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Administrative Review
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MEMORANDUM

DATE: January 8, 2003

TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for Group II, Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results in the 2000-2001 Antidumping Duty Administrative Review of Granular Polytetrafluoroethylene Resin from Italy

Summary

This memorandum addresses issues briefed or otherwise commented upon in the above-referenced proceeding. Section A lists the issues briefed by interested parties and section B analyzes the comments of the interested parties and provides our recommendations for each of the issues.

Background

On September 10, 2002, the Department of Commerce (the Department) published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Polytetrafluoroethylene Resin from Italy*, 67 FR 57376 (September 10, 2001) (*Preliminary Results*). The period of review (POR) is August 1, 2000, through July 31, 2001. We invited parties to comment on the *Preliminary Results.* The petitioner, E.I. DuPont de Nemours & Company (DuPont), and the respondent, Ausimont S.p.A. and its subsidiary Ausimont U.S.A., Inc. (Ausimont),[1] submitted case briefs on October 10, 2002, and rebuttal briefs on October 17, 2002.

[1] We will refer to Ausimont SpA and Ausimont USA collectively as "Ausimont," unless indicated otherwise in this memorandum.

The Department rejected, and requested resubmission of, DuPont's rebuttal brief on October 28, 2002, because that brief advanced a new argument not present in the petitioner's case brief and not responsive to arguments in the respondent's case brief. The petitioner resubmitted its rebuttal brief on October 30, 2002. On October 31, 2002, the Department rejected the petitioner's resubmitted rebuttal brief, as the new information was not redacted from the attachment. The petitioner resubmitted its rebuttal brief on November 1, 2002.

On October 31, 2002, the Department issued a second supplemental questionnaire to Ausimont, as a result of issues raised in the briefs. Ausimont submitted its response to this questionnaire on November 14, 2002, and the petitioner submitted comments on Ausimont's response on November 25, 2002.

A public hearing was held on December 9, 2002, at which the parties discussed the case and rebuttal briefs, as well as Ausimont's second supplemental questionnaire response and the petitioner's November 25, 2002, comments.

A. Issues

Comment 1: *Unreported further manufactured sales*
Comment 2: *Calculation of the constructed export price profit ratio*
Comment 3: *Application of the special rule*
Comment 4: *Treatment of sales of off-spec merchandise*
Comment 5: *Treatment of negative margins*
Comment 6: *Packing expenses for further-manufactured sales*
Comment 7: *Issuance of draft final results*
Comment 8: *Factory overhead and general and administrative expenses for further-manufactured sales*

B. Discussion of Issues

Comment 1: *Unreported further-manufactured sales*

In its case brief, the petitioner argues that Ausimont may have substantially understated its U.S. sales of subject merchandise. According to the petitioner, the respondent's "Summary of Reactor Bead Consumption," included as part of its response to the Department's supplemental questionnaire, indicates an amount of subject wet raw polymer was consumed to make "non-subject merchandise." The petitioner argues that if this non-subject merchandise is in fact further-processed wet reactor bead used in products sold in the United States, then the Department must consider these sales within the scope of the review and the final dumping analysis must include these transactions. If the Department does not consider these sales, the petitioner contends that the results of the review will be distorted. In addition, the petitioner requested that the Department ask Ausimont to specify the quantity of the imported wet reactor bead classified as "non-subject merchandise" that resulted in U.S. sales. If

Ausimont is unable to fully account for the wet reactor bead, the petitioner argues the Department should, as facts available, assign the highest margin of any further-manufactured import to this quantity of wet reactor bead in calculating the margin for the final results of this review.

Ausimont, in its rebuttal brief, states that the wet reactor bead in question consisted of reactor bead that was not subject merchandise when imported as it was contaminated and could not have been used in the production of PTFE resin. For support, Ausimont cites *Granular Polytetrafluoroethylene Resin from Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order*,[2] in which the Department stated that "PTFE wet raw polymer is the intermediate product from which Ausimont produces granular PTFE resin in the United States." The respondent argues that, since the reactor bead was not capable of being processed into scope merchandise when it was imported, then the sales must be considered outside the scope and not included in the final dumping analysis.

In its November 14, 2002, response to the Department's second supplemental questionnaire, Ausimont reaffirms its position that wet raw polymer that is not or cannot be manufactured into granular PTFE resin is outside the scope of the antidumping duty order and should not be included in the results of this administrative review. Ausimont argues that, when the petitioner requested that the Department initiate a scope determination, it specifically asked the Department to determine whether "imported products completed or assembled in the United States fall within the scope of the order." Furthermore, Ausimont claims that the Department's initiation and investigation in the anti-circumvention inquiry was limited to wet reactor bead imported into the United States and manufactured into granular PTFE resin products covered by the antidumping duty order. Finally, Ausimont provided an affidavit from its Chief Financial Officer confirming that the unreported wet raw polymer was incapable of being manufactured into granular PTFE resin. As a result, Ausimont claims that it has correctly identified the relevant merchandise as non-scope wet reactor bead that could not be manufactured into granular PTFE resin and, accordingly, did not report the sales of merchandise further manufactured from it.

The petitioner, in its November 25, 2002, comments on Ausimont's second supplemental questionnaire response, argues that Ausimont offers no factual support for its arguments. According to the petitioner, the Department's circumvention order clearly states that PTFE wet raw polymer falls within the scope of the review. In fact, the petitioner notes that in the 1996/1997 review, the Department used home market sales of wet raw polymer to establish normal value for shipments of wet raw polymer to the United States. The petitioner contends that Ausimont reported its home market sales of wet raw polymer in that review because they are, in fact, scope merchandise.

Furthermore, the petitioner argues that Ausimont's contention that the unreported quantity of wet raw polymer was incapable of being manufactured into granular resin is irrelevant given that the Department has previously stated that imports of subject merchandise are considered subject merchandise even if

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[2] 58 FR 26100, 26101 (April 30, 1993) (*Final Circumvention Determination*).

they are used to produce merchandise that is outside the scope of an order.[3] In addition, the petitioner notes that Ausimont has provided no factual support for its distinction between PTFE wet raw polymer and "contaminated" wet raw polymer. The petitioner does allow that if the imported merchandise was not PTFE wet raw polymer, and if this fact was fully documented by Ausimont, then the material would not be in the scope of the antidumping duty order. The petitioner states that since no evidence of this distinction was provided by Ausimont then the Department is justified in applying total adverse facts available and assigning Ausimont a margin of 55 percent, the highest margin from any segment of the proceeding (from the initiation notice). If the Department decides to use the data on the record to calculate a margin for the unreported sales, the petitioner argues that the Department should identify the further-manufactured sale with the largest unit value and apply the U.S. price and unit margin components to the calculation.

Department's position: We agree, in part, with the petitioner. In the *Final Circumvention Determination*, the Department determined that "PTFE wet raw polymer, the imported product subject to this inquiry, falls within the scope of the antidumping duty order on granular PTFE resin from Italy,"[4] without reference to the ultimate use of the wet raw polymer and without requiring any kind of end-use certification from Ausimont. In each subsequent review, the Department has included "PTFE wet raw polymer exported from Italy to the United States" in the scope of the review.[5] At no point has the Department specifically excluded wet raw polymer used to manufacture products other than granular PTFE resin from the scope of the antidumping order. In fact, in the 1996-1997 review, Ausimont reported, and the Department used, home market sales of wet raw polymer as normal value without considering whether that wet raw polymer was or could have been used to produce granular PTFE resin. We note that the scope of the order does specifically exclude "PTFE dispersions in water and fine powders."[6]

Because Ausimont believed the products in question were outside the scope, the Department provided it with another opportunity to supply the missing information. On October 31, 2002, the Department issued a second supplemental questionnaire to Ausimont requesting that the company "report all sales of further-manufactured wet raw polymer, regardless of whether the finished product itself is scope merchandise"[7] and complete Section E for those sales. Furthermore, the Department acknowledged

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[3] *See* petitioner's November 25, 2002 submission at 4, citing *Certain Alloy and Carbon Hot-Rolled Bars, Rods, and Semifinished Products of Special Bar Quality Engineered Steel From Brazil; Final Determination of Sales at Less Than Fair Value*, 58 FR 31496 (June 3, 1993).

[4] *See Final Circumvention Determination* at 26100.

[5] *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy*, 67 FR 1960, 1961 (January 15, 2002).

[6] *See Id.*

[7] *See* October 31, 2002, letter from the Department to Ausimont.

Ausimont's arguments that such sales are outside the scope of order, stated that it would consider Ausimont's arguments for the final results of this review, and reiterated that Ausimont "must report all further-manufactured sales of wet raw polymer for the Department's review."[8] In its November 14, 2002, response, Ausimont refused to report such sales and again argued that wet raw polymer that is not or cannot be processed into granular PTFE resin is itself outside the scope of the order. In addition, Ausimont's Chief Financial Officer certified that the unreported wet raw polymer could not have been manufactured into granular PTFE resin.

We find Ausimont's arguments unconvincing. The plain language of the scope clearly includes wet raw polymer in the scope of this review. Furthermore, Ausimont has provided no documents that definitively demonstrate that the imported merchandise was a) contaminated, b) chemically distinct from PTFE, or c) entered the United States as something other than PTFE. We note that Ausimont itself included the volume of the sales in question in its entries of subject merchandise, reported in its section A response. If the unreported wet raw polymer was chemically different from wet raw polymer used to make PTFE resin, and the respondent was able to document this fact, then the Department could consider whether the merchandise is part of the scope of the antidumping order. In this review, the Department lacks the information to determine whether the unreported wet raw polymer is not subject to this review, despite specifically requesting this information from the respondent. Therefore, in these final results, we are relying on the plain language of the scope and including all sales of PTFE wet raw polymer regardless of whether it could be or was further manufactured into granular PTFE resin.

Because Ausimont did not report a substantial quantity of further-manufactured sales, we have determined that Ausimont failed to act to the best of its ability to comply with the request for information and an adverse inference is warranted, in accordance with section 776(b) of the Tariff Act of 1930, as amended (the Act). However, we disagree with the petitioner that the facts of this case require the Department to calculate the overall margin using total adverse facts available. Ausimont has provided additional data and clarification in response to other requests by the Department, but failed to comply with the Department's request regarding its unreported further-manufactured sales. Therefore, as partial facts available, we are applying the highest calculated margin from any segment of this proceeding to the quantity of unreported sales. In this case, the highest calculated margin was 46.46 percent, which was the margin calculated in the initial investigation.

The final margin from the investigation was calculated using actual, verified data. To determine whether this margin bears a rational relationship to the probability of dumping, we reviewed the margins in more recently completed reviews and also looked at the positive margins calculated on further-manufactured sales in the current review. We note that we calculated a similar margin (45.72 percent) in the 1996-1997 review of this case. Furthermore, the final margin from the investigation is well within the range of margins calculated on further-manufactured sales in the current review. Therefore, we conclude that it

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[8] *Id.*

is appropriate to apply in this review the final margin from the investigation to the unreported U.S. sales of further manufactured wet raw polymer.

Comment 2: *Calculation of the constructed export price profit ratio*

The petitioner argues that when the Department applied a constructed export price (CEP) profit ratio based on Ausimont's financial statements, the Department did not follow its standard practice of calculating CEP profit using the respondent's data when such data is available. In addition, the petitioner claims that, in using the financial statements, the Department acted contrary to the statute, which states that if the Department requested cost of production data related to sales then it should calculate the CEP ratio from the requested information. The petitioner notes that section 772(f) of the Act provides three hierarchical methods for calculating CEP profit: the first method uses expense data made available to the Department when conducting a sales-below-cost investigation, and the second and third methods use information provided in the respondent's financial statements.

The petitioner notes that the Department did request a "full response" to Section D of the questionnaire in a letter to Ausimont. However, the petitioner argues that Ausimont did not provide a full response because it did not provide constructed value (CV) information for products that were sold in the United States, but not in the home market. Furthermore, the petitioner contends that it informed the Department of this deficiency on February 22, 2002, and recommended that the Department request Ausimont provide cost data for all control numbers; however, the Department failed to do so. As a result, the petitioner notes that the Department was unable to calculate the CEP profit ratio and, therefore, has understated Ausimont's margin in the preliminary results. The petitioner recommends that the Department use facts available to calculate the CEP profit rate based on the actual revenues and expenses provided by Ausimont for sales of the subject merchandise in the home market and United States.

Ausimont, in its reply brief, argues that the petitioner is incorrect in stating that the statute requires the reporting of CV information not otherwise required solely to enable the Department to calculate the CEP profit ratio. The respondent states that the Department did not require Ausimont to submit a CV database because all U.S. sales have identical or similar matches . Therefore, the Department should not apply facts available because the information the petitioner claims is missing was not specifically requested and there is information on the record enabling the Department to calculate CEP profit (namely, Ausimont's financial statements).

Department's position: We agree with the petitioner and, in the final results of this review, we have calculated CEP profit using Ausimont's data. However, with regard to the petitioner's argument that we should have required Ausimont to submit CV information for all products sold in the United States, we note that section 351.402(d)(3) of the Department's regulations states that "the Secretary will not require the reporting of costs of production solely for purposes of determining the amount of profit to be deducted from the constructed export price." Furthermore, in the letter accompanying the

Department's questionnaire, the Department instructed Ausimont to respond to the "constructed value portion of section D with respect to products or models sold in the United States for which you had no sales of comparable merchandise in the home or third country market."
In the preliminary results, the Department was unable to calculate CEP profit because the respondent reported a product-specific general and administrative (G&A) expense amount, rather than a single G&A ratio calculated from the respondent's financial statements. Absent a complete constructed value database, the Department can calculate a cost of production for each U.S. sale using the total cost of manufacturing (provided for matching purposes), a G&A ratio, and an interest expense ratio. In this case, Ausimont reported an interest expense ratio (in its cost of production database) and total cost of manufacturing for each U.S. sale, but did not report a single G&A ratio. We note that we have accepted Ausimont's product-specific G&A expenses in past reviews; however, the Department's normal practice is to require all respondents to calculate a single G&A ratio based on their financial statements. In this review, Ausimont was put on notice that the Department was no longer accepting its methodology and that it would have to comply with the Department's normal practice. In the Department's first supplemental questionnaire, issued on August 8, 2002, we requested that Ausimont "calculate a single G&A ratio by following the instructions in questions III.C.3 and III.D.1 of the Department's section D questionnaire." In its September 17, 2002, response, Ausimont argued that its product-specific G&A calculation "constitutes the most accurate calculation of this expense for the cost database." In addition, Ausimont noted that the concept of "production costs" in an Italian financial statement is not the equivalent of the U.S. concept of "cost of goods sold" (COGS); therefore, Ausimont was unable to divide by the COGS number as requested.

In the Department's second supplemental questionnaire, we acknowledged Ausimont's arguments regarding the product-specific G&A and stated "nonetheless, you must recalculate your G&A expense based on your financial statements, as the Department originally requested. Failure to do so may result in the Department's application of facts available." In its response to the second supplemental questionnaire, Ausimont reiterated its earlier arguments, again stating that, because Italian financial statements do not contain an analogous concept to COGS, Ausimont was unable to comply with the Department's request.

We note that Ausimont could have calculated a COGS by using the income statement used in preparing its financial statements, to classify each component of "production costs" as COGS, financial expense, G&A expense, or selling expense. In fact, this is precisely the method Ausimont used in its response to the petitioner's cost allegation in the 12th administrative review.[9] In that review, we did not accept Ausimont's calculation in our cost investigation initiation simply because it was new information after the cost allegation was filed, not because we objected to the company's calculation.[10] In addition, in its

[9] *See* petitioner's November 25, 2002, letter to the Department at Attachment A.

[10] *See* Sales Below the Cost of Production memorandum to Gary Taverman from David Layton and Magd Zalok, dated February 5, 2001, at 4.

September 17, 2002, response to the Department's supplemental questionnaire, Ausimont noted that, in calculating its financial expense, it was necessary to deduct certain items from the "cost of production" reported on its parent company's financial statement "to put the reported COP on the same basis as the U.S. concept of COGS." Clearly, Ausimont understands how to derive a COGS from the cost of production reported in Italian financial statements. Furthermore, other European respondents face this same problem, yet they are also able to calculate a COGS and a single G&A ratio.[11]

Because Ausimont did not properly calculate its G&A ratio as requested by the Department on three separate occasions, we have determined that Ausimont failed to act to the best of its ability to comply with the request for information and an adverse inference is warranted, in accordance with section 776(b) of the Act. We note that the petitioner has requested that we calculate CEP profit by applying the lowest ratio of expenses to sales revenues of any control number to all U.S. sales with missing cost data. However, we note that, because the respondent provided total cost of manufacturing data for all U.S. sales and complete cost information for all home market sales (including a single interest expense ratio), we only need a single G&A ratio to calculate CEP profit. As a result, as partial adverse facts available, we have used the lowest product-specific G&A expense to calculate a cost of production for each home market and U.S. sale, and, thereby, calculate CEP profit.

Section 776(c) of the Act provides that when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal. In this case, as adverse facts available, we are not using secondary information. *See* 19 CFR 351.308(c)(2). Accordingly, the G&A ratio we are using is not subject to the corroboration requirement.

Comment 3: *Application of the special rule*

The petitioner argues that the Department correctly denied the respondent's request to invoke the special rule[12] regarding further-manufactured merchandise. According to the petitioner, Ausimont

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[11] *See, e.g., Stainless Steel Bar from Italy; Final Determination*, 67 FR 3155, 3157 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 31; *Stainless Steel Plate in Coils from Italy; Preliminary Results of Antidumping Administrative Review*, 67 FR 39677, 39680 (June 10, 2002); *Certain Pasta from Italy; Final Results of Antidumping Administrative Review*, 67 FR 77852 (December 13, 2000) and accompanying Issues and Decision Memorandum at Comment 21.

[12] Section 772(e) of the Act states: "Special Rule for Merchandise With Value Added After Importation. Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using one of the following prices if there is a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate: (1) The price of identical subject

began importing and further processing wet reactor bead (the merchandise currently being further processed into PTFE products in the United States) to circumvent the antidumping order. As a result, the petitioner filed an anti-circumvention case. Despite the fact that the Department found that imports of wet reactor bead were circumventing the order, and therefore included imports of such merchandise in the scope of the order, the petitioner notes that the respondent repeatedly requests the Department ignore its imports of wet reactor bead and invoke the special rule. The petitioner claims that, if the Department does not calculate a margin for sales of the further- manufactured wet reactor bead, it would, in effect, be allowing respondent to circumvent the order.

In its case brief, Ausimont argues that the Department abused its discretion by refusing to apply the special rule to Ausimont's further-manufactured sales. Furthermore, Ausimont contends that, if the Department does not employ the special rule in the final results of this review, it should compare further-manufactured merchandise to CV in the margin calculation, as there are no sales of wet reactor bead in the home market.

Ausimont notes that, according to the Federal Circuit, the Department must reasonably exercise its discretion in determining whether the special rule should be applied and, in this matter, the Department has not acted reasonably.[13] In addition, Ausimont argues that the value added in the United States exceeds 65 percent of the price charged to the first unaffiliated purchaser, the threshold set by the Department for application of the special rule. Ausimont further states that the Department's decision not to apply the special rule in past administrative reviews is irrelevant to this review. In support of its position, Ausimont cites three reasons as to why the Department should reconsider its past decisions in light of the specific information presented in this review.

First, Ausimont notes that U.S. sales of imported PTFE resin provide a sufficient quantity to be used as a basis for comparison. Ausimont argues that this fact, along with the fact that the proportion of imported PTFE resin sales to sales of further-manufactured PTFE resin has increased, indicates that the application of the special rule is warranted and that the use of the imported PTFE resin sales would produce more accurate results than in prior reviews. Second, Ausimont contends that the Department's use of the traditional rule, as opposed to the special rule, in the preliminary determination has produced

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merchandise sold by the exporter or producer to an unaffiliated person. (2) The price of other subject merchandise sold by the exporter or producer to an unaffiliated person. If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis."

[13] *See RHP Bearings Ltd. v. United States*, 288 F. 3d. 1334 (Fed. Cir. 2002) (*RHP Bearings*).

flawed results. Ausimont notes that both the Department[14] and the Court of International Trade[15] have stated that wet raw polymer and PTFE resin are dissimilar and there is no reasonable expectation that the two products would have similar selling prices. Furthermore, Ausimont argues that the Department, in the 1996-1997 review, identified home market sales of wet raw polymer as the relevant home market sales for price-based matches. According to Ausimont, these statements indicate that it is inappropriate to match wet raw polymer to finished PTFE resin. Third, Ausimont notes the CIT has held that the Department must apply its regulations rationally to all similarly situated respondents.[16] Ausimont argues that the Department, in past determinations, has applied the special rule in similar situations when the percentage of imported sales to total sales was similar to Ausimont's in this review. Based on these three reasons, Ausimont maintains that Commerce should apply the special rule to Ausimont's further-manufactured sales in this review.

Finally, Ausimont argues that, if the Department should decide not to apply the special rule, the Department should use CV for the calculation of normal value for wet reactor bead. Ausimont notes, as discussed above, that the Department, in past reviews, has stated that wet raw polymer and finished resin are so dissimilar that there is no expectation of similar selling prices. In order to match its further-manufactured sales to CV, Ausimont proposes that the Department select the lowest G&A value from the home market cost data when calculating CV because wet raw polymer would absorb lower costs as an intermediate, as opposed to a finished, product.

In its reply brief, the petitioner again argues that the Department correctly denied the respondent's request to invoke the special rule regarding further-manufactured merchandise. The petitioner notes that the Department is under no obligation to apply the special rule. Instead, the statute provides the Department with the discretion to apply the special rule in situations that would prove to be an administrative burden to the Department and would not detract from the accuracy of its analysis.

According to the petitioner, Ausimont's request to use the sales of imported PTFE resin as a proxy for sales of further-manufactured PTFE resin would produce an inaccurate calculation of the margin, as further-manufactured sales are a significant percentage of Ausimont's total U.S. sales. As a result, the petitioner contends that the Department's decision not to apply the special rule is consistent with its "overriding mandate to calculate accurate dumping margins."[17] In addition, the petitioner argues that, in

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[14] *Granular PTFE resin from Italy, Final Results of Antidumping Administrative Review, 63 FR 49080 - 49082 (Sept. 14, 1998)*

[15] *Ausimont SpA v. United States, 2001 Ct. Intl. Trade, LEXIS 128, at *68.*

[16] *Carpenter Technology Corp. V. United States, 2002 Ct. Intl. Trade, LEXIS 76 at *20.*

[17] *See* petitioner's rebuttal brief at 8, citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*, 63 FR 2558, 2560 (January 15, 1998).

this review, although the value added through further manufacturing is significant, the calculation of the margin for further-manufactured sales can easily be performed.

The petitioner also argues that Ausimont has misstated the law and facts of this review to support its arguments in requesting the use of the special rule. The petitioner maintains that the Department's decision to reject Ausimont's request for the application of the special rule was based on a well-reasoned review of the facts and did not, as suggested by Ausimont, simply rely upon the facts presented in prior reviews. The petitioner states that Ausimont is also incorrect in its statement that the Department has held it to a different standard of special rule eligibility. The petitioner notes that Ausimont's list of cases with similar circumstances in which the Department applied the special rule does not take into consideration the Department's analysis regarding administrative burden and accuracy related to the calculating the costs of further manufacturing.

Furthermore, the petitioner argues that Ausimont's request to invoke the special rule would provide the respondent with another way of circumventing the order, which includes wet reactor bead due to the further manufacturing of the wet reactor bead in the United States.

The petitioner also states that Ausimont's claim that the price-to-price comparison of imported wet reactor bead and granular PTFE resin is unfair is false and ignores the Department's preference for identical or similar merchandise comparisons. The petitioner states that the Department should follow its established hierarchical procedures of using identical and similar price comparisons, which would properly match the imported wet reactor bead and the granular PTFE resin, rather than using CV as suggested by Ausimont.

Department's position: We agree with the petitioner. Our decision to refrain from applying the special rule in this case is appropriate, and is in accordance with section 772(e) of the Act and the Department's established practice. As we stated in our November 29, 2001, letter to Ausimont,[18] the statute specifies that the use of the options identified in section 772(e)(1) and (e)(2) is contingent upon the existence of a quantity of sales sufficient to provide a reasonable basis for comparison, and a decision that the use of such sales is appropriate.[19] Moreover, because the purpose of section 772(e) is to reduce the administrative burden on the Department,[20] the Department retains the authority to

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[18] *See* Letter from the Department of Commerce to Ausimont, dated November 29, 2001, including *Memorandum from Magd Zalok to Holly Kuga, Acting Deputy Assistant Secretary for Import Administration*, dated December 9, 1999.

[19] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558, 2561 (January 15, 1998).

[20] *See* SAA at 825.

refrain from applying the special rule in those situations where the value added, while large, is simple to calculate.[21]

As we stated in the November 29, 2001, letter to Ausimont, the facts of this case support the Department's decision to refrain from using Ausimont's non-further-manufactured sales as proxies for its sales of granular PTFE resin, further manufactured from imported wet raw polymer. First, the information we have on the record of this case clearly shows that Ausimont's U.S. sales of further-manufactured merchandise represent a large portion of its total U.S. sales of the subject merchandise during the POR. Ausimont states that the proportion of further- manufactured sales has decreased since the previous review and claims that this fact demonstrates a "very significant shift in trade flows." We disagree and continue to find that, in this review, as in the previous review, further-manufactured sales comprise a very significant portion of the volume and value of U.S. sales. Therefore, we continue to believe that using the non-further-manufactured sales as a proxy for Ausimont's further-manufactured sales would introduce a relatively high potential for inaccuracy.

Second, we stated in our November 29, 2001, letter that the burden of using the Department's standard methodology, by including further-manufactured sales in its margin calculation, is relatively low. We stated that based on our experience, we know that the further manufacturing of wet raw polymer into PTFE resin is not a very complex process.[22] We have consistently included Ausimont's sales of further-manufactured wet raw polymer in our analysis and have experience with and knowledge of Ausimont's further-manufactured sales, as well as with the calculation of the cost of further-manufacturing in the United States with respect to these sales. Ausimont argues that, given the facts of this case, the Department's application of the traditional further-manufacturing analysis produces distorted results; however, Ausimont does not provide any evidence as to why the results, although less favorable to Ausimont than disregarding further manufactured sales, are inaccurate. Given the simplicity of the further-manufacturing process, the further-manufacturing analysis itself is not complicated and, therefore, the burden of this analysis is relatively low.

Finally, in the final results of this review, we have continued to compare sales of further- manufactured wet raw polymer to home market sales of similar merchandise rather than, as Ausimont suggested, CV. The Act and the Department's regulations set forth a preference for basing normal value on the price of the foreign like product and for making price-to-price comparisons, whenever possible. *See* section 773(a)(1)(A) of the Act and section 351.404(f) of the Department's regulations. This preference for a price-to-price comparison has been most recently affirmed by the Court of Appeals for the Federal Circuit in *Cemex S.A. v. United States*, 133 F.3d 897 (Fed.Cir.1998) (*Cemex*), which noted that,

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[21] *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320, 33338 (June 18, 1998).

[22] *See Final Circumvention Determination*.

when home market sales of identical merchandise are unavailable, the statute requires that normal value be based on non-identical, but similar merchandise, rather than CV.

In cases where we do not find that the identical products were sold in the home market, we will then identify, using a product matching methodology, the product sold in the foreign market that is most similar to the product sold in the United States. *See* section 773 (a)(6)(C)(ii) of the Act. For those non-identical or most similar products which are identified based on the Department's product matching criteria, we make a "difference in merchandise" (DIFMER) adjustment to the home market sales price to account for the actual physical differences between the products sold in the U.S. and the home market or third-country market. The statute is silent, however, as to the precise manner in which similar merchandise is to be identified. Because the antidumping statute does not detail the methodology that must be used in determining what constitutes "similar" merchandise, the Department has broad discretion, implicitly delegated to it by Congress, to apply an appropriate model match methodology to determine which home market models are properly comparable with U.S. models under the statute.[23] Furthermore, the Courts will uphold the Department's model match methodology as long as it is reasonable.[24]

As Ausimont notes, in this review, there are no home market sales of wet raw polymer; however, we note that, in the preliminary results, the Department was able to match every further- manufactured sale to similar merchandise sold in the home market. Such matches were possible because wet raw polymer and the various grades of granular PTFE resin have similar physical characteristics, as the granular PTFE resin is produced from "relatively simple"[25] processing of the wet raw polymer. If the wet raw polymer and granular PTFE resin were so physically dissimilar as to prevent their comparison, the extensive and costly additional processing included in the cost of the granular PTFE resin would prevent such a comparison under the Department's DIFMER test. Therefore, we continue to find that it is appropriate to compare sales of wet raw polymer to sales of similar granular PTFE resin in the home market, provided such sales pass the DIFMER test.

Comment 4: *Treatment of sales of off-spec merchandise*

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[23] *See e.g., Koyo Seiko Co., Ltd., et. al. v. United States*, 66 F.3d 1204 (Fed. Cir. 1995).

[24] *See NTN Bearing Corp. of America, et al v. United States*, 924 F. Supp. 200 (CIT 1996); *SKF USA Inc., et al v. United States*, 876 F. Supp 275 (CIT 1995).

[25] *See Final Circumvention Determination* at 26102: "Further, our comparison of respondents' U.S. and Italian post-treatment processes supports our preliminary conclusion that post-treatment processes are not complex relative to the processes required to produce PTFE wet raw polymer, and do not fundamentally alter the nature of the product. As a result, we reaffirm our preliminary determination that, within the context of the overall production process for granular PTFE resin, the processes that respondents currently perform in the United States are relatively simple."

Ausimont argues that the Department should exclude home market off-spec sales in the calculation of normal value. According to Ausimont, the Department's regulations, at section 351.102, state that sales "outside the ordinary course of trade" include "sales or transactions involving off-quality merchandise." In addition, Ausimont notes that the Department has excluded off-spec sales as outside the ordinary course of trade in prior segments of this proceeding.

Ausimont also argues that certain U.S. sales were of "off-spec" merchandise outside the ordinary course of trade and, therefore, should not be included for purposes of calculating the final margin. According to Ausimont, the off-spec merchandise was held in inventory 12 to 15 times longer than the normal course of business and, as a result, there was an extraordinarily long time between importation and sale. Ausimont notes that the Court of International Trade (CIT) has observed that the Department need not include every U.S. sale of subject merchandise in every case. Furthermore, the CIT has stated that the Department must apply a methodology that accounts for unrepresentative sales to achieve a fair comparison.[26] As a result, Ausimont argues that inclusion of the U.S. off-spec sales, with their aberrational inventory carrying costs, produces an unfair comparison; therefore, the Department should exclude such sales from its analysis.

The petitioner replies that the Department lacks adequate information from the respondent about the U.S. off-spec sales and should continue to calculate the actual margin for these sales. The petitioner further argues that even if the Department should accept that these sales are off-spec, Ausimont's claim that the U.S. sales should be excluded as outside the ordinary course of trade should be disallowed. The petitioner notes that the off-spec sales can only be outside the ordinary course of trade if they are home market sales. Finally, the petitioner contends that, even if the exclusion of U.S. sales is warranted in extraordinary circumstances, such exclusion is not warranted in this case because Ausimont has not adequately supported its claim. For these reasons, the petitioner argues that the Department should include the off-spec sales in its final analysis and compare those sales to CV.

Department's position: With regard to the home market off-spec sales, we have included those sales in its calculation of normal value, but have designated them as sales of "non-prime" merchandise. Although the respondent has argued that such sales are "outside the ordinary course of trade," it has failed to provide evidence to support its claim. We note that, while the Department's regulations allow the exclusion of sales of off-quality merchandise as outside the ordinary course of trade, the Department is not required to do so. In fact, the Department's normal practice is to include all sales of off-spec or non-prime merchandise in its calculation and restrict matches of non-prime sales in the

[26] *See* Ausimont's case brief at 10, citing *American Permac, Inc. v. United States*, 783 F. Supp. 1421, 1423 (CIT 1992), *quoted with approval in Windmill International PTE, Ltd. v. United States*, 193 F. Supp. 2d. 1303, 1312 (CIT 2002); *FAG U.K. Ltd. v. United States*, 945 F. Supp. 260, 265 (CIT 1996); *FAG Italia SpA v. United States*, 948 F. Supp. 67, 71 (CIT 1996).

United States to non-prime sales in the home market.[27] Furthermore, it should be noted that, because Ausimont's home market off-spec sales are treated as non-prime merchandise, they will not be matched to U.S. sales.

We agree with the petitioner, with respect to the U.S. off-spec sales, that we should calculate actual dumping margins for all U.S. sales as we did in the preliminary results. Our position is consistent with existing case law supporting the use of all U.S. sales in the margin calculation. We disagree with Ausimont's view that the U.S. off-spec sales are outside the ordinary course of trade, and therefore should be excluded. This line of reasoning only applies to the calculation of normal value based on home market sales and not to U.S. sales. The CIT has held, in two separate decisions, that U. S. sales both inside and outside the ordinary course of trade are to be included in the U.S. price calculations.[28]

In addition, Ausimont failed to prove that the merchandise in question is, in fact, off-spec. In spite of numerous attempts by the Department to determine the nature of the off-spec sales claimed by Ausimont, the Department never received satisfactory evidence from the respondent. On three separate instances the Department requested information from Ausimont regarding the off-spec U.S. sales. In the supplemental questionnaire, dated August 8, 2002, the Department requested Ausimont to report all sales in the U.S. market of off-spec merchandise. The Department further clarified and repeated this question in a letter to Ausimont, dated August 16, 2002. The Department noted the failure to provide the requested information in its preliminary results calculation memorandum, dated September 3, 2002. Again, in a letter dated September 4, 2002, the Department requested Ausimont to supply information and documentation regarding the alleged off-spec sales in its response of September 17, 2002. In each of these cases, Ausimont provided no definitive information or supporting documentation to demonstrate that merchandise in question was actually off-spec.

For the above-stated reasons, for the final results of this review, we treated the purported U.S. off-spec sales as sales of prime merchandise, as we did in the preliminary results. However, as Ausimont provided the appropriate control number and product code for these sales in its supplemental questionnaire response, we altered the methodology used in the preliminary results, in which we matched the off-spec sales to CV, and have matched the off-spec sales to sales of identical or similar merchandise in the home market.

Comment 5: *Treatment of negative margins*

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[27] *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 50408 (October 3, 2001) and accompanying Issues and Decision Memorandum, at Comment 3.

[28] *See* the petitioner's rebuttal brief at 5, *citing Bowe Passat Reingigungs-und Washchereitechnik GmbH v. United States*, 926 F. Supp. 1138, 1147-48 (CIT 1996) *and Floral Trade Council v. United States*, 15 CIT 497, 508 n. 18, 775 F. Supp. 1492 (CIT 1991).

Ausimont, in its case brief, argues that the Department should reevaluate its methodology of assigning a zero margin to export price (EP) or CEP sales made above normal value as used in this review. According to Ausimont, section 731 of the Act stipulates that the Department "may impose antidumping duties only when the determination is that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value." Based on this reading, Ausimont argues, the margin calculation in this review violates antidumping law and is impermissible as it ignores the difference by which CEP of U.S. sales exceeds normal value. Ausimont further argues that the exclusion of sales in which CEP exceeds normal value prevents the analysis of "contradictory evidence, or evidence from which conflicting inferences can be drawn," as noted in a related Federal Circuit decision,[29] that would allow for an unbiased margin calculation. Ausimont contends that, for these reasons, the evidence of the sales above fair value should be equally evaluated with that of sales below fair value. Ausimont further relies upon two decisions by WTO Panels as support for its argument.

Ausimont notes that the first WTO Panel decision[30] should be interpreted to mean that the Department's failure to offset positive margins with negative margins in this review violates both the Antidumping Agreement and the antidumping statute. The second WTO decision[31] relates to the arm's length test and determined, as noted by Ausimont, that the Department's arm's length test did not properly allow for the even weighting of affiliated transactions that occurred above the prices of unaffiliated transactions as it did to those that occurred below the prices of unaffiliated transactions. Ausimont notes that the Department's response to the WTO panel decision was to alter its methodology. Ausimont claims that this offers further proof that, when the Department employs a biased methodology, the Department is not making a "fair comparison."

The petitioner argues that the Department should reject Ausimont's request for an offset in instances of sales with negative margins. The petitioner states that Ausimont's arguments are incorrect in that they are premised on a reading of Section 731 of the Act, which applies to investigations. The petitioner contends that the relevant section of the Act is Section 751 because it relates to administrative reviews. According to the petitioner, this section requires the analysis to focus on the dumping margin for each individual entry rather than on the class of merchandise as argued by Ausimont. The petitioner contends that, if Congress had contemplated negative assessments of duties, it would have clearly stated its intent in the statute. The petitioner also argues the Department would be making new legal precedent if it were to follow Ausimont's request. The petitioner states that the CIT has, in several decisions, explained that the Department should continue to follow its current methodology by zeroing negative margins. The petitioner further notes that although Ausimont cited decisions from the WTO Panel that

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[29] *Taiwan Semiconductor Ind. Assoc. V. United States, 266 F.3d 1339, 1345 (Fed. Cir. 2001).*

[30] *European Communities - Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, Sections 6.116 and 6.119* (October 30, 2000) (*Bed Linens*).

[31] *United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS/184/AB/R (July 24, 2001).*

found that the practice of zeroing is unlawful, the Department is under no obligation under U.S. law to recognize a decision between the European Union and India. For all of these stated reasons, the petitioner argues that the Department should continue its standard practice.

Department's position: We disagree with Ausimont and have not changed our methodology with respect to the calculation of the weighted-average dumping margin for the final results. As we have discussed in prior cases, our methodology is consistent with our statutory obligations under the Act.[32]

Section 771(35)(A) of the Act defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." 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 export prices and constructed export prices of such exporter or producer." These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds EP or CEP, and to divide this amount by the value of all sales. The directive to determine the "aggregate dumping margins" in section 771(35)(B) of the Act makes clear that the singular "dumping margin" in section 771(35)(A) of the Act applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which EP or CEP exceeds normal value on sales that did not fall below normal value permitted to cancel out the dumping margins found on other sales. This does not mean, however, that sales that did not fall below normal value are ignored in calculating the weighted-average rate. It is important to note that the weighted-average margin will reflect any "non-dumped" merchandise examined during the administrative review; the value of such sales is included in the denominator of the dumping rate, 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.

Finally, with respect to Ausimont's WTO-specific arguments, U.S. law, as implemented through the Uruguay Round Agreements Act, is consistent with our WTO obligations. *See* Statement of Administrative Action (SAA), H. R. Doc. No. 103-316 (1994) at 669. Moreover, the *Bed Linens* decision concerned a dispute between the European Union and India. We have no obligation under U.S. law to act on this decision. Similarly, the WTO panel decision regarding the arm's length test did

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[32] *See, e.g., Final Determination of Sales at Less than Fair Value: Certain Softwood Lumber Products from Canada*, 66 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum, at Comment 12, and *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands*, 66 FR 50408 (October 3, 2001), and accompanying Issues and Decision Memorandum, at Comment 1; *see also, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000- 2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990, (November 14, 2002), and accompanying Issues and Decision Memorandum, at Comment 9.

not address the Department's practice of zeroing negative margins. Accordingly, we are continuing to apply our margin calculation methodology pursuant to Department practice.

Comment 6: *Packing expenses for further-manufactured sales*

The petitioner claims in its case brief that Ausimont may have omitted packing expenses for certain further-manufactured sales. The petitioner argues that, although Ausimont states in its questionnaire response that the merchandise is packed in one section and then transferred to a second section for additional processing and packing, Ausimont did not report packing expenses related to the second section. Therefore, the petitioner states that the Department should correct this problem by adding an estimated amount for the omitted packing expense to all sales processed in this section.

Ausimont replies that it did not omit the packing costs; therefore, the Department should not apply facts available to the further-manufactured sales in question. The respondent argues that packing expenses related to the second section were included as part of the first section packing expenses because they were sufficiently small as not to warrant a further breakout. Ausimont contends that, if the Department were to use facts available and add an additional expense for the second section, it would result in a double counting of this expense.

Ausimont, in its November 14, 2002, response to the Department's second supplemental questionnaire, provided a revised exhibit in which the packing expenses are properly assigned to each section. Ausimont states that, if the Department adds the additional packing expense to the second section, it should decrease the packing expenses in the first section to avoid the double counting of the expense. The petitioner, in its November 25, 2002, comments argues that the Department should use Ausimont's revised further-manufacturing costs in the final results.

Department's position: In the final results of this review, we have used the revised further-manufacturing costs provided in Ausimont's second supplemental questionnaire response (Exhibit S-36). As stated by Ausimont and accepted by the petitioner, the revised costs reflect the actual packing costs incurred in each section of the further-manufacturing process.

Comment 7: *Issuance of draft final results*

The respondent requests that the Department allow the parties to have an opportunity to comment on any changes made to the preliminary results prior to issuing its final determination. The respondent argues that since it submitted information related to its home market in response to the Department's supplemental questionnaire after the issuance of the preliminary results, the parties should be allowed to comment on any changes that the Department may make to the preliminary results not previously addressed in the parties' briefs.

The petitioner did not brief this issue.

Department's position: The Department frequently introduces changes in methodology or more in-depth analysis in its final results as a result of further analysis and consideration of interested party comments. In fact, section 351.301(c)(2) of the Department's regulations states that "the Secretary may request any person to submit factual information at any time during a proceeding." Clearly, the regulations contemplate that the Department may need to request additional information between the preliminary and final results of a review; however, there is no statutory or regulatory obligation for the Department to issue draft final results for comment and we have not done so here.

Comment 8: *Factory overhead and G&A expenses for further-manufactured sales*

The petitioner argues that Ausimont improperly reported "fixed overhead expenses in the G&A expense category" as indirect selling expenses for its further-manufactured sales. According to the petitioner, Ausimont allocated only some of the selling, general, and administrative (SG&A) expenses reported on in Ausimont USA's financial statement. Therefore, the petitioner requests that the Department adjust the respondent's submitted costs of further manufacturing to account for the omitted factory overhead included in the respondent's SG&A.

Ausimont contends that it reported SG&A expenses based on POR costs and has properly assigned SG&A expenses to both categories of merchandise. Furthermore, Ausimont notes that, in Section C of its questionnaire response, it provided a worksheet that ties the SG&A expense total to Ausimont USA's financial statements. Ausimont argues that if the G&A expenses already allocated to U.S. sales were also included in the costs of further manufacturing then the Department would be double counting the G&A expenses. As a result, Ausimont claims that no adjustment to the further-manufactured costs is necessary.

Department's position: We agree with the respondent. In its August 30, 2002, response to the Department's supplemental questionnaire, Ausimont stated that it included the SG&A expenses in Ausimont USA's financial statement in indirect selling expenses. In its rebuttal brief, Ausimont notes that its indirect selling expense calculation worksheet divides the expenses into selling and G&A expenses and allocates a portion of each category to sales of subject merchandise. The petitioner seems to suggest that Ausimont should have allocated all of the SG&A expenses on its income statement to sales of subject merchandise; however, given that Ausimont produces a number of other products, such an allocation would be inappropriate. We have examined Ausimont's allocation of its selling and SG&A expenses and find it to be reasonable. Furthermore, the total amount of SG&A expenses on the indirect selling expense worksheet ties to Ausimont USA's financial statements.

In its supplemental questionnaire response, Ausimont further clarified that G&A expenses related to further-manufactured merchandise are classified as Orange plant indirect overhead and are included in Ausimont USA's financial statement as part of fixed overhead, not SG&A. Therefore, we conclude

that Ausimont has properly accounted for and reported all SG&A expenses associated with further-manufacturing.

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 this review in the Federal Register.

AGREE____ DISAGREE____

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Faryar Shirzad
Assistant Secretary
for Import Administration

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Date