

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
2004-2006 Administrative Review of Purified  
carboxymethylcellulose from Finland.

SUMMARY:

We have analyzed the comments and rebuttal comments of interested parties in the 2004 to 2006 administrative review of the antidumping duty order covering Carboxymethylcellulose (CMC) from Finland. In addition, we have made certain changes to our margin calculation program since the Preliminary Results to address certain programming errors. These errors and the programming changes made to correct these errors are discussed in the Memorandum to the File "Analysis of Data Submitted by Noviant Oy and CP Kelco Oy (collectively, CP Kelco)" in the Final Results of the 2004-2006 Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from Finland: December 27, 2004, through June 30, 2006, dated December 3, 2007 (Final Analysis Memorandum). We recommend that you approve the positions described in the "Discussion of The Issues" section of this Issues and Decision Memorandum.

Below is the complete list of the issues in this administrative review for which we received comments by parties:

**Issue 1: Amortization of Goodwill**

**Issue 2: Zeroing of Non-Dumping Margins**

**BACKGROUND:**

On August 7, 2007, the Department published the preliminary results of administrative review of the antidumping duty order covering CMC From Finland. See Purified Carboxymethylcellulose from Finland; Notice of Preliminary Determination of Antidumping Duty Administrative Review, 72 FR 44106 (August 7, 2007) (Preliminary Results). The merchandise covered by this order is purified carboxymethylcellulose from Finland, as described in the “Scope of the Order” section of the Federal Register notice. The period of review (POR) is December 27, 2004 through June 30, 2006. This review covers CP Kelco Oy, Noviant Oy, Noviant Inc., and CP Kelco U.S., Inc. (collectively, CP Kelco).

In the Preliminary Results we invited parties to comment. In response, the Department received a case brief from CP Kelco on September 10, 2007. See Letter from CP Kelco dated September 10, 2007 (CP Kelco’s Case Brief). The Aqualon Company, a division of Hercules, Incorporated (Petitioner), submitted a Letter in Lieu of Case Brief on September 10, 2007. See Letter from Edward Lebow to Tyler Weinhold and Robert James Regarding Carboxymethylcellulose from Finland; Demonstration of Programming Errors in Lieu of Case Brief, dated September 10, 2007. Petitioner submitted a rebuttal brief on September 17, 2007 (Petitioner’s Rebuttal Brief). At CP Kelco’s request, the Department held a public hearing on September 26, 2007.

**DISCUSSION OF THE ISSUES:**

**Issue 1: Amortization of Goodwill**

In the financial statements which cover the POR, CP Kelco Oy amortized goodwill. CP Kelco argues that in the Preliminary Results, the Department should not have included goodwill expenses in CP Kelco’s general and administrative (G&A) expenses. CP Kelco states that the Act requires the Department to calculate costs based on the normal books and records of the exporter or producer, if those records are maintained in accordance with the generally accepted accounting principles (GAAP) of the exporting country, and so long as they reasonably reflect the costs of producing that merchandise. As the measure of reasonableness, CP Kelco claims that the Department must look to U.S. GAAP for guidance. Therefore, CP Kelco concludes that because both U.S. GAAP and international financial reporting standards (IFRS) do not allow goodwill amortization, to include such amortization would distort its cost of production (COP). CP Kelco explains that publicly traded companies in Finland are required to follow IFRS accounting principles, whereas non-publicly traded companies can choose to use Finnish GAAP

or IFRS. CP Kelco insists that because CP Kelco Oy, a non-publicly traded company, can use either IFRS or Finnish GAAP, the Department should allow it to use IFRS for goodwill despite the fact that it chose to follow Finnish GAAP to prepare its financial statements.

CP Kelco argues that the inclusion of goodwill amortization distorts its COP because there was no goodwill expense included in CP Kelco's consolidated parent financial statements. CP Kelco states that U.S. GAAP and IFRS only permit the amortization of goodwill if it is "impaired." CP Kelco continues that for fiscal year 2005, its parent company, JM Huber, did not record impairment of goodwill in its U.S. GAAP financial statements (*i.e.*, the financial statements into which CP Kelco Oy is ultimately consolidated). Therefore, CP Kelco claims that CP Kelco Oy's goodwill is not impaired, and would not be included as an expense under U.S. GAAP. CP Kelco points out that in the past, the Department has included amortization of goodwill because the respondent company did not demonstrate that the inclusion of goodwill amortization expense would distort the costs. See Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy, 72 FR 1980 (January 17, 2007) (Poly Resin from Italy) and accompanying Issues and Decision Memorandum at page 2. CP Kelco concludes that its Finnish GAAP financial statement costs are distorted because there is no goodwill amortization or impairment recognized on JM Huber's consolidated U.S. GAAP financial statements. Therefore, CP Kelco contends, the Department should not include goodwill amortization in its COP.

Petitioner asserts the Department appropriately included CP Kelco Oy's goodwill amortization in CP Kelco Oy's G&A expenses. Petitioner also points out that section 773(f)(1)(A) of the Act requires the Department to calculate costs based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. In addition, Petitioner argues that the Department reaffirmed its position in Poly Resin from Italy. Petitioner contends that, contrary to CP Kelco's claim, the facts in Poly Resin from Italy are similar to the facts in this review in that the respondent company maintained its normal books and records in accordance with home country GAAP; the respondent company had consolidated financial statements prepared in accordance with IFRS rules; and the cost of manufacturing reported to the Department was based on the underlying records maintained in the normal books and records (*i.e.*, home country GAAP). In Poly Resin from Italy, Petitioner argues, the respondent did not allege the costs in its normal books and records were distorted. Petitioner notes CP Kelco's argument that Poly Resin from Italy is distinguishable from the current proceeding is incorrect because CP Kelco also did not allege that its normal books and records were distorted.

Petitioner contends that including the goodwill amortization in the reported costs is not unreasonable. Petitioner notes that financial accounting cost calculations differ from antidumping cost calculations because of different objectives. Petitioner states that financial statements are focused on the net income or expense, while antidumping cost calculations are based on an accurate reported cost. In addition, while financial statements can be prepared with different measurements of expenses from year to year, the antidumping cost calculations could be

distorted if arbitrary allocation of costs occurred between review periods. Also, petitioner argues that CP Kelco's claim that because there is no goodwill impairment in its parent company's financial statements, there is no goodwill amortization in its costs, is illogical. Petitioner concludes that the Department should reaffirm its Preliminary Results and continue to include the goodwill amortization in CP Kelco Oy's G&A expense rate calculation.

### **Department's Position:**

We agree with Petitioners. The Department is directed by section 773(f)(1)(A) of the Act to normally calculate costs based on the books and records of the exporter or producer provided those records are kept in accordance with the home country GAAP and that they reasonably reflect the costs associated with the production and sale of the merchandise. In this case, we have established that CP Kelco's audited financial statements are prepared in accordance with Finnish GAAP. See Memorandum from Joseph Welton through Theresa Deeley to Neal Halper, dated July 3, 2007, at page 20. Finnish GAAP allows non-public companies to either amortize goodwill or only recognize expenses when the goodwill is impaired. CP Kelco elected the amortization method in its normal books and records. The amortization method to recognize goodwill expenses allows for the systematic recognition of goodwill costs as an expense over an extended period of time.

We disagree with CP Kelco's argument that simply because U.S. GAAP and IFRS do not permit goodwill amortization, to do so distorts its COP. CP Kelco's argument rests solely on the fact that the way CP Kelco Oy records goodwill amortization, which is acceptable under Finnish GAAP, differs from U.S. GAAP and IFRS which requires that the goodwill be impaired before being recorded as an expense. It is not unusual that U.S. GAAP (or IFRS) differs from the GAAP of other countries. A mere difference between U.S. GAAP (or IFRS) and a respondent company's home market GAAP does not provide evidence of distortion. The Act specifies that we only depart from a company's home country GAAP when that home country GAAP does not reasonably reflect the costs associated with production of the merchandise. Therefore, there must be some evidence that the GAAP treatment at issue distorts the reported costs before we will depart from the home country GAAP. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part, 72 FR 62630 (November 6, 2007) and accompanying Issues and Decision Memorandum at comment 8.

Goodwill is generated when a company acquires another company and the price it pays exceeds the net book value of the acquired company's assets. This goodwill is added to the acquiring company's balance sheet as an asset. Under U.S. GAAP, the goodwill is expensed only when it is determined to be impaired. We note this impairment test is not a test to determine whether costs are distorted. It is a test under IFRS and U.S. GAAP to determine whether the goodwill asset value is overstated. Under the amortization method used by CP Kelco Oy, the goodwill amortization period must take into account the period over which the goodwill will yield future revenue, but cannot exceed twenty years. This systematic recognition of goodwill expense over a reasonable life matches the goodwill costs to the associated revenues. Because

we do not find it unreasonable to spread the premium which CP Kelco Oy paid for the acquired company's net assets over the period of time benefitting from such assets, we disagree that we should deviate from CP Kelco Oy's normal books and records with regard to the goodwill amortization.

Even though we consider CP Kelco's claim that none of its goodwill was impaired during the POR to be moot, we note that this is not a fact that is evident from the case record. The fact that no goodwill impairment expense appears on the face of its parent company's (JM Huber) consolidated financial statements<sup>1</sup> does not conclusively support CP Kelco's contention that none of its goodwill was impaired during the year. Because CP Kelco Oy's goodwill amount is so insignificant in relation to JM Huber's consolidated total expenses,<sup>2</sup> it is feasible that some of CP Kelco's goodwill was impaired, but that the amount was not material enough to be reported as a separate line in the JM Huber audited consolidated financial statements. Therefore, we disagree with respondent's argument that the goodwill expenses would have definitely been shown in JM Huber's financial statements if they had been impaired. Further, we note that CP Kelco never provided any type of impairment analysis to show that its goodwill was not impaired during the POR.

We agree with Petitioner that the facts in Poly Resin from Italy are similar to those in this case. In Poly Resin from Italy, the Department relied on the respondent's normal books and records which included goodwill amortization and "that follow Italian GAAP, and have not been proven distortive." See Poly Resin from Italy, and accompanying Issues and Decision Memorandum at pages 4 and 5. The Department has continued to uphold this treatment in Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy, 72 FR 65939 (November 26, 2007) and accompanying Issues and Decision Memorandum at page 7. CP Kelco Oy chose to amortize goodwill, as allowed under Finnish GAAP, in its normal books and records. Because amortizing goodwill is a practice stipulated by Finnish GAAP and because we do not find it to be an unreasonable methodology, we have continued to include the goodwill amortization in CP Kelco Oy's reported COP.

## **Issue 2: Zeroing of Non-Dumping Margins**

In its calculation of antidumping duty margins and importer-specific assessment rates, the Department does not permit non-dumped sales (U.S. sales made at net prices greater than normal value) to offset the amount of dumping found with respect to dumped sales (U.S. sales made at net prices less than normal value). This practice is commonly referred to as "zeroing."

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<sup>1</sup>JM Huber's audited consolidated financial statements are prepared in accordance with U.S. GAAP. U.S. GAAP requires that only impaired goodwill be expensed each year.

<sup>2</sup>See, Memorandum RE: Cost of Production and Constructed Value Calculation Adjustments for the Final Results from Gina Lee through Theresa Deeley to Neal Halper, dated December 3, 2007, at page 1.

CP Kelco argues the Department is not required to set negative margins to zero, as is its practice. See CP Kelco’s Case Brief at 7 and 8. CP Kelco points out that section 751(a)(2) of the Tariff Act of 1930, as amended, (the Tariff Act) requires the Department to determine “(i) the normal value and export price (or constructed export price) of each entry of subject merchandise, and (ii) the dumping margin for each such entry.” *Id.* at 8. CP Kelco further points out that section 771(35)(A) of the Tariff Act defines the term “dumping margin” as “the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” *Id.* CP Kelco argues that in *Timken Co. v. United States*, 354 F. 3d 1334, 1341-42 (Fed. Cir. 2004), *cert. denied* 543 U.S. 976 (2004) (*Timken*), the Court of Appeals for the Federal Circuit held that the Tariff Act does not require the Department to employ the zeroing methodology: “we conclude that Congress’s use of the word ‘exceeds’ does not require dumping margins to be positive numbers.” *Id.* CP Kelco further asserts the United States Court of International Trade (CIT) recently echoed the higher court’s ruling in *SNR Roulements et al. v. United States*, 341 F. Supp. 2d 1334,1345 (Ct. Int’l Trade 2004) (*SNR Roulements*), where the CIT held that “the language of 19 U.S.C. § 1673 neither unambiguously requires nor prohibits zeroing under the first step of *Chevron*.”<sup>3</sup> *Id.* at 8 to 9. In support, CP Kelco also cites *Corus Staal B.V. v. United States*, 387 F. Supp. 2d 1291, 1297 (Ct. Int’l Trade 2005), *cert. denied*, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (2006) (*Corus Staal*). *Id.* at 8 to 9 and footnote 13. CP Kelco argues that while both courts affirm the zeroing methodology as permissible under the Tariff Act, both courts found that the practice is not required by the statute. *Id.* at 9.

CP Kelco further argues that the World Trade Organization (WTO) Appellate Body has found the zeroing methodology in administrative reviews to be inconsistent with the U.S.’s obligations under the WTO Antidumping Agreement. *Id.* Citing *EC-Bed Linens*<sup>4</sup>, *U.S.-Softwood Lumber*<sup>5</sup>, *U.S.-Zeroing (EC)*<sup>6</sup>, and *U.S.- Zeroing (Japan)*<sup>7</sup>, CP Kelco argues the

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<sup>3</sup> The Court of International Trade explains in *SNR Roulements* that “to determine whether Commerce’s construction of the statutes is in accordance with law, the Court looks to *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984) (*Chevron*). The first step of the test set forth in *Chevron* requires the Court to determine ‘whether Congress has directly spoken to the precise question at issue.’ *Id.* at 842.” See *SNR Roulements* at 1338.

<sup>4</sup> Report of the Appellate Body on the Complaint of India Concerning European Communities - Anti-dumping Duties On Imports of Cotton-Type Bed Linens From India, WT/DS141/AB/R (March 1, 2001) (*EC-Bed Linens*).

<sup>5</sup> Report of the Appellate Body on the Complaint of Canada concerning the United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R, AB-2004-2 (August 31, 2004) (*U.S.-Softwood Lumber*).

<sup>6</sup> Report of the Appellate Body on the Complaint of the European Union Communities Concerning United States - Laws, Regulations, and Methodology for Calculating Dumping Margins, WT/DS294/AB/R (May 9, 2006) (*U.S.-Zeroing (EC)*).

<sup>7</sup> Report of the Appellate Body on the Complaint of Japan Concerning the United States - Measures Related to Zeroing and Sunset Reviews, WT/DS322/AB/R, (January 23, 2007) (*U.S.- Zeroing (Japan)*).

Department's zeroing methodology is inconsistent with the recent rulings by the WTO Appellate Body. CP Kelco further asserts that in U.S.-Zeroing (Japan), the WTO Appellate Body found the zeroing practice to be inconsistent with Articles 2.4 and 9.3 of the Anti-dumping Agreement and Article VI:2 of the 1994 General Agreement on Tariffs and Trade (GATT 1994), when applied in administrative reviews. Id. at 9 to 10.

Citing Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, 77725 (December 27, 2006) (DOC Zeroing), CP Kelco notes the Department has recently adopted a new methodology in investigations which significantly limits the use of zeroing. Id. at 10. CP Kelco argues the U.S. had agreed to implement the WTO Appellate Body's decision on zeroing at the February 20, 2007, meeting of the WTO Dispute Settlement Body on U.S.-Zeroing (Japan). Id. CP Kelco asserts that doing so would preclude the use of zeroing in administrative reviews. Id. In light of these considerations, CP Kelco requests the Department revisit its policy on zeroing, eliminating the practice in this administrative review. Id. CP Kelco argues that this is necessary to bring the Department's policies in line with the WTO Appellate Body's decisions. Id.

Petitioner argues the Department's consistent position is that zeroing is legally supportable in reviews. See Petitioner's Rebuttal Brief at 2. Petitioner further argues the courts have repeatedly upheld the Department's position. Moreover, Petitioner contends the Department is required to follow statutorily-mandated procedures before changing its practices in response to decisions by the WTO. Id.

Petitioner contends zeroing in administrative reviews is the Department's consistent policy. Id. Citing Certain Frozen Warmwater Shrimp from Brazil: Final Results of Antidumping Duty Administrative Review, 72 FR 52061 (September 12, 2007) and the accompanying Issues and Decision Memorandum at Comment 2 (Warmwater Shrimp from Brazil), Petitioner asserts the Department has recently employed the use of zeroing in antidumping reviews, rejecting the argument that WTO Appellate Body Decisions require the Department to end this methodology in administrative reviews. Id. Petitioner also cites Floor-Standing, Metal-Top Ironing Tables and Parts Thereof from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 72 FR 13239 (March 21, 2007), and the accompanying Issues and Decision Memorandum at Comment 4, and Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 18204 (April 11, 2007), and the accompanying Issues and Decision Memorandum at Comment 4. Id.

Citing Timken and Corus Staal, Petitioner also argues the courts have twice upheld the Department's interpretation of the Tariff Act with regard to zeroing. Id. at 3. Petitioner points out the U.S. Supreme Court has refused to hear appeals of these cases. In support of its argument, Petitioner quotes the Federal Circuit in Timken: "The Federal Circuit has held that WTO decisions are 'not binding on the United States, much less this court.'" Id., quoting Timken at 1344.

Petitioner concedes the WTO found zeroing to be inconsistent with the United States treaty obligations under the WTO. Id. Petitioner further concedes the United States has agreed to implement that decision. Id. Petitioner asserts, however, that this does not obligate nor permit the Department to abandon the zeroing methodology in this administrative review. Quoting the Department's decision on the zeroing issue in Warmwater Shrimp from Brazil, Petitioner maintains that "Congress has adopted a specific statutory scheme for addressing the implementation of WTO dispute settlement reports. See 19 U.S.C. 3538." Id. at 4. Petitioner contends the Department may change its practices in response to WTO decisions only after this statutory scheme is followed. In support, Petitioner cites Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) (Corus Staal 395 F.3d). Id.

### **Department's Position:**

Section 771(35)(A) of the Tariff Act defines "dumping margin" as the "amount by which the normal value *exceeds* the export price or constructed export price of the subject merchandise" (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute. See Timken, Koyo Seiko Co. v. United States, 543 U.S. 976 (2004), and Corus Staal BV v. Department of Commerce, 395 F. 3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) (Corus Staal 2005). We note we have taken action with respect to two WTO dispute settlement reports which found the denial of offsets to be inconsistent with the Antidumping Agreement: U.S. - Zeroing (EC), and U.S. - Zeroing (Japan).

With respect to US - Zeroing (EC), the Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See DOC Zeroing. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See DOC Zeroing at 77724. With respect to the specific administrative reviews at issue in that dispute, the United States did not apply any change in its calculation methodology in those administrative reviews to render those determinations consistent with the findings contained in the WTO report.

As such, the Appellate Body's reports in U.S. - Zeroing (EC) have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. See Corus Staal 2005, at 1347-49; Timken, at 1342. Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value. With respect to US - Zeroing (Japan), Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. See 19 U.S.C. § 3538.

As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4): (implementation of WTO reports is discretionary); see also the Statement of Administrative Action on the Uruguay Round Agreements Act (SAA) at 354: ("after considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is not inconsistent with the panel or Appellate Body recommendations. . ."). Because no change has been made with respect to the issue of zeroing in administrative reviews, the Department will continue with its current approach to calculating and assessing antidumping duties in this administrative review. See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 72 FR 28676, 28678 (May 22, 2007). For the reasons set forth above, we have not changed the methodology employed in calculating the weighted-average dumping margins for these final results.

#### RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the positions set forth above and adjusting the related margin calculation accordingly. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margin for CP Kelco in the Federal Register.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

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Stephen Claeys  
Acting Assistant Secretary  
for Import Administration

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Date \_\_\_\_\_