

December 4, 2008

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

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Antidumping and Countervailing Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review of Purified
Carboxymethylcellulose from the Netherlands

SUMMARY

We have analyzed the comments and rebuttal comments of interested parties in the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from the Netherlands. We recommend that you approve the Department's position described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum.

Comment 1: Whether to Increase CP Kelco B.V.'s Cost of Production for Shut-down Costs Incurred by its Swedish Affiliate

BACKGROUND

On August 7, 2008, the Department of Commerce (Department) published the preliminary results of administrative review of the antidumping duty order covering purified purified CMC from the Netherlands. See Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 73 FR 45943 (August 7, 2008) (Preliminary Results). The merchandise covered by the order is purified purified CMC from the Netherlands, as described in the "Scope of the Order" section of the Federal Register notice. The period of review (POR) is July 1, 2006, through June 30, 2007. This review covers CP Kelco B.V. and its U.S. affiliates, CP Kelco U.S., Inc. and Huber Engineered Materials (collectively, CP Kelco).

In the Preliminary Results, we invited parties to comment. In response, The Aqualon Company, a division of Hercules, Incorporated (Petitioner), submitted a comment and request for a public hearing on September 5, 2008. See Letter from Haynes & Boone, LLP, regarding “Request for a Public Hearing and Comment in Lieu of a Formal Case Brief,” dated September 5, 2008 (Petitioner’s Comment). CP Kelco submitted a rebuttal brief on September 15, 2008 (CP Kelco’s Rebuttal Brief). Petitioner subsequently contacted officials at the Department and withdrew its request for a public hearing. See Memorandum to the File from Robert James, Program Manager, titled “Withdrawal of Request for Public Hearing,” dated September 11, 2008. As a result, no public hearing was held.

For a discussion of proprietary issues raised by parties, see Memorandum to the File, titled “Proprietary Issues for CP Kelco B.V.,” dated December 4, 2008, from Stephen Bailey, Case Analyst (Proprietary Information Memorandum).

DISCUSSION OF INTERESTED PARTY COMMENTS

Comment 1: Whether to Increase CP Kelco B.V.’s Costs of Production for Shut-down Costs Incurred by its Swedish Affiliate

Petitioner argues that CP Kelco B.V.’s general and administrative (G&A) costs must include an allocation of the expenses associated with the shut down of the production facilities of CP Kelco’s Swedish affiliate, CP Kelco A.B. See Petitioner’s Comment. Petitioner argues that the shut down was done in the normal course of business. Petitioner asserts CP Kelco operates a single purified CMC business in the United States, has integrated production operations in Europe, and coordinates its operations internationally. Id. at 2. Petitioner cites to page D-28 of CP Kelco’s January 10, 2008, Section D supplemental questionnaire response, where it states:

In the normal course of business, all group G&A expenses incurred at the head office in Arnhem, the Netherlands and any group G&A expenses physically performed at CP Kelco A.B. and CP Kelco Oy are combined and allocated to the three operating companies based upon budgeted sales revenues.¹

Petitioner argues that the shut down was aimed at managing or “rationalizing” the CP Kelco Group’s European production operations and that the CP Kelco Group did not exit any part of the purified CMC business as a result of the shut down. Petitioner also argues that the shut down of CP Kelco A.B. will result in future benefits to CP Kelco and to CP Kelco’s Finnish affiliate, CP Kelco Oy, and should be included in the common group expenses that are allocated across all three companies.

Petitioner suggests these costs should be allocated based on the cost of sales, consistent with the

¹ CP Kelco A.B. and CP Kelco Oy are referred to as CPK-AB and CPK-Oy, respectively, in CP Kelco’s January 10, 2008, Section D supplemental questionnaire response. Collectively, CP Kelco B.V., CP Kelco A.B., and CP Kelco Oy form the “CP Kelco Group’s European production operations.”

Department's treatment of other G&A expenses in the concurrent purified CMC reviews. Accordingly, Petitioner proposes a methodology for allocating CP Kelco A.B.'s shut-down costs to CP Kelco by cost of sales, and provides a detailed allocation worksheet as an attachment to its comments. See Petitioner's Comment at 4, and Attachment 1.

In rebuttal, CP Kelco contends that Petitioner's arguments are unsupported by record evidence and contradict the Department's past practice of allocating G&A expenses on a company-specific basis, and excluding plant closure costs from the Department's calculation of cost of production (COP). CP Kelco further argues that Petitioner's recommendation to allocate plant closure costs from CP Kelco A.B. to CP Kelco is erroneous. CP Kelco asserts that CP Kelco A.B. was subject to a separate antidumping proceeding during the POR involving different subject merchandise. CP Kelco contends that the Department should adhere to its decision in its Preliminary Results and exclude CP Kelco A.B.'s plant closure costs from all aspects of the Department's margin analysis.

First, CP Kelco contends the Department's practice to exclude plant closure costs from the COP has spanned several years and multiple proceedings. CP Kelco notes that although the Department once included in the calculation of COP the gains or losses related to the closure of a production facility, the Department finalized its position in Softwood Lumber from Canada. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada, 70 FR 73437 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 8 (Softwood Lumber from Canada (2005)). CP Kelco argues that a reversal of this policy would require the Petitioner to provide compelling argument and evidence to justify a departure from it, noting that the Department rejected the methodology that Petitioner is now advocating in its decision in Softwood Lumber from Canada (2005). CP Kelco asserts that Petitioner has failed to provide any such compelling argument and, therefore, the Department should continue to exclude CP Kelco A.B.'s plant closure costs from its COP calculations.

With regard to Petitioner's argument that CP Kelco A.B.'s plant closure constitutes a "rationalizing" of the CP Kelco Group's European production operations and, furthermore, that the costs of the closure should be allocated to CP Kelco and CP Kelco Oy, CP Kelco contends that such an argument is unsupported by citation to case law or Department precedent.

Second, CP Kelco argues that Petitioner cites no record evidence for its argument that CP Kelco operates as a single sales business in the United States, with an integrated production operation in Europe. CP Kelco contends record evidence demonstrates that CP Kelco sold significantly different types of purified CMC during the POR as compared to the product coming from CP Kelco A.B.

Third, CP Kelco further argues that Petitioner's assertion that the closure of CP Kelco A.B. occurred in the normal course of the CP Kelco Group's business is contradicted by case precedent. CP Kelco further asserts that Petitioner has provided no evidence to support a finding that plant closures regularly occur in CP Kelco's normal operations. See CP Kelco's Rebuttal Brief at 9.

Specifically, CP Kelco again cites to Softwood Lumber from Canada (2005), where the Department determined that the permanent closure or sale of a production operation is not routine, nor should the resulting losses (or gains) of the closure be treated as part of G&A expenses. See Softwood Lumber from Canada (2005). Recognizing the Department's practice of including gains or losses incurred on the routine disposition of fixed assets in G&A expenses, CP Kelco asserts the present circumstances are entirely different, as CP Kelco A.B.'s plant closure "constituted much more than the 'routine disposition of fixed assets,'" but rather was the complete removal of an entire production facility. See CP Kelco's Rebuttal Brief at 10. Therefore, as plant closures do not occur in the normal course of business and are not routine in form or value, CP Kelco argues that Petitioner has not provided any evidence that would justify the Department's inclusion of costs associated with CP Kelco A.B.'s plant closure expenses in the G&A expense calculations for CP Kelco B.V. or CP Kelco Oy.

Fourth, CP Kelco contends that as demonstrated by record evidence, CP Kelco A.B.'s production facility in Skoghall, Sweden, was completely dismantled, its equipment sold or decommissioned, and the land and building sold, thus constituting the shut down of the entire production facility. See CP Kelco's Rebuttal Brief at 11; see also, CP Kelco's Section A Response. Moreover, CP Kelco cites Softwood Lumber from Canada (2005) at footnote 60, where the Department stated that "the sale of an entire production facility differs from the sale of a piece of equipment, or even large pieces of equipment..." and that a plant encompasses "many pieces of production equipment, the building, land and fixtures..." necessary to produce a product. CP Kelco asserts that record evidence demonstrates the CP Kelco A.B.'s plant closure mirrors the intent of the Department's statement and determination in Softwood Lumber from Canada (2005). Therefore, CP Kelco A.B.'s plant closure cannot be viewed as a "rationalizing" of production facilities, but rather as a complete shut down of a production facility.

Fifth, CP Kelco argues that Petitioner wrongly assumes that the Department may determine the appropriate treatment of shut-down expenses based on where such expenses are reported in the company's financial statements and, additionally, that the Department may allocate shut-down expenses of one company to its foreign affiliate(s). See CP Kelco's Rebuttal Brief at 11-12. CP Kelco asserts that the Department has previously considered the identical argument in Softwood Lumber from Canada (2005) and, in that case, rejected the argument. Specifically, the Department stated that it disagreed that a respondent's closure costs ought to be included in the respondent's reported costs for dumping purposes, merely because those costs were captured in the company's operating cost section of its income statement. Id. at 13, citing to Softwood Lumber from Canada (2005). Furthermore, CP Kelco points out that the Department found that the respondent's product costs "would be distorted if" its plant closure costs "were included as a general expense..." Id. CP Kelco, therefore, argues that the Department's precedent and position with regard to plant closure costs is "unequivocal," in that plant closure costs must be excluded from G&A expenses, regardless of where such expenses are reported in the company's financial statements. Id. at 14. Finally, CP Kelco contends that Petitioner has provided no compelling reasoning or substantial evidence that would justify including CP Kelco A.B.'s plant closure costs in the Department's COP calculations, nor allocating those expenses to CP Kelco

A.B.'s foreign affiliates. Moreover, CP Kelco asserts that Petitioner's arguments and conclusion have all been previously rejected in prior proceedings before the Department, and that the Department's position on the treatment of plant closure expenses has been clear for several years and through several proceedings. Id. at 15.

Finally, CP Kelco contends that the Department's established practice dictates that G&A expenses must be calculated on a company-specific basis. See CP Kelco's Rebuttal Brief at 14. CP Kelco further asserts that this practice has been applied by the Department in a consistent and predictable manner. CP Kelco cites Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055 (September 12, 2007), and the accompanying Issues and Decision Memorandum at Comment 6, where the Department states the following:

Because there is no bright-line definition in the Act of what a G&A expense is or how the G&A expense ratio should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating G&A expenses. This reasonable, consistent and predictable method is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide cost of sales and not on a consolidated, divisional, or product-specific basis.

See CP Kelco's Rebuttal Brief at 14.

CP Kelco argues that Petitioner is urging the Department to abandon a long-established practice without proper justification. Id.

According to CP Kelco, the Department has explained in other proceedings that it does not base its calculations on consolidated financial data because they do not accurately represent the G&A expenses of the producer, and because differences exist between expenses incurred in different countries. Id. at 15. CP Kelco also cites to the Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada, 69 FR 75921 (December 20, 2004) and the accompanying Issues and Decision Memorandum at Comment 23, where the Department decided not to rely upon the respondent's consolidated financial statements, which included expenses incurred in non-subject countries, to calculate the G&A expense ratio. Id.

CP Kelco contends that Petitioner is suggesting that non-operating expenses from CP Kelco A.B. be consolidated with the operating expenses of CP Kelco B.V., without providing sufficient explanation of why this should be done. Id. CP Kelco asserts that Petitioner's only rationale for this change is that the shut down of CP Kelco A.B. results in future benefits to CP Kelco B.V. CP Kelco contends, however, that Petitioner fails to explain why such a benefit would justify a departure from the Department's past practice. CP Kelco argues that the question at hand is not whether an economic benefit exists, but whether non-fungible expenses from a foreign company

are relevant to the G&A expenses of CP Kelco B.V. CP Kelco references the Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (May 20, 2002) and the accompanying Issues and Decision Memorandum at Comment 6, where the Department decided the parent company's G&A expenses should not be allocated to the respondent because such expenses are not considered fungible in nature, and because the Department found no evidence that administrative or other expenses pertaining to the product under investigation were incurred by the parent company.

In summary, CP Kelco urges the Department to reject Petitioner's arguments and continue to adhere to its decision in the Preliminary Results to exclude CP Kelco A.B.'s plant closure costs from all aspects of the Department's antidumping calculations, specifically with regard to allocating the Swedish affiliate's shut-down expenses to each of the European production entities of the CP Kelco Group.

Department's Position:

The Department has continued to exclude expenses related to the shut down of CP Kelco A.B.'s plant and production facilities from the COP calculation. The Department continues to find that expenses related to the shut down should not be allocated across all three CP Kelco Group companies participating in the concurrent reviews of purified CMC from Sweden, Finland, and the Netherlands. Therefore, for purposes of these final results, we have not adjusted CP Kelco's COP for costs associated with the closure of its plant and production facilities.

During the POR, CP Kelco A.B. closed its purified CMC production facility in Skoghall, Sweden, incurring various expenses, which were solely related to the shut down, such as the dismantling of production equipment and production lines and terminating the lease held for the production facility and warehousing sites. The Department has determined CP Kelco A.B.'s plant closure to be of a complete and permanent nature. For further discussion and documentation of CP Kelco A.B.'s plant closure, see the Issues and Decision Memorandum in the concurrent antidumping duty administrative review of purified CMC from Sweden at Comment 1, dated December 4, 2008. The Department finds that these shut-down costs are not a cost of production for either CP Kelco A.B. or CP Kelco B.V. The Department normally makes a distinction between replacing production equipment and disposing of pieces of production equipment which are considered as a cost, and the sale or shut down of an entire production facility. In Softwood Lumber from Canada (2005), the Department explained that selling an entire production facility, as opposed to the pieces of the plant which can include the building, land and fixtures, are transactions that change the organization and structure of the company and its operations. The Department further explained the rationale behind this position:

Once a facility is sold or shut down, by definition it no longer relates to the ongoing or remaining production, and it becomes either an asset owned by another party or an asset awaiting sale or disposal. Prior to the sale or shut down, the cost of the

facility would be allocated to the products produced at that facility in the form of depreciation expenses.

Id.

Furthermore, the Department explained its position in that case:

The sale of an entire production facility is a significant transaction, both in form and value, and the resulting gain or loss generates non-recurring income or losses that are not part of a company's normal business operations, and are unrelated to the general operation of the company. The sale of an entire production facility does not support a company's general operations, rather it is a sale or removal of certain production facilities themselves. It represents a strategic decision on the part of management to no longer employ the company's capital in a particular production activity. These are transactions that significantly change the operations of the company.

Id.

The Department additionally explained that it "does not consider it appropriate to include gains or losses on the sale of an entire facility in calculating G&A, even if we could capture both the closure costs and the gain or loss on sale in the same accounting period." Id. In keeping with the position set forth in Softwood Lumber from Canada (2005), we find that it is the Department's practice to consider the expenses stemming from the complete shut down of a production facility to be separate from the COP of a company's products.

The Department also finds that CP Kelco A.B.'s shut-down costs are not a cost for CP Kelco or CP Kelco Oy. We find Petitioner's arguments that the CP Kelco Group has integrated production operations in Europe, that the shut down of CP Kelco A.B. was aimed at "rationalizing" the CP Kelco Group's European production operations, that the shut down will result in future benefits to CP Kelco B.V. and CP Kelco Oy, and other specific arguments (see the Proprietary Information Memorandum) to be unavailing. For the reasons stated above, we do not recognize CP Kelco A.B.'s shut-down costs as a part of the COP for CP Kelco A.B. Therefore, it would be inappropriate for the Department to include these costs as a part of the COP for CP Kelco B.V. or CP Kelco Oy. In the past, we have excluded such costs for individual respondents operating within a single country. See Softwood Lumber from Canada (2005). Therefore, to include and allocate such costs across a group of affiliated companies located in separate countries would be contrary to our past practice.

For the reasons stated above, we do not consider CP Kelco A.B.'s shut-down costs as an element of that company's COP. Further, we do not find these costs to be part of the COP for either CP Kelco B.V. or CP Kelco Oy. Therefore, we have not allocated the expenses incurred by CP Kelco A.B. in closing its plant to the company's G&A expense and are not allocating a proportion of

those shut-down costs to the G&A expenses of either CP Kelco B.V. or CP Kelco Oy.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the position set forth above. If this recommendation is accepted, we will publish the final results and the final weighted average dumping margin for CP Kelco in the Federal Register.

Agree_____

Disagree_____

David M. Spooner
Assistant Secretary
for Import Administration

Date