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Investigation
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DATE: March 4, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Certain Polyethylene Terephthalate Resin from Canada: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value

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SUMMARY

The Department of Commerce ("the Department") finds that certain polyethylene terephthalate resin ("PET resin") from Canada is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is January 1, 2014, through December 31, 2014.

After analyzing the comments submitted by interested parties, and based on our findings at verification, we made certain changes to the margin calculations for the mandatory respondent, Selenis Canada Inc. ("Selenis Canada"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

Comment 1: Whether the Department Should Use the Depreciation Expenses Based on the Revaluation of Fixed Assets as Recorded in Selenis Canada's 2014 Audited Financial Statements
Comment 2: Whether the Department Should Calculate Interest Expenses Based On The Parent Company's 2014 Consolidated Financial Statements
Comment 3: Whether the Department Should Correct Selenis Canada's Cost Data for Adjustments Outlined In the Cost Verification Report

Comment 4: Whether the Department Should Calculate Selenis Canada's Costs on a Quarterly Average Basis Rather Than a Single Annual Average

BACKGROUND

The following events have taken place since the Department published the Preliminary Determination in this investigation on October 15, 2015.[1] Between October 19, 2015 and October 30, 2015, the Department verified the information provided by Selenis Canada.[2] On November 16, 2015, DAK Americas LLC, M&G Chemicals, and Nan Ya Plastics Corporation ("Petitioners") requested the Department to conduct a public hearing to discuss the issues raised in their case and rebuttal briefs. Furthermore, on December 11, 2015, Petitioners and Selenis Canada submitted case briefs.[3] On December 16, 2015 Selenis Canada submitted a revised case brief pursuant to the Department's request. Additionally, on December 18, 2015, Petitioners and Selenis Canada submitted rebuttal briefs.[4]

SCOPE OF THE ORDER

The merchandise covered by this investigation is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process. The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. See Appendix I to the Federal Register notice for the final determination of this investigation, issued concurrently with this memorandum.

[1] See Certain Polyethylene Terephthalate Resin from Canada: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 62019 (October 15, 2015) ("Preliminary Determination"), and accompanying Preliminary Issues and Decision Memorandum ("PDM").

[2] See Memorandum to the File from Gina K. Lee, Senior Accountant, through Peter S. Scholl, Lead Accountant, and Neal M. Halper, Office Director, regarding "Verification of the Cost Response of Selenis Canada Inc. in the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from Canada," (November 25, 2015) ("Cost Verification Report"); see also memorandum to the File, from Karine Gziryan and Krisha Hill, AD/CVD Operations, Office IV, to the File "Verification of the Sales Questionnaire Responses of Selenis Canada, Inc.: Less-Than-Fair-Value Investigations of Certain Polyethylene Terephthalate Resin from Canada ("PET Resin")," (December 3, 2015) ("Sales Verification Report").

[3] See Letter from Petitioners to the Secretary of Commerce "Certain Polyethylene Terephthalate Resin from Canada: Petitioners' Case Brief," dated December 11, 2015 ("Petitioners' Brief"); see also letter from Selenis Canada to the Secretary of Commerce "Antidumping Case Brief of Selenis Canada: Certain Polyethylene Terephthalate (PET) Resin from Canada," dated December 11, 2015 ("Selenis Canada Brief").

[4] See Letter from Petitioners to the Secretary of Commerce "Certain Polyethylene Terephthalate Resin from the Sultanate of Canada: Petitioners' Rebuttal Case Brief," dated December 18, 2015 ("Petitioners' Rebuttal Brief"); see also Letter from Selenis Canada to the Secretary of Commerce "Antidumping Rebuttal Case Brief of Selenis Canada: Certain Polyethylene Terephthalate (PET) Resin from Canada," dated December 18, 2015 ("Selenis Canada Rebuttal Brief").

DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Should Use the Depreciation Expenses Based On The Revaluation of Fixed Assets as Recorded in Selenis Canada's 2014 Audited Financial Statements

Petitioners

- The Department should not have used Selenis Canada's submitted depreciation expenses based on the historic asset values in the Preliminary Determination calculation of the dumping margin for Selenis Canada.
- The revaluation of assets in Selenis Canada's books and records adjusts the fixed assets to current value, and, thus the depreciation calculated based on the revalued assets represents the current depreciation.
- The actual depreciation expense based on the revaluation of the fixed assets represents the depreciation that was incurred during the POI and reported in the financial statements.
- Failure to account for these actual depreciation expenses results in a distorted and understated cost of production, which does not reflect the actual costs as recorded in Selenis Canada's normal books and records, or reflect what is recorded in Selenis Canada' 2014 financial statements.
- When the Department has found that the respondent's costs were understated and did not reflect the cost of producing the merchandise under investigation, even when the financial statements were prepared in accordance with local Generally Accepted Account Principles ("GAAP"), the Department has adjusted the respondent's costs using a methodology that more accurately captures the actual costs incurred to produce the merchandise under investigation.

Selenis Canada

- The Department properly relied upon depreciation expenses based on the historical asset value of the company's plant and equipment which Selenis Canada's auditors had advised were calculated in accordance with Canadian GAAP.
- Selenis Canada contends that the revaluation of fixed assets was a departure from home country GAAP and was specifically rejected by its auditors because Selenis Canada did not meet the specified conditions to revalue assets established in Canadian GAAP. This resulted in the auditors issuing a qualified opinion on the Selenis Canada financial statements because depreciation calculated based on revalued asset amounts is not in accordance with Canadian GAAP.
- There is no indication on the record that the depreciation calculated based on the historic valuation of the fixed assets, in accordance with Canadian GAAP, did not reasonably reflect the COP for the production and sale of the merchandise.
- While Petitioners claim that the replacement value of Selenis Canada's assets more accurately reflects the fair market value, they cite to no record evidence to support this conclusion and Selenis Canada's auditors concluded that the

> depreciation based on the revalued assets is a distorted value and rejected this methodology for the financial statements.

Department's Position:

We agree with Selenis Canada and continue to rely on Selenis Canada's historical depreciation expenses as recorded in its normal books and records. Section 773(f)(1)(A) of the Act instructs the Department to calculate costs based on a respondent's normal books and records if they are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. In this case, we find that the calculation of the PET resin producer's depreciation expense on a historical basis is consistent with the company's normal books and records, with Canadian GAAP, and with the Department's practice of applying foreign GAAP except where those principles distort the cost.[5]

While Selenis Canada calculated and reported to its corporate parent depreciation expense based on revalued fixed asset amounts, its auditors concluded that this reporting was not in accordance with Canadian GAAP. Selenis Canada reported to the Department depreciation expenses based on the historical value of the assets which is in accordance with Canadian GAAP. In the preliminary determination, the Department relied on the depreciation expenses based on the historical fixed asset values, which are in accordance with Canadian GAAP. At issue here is whether the historical depreciation expense reasonably reflects the costs associated with the production and sale of the merchandise.

In this case, the record shows that Selenis Canada's audited financial statements were prepared in accordance with Canadian GAAP, except for the revaluation of fixed assets. As stated on page 2 of the Independent Auditors' Report, submitted as Attachment 1 in Selenis Canada's October 9, 2015 submission:

> Under Canadian accounting standards for private enterprises, plant and equipment is recorded at cost unless specified conditions are met to permit a comprehensive revaluation of assets and liabilities. On December 31, 2013, Selenis Canada Inc. revalued its plant and equipment when the specified conditions in Canadian accounting standards for private enterprises were not met (See Note 2). This constitutes a departure from Canadian accounting standards for private enterprises.

While Petitioners argue that the revalued asset depreciation expense results in a higher amount than the historical based depreciation, they have provided no record evidence to support their assertion that depreciation based on the historical cost of fixed assets, in accordance with the company's normal books and records and Canadian GAAP, is distortive. As such, we have

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[5] See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (February 9, 2009) and accompanying Issues and Decision Memorandum at Comment 6 (where the Department adjusted the respondent's costs to include three months of depreciation expense that was not recorded in the company's books, and accompanying Issues and Decision Memorandum at Comment 6; and, Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52061 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 5.

continued to rely on the company's reported depreciation expense based on the historical cost of its fixed assets.

Petitioners cite a number of cases, all of which are distinguishable from Selenis Canada's facts regarding the Department's precedent for departing from the exporting country's GAAP. In Steel Wire Rod from Trinidad and Tobago[6] we used depreciation based on the revalued assets because these depreciation figures represented those in the normal books and records of the respondent which were in accordance with home country GAAP. In this case Selenis Canada reported the depreciation on the basis of the revalued assets only for the purpose of reporting to its parent company, but maintained depreciation records based on the historical value of the assets in accordance with Canadian GAAP and reported these values to the Department. We distinguish this proceeding from Citric Acid from Canada, in that that proceeding was concerned with the proper valuation of an asset sale between affiliated parties and whether the related depreciation should be based on the book value of the assets or an arm's length value between the affiliated parties.[7] As there was no asset sale between affiliates in this case, Citric Acid from Canada is not on point. Stainless Steel Plate from South Africa related to whether excluding certain depreciation expenses from the COP reasonably reflected the cost of production which we determined it did not.[8] However, the exclusion of certain depreciation expenses is not at issue here. In Oil Country Tubular Goods from Ukraine we acknowledged as unreasonable a circumstance where a company did not report any depreciation in compliance with a Ukrainian GAAP rule that allowed companies not to report depreciation until the production operation at issue was registered with a government agency, but that issue was ultimately found moot.[9] However later in that case the department utilized the revalued depreciation over historical depreciation because the revalued depreciation was based on the normal books and records of the respondent in accordance with Ukrainian GAAP, and the respondent failed to demonstrate that the use of the revalued depreciation expenses from its normal books and records was distortive.[10] The facts of this case are analogous to the latter portion of Oil Country Tubular Goods from Ukraine, in so far as a particular method of depreciation was not, without more evidence, inherently distortive. The facts are dissimilar to the former portion of Oil Country Tubular Goods From Ukraine in so far as not having *any* depreciation was inherently distortive despite its compliance with the home country GAAP.

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[6] See Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of 1st Administrative Review, 70 FR 12648 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 1.
[7] See Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review, 76 FR 34044 (June 10, 2011), and accompanying Issues and Decision Memorandum at Comment 3
[8] See Stainless Steel Plate in Coils from South Africa: Final Determination of Sales at Less Than Fair Value, 64 FR 15459 (March 31, 1999) at Comment 14.
[9] See Certain Oil Country Tubular Goods from Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 79 FR 41969 (July 18, 2014), and accompanying Issues and Decision Memorandum, at Comment 6.
[10] Id. at Comment 7.

Comment 2: Whether the Department Should Calculate Interest Expenses Based On The Parent Company's 2014 Consolidated Financial Statements

Selenis Canada

- Selenis Canada claims that because it had no borrowings from either its parent company or other affiliates during the POI, the Department's use of the parent company's financial expense ratio vastly overstates Selenis Canada's actual financial expenses attributable to production of the subject merchandise by a factor between 4 and 5.
- The financial expenses that were actually incurred by Selenis Canada during the POI are best reflected in the company's own audited 2014 financial statements.
- The statute directs Commerce to calculate the general and administrative expense component of production costs, of which financial expenses are a part, in a manner designed to capture the actual costs incurred by the individual producer or exporter.
- In the past, the Department has not used the parent's consolidated financial statements to calculate a financial expense rate for respondents who have been able to show they are not controlled by their parent or were able to show that their own financial statements were more accurate because there was no evidence of inter-company production financing arrangements.
- An analysis of its parent's financial statements and Selenis Canada's own financial statements establish that there were no inter-company borrowings, transfers of merchandise, equity infusion or any other type of financial transaction between Selenis Canada and any other affiliated company.
- The potential for manipulation of the financial expense rate by Selenis Canada's parent is entirely negated by the absence of loans, debt issuance or swap, or other types of financial transactions.
- Selenis Canada agreed to file its parent company's 2014 audited financial statements as soon as they become available.
- Selenis Canada agreed with Petitioner that the Department should use the 2014 consolidated financial statements of Selenis Canada's parent company in case the Department chooses to use the Selenis Canada's parent company's financial statements for purpose of calculating financial expenses.
- According to Selenis Canada the 2014 consolidated financial statements of its parent company are expected to be available by December 31, 2015.
- Selenis Canada stated in its rebuttal brief that it will submit the 2014 consolidated financial statements of its parent company to the Department as soon as they become available.

Petitioners

- The Department correctly based its financial expense ratio on the consolidated financial statement of Selenis Canada's parent company.

- The Department's policy reflects the well settled notion that the issuance of consolidated financials is a per se indication of control by the parent over affiliated and subsidiary companies.
- Selenis Canada's claim that it had no intercompany borrowings from its affiliates is incorrect. While this statement may be true with regard to the parent company, the consolidated financial statements reveal that during the POI, Selenis Canada had substantial borrowings from another member of the group.
- There exists substantial record evidence that demonstrates that the parent company is the controlling entity that has the power and influence over Selenis Canada and negotiates the terms and conditions for loans on behalf of all subsidiaries in the group of companies.
- The statute provides no guidance on the method of how the financial expense ratio should be calculated, but over the course of many years, the Department has developed a consistent practice for calculating financial expenses.
- The Department's longstanding practice and policy to calculate a respondent's financial expense ratio based on the audited financial statements of the highest level of consolidation available has been applied in numerous antidumping cases in which a respondent's financial statements were part of the parent company's consolidated financial statements which has been affirmed by the Court of International Trade and the Federal Circuit.
- The Department's policy recognizes both the fungibility of money and the power of a controlling entity to control the capital structure of the entire consolidated group.
- The Department should calculate interest expenses based on the parent company 2014 consolidated financial statements.
- In the Preliminary Determination, the Department calculated the financial expense ratio based on the 2013 audited consolidated financial statements of Selenis Canada's parent company because the consolidated financial statements for 2014 of the parent company were not completed and were not available. As of the dated of the cost verification, according to Selenis Canada, these financials statements still were not completed and not yet available.
- During the course of this proceeding, the Department asked Selenis Canada to provide the calculation of the financial interest expense ratio based on the 2014 consolidated audited financial statements of Selenis Canada's parent company. In its response to Supplemental Section A questionnaire Selenis Canada indicated that the estimated completion date for the 2014 consolidated financial statements of its parent company is December 31, 2015**.**

Department's Position:

For the preliminary determination, the Department recalculated the respondent's net financial expense ratio based on the 2013 consolidated financial statements of its parent group, for the fiscal year which most closely corresponds to the POI which were available and on the record. Selenis Canada disagrees with the Department's preliminary determination and advocates that the best measure of the company's actual financial expenses are those reflected in the unconsolidated Selenis Canada financial statements. We disagree.

Section 773(b)(3)(B) of the Act, as amended, provides that, for purposes of calculating cost of production, the Department shall include an amount for general expenses based on actual data pertaining to the production and sales of the foreign like product by the exporter in question. When the statute is silent or ambiguous on a specific issue, the determination of a reasonable and appropriate method is left to the discretion of the Department. Although the Act does not specify a particular method for calculating financial expenses, the Department's long-standing practice is to calculate a respondent's financial expense ratio based on the audited financial statements of the highest level of consolidation available.[11] We have continued to calculate Selenis Canada's net financial expense rate for the final determination based on the consolidated financial statements of its parent where Selenis Canada is a subsidiary in accordance with this established practice.

This methodology recognizes the fungible nature of invested capital resources (i.e., debt and equity) within a consolidated group of companies.[12] It also recognizes that the controlling entity within a consolidated group has the ultimate power to determine the capital structure and financial costs of each member within the group.[13] Consolidated financial statements are more meaningful than separate financial statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has controlling financial interest in another entity. As the Department stated in Low Enriched Uranium from France:

> Companies finance operations through various forms of debt transactions, stock transactions, cost sharing and reimbursement schemes, and even corporate operating transactions. These financing activities are conducted both with internal and external parties. In such circumstances, the controlling management of the group coordinates these activities in order to maximize the benefit to the group as a whole. A few examples of these types of activities include, but are not limited to, debt moved to specific companies in order to shield assets in other companies from creditors; monies moved through manipulated transfer prices to avoid tax liabilities or currency restrictions; sharing or undertaking strategic costs such as research and development; or conversions of debt into equities (or vice versa) to present a group member in a more favorable financial position. The important point here is that the corporate control on the financing operations of individual group member companies may exist even in the apparent absence of specific inter-company financing transactions.[14]

Thus, the consolidated financial statements of Selenis Canada's parent group are more appropriate than Selenis Canada's own separate financial statements, and the consolidated

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[11] See, e.g., 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 25 ("Certain Frozen Warmwater Shrimp from India"); Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (August 30, 2002) ("Steel Wire Rod from Mexico") and accompanying Issues and Decision Memorandum at Comment 21-22.

[12] See Steel Wire Rod from Mexico, and accompanying Issues and Decision Memorandum at 21-22.

[13] Id.

[14] See, Notice of Final Determination of Sales at Less than Fair Value: Low Enriched Uranium From France, 66 FR 65877 (December 21, 2001) (Low Enriched Uranium from France) and accompanying Issues and Decision Memorandum at Comment 14.

financial statements are necessary for a fair presentation when one entity directly or indirectly has a controlling financial interest in another entity. We find in this case that Selenis Canada's parent has a controlling interest in Selenis Canada.[15] As the Department stated in Certain Frozen Warmwater Shrimp from India:

> Financial expenses recorded on a respondent's own financial statements, or a lower level consolidation, only reflects the financial position that the management of the group wishes to present for that particular subsidiary. Because the majority of the board of directors, and by extension management, of each group member is ultimately controlled by each successive board of directors, up to the highest level board of directors and management, it is reasonable to conclude that the overall strategic operations are guided from above. The Department recognizes that the very purpose of creating a corporate group is to leverage the strategic and competitive advantages of individual group companies for the betterment of the whole. Thus, the financial position of one group member will not properly reflect the actual financial position of that company. It cannot be ignored that the company is operating as a member of a larger entity, with the support (direct or indirect) to which it is entitled from the group.[16]

The true economic picture of the consolidated group can only be seen when all inter-company holdings (i.e., shares in affiliates and debts between affiliates) and inter-company transactions (i.e., inter-company sales, receivables, payables, etc.) have been eliminated (i.e., removal of the double-counting effect of inter-company transactions) in the consolidated financial statements of the parent company. Only after such eliminations does the debt structure of the group become apparent and does the actual cost of borrowing of group companies become visible. Such eliminations also derive a cost-of-sales figure free of inter-company transactions. The consolidated cost of sales is used to allocate the true financial expense to the products produced within the group.

The Court of Appeals for the Federal Circuit has sustained "as reasonable Commerce's well-established practice of basing interest expense and income on fully consolidated financial statements."[17] Moreover, the CAFC affirmed "Commerce's well-established practice of acknowledging the role of consolidated statements."[18]

Selenis Canada argues that its own financial expenses are the most representative of the company's actual experience unless the company had transactions with other group companies. We disagree with Selenis Canada that it is necessary to have transactions with group companies to use the consolidated financial statements to calculate financial expenses and our position is consistent with the CAFC's opinion in American Silicon III.[19] The CAFC explained that it was unnecessary for Commerce to assess inter-company financial transactions in calculating finance expenses in a dumping margin since this would create "a new kind of test {which} would impose

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[15] See the Annex 1. to the consolidated financial statements in the Supplemental Section A July 1, 2015 at Exhibit SA-20.
[16] See Certain Frozen Warmwater Shrimp from India, and accompanying Issues and Decision Memorandum at 26.
[17] See American Silicon Techs. v. United States, 334 F. 3d. 1033, 1037-1038 (Fed. Cir 2013) (American Silicon III).
[18] Id.
[19] Id.

significant new administrative burdens on Commerce and invite potential manipulation {which} might take the form of a controlling company selecting a financial cost ratio by directing one its subsidiaries with a low ratio to lend to the exporter."[20]

Nonetheless, we agree with Petitioners that Selenis Canada was incorrect in stating that Selenis Canada had no financial transactions with any group company. Information on the record (i.e., the consolidated financial statements) demonstrates that Selenis Canada had a mortgage on its tangible fixed assets from Banco Espirito Santo, S.A. ("BES").[21] Further, the consolidated financial statements show that Selenis Canada's parent company is the controlling entity that has the power and influence over Selenis Canada and negotiates the terms and conditions for loans on behalf of all subsidiaries in the group of companies.

For instance, in the consolidated financial statements, it states:

> In 2014, the … Group completed the process of restructuring its bank debt, still subject to the same conditions precedent. The main changes involve the change of the maturities of the current lines of financing, and reduction of their cost, in addition to the issue of new lines of financing with a view to ensuring the new investment requirements resulting from the projected growth, essentially in the subsidiary Selenis Canada.[22]

This factual scenario is in line with our reasoning in Low Enriched Uranium from France, above. Due to the fact that the record shows that Selenis Canada had transactions with group companies and involvement with its parent company in determining the capital structure of the group, we deem Selenis Canada's arguments regarding transactions with the group to be unpersuasive.

Selenis Canada argues that the calculated financial expense rate in the preliminary determination was unreasonable and compares the short-term borrowing rate used for calculating credit expenses, and the financial expense rate used to calculate financial expenses for the cost of production. We disagree that this is a valid comparison as these are two distinct rates. Credit expenses are an imputed amount which relies on the short term interest rates associated with the currency in which sales are denominated whereas a company's financial expense for COP relates to the company's actual borrowing costs (i.e., interest expense) as a percentage of its total cost of sales. As the Department explained in Welded Carbon Pipe from Turkey, it calculates credit expense using the short-term interest rate tied to the currency in which the sales are denominated based on the respondent's weighted-average short-term borrowing experience in that currency. The Department stated in that case that "the fact that the Department uses the highest level of consolidation to calculate interest expense used in the cost of production calculation has no bearing on the short-term borrowing rate used to calculate credit expense."[23]

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[20] Id.
[21] See, the Annex 1. to the consolidated financial statements in the Supplemental Section A July 1, 2015 at Exhibit SA-20 at page 66.
[22] Id. at 51.
[23] See Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Results of Antidumping Duty Administrative Review, 76 FR 76,939 (December 9, 2011), and accompanying Issues and Decision Memorandum at 28 (Comment 10).

Petitioners advocate in their comments that the Department require Selenis Canada to put on the record its parent's 2014 audited financial statements. While Selenis Canada agrees, given the record in this case and the timing of parties' arguments that we should use new factual information that is not currently before the Department, we disagree. Instead, we find it appropriate in this case to calculate Selenis Canada's financial expense ratio based on the company's consolidated 2013 financial statements because Selenis Canada's parent company's consolidated 2014 financial statements are not on the record of this investigation and they were not available by the deadlines for submitting new factual information. Furthermore, they were not available before and during the verification.

In the Preliminary Determination, the Department calculated the net financial expense ratio based on the 2013 audited consolidated financial statements for Selenis Canada's parent company. In the Preliminary Determination, we did not use the audited consolidated 2014 financial statements for Selenis Canada's parent company for the most recently completed fiscal year 2014, because these financial statements were not yet available. As Selenis Canada stated in its supplemental questionnaire, the earliest the audited consolidated 2014 financial statements of its parent company would be available was December 31, 2015, which was after we completed verification on October 30, 2015, several months after our preliminary determination on October 15, 2015, and after the briefing period for this proceeding, which concluded on December 18, 2015. Since parties never even attempted to submit the audited 2014 financial statements for Selenis Canada's parent company, we need not address exactly which factual information deadline may have applied or how we might have ruled if parties had submitted the 2014 financial statement for Selenis Canada's parent company. However, we note that the deadline discussed in 19 CFR 351.301(c)(5) provides that in an investigation the deadline for new factual information that does not fall under the other deadlines discussed in the regulation will be 30 days before the scheduled date of the preliminary determination, in this case September 15, 2015. September 15, 2015 is well before the earliest date the new financial statement could have been ready. Because the Department faces strict statutory deadlines when conducting antidumping duty investigations, it is important that information from interested parties is provided early and in a timely manner so that we can analyze such information effectively and meet our statutory obligations under U.S. law.

Selenis Canada's parent company's audited consolidated 2014 financial statements are not on the record and the new factual deadline has passed. In general, it is too late at this advanced stage of this proceeding for new factual information for the Department to consider and the interested parties to comment upon after briefs and rebuttals have been filed in this case. Accordingly, the Department is not using Selenis Canada's parent company's 2014 consolidated financial statements, which are not on the record, for purposes of the calculating interest expense, and for the final determination, we will continue to use the company's 2013 consolidated financial statements to calculate interest expense.

Respondent cites a number of cases, all of which are distinguishable from Selenis Canada's facts regarding the Department's precedent for calculating the financial expense rate based upon the consolidated financial statements of the respondent's ultimate corporate parent.

In support of its position that the Department will allow respondents to present evidence that is sufficient to show that the Department's practice of calculating interest expense based on the consolidated group of companies would result in a distortion of the true financing cost of Selenis

Canada, the respondent cites to Gulf States Tube Division of Quantex Corporation v. United States.[24] However, in Gulf States the Department's decision to use an integrated financial statement was upheld.[25] Here, as in Gulf States, this record does not support the contentions 1) that Selenis Canada's parent does not control Selenis Canada's operations; 2) that Selenis Canada's parent does not have the power to determine Selenis Canada's capital structure; and 3) that by using the parent's consolidated interest expense, the Department has distorted Selenis Canada's true financing expense. We note that the CAFC in American Silicon III also determined that Commerce reasonably calculated interest expense based on the consolidated financial statements of the parent.

> In the first place, this court notes that standard accounting principles acknowledge consolidated financial statements as a fair presentation of the financial position of a group. See, Floyd A. Beams, Advanced Accounting 74, 77, 91 102-03 (5th ed. 1992). Following those practices, Commerce has adopted and followed a standard policy for assessing finance costs of a producer based on the consolidated financial statements of a parent because the cost of capital is fungible. Commerce's policy recognizes that consolidated financial statements indicate that a corporate parent controls a subsidiary. These consolidated statements represent the financial health of parent company operations in view of subsidiary operations. In addition, fungible financial assets invite manipulation. In other words, if Commerce only used a single division of a group as the source of financing costs, the controlling entity could shift borrowings from one division to another division to defeat accurate accounting.[26]

For the reasons enumerated above, we find in this case that the net financial expense rate calculated from the consolidated financial statements is reasonable.

Selenis Canada also cites Aimcor v. United States[27] to support its contention that there is precedence for rejecting the financial statements of the ultimate corporate parent to calculate the respondent's financial expenses. However the CAFC has clarified that Aimcor v. United States "does not apply in the face of intercompany borrowing."[28] As explained above, there is record evidence of such intercompany borrowing. Even though evidence of intercompany borrowing is not required for the Department to rely on consolidated financial statements, record evidence of that borrowing plainly makes Selenis Canada's reliance on Aimcor v. United States unavailing. Additionally, Aimcor v. United States is nearly 20 years old, and subsequent CAFC decisions have made it clear that evidence of intercompany borrowing is not a requirement, as Selenis Canada contends, for using the financial statements of the ultimate corporate parent.[29]

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[24] See, Gulf States Tube Division of Quantex Corporation v. United States, 981 F. Supp. 630 (CIT 1997) (Gulf States).
[25] Id. at 650.
[26] See American Silicon III, 334 F. 3d at 1037.
[27] See Aimcor v. United States, 69 F. Supp. 2d 1345 (CIT 1999).
[28] See E.T. Dupont De Nemours & Co. v. United States, 4 Fed. Appx. 929, 933 (Fed. Cir. 2001)
[29] See American Silicon III, 334 F. 3d. at 1037-1038.

Selenis Canada also cites to Polyethylene Terephthalate from Korea[30] in order to provide an instance where the Department determined that the respondent's own financial statements, and not those of the consolidated group, were more accurate because there was no evidence of inter-company production financing arrangement. Again, this case is 25 years old and the Department's practice and case precedent have evolved since that time. As explained above, the Department does not require evidence of inter-company transactions to use the consolidated financial statements to calculate net financial expenses.

For the reasons stated above, the Department has continued to rely on the financial expense ratio calculated for the preliminary determination, except for the minor adjustment made due to verification corrections.

Comment 3: Whether the Department Should Correct Selenis Canada's Cost Data for Adjustments Outlined In the Cost Verification Report

Petitioners

- Petitioners state that the Department should account for the change in production quantity noted at verification and increase the per unit manufacturing costs.
- Petitioners advocate that the Department should account for the increase in the per unit cost of manufacturing ("COM")from the adjustment to the closing of finished goods inventory and the cost of goods sold noted at verification.
- Petitioners argue that the Department should account for the unreconciled difference in polyethylene terephthalic acid consumption noted at verification resulting in an increase in the costs.
- Petitioners state if the Department uses the depreciation based on historic asset values then as the Department noted in its verification report, the denominator of the general and administrative (G&A) expense ratio needs to be adjusted to reflect this depreciation instead of the reported denominator which utilizes the depreciation on the revalued assets.

Selenis Canada

- Selenis Canada agrees with all the proposed adjustments above.

Department's Position:

We agree with both Selenis Canada and Petitioners and have included the verification adjustments noted in the cost verification report in our cost calculation adjustments for the final determination.[31]

[30] See Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from Korea, 56 FR 16305 (April 22, 1991).
[31] See Memorandum to Neal M. Halper from Gina K. Lee, RE: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Selenis Canada, Inc. ("Selenis Canada"), dated March 4, 2016.

Comment 4: Whether the Department Should Calculate Selenis Canada's Costs on a Quarterly Average Basis Rather Than a Single Annual Average

Selenis Canada

- The Department has departed from its normal annual average COP methodology where reliance on the normal annual weighted-average cost methodology would be distortive due to significant cost changes during the POI.
- An analysis of the administrative record in this case shows that there were significant changes in the COM throughout the cost reporting period.
- In this industry, the price of the PET resin is directly linked to the cost of the raw materials.
- The use of shorter cost averaging periods would be more appropriate due to the occurrence of significant cost changes throughout the POI.

Petitioners

- The Department has adopted a consistent approach of calculating period-wide, annual-average costs to compare to prices covering the same extended period of time.
- Selenis Canada's argument is not supported in the record, and fails to 1) outline the Department's two-part test for resorting to quarterly-cost averages; and, 2) show that its cost data satisfy the test.
- Because there is no record evidence of a 1) sustained increase or decrease in unit costs throughout the period; and 2) no evidence of a correlation between consistently declining/rising manufacturing costs and prices, there is no record data that supports use of a shorter cost averaging period in this case.
- The Department should continue to rely on the annual cost averages for the final results.

Department's Position:
We agree with Petitioners that record evidence does not support a departure from the Department's normal annual weighted-average cost calculation methodology for this final determination. The Department has developed and applied a two prong test to determine whether to deviate from its normal methodology of calculating an annual weighted-average cost.[32] In determining whether to deviate from our normal methodology, the Department evaluates whether the change in the COM recognized by the respondent during the POI or period of review ("POR") is significant.[33] A "significant" change is defined as a greater than 25 percent

[32] See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Review, 76 FR 76939 (December 9, 2011) and accompanying Issues and Decision Memorandum at Comment 1, Certain Pasta from Italy: Notice of Final Results of the Thirteenth Antidumping Duty Administrative Review, 75 FR 81212 (December 27, 2010), and accompanying Issues and Decision Memorandum at Comment 1; Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 75 FR 6627 (February l0, 2010), and accompanying Issues and Decision Memorandum at Comment 6; and Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 4.
[33] Id.

change in COM from the high to the low quarter.[34] After developing our practice over recent years regarding whether or not to apply an alternative cost averaging period in computing the costs of production for a case proceeding, we systematically ask respondents to report their three most significant inputs in producing the merchandise under consideration for each month of the POI or POR. We also ask that they provide the approximate percentage each such input represents of the total cost of manufacturing of the merchandise under investigation or review. This case is no exception. We asked Selenis Canada to report monthly costs for its three most significant inputs during the POI in question II.A.6. of our section D questionnaire.[35] In its June 19, 2015 section D questionnaire response, Selenis Canada responded to this question and provided the chart we requested in exhibit D2. Specifically, Selenis Canada reported its monthly purchases during the POI of its three most significant inputs, purified terephthalic acid, isopropyl alcohol, and monoethylene glycol.[36] Our review of the information in this exhibit supported our determination that the quarterly changes in the purchase prices of these top inputs did not meet the threshold to warrant further investigation with regards to using an alternate cost averaging methodology for the investigation.[37] Had our analysis indicated a significant quarterly change for the three top inputs we would have requested further information to conduct our two-prong test.[38] As the data on this record showed that the change in costs did not appear to be significant, we did not pursue this issue any further.[39]

As such, we affirmatively stated in our preliminary determination decision memorandum that we applied our standard annual-average cost methodology.[40] We note that no party raised this issue until Selenis Canada filed its case brief on December 16, 2015. Therefore, as the record supports the fact that Selenis Canada's costs did not significantly change over the POI, and as Selenis Canada did not provide any alternate support or analysis that would suggest otherwise, we have continued to apply our standard annual-average cost calculation methodology for the final determination.

[34] Id.
[35] See Section D of the April 27, 2015 Antidumping Questionnaire.
[36] See Supplemental Section D submission of June 19, 2015 at D2.
[37] Id.
[38] Id.
[39] Id.
[40] See Preliminary Determination and accompanying PDM at 11.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the Federal Register.

✓ ________   ________

Agree   Disagree

____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 MARCH 2016

Date