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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2010 to 2011 Administrative Review of the Antidumping Duty
Order on Purified Carboxymethylcellulose from Finland

I Summary

We have analyzed the case and rebuttal briefs of interested parties in this administrative review of the antidumping duty order on purified carboxymethylcellulose from Finland. We recommend you approve the conclusions described in the "Discussion of Interested Party Comments" section of this memorandum. The issues for which we received comments are listed below.

II. Background

On August 7, 2012, the Department of Commerce (the Department) published the Preliminary Results of the 2010-2011 administrative review of the antidumping duty order on Purified Carboxymethylcellulose from Finland.¹ This review covers one respondent, CP Kelco Oy and CP Kelco, Inc. (collectively CP Kelco). The petitioner in this proceeding is the Aqualon Company, a division of Hercules Incorporated (Petitioner). We invited parties to comment on the Preliminary Results. In response, we received a case brief from Petitioner on September 6, 2012.² CP Kelco filed a rebuttal brief on September 11, 2012.³

On December 21, 2012, we completed a post-preliminary targeted dumping analysis and preliminarily determined that a pattern of constructed export prices for comparable merchandise

¹ See Purified Carboxymethylcellulose from Finland: Notice of Preliminary Results of Antidumping Duty Administrative Review, 77 FR 47036 (August 7, 2012) (Preliminary Results).

² See Case Brief of Petitioner Aqualon Company, dated September 6, 2012 (Petitioner's Case Brief).

³ See Purified Carboxymethylcellulose from Finland; Rebuttal Brief, dated September 11, 2012 (CP Kelco's Rebuttal Brief).

that differ significantly among customers and time periods exists for CP Kelco.⁴ We invited parties to submit comments by January 2, 2013, and rebuttal comments by January 3, 2013. We subsequently extended the deadlines for comments and rebuttal comments to January 3, 2013, and January 8, 2013, respectively.⁵ We received comments from Petitioner on January 2, 2013.⁶ CP Kelco filed comments of on January 3, 2012.⁷ CP Kelco and Petitioner both filed rebuttal comments on January 8, 2013.⁸

III. Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

IV. Discussion of Interested Party Comments

Issue 1: Authority to Conduct a Targeted Dumping Analysis and Apply an Alternative Methodology

Petitioner continues to allege targeted dumping, and argues that there are patterns of export prices and constructed export prices for comparable merchandise which differ significantly among purchasers, time periods, and regions. Petitioner argues these patterns of

⁴ See Memorandum through Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Lynn Fischer Fox, Deputy Assistant Secretary for Policy and Negotiations, regarding "Antidumping Duty Administrative Review of Purified Carboxymethylcellulose (CMC) from Finland: Post-Preliminary Targeted Dumping Analysis Memorandum" dated December 21, 2012; see also Memorandum from Tyler Weinhold to the file regarding "Preliminary Results of the 2010-2011 Administrative Review of Purified Carboxymethylcellulose (CMC) from Finland: Post-Preliminary Margin Recalculations, Analysis of Data Submitted by CP Kelco Oy and CP Kelco U.S. Inc. (collectively, CP Kelco)," dated December 26, 2012 (Post Preliminary Calculation Memorandum).

⁵ See Memorandum from Tyler Weinhold to the file regarding "Purified Carboxymethylcellulose (CMC) from Finland, 2011 to 2012 Administrative Review Extension of Time Limits for Filing Comments and Rebuttal Comments," dated January 2, 2013 (Post-Preliminary Memorandum).

⁶ See Letter from Petitioners regarding "Purified Carboxymethylcellulose from Finland; Comments of Petitioner Aqualon Company on Post-Preliminary Targeted Dumping Analysis Memorandum," dated January 2, 2013 (Petitioner's Comments).

⁷ See Letter from CP Kelco regarding "Purified Carboxymethylcellulose from Finland; Comments on Post-Preliminary Analysis," dated January 3, 2013 (CP Kelco's Comments).

⁸ See Letter from Petitioners regarding "Purified Carboxymethylcellulose from Finland; Aqualon Company's Rebuttal to CP Kelco's Comments on Post-Preliminary Analysis," dated January 2, 2013 (Petitioner's Rebuttal Comments) and Letter from CP Kelco regarding "Purified Carboxymethylcellulose from Finland: Post Preliminary Analysis Rebuttal Comments," dated January 2, 2013 (CP Kelco's Rebuttal Comments).

pricing differences cannot be accounted for by the average-to-average margin calculation method, but can be accounted for by applying the average-to-transaction method.⁹ Petitioner claims it has provided a sufficient factual basis for its targeted dumping allegation, and that the pricing patterns identified cannot be explained by other factors.¹⁰ Citing Final Modification for Reviews,¹¹ section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.414(c)(1), Petitioner supports the Department's application of a targeted dumping analysis in the post-preliminary analysis and the Department's application of an alternative average-to-transaction methodology without offsets for non-dumped sales.

Petitioner argues the Department has the authority, under section 777A(d)(1)(B), to conduct such an analysis, and where the Department's normal comparison methodology cannot account for price differences resulting from targeted dumping, to apply an alternative methodology which can account for such price differences.¹² Citing Ball Bearings and Parts Thereof from France, Germany, and Italy,¹³ Petitioner further argues the Department has already determined that in reviews, as in investigations, it has the discretion to use the average-to-transaction methodology with zeroing and that the exercise of that discretion is consistent with its international obligations.¹⁴

CP Kelco argues that, in Petitioner's Case Brief, Petitioner does not point to a source of statutory authority that would allow the Department to apply an average-to-transaction comparison method.¹⁵ CP Kelco also adopts by reference its argument, prior to the Preliminary Results, that Petitioner's targeted dumping allegation is untimely.

In its comments on the Department's post-preliminary analysis memorandum, CP Kelco argues that the Department's targeted dumping analysis and its application is contrary to law, because the relevant subsection of the statute which deals with targeted dumping clearly limits such analysis to investigations and not administrative reviews.¹⁶ Thus, CP Kelco claims, statutory authority does not exist for applying the targeted dumping exception provided in section 777A(d)(1)(B) to administrative reviews. CP Kelco argues the targeting dumping authority granted in section 777A(d)(1)(B) applies only to investigations. CP Kelco insists that, unlike the immediately preceding sections of the Act, section 777A(d)(1) refers only to investigations, and makes no reference to administrative reviews. CP Kelco argues that sections 777A(a) and 777A(c) make explicit that they apply to both investigations and administrative reviews, while section 777A(b) deals with selection methods that may be used under section 777A(a), and is therefore also applicable to investigations and reviews. CP Kelco insists,

⁹ See Petitioner's Case Brief at 1-2; Petitioner's Comments at 1.

¹⁰ See Petitioner's Comments at 2.

¹¹ See 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).

¹² See Petitioner's Rebuttal Comments at 1 and 2.

¹³ See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 73415 (December 10, 2012) (Ball Bearings), and accompanying Issues and Decision Memorandum at Comment. 1.

¹⁴ See Petitioner's Comments at 2.

¹⁵ See CP Kelco's Rebuttal Brief at 2.

¹⁶ See section 777A(d)(1)(B) of the Act.

however, that section 777A(d) is broken into two subparts, (d)(1) and (d)(2), the former explicitly referencing investigations and the latter explicitly referencing administrative reviews. CP Kelco argues that this demonstrates that Congress expressly withheld from the Department the authority to use the targeted dumping exception detailed in subsection section 777A(d)(1)(B)(i) in administrative reviews.¹⁷

Citing Nken v. Holder,¹⁸ Keene v. United States,¹⁹ Bates v. United States,²⁰ Lindh v. Murphy,²¹ and Hamdan v. Rumsfeld,²² CP Kelco insists “it is a well-established canon of statutory construction that ‘where Congress includes particular language in one section of a statute but omits it in another section of the same statute, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion.’”²³ Citing Marine Harvest (Chile) S.A. v. United States,²⁴ CP Kelco argues that the Department cannot create the authority to apply targeted dumping because no such authority has been explicitly or implicitly granted.²⁵ Citing FAG Italia S.p.A. v. United States,²⁶ CP Kelco insists that the Department cannot appropriate authority given to it in one aspect of its duties and use that authority in other areas by applying the targeted dumping provision for investigations in administrative reviews.²⁷

Petitioner contends that CP Kelco’s arguments have already been rejected by the Department in Ball Bearings and in the Post-Preliminary Memorandum in the instant review. Petitioner claims the Department has expressly and definitively held that it has the authority to conduct a targeted dumping analysis in administrative reviews, as in investigations.²⁸

Department’s Position:

We continue to find that patterns of export prices and constructed export prices for comparable merchandise that differ significantly among time periods and customers does exist. Further, we find that the average-to-average method cannot account for the observed price differences, and thus, we have used the average-to-transaction method to calculate CP Kelco’s weighted-average dumping margin.²⁹ This position is consistent with 19 CFR 351.414(c)(1) and our determinations in several recently completed administrative reviews.³⁰

¹⁷ See CP Kelco’s Comments at 1-2; CP Kelco’s Rebuttal Brief at 1 to 5.

¹⁸ See Nken v. Holder, 556 U.S. 418, 430 (2009).

¹⁹ See Keene v. United States, 508 U.S. 200 (1993).

²⁰ See Bates v. United States, 522 U.S. 23 (1997).

²¹ See Lindh v. Murphy, 521 U.S. 320 (1997).

²² See Hamdan v. Rumsfeld, 548 U.S. 557, 578 (2006).

²³ See CP Kelco’s Rebuttal Brief at 2-3, quoting Hamdan v. Rumsfeld, 548 U.S. at 578.

²⁴ See Marine Harvest (Chile) S.A. v. United States, 244 F. Supp. 2d 1364, 1379 (Ct. Int’l Trade 2002) and CP Kelco’s Rebuttal Brief at 5.

²⁵ See CP Kelco’s Rebuttal Brief at 5.

²⁶ See FAG Italia S.p.A. v. United States, 291 F.3d 806 (Fed. Cir. 2002).

²⁷ See CP Kelco’s Comments at 2.

²⁸ See Petitioner’s Rebuttal Comments at 1-2.

²⁹ See Memorandum from Tyler Weinhold to the File, Regarding “Final Results of the 2010-2011 Administrative Review of Purified Carboxymethylcellulose (CMC) from Finland: Analysis of Data Submitted by CP Kelco Oy and CP Kelco U.S. Inc. (collectively, CP Kelco),” dated February 5, 2013 (Calculation Memorandum) at 2.

³⁰ See e.g., See Circular Welded Carbon Steel Pipes and Tubes From Turkey; Final Results of Antidumping Duty Administrative Review; 2010 to 2011, 77 FR 72818 (December 6, 2012), and accompanying Issues and

Petitioner submitted a timely allegation of targeted dumping prior to the Preliminary Results.³¹ Petitioner asserted that there are patterns of U.S. sales prices for comparable merchandise that differ significantly among customers, time periods (quarters), and regions (U.S. Census regions and divisions). As a consequence, Petitioner requested that the Department employ an alternative comparison method to calculate CP Kelco's weighted-average dumping margin, comparing individual U.S. transaction prices to normal values based on weighted-averages of comparison market sales prices.

CP Kelco claims that the Department does not have the statutory authority in administrative reviews to conduct a targeted dumping analysis or to employ an alternative comparison method based on a targeted dumping allegation. We disagree. Section 771(35)(A) of Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The definition of "dumping margin" calls for a comparison of normal value and export price or constructed export price. Before making the comparison called for, it is necessary to determine how to make the comparison. Thus, CP Kelco's reliance on FAG Italia S.p.A. v. United States is misplaced, because here it is necessary to calculate a dumping margin based on a comparison; the statute is simply silent in how the Department may make that comparison in administrative reviews.

Section 777A(d)(1) of the Act describes three methods by which the Department may compare normal value and export price (or constructed export price) and places certain restrictions on the Department's selection of a comparison method in investigations. Contrary to CP Kelco's argument, the statute places no such restrictions on the Department's selection of a comparison method in administrative reviews. 19 CFR 351.414 describes the methods by which normal value may be compared to export price or constructed export price in administrative reviews: average-to-average, transaction-to-transaction, and average-to-transaction. These comparison methods are distinct from each other. When using transaction-to-transaction or average-to-transaction comparisons, a comparison is made for each export transaction to the United States. When using average-to-average comparisons, a comparison is made for each group of comparable export transactions for which the export prices or constructed export prices have been averaged together (*i.e.*, for an averaging group). 19 CFR 351.414(c)(1) fills the silence in the statute on the choice of comparison method in the context of administrative reviews. In particular, the Department has determined that in both investigations and administrative reviews, the average-to-average method will be used "unless the Secretary determines another method is appropriate in a particular case."

The Act, the statement of administrative action (SAA), and the Department's regulations do not address directly whether the Department should use an alternative comparison method in

Decision Memorandum at Comment 1 (Pipe from Turkey); Ball Bearings and accompanying Issues and Decision Memorandum at Comment 1; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 3396 (January 16, 2013) (Tapered Roller Bearings), and accompanying Issues and Decision Memorandum at Comment 1.

³¹ See Letter from Petitioners to John Bryson, Secretary of Commerce, entitled "Purified Carboxymethylcellulose from Finland; Targeted Dumping Allegation of Petitioner Aqualon Company, dated May 25, 2012 (Petitioner's Targeted Dumping Allegation).

an administrative reviews, based upon a targeted dumping analysis conducted pursuant to section 777A(d)(1)(B) of the Act.³² In light of the statute's silence on this issue, the Department recently indicated that it would consider whether to use an alternative comparison method in administrative reviews on a case-by-case basis, but declined to "speculate as to either the case-specific circumstances that would warrant the use of an alternative methodology in future reviews, or what type of alternative methodology might be employed."³³ At that time, the Department also indicated that it would look to practices employed by the agency in investigations for guidance on this issue.³⁴

In antidumping (AD) investigations, the Department examines whether to use an average-to-transaction method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act:

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if:

- (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an administrative review, the Department nevertheless finds the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in AD investigations. Accordingly, the Department finds the analysis that has been used in AD investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

The Statement of Administrative Action, attached to H.R. Doc. No. 103-316, vol. I (1994), reprinted in 1994 U.S.C.C.A.N. 3373, 4163 (SAA) does not direct the Department to conduct targeted dumping analyses in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that the Department may use in investigations. That provision, however, is silent on the question of choosing a comparison method in administrative reviews. Section 777A(d)(1)(A) of the Act does not require, or prohibit, the Department from adopting a similar or a different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states "section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods." Like

³² See section 777A(d)(1)(B) of the Act, SAA at 842-43, and 19 CFR 351.414.

³³ See Final Modification for Reviews.

³⁴ Id. at 8102.

the statute, the SAA does not limit the proceedings in which the Department may undertake such an examination.

We disagree with CP Kelco that the silence of the statute with regards to application of an alternative comparison methodology in administrative reviews precludes the Department from applying such a practice. Indeed, the court has stated that the court “must, as we do, defer to Commerce’s reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency’s generally conferred authority and other statutory circumstances.”³⁵ Further, the Court of Appeals for the Federal Circuit has stated that this “silence has been interpreted as ‘an invitation’ for an agency administering unfair trade law to ‘perform its duties in the way it believes most suitable’ and courts will uphold these decisions ‘{s}o long as the {agency}’s analysis does not violate any statute and is not otherwise arbitrary and capricious.”³⁶ We find that the above discussion of the extension of the statute with respect to investigations is a logical, reasonable and deliberative method to fill the silence with regard to administrative reviews.

Concerning CP Kelco’s argument that Petitioner’s targeted dumping allegation was untimely, we disagree. Neither section 777A(d)(1)(B) of the Act nor the SAA provide any deadline as to when an interested party must file a targeted dumping allegation in either an investigation or an administrative review.³⁷ Moreover, when the Department announced that it would consider whether to use an alternative comparison method in administrative reviews on a case-by-case basis, the announcement contained no guidelines on the filing of a request to apply an alternative comparison method.³⁸ As stated in the Preliminary Results, even if we apply the deadline in AD investigations for targeted dumping allegations, *i.e.*, 45 days before the date of the preliminary determination, Petitioner’s allegation would be timely.³⁹ For these reasons, the Department finds that Petitioner’s allegation was timely filed.

Issue 2: The Department’s Choice of a Targeted Dumping Analysis Methodology

CP Kelco claims that the Department’s targeted dumping analysis method is arbitrary and unsupported by the record in this review.⁴⁰ CP Kelco argues that, instead of examining the specific facts of the instant case, the Department mechanically applied the test developed in Nails (the Nails test).⁴¹ CP Kelco argues, however, that when the Department withdrew the

³⁵ See U.S. Steel Corp. v. United States, 621 F.3d 1351, 1357 (Fed. Cir. 2010).

³⁶ See Mid Continent Nail Corp. v. United States, 712 F. Supp. 2d 1370, 1376 (CIT 2010) (Mid Continent Nail) citing U.S. Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996).

³⁷ See SAA at 842-43.

³⁸ See Final Modification for Reviews.

³⁹ See Preliminary Results, 77 FR at 47038.

⁴⁰ See CP Kelco’s Rebuttal Comments at 2.

⁴¹ See Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) (Nails from the PRC) and Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) (Nails from the United Arab Emirates) (collectively, Nails), as modified in more recent investigations, *e.g.*, Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) (Multilayered Wood Flooring); see also Mid Continent Nail.

previous regulation dealing with targeted dumping in 2008, the Department explicitly stated that it was “returning to a case-by-case adjudication.”⁴² CP Kelco insists that the Department should have specifically analyzed the facts of the instant case, rather than applying the Nails test without explaining why such test is appropriate, and, in doing so, made a decision that is unsupported by substantial evidence and not in accordance with law.⁴³

As part of that assessment, CP Kelco argues that the Department should apply a de minimis analysis and find that any targeted dumping that occurred was minimal and insufficient to meet the standard. Thus, even if some sales pass the test to determine that there is targeted dumping, this does not necessarily mean that there is a pattern of prices that differ significantly among purchasers, regions, or time periods. Rather, if certain sales pass the test, the Department then must determine what number of sales is sufficient to qualify as a pattern, as the Department did in Ball Bearings. In this case, the Department did not discuss why the percentage of CP Kelco’s sales was sufficient to find targeted dumping.⁴⁴

CP Kelco also argues that the Nails test is arbitrary and unsupported by substantial evidence as applied in this review, because the Department does not provide any explanation for how the test was derived or why, for instance, one standard deviation is an acceptable metric by which to measure differences in prices in the first step of the test, as opposed to two, or even three, deviations are a more rigorous measure of a statistically significant difference. Also, the percentage thresholds used by the Department are stated without any explanation or rationale.⁴⁵

However, Petitioner argues that it is the Department's established practice to use one standard deviation to find patterns of price differences in targeted dumping inquiries (among other test the Department uses), and that this practice is a reasonable and accurate way to unmask targeted dumping.⁴⁶

Department’s Position:

We have determined that it is appropriate to apply the targeted dumping analysis adopted for use in investigations in Nails, as modified in more recent investigations, in this administrative review.⁴⁷ This is consistent with our determinations in several recently completed administrative reviews.⁴⁸

In recent AD investigations and administrative reviews where the Department has addressed targeted dumping allegations, the Department has employed the Nails test for each respondent subject to an allegation to determine whether a pattern of export prices or constructed export prices for comparable merchandise that differ significantly among purchasers, regions or time periods existed within the U.S. market. The Nails test involves a two-step process, as

⁴² See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 FR 74930, 74931 (Dec. 10, 2008).

⁴³ See CP Kelco’s Rebuttal Comments at 2.

⁴⁴ Id. at 3-4.

⁴⁵ Id. at 4-5.

⁴⁶ See Petitioner’s Comments at 2.

⁴⁷ See Nails and Multilayered Wood Flooring.

⁴⁸ See e.g., Ball Bearings and Tapered Roller Bearings.

described below, that determines whether the Department should consider whether the average-to-average method is appropriate in a particular situation.

In the first stage of the test, the “standard-deviation test,” we determined the volume of the allegedly targeted group’s (i.e., purchaser, region or time period) sales of subject merchandise that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. We calculated the standard deviation on a product-specific basis (i.e., by control number or CONNUM) using the weighted-average prices for the allegedly targeted group and the groups not alleged to have been targeted. If that volume did not exceed 33 percent of the total volume of the respondent’s sales of subject merchandise for the allegedly targeted group, then we did not conduct the second stage of the Nails test. If that volume exceeded 33 percent of the total volume of the respondent’s sales of subject merchandise for the allegedly targeted group, on the other hand, then we proceeded to the second stage of the Nails test.

In the second stage, the “gap test,” we examined all sales of identical merchandise (i.e., by CONNUM) sold to the allegedly targeted group which passed the standard-deviation test. From those sales, we determined the total volume of sales for which the difference between the weighted-average price of sales for the allegedly targeted group and the next higher weighted-average price of sales for a non-targeted groups exceeds the average price gap (weighted by sales volume) between the non-targeted groups. We weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. In doing this analysis, the allegedly targeted group’s sales were not included in the non-targeted groups; the allegedly targeted group’s weighted-average price was compared only to the weighted-average prices for the non-targeted groups. If the volume of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the allegedly targeted group, then we determined that targeting occurred and these sales passed the Nails test.

As explained in the post-preliminary analysis, if the Department determined that a sufficient volume of U.S. sales were found to have passed the Nails test, then the Department considered whether the average-to-average method could take into account the observed price differences. To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using the average-to-transaction method. Where there is a meaningful difference between the results of the average-to-average method and the average-to-transaction method, the average-to-average method would not be able to take into account the observed price differences, and the average-to-transaction method would be used to calculate the weighted-average margin of dumping for the respondent in question. Where there is not a meaningful difference in the results, the average-to-average method would be able to take into account the observed price differences, and the average-to-average method would be used to calculate the weighted-average dumping margin for the respondent in question.

Contrary to CP Kelco’s argument, the Department did not “mechanically” apply the Nails test; as detailed in the post-preliminary analysis memorandum, the Department considered the

facts on the record in making its determination.⁴⁹ We applied the Nails test as a reasonable method of determining whether targeted dumping exists in this review, consistent with our approach in several other recent administrative reviews. Concerning CP Kelco's argument that the Department has not explained why the Nails test is an appropriate method, we note that the Department has repeatedly explained the use of this test,⁵⁰ and that the U.S. Court of International Trade has affirmed the *Nails* test as reasonable.⁵¹ In addition, as discussed above, because the Act does not specify how the Department should determine whether the two conditions—a pattern of sales and significant differences between the sales—for using the average-to-transaction comparison method are satisfied, it was appropriate for the Department to develop a method to make this two-step determination.

Concerning CP Kelco's argument that the Department should apply a de minimis threshold and find that CP Kelco's targeted sales were de minimis, we note that the percentage of sales by quantity which was found to be targeted in this case is far too high to be considered de minimis, and so CP Kelco's argument is not relevant in the context of this case.⁵² Concerning CP Kelco's reference to the Department's use of one standard deviation, the Department has determined the one-standard-deviation threshold to be a distinct and reasonable bright line to quantitatively measure significant price differences.⁵³ Further, the U.S. Court of International Trade has affirmed the Department's use of the standard deviation test as part of the Nails test.⁵⁴ In addition, in this case, CP Kelco's volume of sales was sufficient to establish a pattern under the Nails test.⁵⁵

We separately determined that the quantity and value of targeted sales found using the Nails test was significant. We explained in Post Preliminary Calculation Memorandum that we found a significant quantity of targeted dumping and identified the quantity of targeted dumping found.⁵⁶ Likewise, in the Final Calculation Memorandum, we explain that we found a significant quantity of targeted dumping and identified the quantity of targeted dumping found.⁵⁷ Finally, we determined that the average-to-average methodology could not take the price differences into account and that the use of the average-to-transaction methodology was required to unmask targeted dumping.⁵⁸

Issue 3: Region vs. Region and Division Targeted Dumping Analysis

In Petitioner's Targeted Dumping Allegation, Petitioner alleged that targeted dumping existed for certain U.S. Census Divisions and for certain U.S. Census Regions. U.S. Census

⁴⁹ See Post-Preliminary Analysis Memorandum at 2-4; Final Modification for Reviews, 77 FR at 8107.

⁵⁰ See Ball Bearings, and accompanying Issues and Decision Memorandum at Comment 1.

⁵¹ See Mid-Continent Nail, 712 F. Supp. 2d at 1380.

⁵² The percentage of sales by quantity is business proprietary, and is contained in the Final Results of the 2010-2011 Administrative Review of Purified Carboxymethylcellulose (CMC) from Finland: Analysis of Data Submitted by CP Kelco Oy and CP Kelco U.S. Inc. (collectively, CP Kelco).

⁵³ See Tapered Roller Bearings, and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁴ See Mid-Continent Nail, 712 F. Supp. 2d at 1377.

⁵⁵ See Post-Preliminary Analysis Calculation Memorandum.

⁵⁶ See Post Preliminary Calculation Memo at 2.

⁵⁷ See Calculation Memorandum at 2.

⁵⁸ Id.

