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

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

SUBJECT: Antidumping Duty Administrative Review of Chlorinated Isocyanurates from Spain: Issues and Decision Memorandum for the Final Results

SUMMARY

We have analyzed the comments of the interested parties in the 2006-2007 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 or Respondent). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On July 10, 2008, 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, 73 FR 39650 (July 10, 2008) (Preliminary Results). The product covered by this review is chlorinated isos. The period of review (POR) is June 1, 2006, through May 31, 2007.

We invited parties to comment on the Preliminary Results. We received timely filed case briefs from Clearon Corporation and Occidental Chemical Corporation (collectively, the Petitioners) and Aragonesas. We also received timely filed rebuttal briefs from the Petitioners and Aragonesas. Petitioners also requested a hearing, which was held by the Department at its main building on September 23, 2008. Based on our analysis of the comments received, the weighted-average margin for Aragonesas has changed from that presented in the Preliminary Results.

LIST OF THE ISSUES

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

Issue 1: Whether the Department Should Grant a Level of Trade Adjustment
Issue 2: Whether the Department Should Refrain From Zeroing Negative Margins
Issue 3: Whether the Department Should Apply the Major Input Rule for Valuing Caustic Soda and Chlorine Inputs
Issue 4: Whether the Department Should Adjust Aragonesas's General and Administrative Expenses
Issue 5: Whether the Department Should Adjust Aragonesas's Comparison Market Movement Expense

DISCUSSION OF THE ISSUES

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

Respondent argues that, for the final results, the Department should either not make a level of trade (LOT) adjustment or apply the LOT adjustment so that it reduces, rather than increases, comparison market (CM) prices. Respondent contends that pursuant to section 773(a)(7)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make an LOT adjustment only when the difference in LOT is "demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade." Respondent notes that, in the Preliminary Results, the Department found that only half the CM CONNUMs sold in both CM LOTs were higher priced. Respondent maintains that "there simply cannot be a consistent pattern when half the sales go in one direction and half in the other." Thus, Respondent contends that there is no pattern of consistent price differences between CM sales at different LOTs in the instant case and that the Department should not make an LOT adjustment for the final results.

In addition, Respondent argues that, should the Department make an LOT adjustment for the final results, it should apply the LOT adjustment so that it reduces, rather than increases, CM prices. Respondent maintains that since it made certain of its CM sales at a more advanced LOT than its U.S. sales, section 773(a)(7)(B) of the Act requires a reduction, not an increase, in the CM price in order to arrive at a CM price that is comparable to the U.S. price. Moreover, Respondent contends that the Department was aware of this statutory requirement in the Preliminary Results when it stated that it "deducted" the amount of the LOT adjustment from CM sales.[1] However, Respondent maintains, the Department's antidumping duty margin calculations mistakenly added to, rather than deducted the LOT adjustment from, CM sales.

[1] See Memorandum to the File: From Scott Lindsay, Subject: Antidumping Duty Review of Chlorinated Isocyanurates from Spain, Re: Calculation Memorandum for the Preliminary Results, at 7, dated June 30, 2008 (Preliminary Calculation Memorandum).

In discussing section 773(a)(7)(A)(ii) of the Act, Respondent maintains that the Statement of Administrative Action accompanying the Uruguay Round Agreements Act makes it clear that "a LOT adjustment or constructed export price offset {} is designed to ensure that a proper comparison is made." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994) at 829. Respondent argues that in the instant review, however, the Department did not make the LOT adjustment in way that ensured a proper comparison. In fact, Respondent contends that by increasing the prices of the higher level CM sales, the Department did not offset price differences between different LOTs in the U.S. and CM markets; rather, the Department increased or exaggerated those price differences.

Respondent cites to Micron Technology, Inc. v. U.S., 243 F.3d 1301, 1305 (Fed. Cir. 2001) (Micron Technology) to support its contention that section 773(a) of the Act requires that any LOT adjustment applied to its CM sales should reduce the price of those sales. According to Respondent, although Micron Technology addresses constructed export price (CEP) offsets, it is also applicable to the LOT analysis of export price (EP) sales. Furthermore, Respondent argues that Micron Technology stands for the proposition that, in order to properly affect price comparability, the Department must reduce CM prices where the CM LOT is more advanced than the U.S. LOT.

As such, Respondent contends that the Court of Appeals for the Federal Circuit (CAFC) has found that it is contrary to the purpose of the LOT adjustment to increase prices for more advanced LOT CM sales when these more advanced LOT CM sales are lower priced than the less advanced LOT CM sales. Respondent argues that section 773(a)(7)(A) of the Act requires that the difference in prices be the result of the performance of different selling activities, and therefore where the price of the higher level sale is lower, it should indicate that the difference in price is not related to different selling activities. Thus, Respondent argues that for these final results, the only logical application of any LOT adjustment is to decrease CM price where the price at the higher LOT are higher than the prices at the less advanced LOT. Where the prices of the higher LOT sales are actually lower, Respondent argues that no adjustment should be made.

Petitioners argue that Respondent's arguments are predicated on the mistaken presumption that the statute requires that an LOT adjustment must always reduce the CM sales price. To the contrary, Petitioners maintain that section 773(a)(7)(A) of the Act states that normal value (NV) can be increased or decreased to make due allowance for any differences in LOT, and that the Department is not required to determine with precision exactly how much of an observable and consistent difference in pricing is due to different LOTs as opposed to other factors. Moreover, Petitioners contend that the Department correctly followed its standard practice in calculating an LOT adjustment following its determination that Respondent's sales at different LOTs in the CM involved both substantial differences in selling activities and a pattern of consistent price differences. Petitioners argue that, because the data clearly showed that Respondent's sales at the more advanced LOT were at lower prices than sales at the less advanced LOT, the LOT adjustment naturally operated to increase those CM prices. Petitioners argue that the Department's application of the LOT adjustment in the Preliminary Results was consistent with both the language and purpose of the statute as well as the factual record of this review.

Department's Position

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same LOT as the EP or CEP. The CM LOT is based on the starting price of the sales in the comparison market. Where NV is based on constructed value (CV), the Department determines the CM LOT based on the LOT of the sales from which the Department derives selling expenses, general and administrative expenses, and profit for CV, where possible. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon From Chile, 63 FR 2664 (January 16, 1998) (unchanged in final determination, see Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile, 63 FR 31411, (June 9, 1998) (Fresh Salmon from Chile)). For EP sales, the U.S. LOT is based on the starting price of the sales to the U.S. market. For CEP sales, the U.S. LOT is based on the starting price of the sales to the U.S. market, as adjusted under section 772(d) of the Act.[2] In the instant case, all U.S. sales are EP.

To determine whether NV sales are at a different LOT than the EP or CEP sale, the Department examines stages in the marketing process and level of selling functions along the chain of distribution between the producer and the customer. See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. Id.; see also Stainless Steel Wire Rods from India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 1040, 1048 (January 8, 2003). When the Department is unable to match U.S. sales to foreign like product sales in the comparison market at the same LOT as the EP sale, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP to NV based on sales at a different LOT in the comparison market, where the difference affects price comparability, as manifested by a pattern of consistent price differences between comparison-market sales at the CM LOT and comparison-market sales at the LOT of the export transaction, the Department makes an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP comparisons to NV, if the CM LOT is at a more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference between the NV and CEP LOTs affects price comparability, the Department adjusts NV under section 773(A)(7)(B) of the Act (the CEP offset provision). Id.

Section 773(a)(7)(A)(ii) of the Act states that NV shall be increased or decreased to make due allowance for any difference between EP and NV that is shown to be wholly or in part due to differences in LOT between EP and NV if that difference is "demonstrated to affect price comparability, based on a pattern of consistent price differences." After considering the parties' arguments and reevaluating our preliminary LOT analysis, we have not made an adjustment for differences in LOT in these final results because we have determined that the evidence does not

[2] In CEP situations, prior to performing its LOT analysis, the Department removes all selling activities related to the selling expenses set forth in section 772(d) of the Act from the CEP LOT. Thus, in the Department's LOT analysis, the CEP LOT becomes that of the constructed sale between the respondent and its affiliated importer. See Micron Technology, 243 F.3d at 1315. Micron Technology does not address the Department's LOT analysis in EP situations such as the instant case.

demonstrate that there is a pattern of consistent price differences between sales at different LOTs in the comparison market.

In analyzing whether there exists a pattern of consistent price differences, the Department's practice has been to consider whether average prices are higher at one of the LOTs for a preponderance of both CONNUMs and quantity sold at the different LOTs in the NV market. See, e.g., 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 accompanying Issues and Decision Memorandum at Comment 2. As Respondent correctly points out, in the Preliminary Results, the Department only examined whether there was a pattern of consistent price differences with respect to quantity. See Preliminary Calculation Memorandum, at 7. For the final results, we have made certain revisions to the dumping margin calculations in response to comments received from the parties (see Memorandum to the File, from Scott Lindsay, Case Analyst: Antidumping Duty Review of Chlorinated Isocyanurates from Spain: Calculation Memorandum for the Final Results (Final Calculation Memorandum), dated December 18, 2008, and Issues 3 and 4 below), which resulted in a change in the number of CONNUMs used in our LOT analysis.

In analyzing price differences between the two LOTs, for each CONNUM sold at both LOTs in the comparison market, we compared the average net price of sales made in the ordinary course of trade at the two LOTs. In accordance with our practice as stated above, for these final results we considered whether the average prices were higher at one of the LOTs for a preponderance of the CONNUMs, as well as whether the average prices were higher at one of the LOTs for a preponderance of the quantities sold. For these final results, we have determined that a pattern of consistent price differences is not supported by evidence showing higher prices at one of the LOTs for a preponderance of CONNUMs. In this context, we consider a preponderance of CONNUMs to be more than a simple majority of CONNUMs. The Department must be satisfied that the pattern established is one of differences sufficiently consistent to demonstrate that the difference in the LOTs affected price comparability. Although we also consider the evidence pertaining to the quantities of each model sold, as discussed above, this alone would be insufficient to find that there exists a pattern of consistent price differences. As a result of these analyses, the Department finds that the evidence does not demonstrate that there is a pattern of consistent price differences between the two LOTs in the comparison market. Therefore, we find that an LOT adjustment is not warranted based upon the facts in this case.

Finally, because the Department finds that there is no basis for making an LOT adjustment for the final results, we are not reaching the issue of whether the Department must grant an LOT adjustment where the sales prices at a more advanced LOT are lower than those sales prices at a less advanced LOT. Therefore, we have not addressed Respondent's argument that any LOT adjustment must per force decrease NV in these final results nor whether the Department mistakenly added rather than deducted the LOT adjustment from CM sales in the Preliminary Results.

Issue 2: Whether the Department Should Refrain From Zeroing Negative Margins.

Respondent argues that the Department should not apply the practice of zeroing for the final results. To calculate the dumping margins for the Preliminary Results, the Department set negative margins to zero. Respondent argues that the WTO dispute resolution bodies have determined repeatedly that such zeroing is not appropriate and is a violation of U.S. commitments under the WTO Antidumping Agreement. See e.g., United States – Laws, Regulations and Methodology for Calculating Dumping Margins Report of the Appellate Body, WT/DS294/AB/R (18 April 2006) (adopted 9 May 2006) at paragraph 135. Respondent contends that, to a certain degree, the United States has implemented those WTO determinations. Therefore, Respondent argues, for the final results, the Department should follow the dictates of the WTO and should not zero negative margins. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006); 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); 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).

Petitioners argue that Aragonesas made this same argument in the prior administrative review with respect to zeroing of negative margins. Petitioners explain that the Department rejected these arguments in that review, noting that the CAFC has upheld the Department's interpretation of the antidumping statute with respect to this issue and that the United States "has not gone through the statutorily mandated process of determining how to implement" certain WTO reports involving zeroing. See Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review, 72 FR 64194 (November 15, 2007) (Final Results of First Review), and accompanying Issues and Decision Memorandum at Comment 9.

Petitioners argue that none of the facts that caused the Department to reject Respondent's argument in the prior administrative review have changed. Further, Petitioners point out that the Department has continued to reject similar arguments and to follow its established practice of zeroing negative margins in calculating the final weighted-average margins in other recent administrative reviews. See, e.g., Carbon and Certain Alloy Steel Wire Rod from Canada: Final Results of Antidumping Duty Administrative Review, 73 FR 26958 (May 12, 2008), and accompanying Issues and Decision Memorandum at Comment 5. Accordingly, Petitioners argue, the Department should not make any changes with respect to zeroing negative margins in the final results.

Department's Position

We have not changed our calculation of the weighted-average dumping margin as suggested by Respondent for these final results of review.

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." Outside the context of antidumping investigations involving average-to average comparisons, the Department interprets this statutory

definition to mean that a dumping margin exists only when NV is greater than EP or CEP. 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 CAFC has held that this is a reasonable interpretation of the statute. See, e.g., Timken Co. v. U.S., 354 F.3d 1334, 1342 (Fed. Cir. 2004); Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied; 546 U.S. 1089 126 S.Ct. 1023, (January 9, 2006) (Corus I).

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate EP and CEP of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value." Timken, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate "masked dumping," before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. See, e.g., Timken, 354 F.3d at 1343; Corus I, 395 F.3d 1343; Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007)(Corus II); and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007).

Respondent has cited WTO dispute-settlement reports (WTO reports) finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act. Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375; NSK, 510 F.3d 1375.

With respect to United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (April 18, 2006)), the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons

in antidumping investigations. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (Zeroing Notice). In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See Id. 71 FR at 77724.

With respect to United States-Measures Relating to Zeroing and Sunset Reviews, WT/DS322/ AB/R (January 9, 2007) (US-Zeroing (Japan)), and, as discussed above, Congress has adopted an explicit statutory scheme in the Uruguay Round Agreements Act for addressing the implementation of WTO reports. See, e.g., 19 U.S.C. § 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the Uruguay Round Agreements Act process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. § 3533(g); see, e.g., Zeroing Notice. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure. With regard to U.S.-Zeroing (Japan), it is the position of the United States that appropriate steps have been taken in response to that report and those steps do not involve a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative review. Furthermore, in response to U.S.-Zeroing (Japan), the CAFC has repeatedly affirmed the permissibility of denying offsets in administrative reviews. Corus II, 502 F.3d at 1374-75; NSK, 510 F.3d at 1380.

For all these reasons, the various WTO Appellate Body reports regarding "zeroing" do not establish whether the Department's denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, the Department has continued to deny offsets to dumping based on export transactions that exceed NV in this review.

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

Petitioners maintain that section 773(f) of the Act instructs the Department to determine the value of a major input purchased from an affiliated party using the higher of the transfer price, market price, or the affiliated party's cost of production (COP) (i.e., the major input rule). Petitioners argue that caustic soda and chlorine are major inputs into chlorinated isos and that the Department should adjust the purchase prices Aragonesas paid for these inputs to reflect the higher of transfer price, market price, or the affiliated party's COP the caustic soda or chlorine.

Petitioners argue that Aragonesas' responses confirm that the company purchased substantial quantities of chlorine and caustic soda, two key inputs into production of the subject merchandise, from its corporate parent Ercros Industrial, S.A. (Ercros). Petitioners contend that in both the original investigation and in the first administrative review, the Department found that chlorine and caustic soda were major inputs into the production of chlorinated isocyanurates and that the prices for Aragonesas's purchases from affiliated parties were below market value. See Final Results of First Review, and accompanying Issues and Decision Memorandum at

Comment 3; Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value, 70 FR 24506 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 8. Petitioners argue that these facts continue to be true in this administrative review and, accordingly, the Department should make an adjustment to Aragonesas' reported costs for chlorine and caustic soda in accordance with section 773(f)(3) of the Act.

Petitioners argue that chlorine and caustic soda represent two of the three key material inputs required to produce chlorinated isocyanurates, and there is no doubt that both items constitute "major inputs" within the meaning of the statute. Further, Petitioners maintain, Aragonesas' responses indicate that it purchases a large percentage of its caustic soda and chlorine requirements from an affiliated supplier. See Aragonesas Section D Response (October 23, 2007) at 7. Therefore, Petitioners contend, Aragonesas' caustic soda and chlorine inputs should be evaluated pursuant to the major input rule. Further, based on the differential between the sales prices of caustic soda and chlorine from its affiliated suppliers to Aragonesas and to unaffiliated parties, the Department should adjust the costs reported by Aragonesas for caustic soda and chlorine to reflect market prices during the POR, consistent with section 773(f)(3) of the Act.

Respondent argues that, if the Department applies the major input rule to caustic soda in the final results the Department should use Ercros' market price to its non-affiliated purchasers to set the value, rather than the values suggested by Petitioners. With regard to chlorine, Respondent argues that during the current POR, only a fraction of the chlorine consumed by Aragonesas for all production was supplied by an affiliate; Aragonesas self-produces the vast majority of the chlorine consumed. See Aragonesas's Supplemental Section D Response (June 3, 2008) at 2 and 4. Respondent argues that such a small value of total production should not be viewed as a major input by an affiliate, and where the amount supplied by the affiliate is so minimal, the major input rule should not apply.

Moreover, Respondent argues, it also used chlorine to produce hydrochloric acid, a non-subject product. Therefore, Respondent argues, some of the chlorine purchases from Ercros, no doubt, was used to produce this non-subject merchandise during the POR. Respondent contends this means that the actual percentage of Ercros-supplied chlorine in the cost of manufacturing (COM) of chlorinated isocyanurates produced by Aragonesas during the POR might likely have been even less than the already small portion. In view of the foregoing, Respondent argues that, should the Department consider applying the major input rule, it (1) should apply a lesser figure for caustic soda than the one suggested by Petitioners and (2) should not apply the rule at all to chlorine since the amount of chlorine supplied by the affiliate is so minimal.

Department's Position

Under section 773(f)(2) of the Act, the "transactions disregarded rule," a transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. 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 Agreements Act, the Department has applied this interpretation consistently. See, e.g., Fresh Salmon from Chile at Comment 22. See also, Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663 (December 10, 2007).

We have analyzed the costs of the chlorine and caustic soda Aragonesas purchased from its affiliated suppliers in accordance with section 773(f) of the Act. To determine if an input is major and section 773(f)(3) of the Act applies, the Department 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 COM. See e.g., Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 27802 (May 17, 2007), and accompanying Issues and Decision Memorandum at Comment 3. In the current review, Aragonesas submitted information which provided the quantities and values of chlorine and caustic soda purchased from affiliated suppliers. See Aragonesas' Section D Response (October 23, 2007) at 8 and 9. We determine that the caustic soda purchased by Aragonesas from Ercros constitutes a major input in accordance with section 773(f)(3) of the Act. However, with regard to the chlorine purchased by Aragonesas from affiliates during the POR, we find that chlorine is not a major input. See Final Calculation Memorandum.

For these final results, we have analyzed Aragonesas' caustic soda transactions using the major-input rule as described in section 773(f)(3) of the Act. We have therefore valued the caustic soda transactions at the higher of transfer price, market price, or COP for the final results. See Final Calculation Memorandum. However, we have not applied the major input rule to Aragonesas' chlorine purchases because the purchases from affiliated parties are not substantial enough to qualify as a major input. Instead, we have applied the valuation rules described in section 773(f)(2) of the Act, the "transactions disregarded rule." Under the transactions disregarded rule, we compared Aragonesas' chlorine purchases from affiliated trading companies during the POR with the transfer price to Ercros' third-party sales prices, as provided Supplemental Section D Response (June 3, 2008) at 4, and Exhibit D1-3. Therefore, for calculating the cost for chlorine in these final results, we have used the higher of the transaction price or the market price in accordance with section 773(f)(2) of the Act. See Final Calculation Memorandum.

Issue 4: Whether the Department Should Adjust Aragonesas's General and Administrative Expenses.

Petitioners argue that Aragonesas' general and administrative (G&A) calculations include two errors that substantially understate the actual amount of G&A expenses associated with producing the subject merchandise during the POR. The first error, Petitioners argue, is that Aragonesas has improperly attributed Ercros' G&A expenses only to the Aragonesas Water Treatment Division, rather than Aragonesas as a whole, as required by the Department's practice.

The second error, Petitioners argue, is in calculating G&A expenses, Aragonesas improperly accounted for certain extraordinary income items that do not relate to general company operations during the POR. This error specifically involves income from an insurance claim and income resulting from "an underpayment for the shares of Aragonesas" pursuant to the merger of Aiscondel S.A. (Aiscondel) with Aragonesas and Aragonesas Delsa S.A. (Delsa). Petitioners contend that it is the Department's practice to allow proceeds from insurance claims to offset G&A when they relate to losses incurred during the same reporting period. See Certain Steel Concrete Reinforcing Bars From Turkey: Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination to Revoke in Part, 72 FR 62630 (November 6, 2007), and accompanying Issues and Decision Memorandum at Comment 5. Petitioners argue that Aragonesas has not established that the insurance proceeds it received during the POR actually relate to losses suffered during the same reporting period.

Similarly, Petitioners contend, Aragonesas claimed an offset to G&A for what amounts to the amortization of negative goodwill associated with the merger of Aragonesas and Aiscondel in a prior period. (This transaction was described in the Department's Final Results of First Review.) Petitioners argue that the Department's general practice in determining whether to include or exclude a particular income or expense item from G&A is to "review the nature of each item, its relationship to the general operations of the company, and how such items are recorded in the normal books and records of the respondent (e.g., whether they are included in the overall G&A account or within a COGS account)." See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 71 FR 65082 (November 7, 2006) (Rebar from Turkey), and accompanying Issues and Decision Memorandum at Comment 9. Pursuant to this standard, Petitioners argue that it appears that the negative goodwill recorded as an extraordinary income item by Aragonesas has no relationship to the general operations of the company, but is simply an artifact of the structure used by Aragonesas for the merger of three companies within the same corporate grouping. Accordingly, the Department should not allow this adjustment in the final results.

Respondent opposes Petitioners' argument that Aragonesas improperly included in the numerator of its G&A calculation only those expenses incurred by Ercros on behalf of Aragonesas' Water Treatment Division. Respondent argues that Petitioners' claim that this "unreasonably under-allocates expenses for G&A functions performed by Ercros for Aragonesas" is also wrong. Respondent argues that because only the Water Treatment Division produces the subject merchandise, only the services provided to that division by Ercros should be included in the G&A calculation.

Respondent contends that it adhered to the Department's practice when it calculated the G&A of Aragonesas itself: Aragonesas included the G&A for all divisions of Aragonesas in the numerator used to calculate its own company-wide G&A during the relevant period. See Section D Response (October 23, 2007), at Exhibit D-7, page 1, which shows that the G&A of all three Aragonesas divisions were used to calculate the G&A that Aragonesas reported as its company-wide G&A. But, Respondent notes, in addition to the amounts reported for Aragonesas alone, certain other G&A services were supplied to Aragonesas by Ercros. Respondent states that it also included the G&A services provided by Ercros in its G&A calculation, but only those services provided by Ercros to the Water Treatment Division, the division that produces the

subject merchandise. Respondent submits that this is the correct way to allocate services procured from outside Aragonesas. Accordingly, Respondent argues the Department should maintain the G&A calculation as reported.

In addition, Respondent maintains that the two offsets to G&A it claimed are appropriate and should be maintained for the final results. Respondent argues that with regard to the first offset, Petitioners are correct that it is the Department's practice to allow certain insurance claims only when the proceeds relate to losses incurred during the same reporting period. However, Respondent argues that, in this case, the insurance paid was not so much for a loss as it was for maintenance of equipment. Respondent states that it made clear in its response the insurance was paid to the Plastics Division because there was a problem with a turbine; the turbine broke, but the insurance carrier had to pay for the repairs and also for the costs relating to the inactivity of the machine. See Supplemental Section D Response (June 3, 2008) at 18. Respondent argues that, since the payment was in the nature of covering maintenance of equipment, the Department's usual practice should not apply in this instance. Accordingly, Respondent contends that the Department should maintain this offset for the final results.

Regarding the second offset, Respondent argues that it explained the offset as follows:

> When Aiscondel merged with Aragonesas and Delsa, there was an underpayment for the shares of Aragonesas. The auditors ordered that this underpayment be distributed as extraordinary income over several years. (Note that this extraordinary income will appear during several years as required by the auditors).

See Supplemental Section D Response (January 14, 2008) at 21. Respondent explains that it was thus required by its outside auditors to report the underpayment, amortizing it over several years. Given the fact that the auditors required that the item be amortized, Respondent maintains, this income is properly an offset to the company's G&A expense. Respondent argues that the statute clearly notes that "{c}osts shall normally be calculated based on the records of the . . . producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country . . ." 19 U.S.C. § 1677b(f)(1). Further, Respondent argues that the practice used in Rebar from Turkey, which Petitioners cited, actually supports Respondent' position because this item is clearly recorded in Aragonesas's books and records and is clearly a G&A item. Therefore, Respondent argues, the offset to G&A taken by Aragonesas is reasonable and should be maintained for the final results.

Department's Position

With regard to the allocation of Ercros' G&A expenses to Aragonesas, the Department finds that Ercros' G&A expenses relate to Aragonesas as a whole, and not only to the Water Treatment Division. As Petitioner notes, it is the Department's practice to calculate G&A expenses based on the producing company as a whole and not on a divisional or product-specific basis. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 31961 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 17. It is clear from Aragonesas' questionnaire responses that Ercros provides extensive G&A services to all Aragonesas business units, not only

the Water Treatment Division that produces subject merchandise. As a result, Aragonesas' company-wide G&A rate should include an allocation of Ercros' G&A to each of the Aragonesas business units. Therefore, we find that Ercros' G&A expenses related to Aragonesas as a whole, and not only the Water Treatment Division, and that they should be included in the G&A. See Final Calculation Memorandum.

With regard to certain offsets resulting from the merger of Aiscondel with Aragonesas and Delsa, we find that this should continue to be an offset to G&A. Goodwill is generated when a company acquires another company and the price it pays exceeds the net book value of the acquired company's assets. This goodwill is added to the acquiring company's balance sheet as an asset. Conversely, negative goodwill is generated when a company buys another company, and the price it pays is less than the net book value of the acquired company's assets. Some countries' generally accepted accounting principles (GAAP) allow both goodwill and negative goodwill to be amortized over future periods. In the instant case, the Department finds that Aragonesas has reported an amount that reflects the amortization of negative goodwill. Under the amortization method used by Aragonesas, the negative goodwill is amortizated over several years. See Supplemental Section D Response (January 14, 2008) at 21.

The Department is directed by section 773(f)(1)(A) of the Act to normally calculate costs based on the books and records of the exporter or producer provided those records are kept in accordance with the home country GAAP and that they reasonably reflect the costs associated with the production and sale of the merchandise. Aragonesas stated that its auditors required that its negative goodwill be amortized in its normal books and records, in accordance with Spanish GAAP. Further, the Department has determined that the amortization of goodwill, under the appropriate circumstances, is an acceptable adjustment to G&A. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum at Comment 16. Therefore, we also find the amortization of negative goodwill to be an appropriate adjustment to G&A. As the amortization methodology used by Aragonesas does not distort the reported cost, we find that there is no reason to deviate from Aragonesas' normal books and records. Therefore, we find that the negative goodwill amortization reported by Aragonesas should be included as an offset to G&A.

With regard to the treatment of the insurance proceeds, we have disallowed Aragonesas' claimed offset to G&A expenses for insurance proceeds received during the POR that relate to losses incurred and recognized prior to the POR. The Department normally allows an offset for insurance reimbursements up to the amount of the related losses incurred during the same reporting period. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada, 70 FR 73437 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 40.C, (the Department found that it was inappropriate to allow insurance proceeds received during the POR that related to losses incurred in prior years to offset the COP of the POR), and Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741 (September 5, 2003), and accompanying Issues and Decision Memorandum at Comment 19 (the Department found that crop insurance proceeds received outside the POR were not related to the COP for the POR). In the instant case, Respondent states the claimed insurance

proceeds received during the POR were related to losses incurred and expensed prior to the POR. See Supplemental Section D Response (June 3, 2008) at 18. Therefore, consistent with the Department's practice, we have disallowed Aragonesas' claimed offset for these proceeds.

Respondent's argument that these insurance claims are related to routine maintenance, and thus should be allowed as an offset, is off point. As stated earlier, the Department's practice is to allow the insurance proceeds as an offset up to the amount of the related losses incurred during the same reporting period. As such, in the instant case, the expenses related to the receipt of insurance proceeds (i.e., the breakdown of the turbine), were not incurred during the POR, thus, based on the Department's practice, we disallowed the income offset.

Issue 5: Whether the Department Should Adjust Aragonesas's Comparison Market Movement Expense

Petitioners state that Department's margin program calculated CM movement expenses as equal to freight costs from the warehouse to the customer. However, Petitioners argue, the Department inadvertently excluded costs reported by Aragonesas for freight and warehousing expenses incurred on certain CM sales. See Aragonesas Section B Response (October 12, 2007), at 21-22. Petitioners contend that because these expenses constitute movement costs that should be incorporated as adjustments to NV, the Department should revise its margin program for the final results to reflect this omission.

Respondent did not comment on this issue in its rebuttal brief.

Department's Position

The Department inadvertently failed to include freight and warehousing expenses incurred on certain CM sales in its margin calculation program for the Preliminary Results. Therefore, for the final results, the Department is including these reported costs.

Agree _____ Disagree_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date