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

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

REGARDING: Antidumping Duty Administrative Review of Chlorinated Isocyanurates from Spain

SUBJECT: Issues and Decision Memorandum for the Final Results

SUMMARY

We have analyzed the comments of the interested parties in the 2004-2006 antidumping duty administrative review of chlorinated isocyanurates ("chlorinated isos") from Spain. As a result, we have made changes to the margin calculation for Aragonesas Industrias y Energía S.A. ("Aragonesas"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On July 9, 2007, the Department of Commerce ("the Department") published the preliminary results of the antidumping duty review of chlorinated isos from Spain. See Chlorinated Isocyanurates from Spain: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 37189 (July 9, 2007) ("Preliminary Results"). The product covered by this investigation is chlorinated isos. The petitioners, BioLab, Inc. ("BioLab"), Clearon Corporation ("Clearon") and Occidental Chemical Corporation ("Oxychem") (or collectively, the "petitioners"), requested a hearing, which was held by the Department at its main building on September 25, 2007. The period of review ("POR") is December 20, 2004, through May 31, 2006.

We invited parties to comment on the Preliminary Results. We received timely filed case briefs from the petitioners and Aragonesas. We also received timely filed rebuttal briefs from the

petitioners and Aragonesas. Based on our analysis of the comments received, we have changed the weighted-average margin from that presented in the Preliminary Results for Aragonesas.

LIST OF THE ISSUES

Below is the complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Whether the Department Should Grant a Level of Trade Adjustment.

A. Whether Certain Sales to Industrial Customers Should be Reclassified as Sales in the Retail Channel of Distribution Due to Product Characteristics.

B. Whether Evidence on the Record Supports Aragonesas' Reported Selling Activity Intensity.

Comment 2: Whether the Department Should Exclude Sales for Which Aragonesas Reported No Freight Expenses in Calculating the Average Rate by Which Aragonesas Over-reported Home Market Inland Freight.

Comment 3: Whether the Department Should Apply the Major Input Rule for Valuing Caustic Soda and Chlorine Inputs.

Comment 4: Whether the Tableting and Packaging Services Supplier is Affiliated With Aragonesas.

Comment 5: Whether the Department Should Adjust Aragonesas' G&A Expenses.

Comment 6: Whether the Department Should Adjust Aragonesas' Cost of Production to Account for Costs That Were Unreconciled After Verification.

Comment 7: Whether the Department Should Deduct Unsubstantiated Interest Income From Aragonesas' Financial Expense Ratio Calculation.

Comment 8: Whether the Department Should Adjust the Reported Costs for CONNUM 1111.

Comment 9: Whether the Department Should Refrain From Zeroing Negative Margins.

CHANGES IN THE MARGIN CALCULATION SINCE THE PRELIMINARY RESULTS

We calculated export price ("EP") and normal value ("NV") using the same methodology stated in the Preliminary Results, except as follows:

1. The Department has revised its methodology for adjusting Aragonesas' home market ("HM") inland freight expenses to exclude two sales with terms indicating that Aragonesas was not responsible for inland freight.

2. The Department has applied the major input rule to inputs transferred between the corporate division formerly known as Aragonesas Delsa S.A. ("Delsa") and Aragonesas in 2005, and between Ercros Industrial S.A. ("Ercros") and Aragonesas in 2006.

3. The Department has adjusted Aragonesas' cost of production ("COP") to account for costs that were unreconciled after verification.

4. The Department has adjusted the reported costs for control number ("CONNUM") 1111.

DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Should Grant a Level of Trade Adjustment.

The petitioners state that in the Preliminary Results the Department determined that Aragonesas made sales at two levels of trade ("LOT") in the HM (retail/distributor customers and industrial customers) and at one LOT in the U.S. market (industrial customers). See Clearon and Oxychem ("C&O") Case Brief at 3-6; see Biolab Case Brief at 2-7. The petitioners state that the Department made an LOT adjustment where U.S. sales made at the industrial LOT were matched to HM sales at the retail/distributor LOT. Citing section 773(a)(7)(A) of the Tariff Act of 1930, as amended ("the Act"), the petitioners state that the Department makes LOT adjustments to NV when any difference between the prices forming the basis for NV, and the prices for the U.S. sales that are compared to NV, are shown to be wholly or partly due to a difference in the LOTs, i.e., that there is a difference between the selling functions performed by the sellers at the different LOTs in the two markets, and the difference affects price comparability.

A. Whether Certain Sales to Industrial Customers Should be Reclassified as Sales in the Retail Channel of Distribution Due to Product Characteristics.

The petitioners note that Aragonesas defined industrial customers as those who purchase bulk granular products, and distributor/retail customers as those who purchase small-sized products that are branded and already packaged for retail sale, and that Aragonesas reported each customer category as a separate LOT. The petitioners contend that the Department, in the Preliminary Results, determined that there was a difference in price comparability based on a comparison of a small number of HM sales of a single CONNUM to an industrial customer, to many HM sales of that CONNUM sold to many retail/distributor customers. The petitioners argue that the product within this CONNUM is clearly a small-sized retail product, citing Aragonesas' product brochure. The petitioners contend that the claimed differences in the intensity of selling functions performed for industrial customers and distributor/retail customers should not apply to the sales of a retail product to an industrial customer. According to the

petitioners, classification of sales of retail products in the industrial LOT contradicts all of the representations Aragonesas has made of the differences between the industrial and retail LOTs. Moreover, the petitioners contend that a retail product should require the same intensity of selling functions regardless of the type of customer to which it is sold. For these reasons, the petitioners argue that the Department should reclassify the sales in question from the industrial LOT to the retail/distributor LOT. If these sales are reclassified, the petitioners contend that there would be no basis for calculating an LOT adjustment, as all HM sales of this CONNUM would be in the same LOT.

In rebuttal, Aragonesas argues that the LOT of the sales in question was correctly reported since the customer purchasing the sale is an industrial customer, who generally buys bulk products. See Aragonesas' Rebuttal Brief at 6-7. Aragonesas notes that the prices it charged to the industrial customer for buying the retail product were different than the prices it charged to retail customers who also bought this CONNUM. Based upon these differences, the Department calculated an LOT adjustment. According to Aragonesas, this situation is exactly why the Department calculates an LOT adjustment. If the comparison market sales are at a different LOT and that difference affects price comparability between the sales on which NV is based and the comparison market sales at the level of the export transaction, an LOT adjustment is appropriate. Aragonesas states that, as all sales to the U.S. market were at the industrial LOT, and some of these sales were compared to sales made in the retail/distributor LOT, to not permit an LOT adjustment where different LOTs exist would be unreasonable and contrary to law.

Department's Position:

We agree with Aragonesas that the sales of the retail product to the industrial customer should not be reclassified as being made in the retail/distributor LOT. Section 773(a)(7)(A) of the Act provides that in order to grant an LOT adjustment, we must find that the EP or constructed export price ("CEP") sale (as appropriate) was made at a different level than that of the NV sale and that this difference: (1) involved different selling activities; and (2) affected price comparability based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. To determine whether NV sales are at a different LOT than the EP and CEP sales, the Department examines stages in the marketing process and level of selling functions along the chain of distribution between the producer and the customer pursuant to 19 CFR 351.412(c)(2) and 19 CFR 351.412(d)(1). See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 72 FR 26591 (May 10, 2007) and the accompanying Issues and Decision Memorandum at Comment 1. Different LOTs are characterized by purchasers at different places in the chain of distribution, and sellers performing qualitatively different selling functions in selling to them. See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Final Results of Antidumping Duty Administrative Review, 67 FR 2408 (January 17, 2002); Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (December 13, 2000); Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 6609 (February 10, 1999); Notice

of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61746 (November 19, 1997); and Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148 (April 9, 1997). Therefore, any determination of the existence of LOTs rests on, first, identifying and defining the channels of distribution in a particular industry and, second, identifying and defining the selling activities provided to customers in each channel of distribution. After evaluating these criteria, which are used to define the LOTs, the Department then conducts its pricing analysis to determine whether there exists a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, pursuant to section 773(a)(7)(A)(ii) of the Act.

In this case, Aragonesas defined its LOT according to categories of customers (industrial, retail, and distributor), and claimed that the intensity of selling functions varies according to each customer type. See Aragonesas' September 13, 2006, Section A questionnaire response at A-32 to A-33. The Department verified that Aragonesas correctly reported the intensity of selling functions it provided to HM customers. See Memorandum from Thomas Martin, International Trade Compliance Analyst, to The File, "Verification of the Sales Response of Aragonesas Industrias y Energía, S.A. in the Antidumping Duty Administrative Review of Chlorinated Isocyanurates from Spain," dated June 11, 2007 ("Sales Verification Report") at 9. Moreover, the Department has corroborated Aragonesas' claim that the intensity of selling functions varies according to customer type. See Comment 1B below. Aragonesas sold the retail product at both LOTs in the HM and, when sold, the prices were different, depending on the customer category. The purpose of making an LOT adjustment is to capture the price differences that result when comparison market sales are at a different LOT and that difference affects price comparability. In other words, the purpose of granting an LOT adjustment is to reflect in our calculations the fact that prices of a particular product can vary depending on the marketing stage at which the product is sold. Since the facts of this case satisfy those necessary to support an LOT adjustment, such an adjustment is warranted under section 773(a)(7)(A) of the Act.

The petitioners' argument for reclassifying the LOT of the sales of the retail product to the industrial customer is based upon the faulty argument that LOT should be defined by the type of product being sold, rather than channel of distribution or customer category to which the sale is made. 19 CFR 351.412(c)(2) states that "{t}he Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing." Thus, the regulation requires the Department to focus on the different marketing stages. To determine how many different stages in the marketing process exist, the Department generally examines the channels of distribution or customer categories. Different selling activities are often linked to differences in distribution channels, such as ex-factory, direct from the factory to customer, through affiliated warehouses and resellers, and consignment sales. Alternatively, selling functions frequently vary according to type of customer, such as original equipment

manufacturer, distributor, retailer, or industrial user. See Notice of Final Determination of Sales at Less Than Fair Value: Outboard Engines From Japan, 70 FR 326 (January 4, 2005) and the accompanying Issues and Decision Memorandum at Comment 7. It is not clear to the Department how the physical characteristics of a particular product are related to different marketing stages. Since companies are free to sell any particular product, bulk or retail, to any type of customer or through any channel of distribution, the characteristics of the product do not assist the Department is identifying the stage of marketing. For this reason, the Department finds that the type of product being sold is not an appropriate basis for identifying different LOTs.

B. Whether Evidence on the Record Supports Aragonesas' Reported Selling Activity Intensity.

C&O separately argues that Aragonesas has not provided sufficient evidence to substantiate its claim that sales to industrial customers involve substantial differences in sales activities than do sales to retail/distributor customers, pursuant to 19 CFR 351.412(c)(2) and 19 CFR 351.412(d)(1). See C&O Case Brief at 6-10. C&O contends that Aragonesas' LOT claim is premised on the concept that similar services performed for different classes of customers constitute separate LOTs. See C&O Case Brief at 6. C&O cites Notice of Preliminary Determination of Sales at Less Than Fair Value: Metal Calendar Slides from Japan, 71 FR 5244, 5247 (February 1, 2006) ("Metal Calendar Slides") and Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy, 71 FR 45017, 45022 (August 8, 2006) ("Pasta from Italy 9th Review") to support its claim that the Department has rejected such an approach to LOT analysis. C&O states that Aragonesas' claim that orders for retail customers are placed much more often than orders by industrial users, thereby requiring more time for order processing and scheduling, does not withstand an analysis of the reported HM sales. C&O claims that Aragonesas must take more time in order processing and scheduling for industrial customers than retail customers because industrial customers placed more orders per customer than did retail customers. C&O also claims that the percentage of industrial, distributor, and retail customers that had rebates and cash discounts was nearly the same. Thus, Aragonesas cannot use these two selling functions to distinguish between LOTs.

Regarding commissions, C&O states that since the only HM commission agent is in the Balearic Islands of Spain, all sales in the Balearic Islands are commission sales, thus commissions are geography-based, and not based on whether the customers are industrial customers, distributor, or retail customers. Regarding packing services and freight and delivery services, C&O argues that, if Aragonesas' claim that bulk sales are to industrial users and smaller package sales are to retail/distributor users is true, then this strengthens its previous argument that the sales of retail product to the industrial user should be reclassified to the retail LOT. If the sales of this retail product remain in the industrial LOT, C&O contends that packing services, and freight and delivery services, cannot distinguish the two LOTs. Finally, C&O states that Aragonesas does not describe its sales process separately for its claimed different LOTs, and does not identify any selling activities that are unique to either of its reported LOTs. Thus, C&O

asserts that the sales processes are identical for industrial, distributor, and retail customers, and therefore cannot support a claim to different LOTs. Accordingly, C&O argues that the Department should determine that Aragonesas sells through a single LOT in the HM for the final results.

In rebuttal, Aragonesas states that C&O's argument, that the differences in Aragonesas' selling activities between industrial and retail customers are not substantial enough to constitute separate LOTs, directly contradicts the findings of the Department, citing Memorandum from Thomas Martin, International Trade Compliance Analyst, to Edward Yang, Senior Enforcement Coordinator, "Level of Trade Analysis: Aragonesas Industrias y Energía S.A. (Aragonesas)," dated June 22, 2007 ("LOT Memorandum"). See Aragonesas' Rebuttal Brief at 1-5. Aragonesas states that the Department's findings are correct because: (1) industrial customers usually buy just one or two types of products in very large quantities, whereas retail and distributor customers buy many different types of products in smaller quantities; (2) packaging, packing, and shipping requirements are very different between the two LOTs; and (3) the Department verified that selling functions were different at the different LOTs.

Aragonesas claims that C&O's analysis regarding the time required in processing and scheduling for industrial customers and retail customers is flawed. According to Aragonesas, C&O's analysis, which is based upon unique invoice numbers, does not account for the possibility that one invoice may contain several orders, and that a retail order may cover numerous products, and be more time-consuming to complete. Aragonesas states that it reported in its section A response that retail and distributor customer require more sales visits. Aragonesas contends that C&O's analysis of intensity is on a per-customer basis, but that on a per-unit basis, the level of intensity of selling functions is greater for retail sales. Regarding C&O's argument that cash discounts and commissions are not different between the two LOTs, Aragonesas states that the Department did not base its decision to find two LOTs on these selling functions, citing the LOT Memorandum. Regarding C&O's argument that packing, and freight and delivery cannot be different between the two LOTs, Aragonesas states that the logistics involved in selling supersacks of one metric ton each is considerably different from the logistics involved in shipping pails or other containers or shipping amounts of less than one ton. Regarding C&O's argument that distribution channels having identical sales processes cannot support a claim to different LOTs, Aragonesas argues that although the sales process might be the same, the amount of time and effort for the process, i.e. the intensity, will differ considerably between retail sales and sales to industrial users. Citing its prior responses, Aragonesas states that retail customers require significantly more services than do industrial customers, and receive frequent visits from in-house sales personnel. Aragonesas states that industrial users are a limited group and do not often enter or leave the market, in contrast to retail level customers that are numerous and often enter or leave the market, requiring Aragonesas to visit retail customers more often. Aragonesas also argues that more freight and delivery services are required for retail customers, as they purchase in smaller volumes and with more frequency than industrial customers. Aragonesas distinguishes the facts regarding its claimed LOTs from the facts in Metal Calendar Slides and Pasta from Italy 9th Review, cited by C&O. Aragonesas states that in

Metal Calendar Slides, the Department only determined that different sized manufacturers cannot be the basis for different LOTs, while Aragonesas' LOTs are based upon customer type, manufacturers and retailers, not size. Aragonesas states that, unlike in Pasta from Italy 9th Review, the Department found that its selling functions were sufficiently distinct between the retail/distributor level and the industrial level, and there are no facts in Pasta from Italy 9th Review that remotely suggest that Aragonesas' situation is similar.

Department's Position:

The Department disagrees with C&O's argument that Aragonesas' reported intensity levels for its selling functions are not supported by evidence on the record. As stated above, the first step in an LOT analysis is to define channels of distribution. The second step in the LOT analysis is to determine the number of selling functions within each reported LOT, and the intensity with which those selling functions are provided. Typically, the level of intensity for each selling function is determined by evaluating the frequency of utilization of the selling activity. See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (December 13, 2000) and the accompanying Issues and Decision Memorandum at Comment 5A ("Pasta from Italy 3rd Review"). The number and intensity of selling activities is determined by data extracted from the narrative responses of the respondent to the questionnaire and supplemental questionnaires. Aragonesas' methodology in this instance was to describe the level of intensity of the sales activity toward each customer type, either through the experience of its sales manager, or by comparing the number of customers in each category whose sales involve a certain sales activity. See Sales Verification Report at Exhibit 20. One way to corroborate claimed intensities is to calculate the percentage of observations within each grouping that have a measurable selling activity reported. See Pasta from Italy 3rd Review at Comment 5A.

To test Aragonesas' methodology, the Department conducted a sale-by-sale analysis of Aragonesas' HM sales to determine whether Aragonesas' reported selling activity intensities are supported by its sales data. See Memorandum from Thomas Martin, International Trade Compliance Analyst, to the File, "Sale-by-Sale Analysis of Selling Functions Provided by Aragonesas Industrias y Energía S.A. ("Aragonesas")," dated concurrently with this memorandum. Specifically, the Department calculated the percentage sales with a reported value of greater than zero for INLFTCH (HM inland freight), REBATE1H (rebates), and EARLPYH (early payment discount) from all reported sales within each customer category. For order processing, in order to estimate the degree of order processing, the Department calculated the average number of HM sales observations per invoice number. Based upon our analysis, we find the reported data for freight services, rebates, discounts, and the number of orders per invoice, corroborates Aragonesas' reported selling activity intensity. Id.

Regarding packing and commissions, the Department finds that it is appropriate to exclude these reported selling activities from its analysis. The Department does not consider packing to be a selling function relevant to LOT, because packing is reported by each respondent,

either in the PACKH/U (packing) field or as part of variable overhead. See Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review, 70 FR 24524, 24527 (May 10, 2005), unchanged in the final results, Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil, 70 FR 60282 (October 17, 2005). Packing is distinguishable from selling activities such as freight services, rebates, and discounts, because these activities require processing time by sales personnel which is not accounted for in the calculated amount reported in the field itself. Also, we agree with C&O's argument that, in this instance, the commission selling function is not provided on the basis of different customer categories or distribution channels, but rather on a geographic basis. The lack of sales with reported commission selling activity in the industrial distribution channel is only a consequence of the lack of industrial customers in the Balearic Islands. Thus, in this case, the commission selling function is not appropriate to this analysis. Regarding C&O's argument that identical sales processes cannot support a claim to different LOTs, we disagree. The Department's LOT analysis rests on the degree of intensity of specific selling activities. While the description of sales processes will provide an overview of all selling activities performed during a sale, the discussion of the intensity of the services provided relates only to the Department's LOT analysis. Thus, while the sales process in different channels of distribution may involve all of the same selling activities, the Department may find different LOTs where the intensity of the selling activities is distinct between the channels.

Comment 2: Whether the Department Should Exclude Sales for Which Aragonesas Reported No Freight Expenses in Calculating the Average Rate by Which Aragonesas Over-reported Home Market Inland Freight.

The petitioners state that the Department examined inland freight for seventeen HM sales at verification, and found that Aragonesas over-reported its HM inland freight expenses. See C&O Case Brief at 10-11; see Biolab Case Brief at 7-8. The petitioners state that the Department calculated the percentage difference between reported inland freight expenses and verified inland freight expenses for selected HM sales, and calculated the simple average of these percentage differences. The simple average of the percentage differences of the verification sample indicated that Aragonesas had over-reported its HM inland freight expenses. In calculating this average, the petitioners state that the Department included sampled HM sales for which Aragonesas correctly reported that it paid no freight expenses. In correcting Aragonesas' HM inland freight expenses, the petitioners state that the Department multiplied this average percentage difference by the reported inland freight expense for every sale, and then reduced the inland freight expense by the resulting amount. The petitioners state that since this methodology results in no change for sales with no reported inland freight, the Department should not include sales with no reported inland freight in calculating the average rate by which Aragonesas over-reported HM inland freight. The petitioners contend that including only sales for which Aragonesas paid inland freight in the calculation of the over-reporting rate would correctly measure the degree to which the freight expenses for those sales were overstated. The petitioners also contend that excluding sampled HM sales for which Aragonesas correctly reported that it

paid no freight charges would be consistent with the fact that the Department found discrepancies in Aragonesas' reporting of freight only for sales where Aragonesas was responsible for inland freight. In addition, the petitioners claim that including only those sales for which Aragonesas paid inland freight expenses in calculating the over-reporting rate would be consistent with the fact that Aragonesas attributed the reporting errors to difficulties found by its personnel in using freight rate schedules that did not list all of the destinations for HM sales, which could not have affected sales for which Aragonesas did not have to pay inland freight charges.

In rebuttal to the petitioners' argument that the Department should revise the calculation of its downward adjustment to Aragonesas' HM inland freight expenses to include only sales where freight charges were reported, Aragonesas states that the petitioners' argument does not make sense either logically or mathematically. See Aragonesas' Rebuttal Brief at 7-10. Aragonesas states that the Department's methodology was based on the presumption that mistakes similar to the mistakes on the sales reviewed at verification would likely have been found in similar proportion on all the sales, and for that reason it was appropriate to make an adjustment to correct for the assumed errors on the other sales not verified. Aragonesas states that, of the seventeen sales reviewed, two were reported as not having any freight. Aragonesas claims that it would be illogical and mathematically invalid to eliminate sales where the freight was correctly reported to be zero from the calculation. According to Aragonesas, eliminating correctly reported sales from the calculation would have the perverse effect of penalizing Aragonesas for correctly reporting the freight on those sales. Aragonesas states that zero freight is still a freight amount, and the petitioners are confusing the results of the adjustment calculation with the intent behind the adjustment calculation, in arguing that the calculation should not include sales with no freight charges, since the adjustment will have no impact on sales without a reported freight amount. Aragonesas states that the Department's intent was to determine a reasonable adjustment based on all the sales reviewed, and to eliminate from the calculation sales that were reviewed merely because they were correctly reported as zero would skew the calculation results inappropriately. Aragonesas states that to eliminate these sales from the Department's adjustment would overemphasize the overall reporting error.

Aragonesas also states in rebuttal that it did not challenge in its case brief the Department's adjustment calculation or its underlying assumptions, because it recognized that some form of adjustment was likely required, and it considers the one used by the Department fairly reasonable. Aragonesas contends that the Department's methodology was nonetheless unfair, because it included three sales that were understated by less than 1 percent, and, therefore, ten sales out of seventeen were correct. Aragonesas states that of the seven sales that were not correctly reported, four favored Aragonesas and three did not. Aragonesas argues that one anomalous error for one sales observation with an overstated amount increased the Department's adjustment significantly and unreasonably, and well beyond what is truly representative. Aragonesas contends that a fairer adjustment would have excluded the highest overstated amount and the highest understated amount. Thus, Aragonesas argues that the petitioners' argument has only the purpose of giving more weight to one excessively high overstated amount, which is unduly punitive given the proportion of sales that were correct or nearly correct.

Department's Position:

The Department agrees with the petitioners. During its sales verification, the Department verified several aspects of Aragonesas' reported inland freight expenses. The Department verified Aragonesas' reported terms of delivery (SALETERH) by examining the commercial invoice for each selected sale. The invoices state the terms of delivery in the form of the International Chamber of Commerce's Incoterms, and the location where the merchandise was legally transferred to the customer. The Department found no discrepancies. See Sales Verification Report at 16. Of the five pre-selected HM sales observations, and the ten pre-selected HM freight observations, two were reported to have terms of sale where Aragonesas paid no HM inland freight expenses. These were verified to be correct. Id. In addition, the Department revisited two additional observations for which we had previously requested supporting documentation, and for which we had previously confirmed the terms of delivery. See Aragonesas' March 8, 2007, supplemental questionnaire response at Exhibit A-C-14. The terms of delivery for these sales was also verified to be correct. Id.

While the Department verified the terms of delivery for each of the selected sales observations, the Department also verified Aragonesas' reported HM inland freight expenses for the seventeen selected sales observations. See Sales Verification Report at 21. For those sales with terms of delivery indicating that Aragonesas was responsible for inland freight, the Department calculated the percentage difference between reported inland freight expenses and verified inland freight expenses, and calculated the simple average of these percentage differences. The Department determined that, for those sales with delivery terms indicating that Aragonesas incurred freight cost, Aragonesas, on average, over-reported its HM inland freight expenses. See Sales Verification Report at Attachment 1. For the Preliminary Results, as a corrective measure, the Department increased Aragonesas' HM inland freight based upon its verification findings. See Memorandum from Thomas Martin, International Trade Compliance Analyst, to the File, "Calculation Memorandum for the Preliminary Results for Aragonesas Industrias y Energia S.A.," dated July 2, 2007, at 4.

However, the Department agrees with the petitioners that its preliminary methodology for calculating this adjustment was inaccurate. Specifically, the sales with a verified delivery term indicating that Aragonesas paid no HM inland freight for the transaction should be excluded from the Department's revision of Aragonesas' HM inland freight. As stated above, for two sales, the Department found that Aragonesas' commercial invoices for the sales at issue indicated that Aragonesas was not responsible for inland freight, i.e., Aragonesas' customer was responsible for inland freight from the location of Aragonesas' factory. See Sales Verification Report at Exhibits 26 and 27. Once the Department verified the delivery term, the use of these observations in the Department's analysis of Aragonesas' HM inland freight became inappropriate, as Aragonesas was not responsible for inland freight on those sales. Therefore, the Department will exclude from its calculation of Aragonesas' over-reported HM freight those HM sales with a verified delivery term indicating that Aragonesas was not responsible for HM inland

freight. Accordingly, the Department will apply no adjustment to HM sales where Aragonesas has reported no HM inland freight, and which the Department did not select for verification.

Regarding Aragonesas' argument that a fairer adjustment to HM inland freight would have excluded anomalous inaccurate observations, the Department disagrees. The Department examined a relatively high number of randomly chosen observations for the purpose of verifying HM inland freight. Typically, such a verification procedure would have required a request for only a few invoices because verification is intended to be a spot-check of a respondent's submitted information, and a small sample is sufficient to draw conclusions regarding the accuracy and completeness of the response. For instance, for Aragonesas' U.S. sales, the Department only selected three observations to specifically verify international freight expenses. See Sales Verification Report at Exhibits 34, 35 and 37. The seventeen selected sales observations for the verification of HM inland freight were more than sufficient to demonstrate that Aragonesas did not report its freight expenses accurately, and there is no guarantee that the "anomalous" observations that the Department found were the most inaccurate observations reported by Aragonesas. Because of the high number of HM sales observations which are part of the Department's adjustment calculation, we find that the adjustments described above the most accurate and fair adjustment the Department can apply in this instance.

Comment 3: Whether the Department Should Apply the Major Input Rule for Valuing Caustic Soda and Chlorine Inputs.

The petitioners argue that the Department should adjust the purchase price Aragonesas paid to affiliated parties for caustic soda and chlorine to reflect the higher of the transfer price, market price, or the affiliate's cost of producing the caustic soda or chlorine. See C&O Case Brief at 11-15; see BioLab Case Brief at 9-14. The petitioners state that section 773(f)(3) of the Act instructs the Department to determine the value of a major input purchased from an affiliated party at the higher of the transfer price, market price or the affiliate's COP (i.e., the major input rule).

The petitioners point out that during the POR the respondent in this review went through corporate structure and ownership changes. The petitioners further note that, for part of the POR, the producer of the merchandise under consideration was a separate legal entity which purchased caustic soda and chlorine from other affiliated legal entities and that, during the POR, these separate legal entities were sold and restructured, so that each entity became a separate division within the Aragonesas corporation. After the restructuring, the petitioners note that the merchandise under consideration was produced by the Water Treatment Division, which purchased caustic soda and chlorine from the Basic Chemicals Division. Furthermore, the petitioners state that subsequent to being sold, the Water Treatment Division purchased caustic soda and chlorine from its new parent company, Ercros. The petitioners assert that the Basic Chemical and Water Treatment Divisions of Aragonesas were two separate, affiliated legal entities until December 2005 when the merger plan was implemented, therefore, any transactions between the two entities should be valued using the major input rule.

The petitioners state that the Department has not adopted a bright-line definition of a major input, but rather "bases determinations of whether an affiliated party input is major on case-specific facts such as the nature of the input, the product under investigation, and the nature of the transactions and operations between the producer and its affiliated supplier." See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 70 FR 72789 (December 7, 2005), and accompanying Issues and Decision Memorandum at Comment 1 ("SSPC from Belgium"). The petitioners contend that because of the quantity of caustic soda and chlorine that the Water Treatment division purchased from affiliated parties, in addition to the fact that caustic soda and chlorine were two of the three principal input materials used to produce chlorinated isos, those materials constitute major inputs based on previous determinations by the Department. Id.

The petitioners assert that for the final results, the Department should value the caustic soda and chlorine Aragonesas purchased during 2005 from an affiliated company using the major input rule. Furthermore, the petitioners argue, the Department should also use the major input rule to value the caustic soda and chlorine the Water Treatment Division purchased from Ercros during the POR.

Aragonesas argues that although the merger of Aragonesas and Aragonesa Industria y Energia S.A. ("AIE") was finalized in December 2005, the merger was made retroactive to January 1, 2005, in the December 31, 2005, audited financial statements. See Aragonesas' Rebuttal Brief at 11-14. Post-merger Aragonesas was restructured into three business units, the Basic Chemical Division (formerly AIE), the Plastics Division (formerly Aiscondel) and the Water Treatment Division (formerly Delsa). Aragonesas contends the divisions were one company for the entire POR and, therefore, the major input rule should not be applied to any of the transactions between Delsa and AIE during 2005 or the Water Treatment Division and the Basic Chemical Division in 2006. Aragonesas also argues that the major input rule should not be applied to its purchases of caustic soda from its parent, Ercros, because those purchases were too minimal to be considered a major input. Furthermore, Aragonesas states that because Ercros owned 100 percent of Aragonesas, the companies should be treated as one company and all transactions between the two companies be valued at the COP and not valued using the major input rule. Finally, Aragonesas states that it reported the transfer price between Delsa and AIE and the Water Treatment Division and the Basic Chemical Division for the entire cost reporting period (i.e., January 1, 2005 through May 31, 2006). Aragonesas asserts that if the Department does apply the major input rule to those transactions, it should do so only for 2005. Aragonesas argues that in 2006, the two divisions were part of the same company, and therefore, during 2006 the transfer price between the divisions should be adjusted to reflect the cost of producing the caustic soda and chlorine.

Department's Position:

We agree with the petitioners that the costs of the chlorine and caustic soda that Aragonesas purchased from its affiliated suppliers should be analyzed in accordance with section

773(f)(3) of the Act. Section 773(f)(3) of the Act authorizes the Department to evaluate transactions between affiliated parties involving the production of a major input to the subject merchandise (i.e., the major input rule). With respect to major inputs purchased from affiliated suppliers, the Department normally values the inputs at the higher of the affiliated party's transfer price, the market price of the inputs, or the actual costs incurred by the affiliated supplier in producing the input. This treatment is consistent with the Department's regulations at 19 CFR 351.407(b). Since implementation of the Uruguay Round Agreement Act ("URAA"), the Department has applied this interpretation consistently. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile, 63 FR 31411, 31426 (June 9, 1998) at Comment 22.

To determine if an input is major and section 773 (f)(3) of the Act applies, the Department typically reviews the percentage of the input received from the affiliated company relative to total purchases of the input and the percentage that input represents to the total cost of manufacturing ("TOTCOM"). See generally Antidumping Duties; Countervailing Duties, Final Rule, 62 FR 27296, 27362 (May 19, 1997). In the current case, Aragonesas submitted charts which provided the quantities and values of chlorine and caustic soda purchased from affiliated suppliers. See Aragonesas' April 16, 2007supplemental section D response at 20-24. Based on our analysis of all of the information, we determined that caustic soda and chlorine purchased by Delsa from AIE and the caustic soda purchased by Aragonesas from Ercros constitute major inputs, and conducted our analysis of the stated prices in accordance with section 773(f)(3) of the Act. See Memorandum from Peter S. Scholl, Lead Accountant, to Neal M. Halper, Director, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Aragonesas Industrias y Energía S.A.,"("Final Cost Calculation Memorandum") dated November 6, 2007, at 2. We noted that Aragonesas did not purchase chlorine from Ercros during the POR.

We disagree with Aragonesas that the Department should not apply the major input rule to transactions between affiliated entities. The respondent in the less-than-fair-value investigation of this proceeding was Delsa. Until June 2005 Delsa's parent was Uralita S.A., which owned 100 percent of Delsa and two other companies, AIE and Aiscondel S.A. In June 2005 Uralita S.A. sold Delsa, AIE and Aiscondel to Ercros S.A. In December 2005, Ercros S.A. merged those three companies into one company, Aragonesas, (the respondent in this segment of the proceeding). The merger was applied retroactively to January 1, 2005 in the December 31, 2005 financial statements. Aragonesas is made up of three business units, the Basic Chemical Division (formerly AIE), the Plastics Division (formerly Aiscondel), and the Water Treatment Division (formerly Delsa). The Water Treatment Division produced the merchandise under consideration, and received chlorine gas and caustic soda from the Basic Chemical Division. Operationally, Aragonesas and AIE conducted business as separate companies until the effective date of the merger in December 2005. In December 2005, the former Delsa, AIE and Aiscondel became legally and operationally divisions of Aragonesas.

The Department typically values transactions between divisions of the same company using the actual cost of the input, because the transactions based on transfer prices between

divisions do not represent the results of economic activity with outside entities. As such, any profit or loss on the internally set transfer prices for transactions between divisions are eliminated for audited financial statement purposes. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada, 70 FR 73437 (December 12, 2005) and the accompanying Issues and Decision Memorandum at Comment 12. We note that although the merger of the three former Uralita companies was made retroactive to January 1, 2005, for the December 31, 2005, financial statement purposes, the merger itself did not occur until December 2005. As the merger was not official until December 2005, throughout 2005 the affiliated companies were operating as separate companies. As a result, we deem it appropriate to analyze the transactions between the affiliated companies in 2005 in accordance with the major input rule. In December 2005, once the three affiliated Uralita entities became legally and operationally divisions of one company, Aragonesas, the Department adjusted the transfer price between the affiliated divisions to the actual cost of manufacturing ("COM") the input plus transportation. Id. Because general and administrative expenses and financial expenses for the company as a whole were added to the COM to determine the COP of chlorinated isos, we did not include these amounts in the COM of the inputs transferred between the divisions. See Final Cost Calculation Memorandum at 2.

Furthermore, the Department has determined not to treat Ercros and Aragonesas as a single entity for the purposes of this review. Therefore, we have applied the major input rule to Aragonesas' purchases of caustic soda from its parent, Ercros, in accordance with section 773(f)(3) of the Act. Generally, the Department will collapse affiliated producers and treat them as a single entity where, based on the "totality of circumstances," the criteria of 19 CFR 351.401(f) are met. See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006) and the accompanying Issues and Decision Memorandum at Comment 13. Since the issue of collapsing was not raised by an interested party until very late in this segment of the proceeding (i.e., in Aragonesas' rebuttal brief), the Department was unable to fully examine the appropriateness of collapsing Aragonesas with Ercros by issuing supplemental questionnaires. It is undisputed that Aragonesas is affiliated with Ercros via section 771(33)(e) of the Act (100 percent corporate ownership), and that Ercros completely controls Aragonesas since it appoints the sole director on Aragonesas' board. However, the record lacks sufficient information with respect to Ercros' production facilities, specifically its ability to produce similar products, or the need for significant retooling in order to do so. Without information on these two points, the Department cannot conduct a collapsing analysis. Therefore, because the record does not contain sufficient information to allow the Department to conduct a collapsing analysis as outlined in 19 CFR 351.401(f), we have determined not to collapse Ercros with Aragonesas in this segment of proceeding. As stated above, we will apply the major input rule to Aragonesas' purchases of caustic soda from Ercros. We expect to examine this issue further in any subsequent administrative review.

Comment 4: Whether the Tableting and Packaging Services Supplier is Affiliated With Aragonesas

The petitioners argue that Aragonesas is affiliated with the company that provides tableting and packaging services. See C&O Case Brief at 15-18; see BioLab Case Brief at 14-19. The petitioners assert that the Department must analyze these transactions to determine whether they were made at arm's-length and in accordance with section 773(f)(2) of the Act. The petitioners contend that Aragonesas and the tableting and packaging company were affiliated during the POR by virtue of a close supplier relationship.

The petitioners point out that section 771(33)(G) of the Act directs the Department to consider any person who controls any other person and such other person to be affiliated parties. In addition, the petitioners cite the statute which states one person can be considered to control another person if the other person is legally or operationally in a position to exercise restraint or direction over the other person. The petitioners continue citing the statute, which states that a finding of control requires that the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or the foreign like product. Furthermore, the petitioners assert that the Statement of Administrative Action for the URAA ("SAA") states that control is not merely ownership but must be evaluated in light of the many ways in which control may be established. It also states that a "company may be in a position to exercise restraint or direction through a close supplier relationship in which the supplier or buyer becomes reliant upon the other." See SAA at 838. The petitioners state that, in determining whether actual reliance exists in previous cases, the Department has specifically considered whether one entity was the sole supplier to another. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea, 63 FR 40404 (July 29, 1998).

The petitioners argue that the record clearly demonstrates that Aragonesas and the tableting and packaging company are affiliated through a close supplier relationship because Aragonesas is in a position to exercise restraint or direction over the other company. The petitioners state that Aragonesas' December 4, 2006, supplemental section A response reports that the tableting and packaging company relocated to Sabiñánigo when Aragonesas moved its facilities there from Madrid. The petitioners contend that the relocation of the tableting and packaging company indicates that Aragonesas possesses a high level of control over the other company. The petitioners argue that the volume of business between Aragonesas and the tableting and packaging company, and Aragonesas assistance in getting the tableting and packaging company established in business are indications of Aragonesas' and the tableting and packaging company's reliance on one another during the POR. The petitioners also assert that because Aragonesas was able to provide the Department with a copy of the tableting and packaging company's financial documents, it indicates a degree of information sharing not expected in a producer / packer relationship. The petitioners claim that because the contract between Aragonesas and the tableting and packaging company restricts the tableting and packaging company's ability to provide services to Aragonesas' competitors, it puts Aragonesas in a position to exert control, and therefore, the two companies should be considered affiliated. Furthermore, the petitioners argue that the contract between the two companies demonstrates that Aragonesas' relationship with the tableting and packaging company has the potential to impact Aragonesas' decisions relating to the production, pricing, or cost of the subject merchandise.

The petitioners argue that the prices charged to Aragonesas by the tableting and packaging company were not at arm's-length because they were affiliated through a close supplier relationship and should not be used in the Department's calculations. The petitioners state that the statute at section 773(f)(2) of the Act ("transactions disregarded provision") directs the Department to use "information available as to what the amount would have been if the transaction would have occurred between persons who are not affiliated." Therefore, the prices between Aragonesas and the tableting and packaging company should be adjusted to the average price of tableting services that Aragonesas received from unaffiliated suppliers, according to petitioners.

Aragonesas argues that it is not affiliated with the tableting and packaging company and, therefore, the Department should not apply the transactions disregarded provision to the transactions between the two companies. See Aragonesas' Rebuttal Brief at 15-19. Aragonesas points out that the same tableting and packaging company provided the same services during the original investigation in this proceeding and the Department did not find any affiliation. See Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value, 70 FR 24506 (May 10, 2005) and the accompanying Issues and Decision Memorandum at Comment 27. Aragonesas asserts that the tableting and packaging company did not move to Sabiñánigo when Aragonesas moved its facilities there from Madrid. Aragonesas contends that the owners of the company that became the tableting and packaging company were already located in Sabiñánigo. Aragonesas claims that the owners of the tableting and packaging company saw a business opportunity when Aragonesas moved into the area, and they formed a company to take advantage of that opportunity. Aragonesas also argues that the financial documents provided to Aragonesas by the tableting and packaging company were available in Spain through the Trade Register. Aragonesas states that a company may see another company's financial information in the Trade Register if it has a commercial relationship with that company. Therefore, Aragonesas points out the financial information provided by the tableting and packaging company is not confidential and the sharing of such information does not indicate an affiliation between Aragonesas and the tableting and packaging company. Furthermore, because there are other tableting and packaging companies within Spain, Aragonesas is not dependent on the tableting and packaging company located in Sabiñánigo.

Aragonesas also argues that the Department is not required to apply the transactions disregarded provision where companies that may be affiliated are operating on a commercial basis. Aragonesas states that the SAA notes that the "types of transactions that Commerce may consider to be outside the ordinary course of trade" are "transactions between affiliated persons . . ." See SAA at 834. Aragonesas contends that the SAA's use of the word "may" means the Department is not required to disregard the prices merely because they are between affiliates. Therefore, the Department has the discretion to accept the transfer price between Aragonesas and the tableting and packaging company even if it does find them to be affiliated.

Finally, Aragonesas argues that the transactions disregarded provision also requires that the Department determine that the transactions between the affiliates were not at arm's-length.

See section 773(f)(2) of the Act. Aragonesas points out that the prices it paid to the first tableting supplier were lower than the prices it paid to the tableting and packaging company located in Sabiñánigo. Aragonesas argues that, therefore, the transfer prices paid to the tableting and packaging company located in Sabiñánigo were indicative of a market price. Aragonesas contends that the prices it paid to the second tableting company cannot be considered representative of a market price for tableting because it had to pay a premium for a special type of tableting urgently required by a customer. Furthermore, Aragonesas states that freight costs to and from the second tableter were included in the invoice price, therefore the second tableting price cannot be used for a comparison to a market price.

Department's Position:

We disagree with the petitioners that the record evidence demonstrates that Aragonesas and the packaging and packing service provider are affiliated parties as a result of a close supplier relationship. Section 771(33)(G) of the Act defines an affiliated party as "any person who controls any other person and such other person." Section 771(33) of the Act states further that "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." The SAA at 838 provides that a company may be in a position to exercise restraint or direction, in the absence of an equity relationship, through close supplier relationships in which the supplier or buyer becomes reliant on the other. In its regulations at 19 CFR 351.102(b), the Department states that such a relationship must have the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or foreign like product. The Department, in practice, has provided additional guidance regarding a close supplier relationship. In Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18416 (April 15, 1997) ("Cold-Rolled Products From Korea"), the Department stated that:

> The standard is not . . . whether one company might be in a position to become reliant upon another by means of their supplier-buyer relationship; rather, the Department must find that a situation exists where the buyer has, in fact, become reliant on the seller, or vice versa. Only if we make such a finding can we address the issue of whether one of the parties is in a position to exercise restraint or direction over the other. When the preamble to our Proposed Regulations, in its definition of "affiliated parties," states that "business and economic reality suggest that these relationships must be significant and not easily replaced," it suggests that we must find significant indicia of control.

Citing Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7308, 7310-7311 (February 27, 1996). We find that Aragonesas and the service provider are not affiliated because we do not find that a close supplier relationship exists, nor do we find evidence of other indicia of affiliation. At the cost verification we examined the relationship between Aragonesas and the tableting and packaging company in accordance with section 771(33) of the Act to determine if the entities were affiliated. See the Memorandum from Michael P. Harrison, Accountant, to Neal

M. Halper, Director, "Verification of the Cost Response of Aragonesas Industrias y Energia S.A. in the Antidumping Review of Chlorinated Isocyanurates from Spain," dated June 27, 2007 ("Cost Verification Report") at 5-6. We noted that there was no equity ownership, shared members of the board of directors, ownership among family members, and no shared management between Aragonesas and the tableting and packaging company. At the cost verification, we examined the relationship between Aragonesas and the tableting and packaging company to determine if either Aragonesas or the tableting and packaging company were reliant on each other. We questioned whether the tableting and packaging company moved to Sabiñánigo from Barcelona when Aragonesas relocated its factory. Both the Aragonesas company officials, and the tableting and packaging company officials, stated that there was a misunderstanding and the information reported in Aragonesas' December 4, 2006, supplemental section A response was incorrect. The tableting and packaging company did not relocate from Barcelona to Sabiñánigo when Aragonesas moved. Id. The company officials explained that when the factory relocated, Aragonesas entered into an agreement with businessmen in the Sabiñánigo area to provide packing, packaging, and tableting services. Aragonesas' previous tableter and packer, located in Barcelona, ceased operations when Aragonesas moved to Sabiñanigo. Id. We also found that Aragonesas is free to tablet and package its own products using its own machinery. Plus, during the POR, Aragonesas used two other unaffiliated companies for a small part of its tableting needs, thus demonstrating the existence of alternative tableters. Id. at 29. For these reasons, Aragonesas appears to be beyond the control and reliance of the tableting and packaging company.

During the cost verification, we found that the equipment the tableting and packaging company used could also be used to tablet and package other types of granular substances without extensive retooling. In fact, subsequent to the POR, the tableting and packaging company provided packaging and packing services to another customer for a non-swimming pool product. The tableting and packaging company did not need to obtain permission from Aragonesas before starting this work because the product did not relate to the swimming pool business. We found that the owners of the tableting and packaging company are currently involved in other types of businesses in the Sabiñanigo area, and were involved in those other businesses before Aragonesas relocated. As a result, the tableting and packaging company appears to be beyond the control and reliance on Aragonesas. See Cost Verification Report at 6. Similar to Cold-Rolled Products from Korea, Aragonesas has alternate sources of tableting and packaging and the owners of the tableting and packaging company have alternate sources of revenue, therefore, we find that neither company is reliant upon the other company.

At the cost verification, we also examined the relationship between Aragonesas and the tableting and packaging company to determine if the business relationship between Aragonesas and the tableting and packaging company had the potential to impact decisions concerning the production, pricing, or cost of the merchandise under consideration. Aragonesas' ability to influence the tableting and packaging company is limited because the price charged for tableting and packaging services are set by a long-term contract, which requires Aragonesas to pay an indemnity fee if it breaks the contract. In addition, it appears that the price established in the

long-term contract includes an element of profit. As a result of the long-term contract, the agreement between Aragonesas and the tableting and packaging company does not appear to have the potential to adversely impact decisions concerning the production, pricing, or cost of the merchandise under consideration. See Cost Verification Report at 29-30. Based on this evidence it appears that Aragonesas does not have control over the tableting and packaging company and, therefore, we did not consider them to be affiliated because of a close supplier relationship. Accordingly, we did not value the transactions between these entities using section 773(f)(2) of the Act (the transactions disregarded provision). We also agree with respondent that the prices Aragonesas paid to the tableting and packaging company in Sabiñanigo could not be compared to the tableting costs Aragonesas paid to other tableting companies because Aragonesas had to pay a premium for a special type of tableting required by the customer. See Cost Verification Report at 29. However, we note that this point is irrelevant as we find there to be no affiliation.

Comment 5: Whether the Department Should Adjust Aragonesas' G&A Expenses.

C&O argues that the Department should increase Aragonesas' reported general and administrative ("G&A") expenses to include the expenses associated with research and development ("R&D") activities during the POR. See C&O Case Brief at 18-19. C&O asserts that Aragonesas did not report any R&D expenses in the reported COM for the subject merchandise or in the reported G&A expenses. C&O cites Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review, 70 FR 46482 (August 10, 2005) and the accompanying Issues and Decision Memorandum at Comment 2 ("Stainless Steel Bar from France") which states that it is the Department's practice to include R&D expenses in either manufacturing costs or as part of G&A expenses. C&O contends that because Aragonesas has not identified the R&D expenses with any type of subject merchandise, the entire amount should be included in G&A expenses.

BioLab argues that the Department should attribute a portion of Aragonesas' parent company's (i.e., Ercros) G&A expenses to Aragonesas in order to calculate Aragonesas' G&A expense ratio. See BioLab Case Brief at 20-21. BioLab states that it is the Department's established practice to attribute a portion of parent company G&A expenses to the respondent subsidiary. See Certain Hot-Rolled Steel Flat Products from the Netherlands; Final Results of Antidumping Administrative Review, 72 FR 28676 (May 22, 2007), and the accompanying Issues and Decision Memorandum at Comment 2. Specifically, BioLab asserts, the Department normally will allocate a portion of G&A expenses of the parent company if that company provided services for its subsidiary. See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review, 66 FR 11557 (February 26, 2001) and the accompanying Issues and Decision Memorandum at Comment 8 ("LNPPs from Germany"). Therefore, BioLab argues for the final results that the Department should include a portion of Ercros' G&A expenses in Aragonesas' G&A expenses in order to calculate Aragonesas' G&A expense ratio.

Aragonesas argues that Spanish generally accepted accounting principles ("GAAP") treat R&D costs as a future cost and not a current expense or product cost, therefore, it is not appropriate to include R&D in the G&A expense calculation. See Aragonesas' Rebuttal Brief at 26-29. Aragonesas asserts that the Stainless Steel Bar from France case cited by petitioners did not state the Department's practice was to include R&D expenses in G&A expenses, but rather the case dealt with the avoidance of double counting of the respondent's R&D expenses. Aragonesas cites 773(f)(1)(A) of the Act, which states that the company's records will be used, "if such records are kept in accordance with the generally accepted accounting principles of the exporting company . . . and reasonably reflect the costs associated with the production and sale of the merchandise." Aragonesas contends that because Spanish GAAP does not consider R&D costs to be a G&A expense, no change in its G&A ratio is warranted.

Aragonesas argues that because its G&A expense rate is based on its 2005 financial statements and because Ercros did not provide any services or employees to Aragonesas in 2005, none of its expenses for 2005 should be allocated to Aragonesas for the G&A expense rate calculation. Aragonesas states that because of the unique situation where Ercros purchased Aragonesas during 2005, it did not provide any services to Aragonesas until 2006. Aragonesas argues that LNPPs from Germany specifically notes that the Department will allocate a portion of the parent's G&A expenses to the respondent if the parent provided services for its subsidiary. In the current case, Aragonesas asserts that Ercros did not provide any services to Aragonesas and, therefore, Ercros' G&A costs should not be allocated to Aragonesas. Aragonesas also argues that in the Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy, 69 FR 18869 (April 9, 2004) and the accompanying Issues and Decision Memorandum at Comment 6 ("Pasta from Italy") the Department stated that it is the Department's "practice to require a respondent to report not only its own G&A, but also a proportional share of a parent's G&A expenses incurred on the reporting entity's behalf." In this case, Aragonesas emphasizes that Ercros did not incur any such expenses, and therefore no adjustment is warranted for the final results.

Department's Position:

We disagree with BioLab and did not add additional R&D costs to Aragonesas' G&A expenses for the final results. While we agree that R&D expenses would usually be included in the reported costs, we examined Aragonesas' 2005 audited financial statements (i.e., balance sheet and income statement) and did not find any R&D expenses that were not accounted for in the reported costs. In Stainless Steel Bar from France, cited by both the petitioners and Aragonesas, the Department acted to avoid double counting the respondent's R&D expenses. However, in that case, the Department did state that R&D expenses "which can be differentiated by product are allocable to the COM of that product. However, R&D activities which cannot be differentiated by product are general R&D expenses, and should be included in the G&A expenses." See Stainless Steel Bar from France at Comment 2. The Department's position on R&D expenses is further explained in 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,

> In determining if expenses associated with R&D activities should be included in the reported costs, we look at whether these expenses relate specifically to individual products or are general in nature. Those expenses that can be differentiated by product are allocable to the cost of manufacturing of that product. However, R&D activities that cannot be differentiated by product are considered general R&D expenses, and should be included in the reported G&A expenses. Normally, the Department considers product-specific or process-specific R&D as a cost of manufacturing only if the benefits of the R&D relate to a single product; otherwise, the R&D is considered a G&A expense.

Section 773(f)(1)(A) of the Act directs the Department to rely "on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the merchandise." See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 52097 (October 12, 2001) and the accompanying Issues and Decision Memorandum at Comment 2. At the cost verification, the Department analyzed each line item on Aragonesas' 2005 income statement and determined whether it should be included in the reported COM, G&A expenses, selling expenses, financial expenses or excluded from the reported costs. See Cost Verification Report at 31-32. We did not discover any R&D expenses that were excluded from the reported costs. We also analyzed Aragonesas' December 31, 2005, balance sheet and determined that there was no unamortized R&D expenses capitalized on Aragonesas' balance sheet. Therefore, we find that Aragonesas' normal books and records have not excluded any R&D expenses, and reasonably reflect the costs associated with production and sale of the merchandise, and no adjustment is necessary.

We also disagree with the petitioners that the Department should allocate a portion of Ercros' G&A expenses to Aragonesas. Therefore, we did not increase Aragonesas' G&A expenses for a portion of Ercros' G&A expenses. The Department normally computes the G&A and other non-operating income and expense ratios of a company based on its unconsolidated operations, and includes an amount of G&A from related companies which pertains to the product under investigation. The Department does so because G&A and other non-operating income and expense items are not considered fungible in nature. See 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. Thus, other non-operating income and expenses realized by a related company do not necessarily affect the general activity of the respondent. Id. Aragonesas' G&A expense ratio is based on its financial statements for the year ending December 31, 2005. In this case, similar to LNPPs from Germany and Pasta from Italy, there is no evidence on the record that Ercros provided non-compensated services to Aragonesas during 2005. As discussed in the Cost

Verification Report at 32-33, it was not until Aragonesas moved to Ercros' corporate offices in 2006 that Ercros began to provide support services (i.e., payroll, accounting, sales, and marketing, general management, etc.) to Aragonesas. Since Ercros provided no services in 2005, there is no reason to attribute the corresponding expenses to Aragonesas. As we did not find any evidence for 2005 that Ercros provided non-compensated administrative services on behalf of Aragonesas, nor have the petitioners provided such evidence, the Department finds that allocating a portion of Ercros' G&A expenses to Aragonesas for 2005 would be inappropriate in this case.

Comment 6: Whether the Department Should Adjust Aragonesas' Cost of Production to Account for Costs That Were Unreconciled After Verification.

The petitioners argue that the Department should adjust Aragonesas' costs to include the unreconciled difference reported in the Cost Verification Report. See C&O Case Brief at 19-20; see BioLab Case Brief at 22. The petitioners contend that the Department should adjust Aragonesas' reported costs to the total costs from Aragonesas' cost accounting system.

Aragonesas argues that the unreconciled difference between the POR costs and the costs reported to the Department is insignificant and immaterial and should not be adjusted. See Aragonesas' Rebuttal Brief at 22-24. Aragonesas asserts that slight differences should be expected between costs from the books and records and costs reported to the Department because of rounding. Aragonesas contends that it followed the statutory language in section 773(f)(1)(A) of the Act when it used its own records to calculate the costs reported to the Department. Aragonesas argues that the statutory language does not suggest that the costs reported to the Department must agree exactly with the company's records. Aragonesas argues that in Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004) and the accompanying Issues and Decision Memorandum at Comment 27 ("Shrimp from Ecuador"), the reconciling difference was a material difference due to omitted costs, and was greater than one percent of the total costs. In the current case, Aragonesas asserts that its unreconciled difference was less than one percent, was clearly insignificant, and was not the result of any omitted or misstated costs. Therefore, Aragonesas argues that for the final results, the Department should make no adjustment to its reported costs.

Department's Position:

Section 773(f)(1)(A) of the Act provides that the Department is to normally rely on data from a respondent's normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing the merchandise. We agree with the petitioners and have adjusted Aragonesas' reported costs to include the unreconciled difference between the COM of the merchandise under consideration and the costs reported to the Department. However, we agree with Aragonesas that this unreconciled difference should be calculated after adjusting for the underreported costs related to the

CONNUM discussed in Comment 8. We note that in Shrimp from Ecuador, cited by Aragonesas, the Department stated that the total unreconciled amount identified in the Cost Verification Report should be included in the reported costs. The amount in question was not an insignificant difference due only to rounding errors, but was a material difference due to the omission of certain costs. As a result, the Department determined that the differences between the reported costs and the financial accounting system costs were significant and warranted an adjustment. See Shrimp from Ecuador at Comment 27. The facts in the current case are similar, the unreconciled difference is not an insignificant difference due only to rounding errors, but rather a material difference due to the omission of certain costs, such as the under-reported CONNUM costs discussed in Comment 8, and should be adjusted.

Comment 7: Whether the Department Should Deduct Unsubstantiated Interest Income From Aragonesas' Financial Expense Ratio Calculation.

BioLab argues that the Department should not allow Aragonesas to deduct unsubstantiated interest income amounts from its financial expense ratio calculation. See Biolab Case Brief at 21-22. BioLab claims that Aragonesas failed to provide documentation supporting the short-term nature of interest on bank accounts, interest on term deposits, interest on deferred customer payments, and discounts on purchases. BioLab contends that it is the Department's practice to disallow offsets to financial expenses unless those offsets can be substantiated by the respondent. See Pasta from Italy at Comment 4. Furthermore, BioLab asserts that in previous cases the Department has disallowed interest on deferred customer payments and discounts on purchases. See Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 2909 (January 18, 2006), and the accompanying Issues and Decision Memorandum at Comment 9 ("Cement from Mexico") and Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil, 65 FR 7497, 7502 (February 15, 2000) ("Silicon Metal from Brazil").

Aragonesas argues that the Department should continue to make the same adjustments for the financial expense ratio as it did in the Preliminary Results. See Aragonesas' Rebuttal Brief at 19-22. Specifically, Aragonesas argues that the Department should continue to allow an interest income offset for (1) the interest on bank accounts; (2) interest on deferred customer payments; and (3) discount on purchases. Aragonesas argues that the Department should not allow: the claimed short-term interest income offset from fixed income securities. Aragonesas states that the Department made a reasoned determination in the Preliminary Results with regards to these minor offsets and should not change its decision from the Preliminary Results. Aragonesas argues that in the Cement from Mexico case the Department rejected the interest revenue from customers as an offset to the financial expenses because the interest was sales revenue which was to be added to the sales price. In the current case, Aragonesas contends that this revenue was not reported separately as a selling adjustment nor was it treated as a post-sale adjustment. Therefore, it was appropriate to apply this revenue as an offset to financial expenses. Aragonesas argues that in Silicon Metal from Brazil the Department had instructed the respondent in a supplemental questionnaire to classify the purchase discounts as a reduction to the direct material

costs. According to Aragonesas, in that case, when the respondent failed to reclassify the discounts, the Department denied the adjustment to the financial expenses. In the current case, Aragonesas argues that the Department never instructed it to reclassify the purchase discounts and, therefore, should allow them as an offset to financial expenses.

Department's Position:

Sections 773(b)(3)(B) and 773(e)(2(A) of the Act defines the COP and constructed value to include an amount for selling, general and administrative expenses based on actual data pertaining to production and sales of the foreign like product. The Department has interpreted these provisions to include net interest expense. The Department's normal practice is to offset financial expenses with only short-term interest income. See Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut-to-Length Carbon Steel Plate from Romania, 72 FR 6522 (February 12, 2007) and the accompanying Issues and Decision Memorandum at Comment 4. We agree with BioLab in part and have disallowed the offset to financial expenses for interest on term deposits, interest on deferred customer payments, and discounts on purchases. In previous cases, the Department has clearly stated that the "burden of proof to substantiate the legitimacy of a claimed adjustment falls on the respondent party making that claim." See Pasta from Italy at Comment 4. In the current case, Aragonesas calculated its financial expense ratio based on the consolidated financial statements of its parent company, Ercros. Aragonesas did not meet its burden of proof by providing evidence that the amounts deducted for the interest on term deposits, interest on deferred customer payments, and discounts on purchases were short-term in nature. We have allowed the offset for the interest on bank accounts because, according to Ercros' 2005 financial statements, it appears to be short-term in nature.

Regarding interest on term deposits, because this interest could be long or short-term in nature, Aragonesas had to substantiate the legitimacy of that offset (i.e., short-term in nature). Aragonesas did not do so. We also disallowed the offset on interest on deferred customer payments because it could be related to either subject or non-subject merchandise and, as such, the Department typically treats this interest as a sales adjustment for the subject merchandise. In Cement from Mexico and Silicon Metal from Brazil cited by BioLab, the Department stated that interest income related to late payment of sales invoices should not be used as an offset in the interest-expense calculation. In Cement from Mexico we also stated that we treat interest income earned on accounts receivable as an adjustment to the selling price. Furthermore, our standard questionnaire directs a respondent to report such interest income in a separate field on the sales database in order to allow for the adjustment to the selling price. See sections B and C of the Department's Questionnaire dated July 26, 2006, concerning "Interest Revenue," which instructs the respondent to report the per-unit interest charges collected on each sale for late payment of the invoice.

We disallowed the discounts on purchases because the purchases can potentially relate to both subject or non-subject merchandise and, as such, the Department typically treats purchase

discounts as a reduction to direct material costs. We note that in its response to question 32 of its January 17, 2007, supplemental D response, Aragonesas stated that it reported its actual production costs. Therefore, it is reasonable to believe any discounts on purchases of raw materials related to the subject merchandise would have been deducted when calculating the actual costs of the subject merchandise. In Silicon Metal from Brazil at Comment 9, the Department stated that discounts from suppliers do not represent income from short-term investments. Furthermore, in that case, the respondent requested that the purchase discounts be used as an offset to the reported COM, if the Department denied the discounts as an offset to financial income. The Department denied both requests, stating that the Department did not have the information necessary to make the COM adjustment requested by the respondent. In the instant case, because the purchase discounts were recorded on Ercros' consolidated financial statements, we do not have the information to determine if they relate to the subject merchandise or to purchases from one of Ercros' other businesses. Therefore, we have not treated the purchase discounts as a reduction to either the financial expenses or to Aragonesas' direct material costs.

Comment 8: Whether the Department Should Adjust the Reported Costs for CONNUM 1111.

BioLab argues that the Department should adjust the reported costs for CONNUM 1111 to the total manufacturing costs calculated at the cost verification using the consumption indices weight-averaged by actual production. See Biolab Case Brief at 22-23.

Aragonesas argues that the Department should not adjust the reported manufacturing costs for CONNUM 1111 because the difference is insignificant and immaterial. See Aragonesas' Rebuttal Brief at 25-26. Aragonesas contends that the purpose of the testing done at the cost verification was to see if the reported TOTCOM was reasonable and if it could be reconciled with other reported costs. Aragonesas points out that there is no evidence that there were any omitted or misstated costs, and that small differences should be expected when two different methods are used to calculate the same number, usually because of rounding. Finally, Aragonesas argues that this adjustment for under-reported CONNUM costs is part of the insignificant unreconciled difference discussed in Comment 6 above, therefore, if the Department decides any adjustment is necessary, it should not make both adjustments because the increase in costs for CONNUM 1111 would be double-counted.

Department's Position:

We agree with the petitioners and have adjusted Aragonesas' reported costs for CONNUM 1111 to be based on the weight-averaged consumption indices calculated at the cost verification. See Cost Verification Report at 18. However, we agree with Aragonesas that this adjusted cost should be included when calculating the unreconciled difference discussed in Comment 6.

Comment 9: Whether the Department Should Refrain From Zeroing Negative Margins.

Aragonesas states that the disclosure documents released following the Preliminary Results indicate that many of Aragonesas' sales had negative margins, which the Department set to zero (i.e., the Department had employed the "zeroing methodology"). See Aragonesas' Case Brief at 1. Had the Department not set these margins to zero, Aragonesas claims that its overall margin would actually be negative, and no dumping would be found. Aragonesas argues that the Appellate Body of the World Trade Organization ("AB WTO") found that zeroing in administrative reviews is inconsistent with Article 9.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, citing Appellate Body Report, United States-Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing"), WT/DS294/AB/R (April 18, 2006) and United States - Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (January 9, 2007) (collectively, "US-Zeroing (EC) dispute reports"). Aragonesas further claims that the Department announced that it would no longer employ zeroing when making average-to-average comparisons in antidumping investigations, citing Antidumping Proceedings: Calculation of the Weighted-Averaged Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, 77724 (December 27, 2006) ("Final Modification"), Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification, 72 FR 1704 (January 16, 2007), and Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification, 72 FR 3783 (January 26, 2007). Aragonesas states that in Final Modification, the Department stated that zeroing is not required by law, and that the Department should refrain from zeroing in this case.

In rebuttal, C&O states that the permissibility of zeroing is well settled, citing Paul Muller Industrie Gmbh & Co. v. United States, 435 F. Supp. 2d 1241, 1245 (CIT 2006), Corus Staal BV v. DOC, 395 F.3d 1343, 1349 (Fed. Cir. 2005) and SKF USA Inc. v. United States, 491 F. Supp. 2d 1354 (CIT 2007). See C&O Rebuttal Brief at 1; see Biolab Case Brief at 1. BioLab states that the Department has repeatedly rejected Aragonesas' arguments, most recently in Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review, 72 FR 42386 (August 2, 2007) and the accompanying Issues and Decision Memorandum at Comment 7.

Department's Position:

Section 771(35)(A) of the Act, defines "dumping margin" as the "amount by which the NV exceeds the EP or CEP of the subject merchandise." The Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than export or constructed export price. As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the

amount of dumping found with respect to other sales. The Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute. See Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) ("Timkin"), and Koyo Seiko Co. v. United States, 543 U.S. 976 (2004). See also, Corus Staal BV v. DOC, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert denied, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) ("Corus Staal BV").

With respect to the US-Zeroing (EC) dispute reports cited by Aragonesas, the Department agrees with Aragonesas that the Department announced that it was modifying its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. See Final Modification, 71 FR at 77724. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. Id. In addition, the United States has not yet gone through the statutorily mandated process of determining how to implement the report with respect to the specific administrative reviews that were subject to the US -Zeroing (EC) dispute. See section 129 of the URAA. As such, the AB WTO's reports have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. See Corus Staal BV, 395 F.3d at 1347-49; Timken, 354 F.3d at 1342. Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed NV.

RECOMMENDATION

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

Agree _____ Disagree_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date