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May 29, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Purified Carboxymethylcellulose
from the Netherlands; 2013-2014

SUMMARY

The Department of Commerce (the Department) is conducting this administrative review of the antidumping duty order on purified carboxymethylcellulose (purified CMC) from the Netherlands. The review covers one producer/exporter of the subject merchandise, Akzo Nobel Functional Chemicals, B.V. (Akzo Nobel). The period of review (POR) is July 1, 2013, through June 30, 2014. We preliminarily find that Akzo Nobel has not sold subject merchandise at less than normal value (NV) during the POR.

Background

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.213(b), and pursuant to the notice of opportunity to request an administrative review,¹ Ashland Specialty Ingredients G.P. (petitioner),² requested an administrative review of the antidumping duty order on purified CMC from the Netherlands on July 17, 2013, for merchandise produced or exported by Akzo Nobel.³ On July 29, 2014, Akzo Nobel requested an administrative review of its imports of purified CMC from the Netherlands.⁴ On August 29,

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 79 FR 37289 (July 1, 2014).

² Known as Aqualon Company, a unit of Hercules Incorporated, until June 30, 2013.

³ See Letter from petitioner to the Secretary of Commerce, entitled "Purified Carboxymethylcellulose from The Netherlands: Request for Administrative Review and Entry of Appearance," dated July 17, 2014.

⁴ See Letter from Akzo Nobel to the Assistant Secretary of Commerce for Enforcement and Compliance, entitled "Purified Carboxymethylcellulose from The Netherlands Request for Administrative Review and Notice of Appearance," dated July 29, 2014.



2014, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the antidumping duty order on purified CMC from the Netherlands.⁵

The original deadline for the preliminary results of this review was April 2, 2015. On March 31, 2015, in accordance with section 751(a)(3)(A) of the Act, the Department extended the time period for issuing the preliminary results of this review by 60 days, to June 1, 2015.⁶

Scope of the Order

The product covered by the order is all purified 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 the order is currently classified in the Harmonized Tariff Schedule of the United States 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.

Affiliation and Treatment as a Single Entity

Statutory and Regulatory Provisions

The Act requires the Department to consider certain persons affiliated. Specifically, section 771(33) of the Act, provides that:

The following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 51548 (August 29, 2014).

⁶ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, regarding “Purified Carboxymethylcellulose from the Netherlands: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2013-2014,” dated March 31, 2015.

(G) Any person who controls any other person and such other person.

The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act further explains that control may be found to exist within corporate groupings.⁷ Specifically, the SAA states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.⁸

Section 351.102(b)(3) of the Department’s regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act.

Additionally, section 771(33) of the Act states that: “For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” Specifically, section 771(33)(F) of the Act considers entities to be affiliated if they directly or indirectly control, are controlled by, or are under common control with, any person. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. For purposes of statutory construction, the term “person” can be construed in the singular or plural and can include a corporate entity or group.⁹ Moreover, the statute does not require evidence of actual control; it is the ability to control that is dispositive.¹⁰ Additionally, the Department may consider control to arise from the potential to manipulate price and production.¹¹ The Department’s regulations at 19 CFR 351.102(b)(3), mirror the statute, stating that, in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Section 351.401(f) of the Department’s regulations outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings –

⁷ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 (1994), at 838, *reprinted in* 1994 U.S.C.C.A.N. 4040 *et seq.* (SAA).

⁸ *Id.*

⁹ See *Dongkuk Steel Mill Co. v. United States*, 29 Court of International Trade (CIT) 724, 732 (CIT 2005).

¹⁰ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27297-98 (May 19, 1997).

¹¹ See *Certain Welded Carbon Standard Steel Pipe and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review*, 62 FR 47632, 47638 (September 10, 1997).

- (1) *In general.* In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) *Significant potential for manipulation.* In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (i) The level of common ownership;
 - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
 - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

Affiliation

Akzo Nobel, identified as the producer for all sales it reported, was wholly-owned by AkzoNobel N.V. during the POR.¹² Akzo Nobel Chemicals AG (ANC-AG), which issued the invoices for sales of CMC after October 1, 2013,¹³ was also wholly-owned by AkzoNobel N.V.¹⁴ Akzo Nobel reported that both it and ANC-AG are part of “the Sub Business Unit (SBU) Performance Additives (P.A.), which is part of the AkzoNobel Functional Chemicals Business Unit (BU).”¹⁵ During the POR, Akzo Nobel produced all of the subject merchandise and exported it from the Netherlands on behalf of ANC-AG to AkzoNobel Functional Chemicals LLC (AN-US), a United States affiliate, for sale in the United States.¹⁶ Because both Akzo Nobel and ANC-AG are owned by a common owner, we find they are affiliated with each other under section 771(33)(F) of the Act.

Treatment as a Single Entity

As discussed above, 19 CFR 351.401(f) of the Department’s regulations states that the Department will treat affiliated producers as a single entity where producers have production

¹² See Letter from Akzo Nobel to the Secretary of Commerce, entitled “Purified Carboxymethylcellulose from The Netherlands: Refiling of Narrative, Section A” (Section A response), dated December 23, 2014, at 5. Akzo Nobel initially filed the Section A response on October 28, 2014, but did not file a BPI version of the narrative response. The Department requested that Akzo Nobel file the BPI version of the narrative response to Section A on December 19, 2014.

¹³ Akzo Nobel stated that “{p}rior to October 1, 2013, {Akzo Nobel} was the exporter of record for the CMC sales to the U.S. From October 1, 2013, through the remainder of the POR (and to the present), the exporter of record for U.S. sales of CMC is ANC-AG.” See Letter from Akzo Nobel to the Secretary of Commerce, entitled “Purified Carboxymethylcellulose from The Netherlands: Response to the Department’s First Supplemental Questionnaire (Sections A-D),” dated February 26, 2015 (Supplemental Questionnaire response), at 1.

¹⁴ See Section A response at 5.

¹⁵ *Id.* at 5-6.

¹⁶ *Id.* at 7-8; see also Supplemental Questionnaire response at 1.

facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities and where there is a significant potential for manipulation of price or production.¹⁷ 19 CFR 351.401(f) further states that, in identifying a significant potential for manipulation, the Department may consider factors including: (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. The Department has also previously explained its practice of collapsing affiliated companies:

Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department normally examines the question of whether reviewed companies “constitute separate manufacturers or exporters for purposes of the dumping law.”¹⁸

The CIT has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.¹⁹

Also, while 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis.²⁰

We examined the record evidence to determine whether Akzo Nobel was affiliated with any of the following entities during the POR: (1) other producers or exporters of subject merchandise, (2) suppliers of inputs used to produce the subject merchandise, (3) reported home market customers, and (4) reported U.S. customers. As explained above, we preliminarily determine that Akzo Nobel is affiliated with ANC-AG. We also examined all three factors contained in 19 CFR 351.401(f)(2) with respect to the significant potential for manipulation and preliminarily

¹⁷ While 19 CFR 351.401(f) uses the term “producers,” the Department’s practice is to apply this regulation to resellers and other affiliated companies as well. See, e.g., *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996) (*Colombian Flowers*) (citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988) (*Granite Products from Spain*)).

¹⁸ See *Colombian Flowers*, 53 FR at 24337 (citing *Granite Products from Spain*, 53 FR at 24337).

¹⁹ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007) (citing *Light Walled Rectangular Pipe and Tube from Turkey: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 10).

²⁰ See, e.g., *Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 10, 2012), unchanged in *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); *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) and accompanying Issues and Decision Memorandum at Comment 5. The CIT has found that collapsing exporters is consistent with a “reasonable interpretation of the antidumping duty statute.” See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d. 1323, 1338, 1342 (CIT 2003).

determine to treat as a single entity Akzo Nobel and ANC-AG, for antidumping duty purposes, as discussed below.

As noted above, the Department's practice with respect to affiliated exporters and producers of subject merchandise is also to examine whether the potential for manipulation of price or production exists using the regulatory criteria. With respect to the first criterion, level of ownership, we find that the level is significant.²¹ Both Akzo Nobel and ANC-AG are owned by the same parent company (*i.e.* AkzoNobel N.V.).²² With respect to the second criterion, overlapping board members, we find that there is substantial overlap of managers between Akzo Nobel and ANC-AG. Primarily, both companies are under the same management team in the Performance Additives SBU.²³ With respect to the third criterion, intertwined operations, record evidence demonstrates that Akzo Nobel's and ANC-AG's operations are closely intertwined. Akzo Nobel produced and exported all of the subject merchandise to the United States during the POR. However, the record demonstrates that Akzo Nobel's production and sales "was undertaken on behalf of ANC-AG under a services arrangement," and that "the purified CMC was produced and sold in the name of ANC-AG."²⁴ With respect to sales to the U.S. market during the POR, Akzo Nobel handled the sales negotiations and pricing, as well as production, of subject merchandise. However, although ANC-AG issued the invoices and booked the financial transactions associated with the production and sale of the subject merchandise,²⁵ record evidence supports that ANC-AG has significantly more involvement in the sales process.²⁶ For these reasons, we find that there is a significant potential for the manipulation of price.

In consideration of the above, and in accordance with 19 CFR 351.401(f) and the Department's practice,²⁷ we are thus treating Akzo Nobel and ANC-AG as a single entity for purposes of these preliminary results.

DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Akzo Nobel's sales of the subject merchandise from the Netherlands to the United States were made at less than NV, the Department compared the constructed export price (CEP)

²¹ See Supplemental Questionnaire response at Tab 2.

²² *Id.*

²³ See Section A response at Tabs 2-3.

²⁴ *Id.* at 2.

²⁵ See Letter from Akzo Nobel to the Secretary of Commerce, entitled "Purified Carboxymethylcellulose from The Netherlands: Response to Questions 1, 21, and 27 of the Department's First Supplemental Questionnaire (Sections A-D)" (Second Supplemental Questionnaire response), dated March 2, 2015, at 1-3.

²⁶ Because our analysis involves the discussion of business proprietary information, see Memorandum from John Drury to the File, titled "Analysis of Data Submitted by Akzo Nobel Functional Chemicals B.V. and Akzo Nobel Functional Chemicals LLC in the Preliminary Results of the 2013-2014 Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from the Netherlands" dated concurrently with this memorandum (Preliminary Analysis Memorandum).

²⁷ See *Flowers from Colombia* (citing *Granite Products from Spain*); see also *Queen's Flowers de Colombia v. United States*, 981 F. Supp. 617, 622 (CIT 1997) (expressly affirming Department's authority to collapse affiliated parties for purposes of antidumping analysis).

to the NV as described in the “Constructed Export Price” and “Normal Value” sections of this memorandum.

A. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(b) and (c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average CEPs (or export prices (EPs)) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping investigations.²⁸ In recent investigations, the Department has applied a “differential pricing” analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.²⁹ The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.³⁰ The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of CEPs (or EPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for

²⁸ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

²⁹ See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350, 33352 (June 4, 2013), and accompanying Issues and Decision Memorandum; *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69361 (November 19, 2013), and accompanying Preliminary Decision Memorandum at “Determination of Comparison Method” (*Nickel-Plated Steel Preliminary Determination*), unchanged in *Notice of Affirmative Final Determination of Sales at Less Than Fair Value: Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan*, 79 FR 19868 (April 10, 2014), and accompanying Issues and Decision Memorandum (*Nickel-Plated Steel Final Determination*).

³⁰ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 48651, 48651 (August 9, 2013), and accompanying Preliminary Decision Memorandum at “Determination of Comparison Method,” unchanged in *Polyethylene Terephthalate Film Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 11407 (February 28, 2014).

purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between CEP (or EP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium, or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significance of the price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of CEPs (or EPs) that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of CEPs (or EPs) that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting

from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. *Results of the Differential Pricing Analysis*

For Akzo Nobel, based on the results of the differential pricing analysis, the Department finds that the value of total sales that passed the Cohen's *d* test was more than 66 percent, and, as such, these results confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.³¹ Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to all U.S. sales. Accordingly, the Department has preliminarily determined to use the average-to-average method for all U.S. sales to calculate the preliminary weighted-average dumping margin.³²

Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for products produced by Akzo Nobel and sold in the home market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are grade, viscosity, degree of substitution, particle size, and solution characteristics.³³

Date of Sale

19 CFR 351.401(i) states that the Department "normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business," as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding

³¹ See Preliminary Analysis Memorandum at 15.

³² See, e.g., *Nickel-Plated Steel Preliminary Determination*, unchanged in *Nickel-Plated Steel Final Determination*.

³³ See the Department's letter to Akzo Nobel regarding the antidumping duty questionnaire, dated September 17, 2014.

that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.³⁴

With respect to Akzo Nobel's sales to the United States, Akzo Nobel reported two channels of distribution. Akzo Nobel's Channel 1 sales are to an unaffiliated U.S. customer through Akzo Nobel's affiliated reseller, AKZO Nobel Functional Chemicals LLC (AN-US), where merchandise is shipped directly to the customer from Akzo Nobel's production facility in the Netherlands.³⁵ For Channel 2 sales, AN-US sells directly to unaffiliated U.S. customers from stock stored in the United States.³⁶

For Channel 1 sales, Akzo Nobel issues the invoice after the date of shipment, and therefore, has reported shipment date from the Netherlands as the date of sale.³⁷ For Channel 2 sales, Akzo Nobel stated that the invoice date is the same date as the shipment date. Therefore, Akzo Nobel has reported the date of invoice (which is the same as the date of shipment) as the date of sale.³⁸ Akzo Nobel provided a sample contract and invoice for a U.S. Channel 2 sale covered by this review, which support Akzo Nobel's contention that price and quantity are subject to change and are not finalized until the date of the invoice or the date of shipment/loading.³⁹ This record evidence demonstrates that all material terms of sale, as reported by Akzo Nobel, are established on the date of the invoice, which is consistent with 19 CFR 351.401(i), the Department's practice, and the date of sale established in previous administrative reviews.⁴⁰ Therefore, we preliminarily determine that the date of shipment for Channel 1 sales, and the invoice/shipment date for Channel 2 sales, is the appropriate date of sale for all sales to the United States.

With respect to its home-market sales, Akzo Nobel reported its date of sale to be the invoice date, which coincides with the loading and shipment date of the merchandise.⁴¹ Akzo Nobel

³⁴ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

³⁵ See Section A response at 15-16.

³⁶ *Id.*

³⁷ *Id.* at 25.

³⁸ *Id.*

³⁹ See, e.g., Section A response at Tab14. With respect to U.S. Channel 1 sales, Akzo Nobel stated (at pages 27-28 of the Section A response) that “{p}rior to invoicing, the customer or AN-US may change the quantity ordered based on availability of the merchandise or shipping limitations, or ANFC/ANC-AG may change the price of the merchandise, although no such instances have been identified during the POR.”

⁴⁰ See, e.g., *Purified Carboxymethylcellulose From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 49494 (August 21, 2014), and accompanying Preliminary Decision Memorandum at “Date of Sale,” unchanged in *Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78395 (December 30, 2014); *Purified Carboxymethylcellulose from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind*, 77 FR 46024 (August 2, 2012), and accompanying Preliminary Decision Memorandum at “Date of Sale,” unchanged in *Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 78 FR 9884 (February 12, 2013).

⁴¹ See Section A response at 15, 25-26; see also Letter from Akzo Nobel to the Secretary of Commerce, entitled “Purified Carboxymethylcellulose from The Netherlands: Response to Sections Band C of the Department’s Questionnaire,” dated November 14, 2014 (Sections B&C response), at B-11.

stated that, until the time that the merchandise is loaded, changes can occur in the material terms of sale, and provided a sample home market sale showing changes in the material terms up to the date of the invoice.⁴² This is consistent with our regulatory presumption for invoice date as the date of sale.⁴³ Furthermore, we note that there is no record evidence that demonstrates that the material terms of sale were established on another date and, in prior reviews, we have used invoice date as the date of sale for Akzo Nobel's home market sales.⁴⁴ Thus, we preliminarily determine that invoice date is the appropriate date of sale for all home market sales in the Netherlands.

Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP for Akzo Nobel's U.S. prices, because the subject merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by a U.S. seller affiliated with the producer or exporter and export price was not otherwise indicated.⁴⁵

We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign and U.S. inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including imputed credit expenses, and indirect selling expenses. Finally, we made an adjustment for profit in accordance with section 772(d)(3) of the Act.⁴⁶

Normal Value

A. *Home Market Viability as Comparison Market*

To determine whether there was a sufficient volume of sales of purified CMC in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), the Department compared the volume of Akzo Nobel's home-market sales of the foreign-like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.⁴⁷ Based on this comparison, we determined that Akzo Nobel had a viable home market during the POR. Consequently, we based NV on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade, as described in detail below.

⁴² See Sections B&C response at B-11; *see also* Section A response at 26 and Tab 13.

⁴³ See 19 CFR 351.401(i).

⁴⁴ See *CMC Preliminary Results of Review 2010-2011*; *see also CMC Preliminary Results of Review 2011-2012*; *see also CMC Preliminary Results of Review 2012-2013*.

⁴⁵ See Sections B&C response at C-10; *see also* Section A response at 27-29.

⁴⁶ See Preliminary Analysis Memorandum at 19 - 22.

⁴⁷ *Id.* at 18 - 19.

B. Level of Trade

Section 773(a)(1)(B) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁹ To determine whether NV sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution.⁵⁰ If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision).⁵¹

Akzo Nobel reported two channels of distribution (*i.e.*, sales to customers that are shipped to the United States from Akzo Nobel's warehouse, and sales to customers from stock in the United States maintained by AN-US) and a single level of trade in the U.S. market.⁵² Akzo Nobel reported sales to both distributors and end-users in the United States.⁵³ For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Our preliminary analysis of these selling functions does not indicate that there are sufficient differences to determine a separate level of trade in the U.S. market. Accordingly, we preliminarily determine that all of Akzo Nobel's U.S. sales constitute a single LOT.⁵⁴

Akzo Nobel reported a single channel of distribution (*i.e.*, direct sales to end-users) and a single LOT in the home market.⁵⁵ The Department's preliminary analysis indicates that the sales process and selling functions that Akzo Nobel performed for selling to home market customers did not vary by individual customers. Therefore, we preliminarily determine that all of Akzo Nobel's home-market sales constitute a single LOT.⁵⁶

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act.⁵⁷ We reviewed the selling functions

⁴⁸ See 19 CFR 351.412(c)(2).

⁴⁹ *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) (*CTL Plate*).

⁵⁰ See 19 CFR 351.412(c)(2).

⁵¹ See *CTL Plate*, 62 FR at 61732-33; *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002), and accompanying Issues and Decision Memorandum at Comment 8.

⁵² See Section A response at 15 – 24; see also Supplemental Questionnaire response at 1 through 2.

⁵³ See Section A response at 17.

⁵⁴ See Preliminary Analysis Memorandum at 9 - 12.

⁵⁵ See Section A response at 15.

⁵⁶ See Preliminary Analysis Memorandum at 9 - 12.

⁵⁷ See *Micron Tech. Inc. v. United States*, 243 F.3d 1301, 1314-15 (Fed. Cir. 2001).

and services performed by Akzo Nobel on CEP sales and preliminarily found that sales in the home market are at a more advanced level of trade than sales at the CEP level. Specifically, Akzo Nobel reported providing certain selling activities/functions for home market sales that Akzo Nobel did not provide in support of sales to the United States. These include activities such as sales forecasting, advertising, distributor training, market research, sales support, and after-sales service.⁵⁸ Additionally, Akzo Nobel provided certain selling activities/functions for home market sales at a higher level than it provided for sales to the United States, such as strategic planning and technical assistance.⁵⁹ Because these additional selling functions are significant, we find that Akzo Nobel's CEP sales are at a different, and less advanced, level of trade than its home market sales.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the level of trade in the home market is at a more advanced stage than the level of trade of the CEP sales and the data available do not provide an appropriate basis for determining whether the difference in levels of trade between NV and CEP affects price comparability. As there was only one level of trade in the home market, there was no data available to determine the existence of a pattern of price differences, and we do not have any other information that provides an appropriate basis for determining a level-of-trade adjustment. Therefore, we applied a CEP offset to NV for CEP comparisons.⁶⁰

To calculate a CEP offset for Akzo Nobel, we deducted the home-market indirect selling expenses from NV for sales that were compared to U.S. CEP sales. We limited the deduction by the amount of the indirect selling expenses deducted in calculating the CEP under section 772(d)(1)(D) of the Act.⁶¹

C. *Cost of Production*

As of the date of initiation of this review, the Department disregarded certain home-market sales made by Akzo Nobel at prices below the cost of production (COP) in the most recently completed segment of this proceeding in which Akzo Nobel participated.⁶² Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Akzo Nobel made sales of the foreign like product in the home market at prices below the COP in the current review period. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of home market sales by Akzo Nobel. Based on our analysis of Akzo Nobel's cost data, we preliminarily determine that a quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on Akzo Nobel's reported data.

⁵⁸ See Section A response at 15-20, and Tab 9; see also Supplemental Questionnaire response at 4-6.

⁵⁹ See Section A response at 18-24 and at Tab 9; see also Supplemental Questionnaire response at 4-6.

⁶⁰ See Preliminary Analysis Memorandum, at 23.

⁶¹ See section 773(a)(7)(B) of the Act.

⁶² See *Purified Carboxymethylcellulose From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination; 2011-2012*, 78 FR 48649 (August 9, 2013), and accompanying Preliminary Decision Memorandum at "Cost of Production," unchanged in *Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 78812 (December 27, 2013).

In accordance with sections 773(f)(2) and (3) of the Act, we evaluated Akzo Nobel's purchases of certain production inputs from an affiliated party. Based on our analysis, the transfer prices paid by Akzo Nobel to its affiliate were on an arm's-length basis.⁶³

1. Calculation of Cost of Production

We calculated the COP on a product-specific basis, based on the sum of the respondent's costs of materials and fabrication for the foreign like product plus amounts for general and administrative expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment in accordance with section 773(b)(3) of the Act. We relied on COP data that Akzo Nobel submitted in its response to our cost questionnaire and supplemental cost questionnaires.⁶⁴

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP. In particular, in determining whether to disregard home market sales made at prices below their COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b) of the Act. We determined the net comparison market prices for the below-cost test by adjusting the gross unit price for all applicable movement charges, billing adjustments, direct and indirect selling expenses, and packing expenses excluding all adjustments for imputed expenses.

3. Results of the Cost of Production Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given CONNUM were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Because we are applying our standard annual average cost methodology in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

Our cost test for Akzo Nobel indicated that for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales in our

⁶³ See Preliminary Analysis Memorandum at 13, 15.

⁶⁴ *Id.* at 15.

analysis as outside of the ordinary course of trade and used the remaining sales to determine NV.⁶⁵

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the price Akzo Nobel reported for home market sales to unaffiliated customers which we determined were within the ordinary course of trade. We made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight expenses from the plant to the warehouse (which are included in the warehouse expense variable), warehousing, and expenses associated with shipping merchandise to the customer. Finally, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where appropriate, by deducting direct selling expenses (*i.e.*, imputed credit expenses) incurred on home-market sales and adding U.S. direct selling expenses (*i.e.*, imputed credit expenses and bank charges) to NV.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) 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. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.⁶⁶

Recommendation

We recommend applying the above methodology for these preliminary results.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 MAY 2015
Date

⁶⁵ *Id.* at 16 - 18.

⁶⁶ *Id.* at 12 - 13.