

December 4, 2008

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

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

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

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#### SUMMARY

We have analyzed the comments and rebuttal comments from interested parties in the antidumping duty administrative review on purified carboxymethylcellulose (CMC) from Sweden. As a result of our analysis of information and arguments on the record, we have made changes to the margin calculations from the preliminary results. See Purified Carboxymethylcellulose from Sweden: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 45703 (August 6, 2008) (Preliminary Results). We continue to find that the respondent in the above-captioned proceeding, CP Kelco A.B. (CP Kelco) made sales to the United States at less than normal value (NV) during the period of review (POR). We recommend that you approve the Department of Commerce (the Department)'s positions described in the "Discussion of Interested Party Comments" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from interested parties:

Comment 1: Inclusion of Shut-down costs in CP Kelco's Cost of Production  
Comment 2: Correction for Ministerial Errors

## DISCUSSION OF INTERESTED PARTY COMMENTS

### Comment 1: Inclusion of Shut-down costs in CP Kelco's Cost of Production

The Aqualon Company, a division of Hercules Incorporated (Petitioner), argues that CP Kelco must include in its reported costs an allocated share of the charges associated with the shut down of its production facility, arguing that the shut down occurred in the normal course of CP Kelco's business. 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). Petitioner asserts that 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-33 of CP Kelco's January 8, 2008, Section D questionnaire response, where CP Kelco reported, "In the normal course of business, all group G&A expenses are accumulated and allocated to each of the three operating companies..." i.e., CP Kelco A.B. in Sweden, CP Kelco Oy in Finland, and CP Kelco B.V. in the Netherlands (collectively, the CP Kelco Group), "...based upon budgeted sales revenue."

Petitioner argues that the shut down was aimed at managing or "rationalizing" CP Kelco's European production operations and that the CP Kelco Group did not exit any part of the CMC business as a result of the shut down. See Petitioner's Comment at 2. Petitioner also argues that the shut down of CP Kelco A.B. will result in a future benefit to CP Kelco's affiliated production companies, CP Kelco B.V. and CP Kelco Oy and, therefore, should be included in the common expenses of the CP Kelco Group, to be allocated across all three European production entities.

Petitioner suggests that these costs be allocated based on the cost of sales consistent with the Department's treatment of other general and administrative (G&A) expenses in the concurrent 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 excluding plant closure costs from the Department's calculation of cost of production (COP) as well as allocating G&A expenses on a company-specific basis. See Letter from Arent Fox LLP, regarding "Rebuttal Brief of CP Kelco A.B.," dated September 11, 2008 (CP Kelco Rebuttal Brief) at 1. CP Kelco further argues that Petitioner's recommendation to allocate plant closure costs from CP Kelco to its foreign affiliates is erroneous as they are covered by separate antidumping orders in separate proceedings 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. Id.

First, CP Kelco asserts 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 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). See CP Kelco Rebuttal Brief at 4. 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 Oy (Finland) and CP Kelco B.V. (the Netherlands), CP Kelco contends that such an argument is unsupported by citation to case law or Department precedent. See CP Kelco Rebuttal Brief at 6.

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 in Sweden sold significantly different types of CMC during the POR as compared to the product originating from CP Kelco Oy, and CP Kelco B.V. Id. at 6-7.

Third, CP Kelco argues that Petitioner's assertion that the closure of its production facilities 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 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'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 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's plant closure in company's calculation of COP.

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 Rebuttal Brief at 11; see also, CP Kelco’s Section A Response; see also, CP Kelco’s Second Supplemental Section D Response, dated June 25, 2008 at 3. Moreover, CP Kelco cites Softwood Lumber from Canada (2005) at footnote 60, where the Department stated “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’s plant closure mirrors the intent of the Department’s statement and determination in Softwood Lumber from Canada (2005). Therefore, CP Kelco’s plant closure cannot be viewed as a “rationalizing” of production facilities, but rather as a complete shut down of a production facility. See CP Kelco Rebuttal Brief at 12.

Finally, 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. Moreover, where these costs are reported in the company’s financial statements gives no indication that these costs ought to be allocated to the G&A of CP Kelco’s foreign affiliates in Finland and the Netherlands. See CP Kelco Rebuttal Brief at 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. Moreover, CP Kelco avers, that to do so would distort a respondent’s production costs. In summary, CP Kelco contends that Petitioner has provided no compelling reasoning or substantial evidence that would justify including its plant closure costs in the Department’s COP calculation, nor to allocate those expenses to CP Kelco’s foreign affiliates in Finland and the Netherlands. Id. at 14-15. Therefore, 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’s plant closure costs from all aspects of the Department’s antidumping calculation for CP Kelco.

#### Department’s Position:

The Department has continued to exclude expenses related to the shut down of CP Kelco’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 closed its purified CMC production facility in Skoghall, Sweden, incurring various expenses, which were solely related to the shut down. CP Kelco explained to the Department in its questionnaire responses that the decision to close the Skoghall production facility was made in October 2006. See CP Kelco's Second Supplemental D Questionnaire Response, dated June 25, 2008 at 1. CP Kelco further explained that the closure was approved by its board of directors in November 2006, at which time CP Kelco also terminated its lease with the owner of the Skoghall plant site. Id. at 2. At the Department's request, CP Kelco provided several pieces of support documentation and exhibits demonstrating that its plant closure was of a permanent nature. We have reviewed the minutes of the meeting of CP Kelco's board of directors, the detailed plan for decommissioning and demolishing the Skoghall facility, and photographs taken of the plant site during its decommissioning. Id. at Exhibits D-38 and D-39, D-41, and D-42, respectively. Specifically, CP Kelco explained in its responses that, pursuant to its plan for decommissioning, utilities installations were disconnected, reusable production equipment was disassembled and relocated to other entities of the CP Kelco Group of companies, and nonreusable production equipment was either demolished, sold for scrap or discarded. Id. at 2. Based on the evidence on the record of this proceeding, we have determined CP Kelco's plant closure to be of a complete and permanent nature. Furthermore, there is no evidence on record which would contradict the Department's findings that CP Kelco's Skoghall facility has been permanently closed and that, without significant investment of capital and resources, CP Kelco is unable to further produce purified CMC in Sweden.

The Department finds these shut-down costs are not a COP for CP Kelco. 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 that "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.” See Softwood Lumber from Canada (2005). 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 consider the expenses stemming from the complete, permanent 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 Oy or CP Kelco B.V. 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 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 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 its COP. Further, we do not find these costs to be a 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, as such, are not allocating a proportion of those shut-down costs to the G&A expenses of either CP Kelco Oy or CP Kelco B.V.

#### Comment 2: Correction for Ministerial Errors

In its case brief, CP Kelco alleged a ministerial error in the Department’s margin calculation program used at the Preliminary Results. See Letter from Arent Fox LLP, regarding “Comments Regarding August 6, 2008 Preliminary Results of Review,” dated September 5, 2008. CP Kelco contends that the Department incorrectly programmed the level of trade (LOT) variable to be equal to “1,” rather than “0.” In effect, CP Kelco argues that this error caused eight U.S. constructed export price (CEP) sales, which should have matched to constructed value (CV) to be dropped from the Department’s program when the program merged CV selling expenses by LOT. Id. at 2-3. Moreover, CP Kelco states that these eight sales were dropped because they were U.S. CEP sales that did not have a matching comparison sale in the home market. CP Kelco avers that this programming error was inadvertent as the Department explained its intent in the Preliminary Results, indicating that comparisons were to be made on all sales (both export price sales and CEP sales). Id. at Footnote 1.

Petitioner did not provide rebuttal comments on this issue.

#### Department’s Position:

The Department has revised its margin calculation program for CP Kelco, as the Department inadvertently dropped certain CEP sales from the margin calculation program, rather than matching these sales to CV. The Department has determined that the error alleged by CP Kelco is ministerial in nature.

However, the Department has determined that it appropriately coded the levels of trade in CP Kelco's margin calculation program as it had intended. Moreover, revising the LOT code from "1" to "0" has no effect on the margin calculation program. In our analysis of CP Kelco's comment with regard to this issue, we discovered that the Department inadvertently coded the LOT variable in the comparison market program as merely "LOT" rather than "LOTH," which is how the variable is reported in CP Kelco's comparison market sales database. Therefore, we have revised this programming language accordingly and, in doing so, are matching all reported U.S. sales to either normal value or CV as required by 19 CFR 351.405(a). For further explanation with regard to the Department's revised programming, see Memorandum to the File, from Patrick S. Edwards, regarding "Final Results of Review: Analysis of the Sales Responses Submitted by CP Kelco A.B.," dated December 4, 2008.

RECOMMENDATION:

Based on our analysis of the comments received and record evidence, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final antidumping margin and the final results of this review in the Federal Register.

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Agree

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Disagree

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date