chemicals Pvt., Ltd.	0.00

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room 1870,

within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue appropriate appraisement instructions for the company subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Where Aquapharm reported entered value for its U.S. sales, we will calculate importer-specific ad valorem duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

Where Aquapharm did not report entered value for its U.S. sales, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are de minimis, in accordance with the

requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific ad valorem ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above de minimis (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is de minimis (i.e., less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediary involved in the transaction. See Assessment Policy Notice for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the

Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.10 percent, the all-others rate made effective by the LTFV investigation. See 1–Hydroxyethylidene–1, 1– Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value, 74 FR 10543 (March 11, 2009). These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Paul Piquado
Assistant Secretary
for Import Administration

December 11, 2011
(Date)

[FR Doc. 2011-32262 Filed 12/15/2011 at 8:45 am; Publication Date: 12/16/2011]