A-475-703
Administrative Review
08/01/2005-07/31/2006
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Granular Polytetrafluoroethylene Resin from Italy

Summary

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the 18th administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy. As a result of our analysis, we have made no changes to the margin calculation. We recommend that you approve the positions described in the *Discussion of the Issues* section of this memorandum. Below is a complete list of the issues in this review for which we have received comments from the parties:

Comment 1: Calculation of Solvay Solexis' General and Administrative (G&A) Expense Ratio
Comment 2: Offsets for Non-Dumped Sales

Background

On July 20, 2007, the Department of Commerce (the Department) published the preliminary results of the 18th administrative review of PTFE resin from Italy.[1] The period of review (POR) is August 1, 2005, through July 31, 2006. We invited parties to comment on the *Preliminary Results*. The respondent, Solvay Solexis Inc. and Solvay Solexis S.p.A. (collectively, Solvay Solexis), submitted a case brief on September 5, 2007; the petitioner[2] submitted a rebuttal brief on September 11, 2007.

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[1] *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy*, 72 FR 39790 (July 20. 2007) (*Preliminary Results*).

[2] The petitioner in this proceeding is E.I. DuPont de Nemours & Company (DuPont).

Discussion of the Issues

Comment 1: Calculation of Solvay Solexis' General and Administrative (G&A) Expense Ratio

For reporting purposes, Solvay Solexis based its cost of manufacturing (COM) on its unaudited, statutory financial statements, which are prepared in accordance with Italian GAAP. However, for the calculation of its G&A expense ratio, Solvay Solexis relied on management profit and loss statements that were prepared in accordance with International Financial Reporting Standards (IFRS) and consolidated into Solvay Solexis' parent company's financial statements. The reported G&A rate was more favorable due to a difference between the statutory and IFRS treatment of the amortization of goodwill. For the *Preliminary Results*, the Department revised Solvay Solexis' reported G&A expense ratio to reflect the amount recorded in the company's statutory financial statements.

First, Solvay Solexis argues that including goodwill recognized in the purchase of a company in that company's G&A calculation is inconsistent with accurate cost of production (COP) analysis. Solvay Solexis asserts that this is because when one company purchases another, goodwill is not created, but its existence is recognized. Solvay Solexis cites to *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 Exhibit 16 (*Lumber 2002*), which states that goodwill "is recognized when a company purchases another company..." Solvay Solexis argues that goodwill exists on the day before a company is purchased, but "entails no cost and has no effect on COP calculations."[3]

Solvay Solexis also cites *Aramid Fiber Formed of Poly Para-Phenylene Terephthalimide from the Netherlands: Final Results of Antidumping Administrative Review*, 61 FR 51406 (October 2, 1996) (*Aramid Fiber*), in which the Department, in its September 25, 1996, "Cost of Production Analysis Memorandum," addressed "residual goodwill" with respect to whether the goodwill that had been recognized when Akzo purchased Aramid had any effect on the COP for the subject merchandise. Solvay Solexis notes that the Department stated "the remaining goodwill represents a cost to Akzo not Aramid," which was the producer of the subject merchandise. Solvay Solexis argues that in *Aramid Fiber*, the goodwill represented the amount Akzo paid for its additional equity interest in Aramid in excess of Aramid's book value, and therefore, the Department did not consider it to be a production cost incurred by Aramid.[4] Solvay Solexis also contends that this aspect of the *Aramid Fiber* determination was challenged and affirmed by the CIT, and that the Department followed that approach in subsequent segments of the proceeding.

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[3] *See* Letter from Solvay Solexis to the Department, September 5, 2007 (Solvay Solexis' case brief) at 5.

[4] *See Aramid Fiber* in the September 25, 1996, "Cost of Production Analysis Memorandum" at 4

In contrast to its situation, Solvay Solexis contends that in cases where goodwill recognized in a purchase was considered to have a "subsequent/continuing impact on COP calculations," the Department focused on the purchaser.[5] Solvay Solexis contends that although there is plainly no subsequent goodwill-related cost at the level of the purchased company, there may be one at the level of the purchaser, which has paid for the goodwill and owns it as an asset that can potentially decline in value. Solvay Solexis argues that the Department's precedent holds that goodwill recognized in the purchase cannot be included in G&A when examining COP at the level of the purchased company, and if for some reason it appears as G&A expenses in the purchased company's financial statements, it must be removed for the purposes of antidumping COP calculations.

According to Solvay Solexis, the Department, consistent with precedent, cannot include in a G&A calculation for Solvay Solexis (the purchased company) any amortization/depreciation expense for goodwill monetized in the 2002 purchase of Ausimont (now Solvay Solexis) by Solvay SA, which is now Solvay Solexis' parent company. Solvay Solexis states that the Department "appears to have been distracted"[6] by the fact that Solvay Solexis claimed, in its statutory financial statements, goodwill depreciation during the POR, as permitted by Italian law. Solvay Solexis contends that this does not mean that it actually incurred any goodwill-related expenses or diminution of goodwill value during the POR. Solvay Solexis argues that the treatment of goodwill is for tax accounting purposes of the type that the Department rightly ignores in COP calculations.[7] Solvay Solexis contends that within this proceeding, the record shows that there was no expense or diminution of goodwill value during the POR for Solvay Solexis or its parent company.[8] Therefore, the Department must use calculations that reasonably reflect the cost associated with the production and sale of the subject merchandise, in accordance with section 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Second, Solvay Solexis argues that treating the goodwill in question as an amortizable item, resulting in an annual depreciation expense, violates pertinent accounting standards and constitutes a further departure from acceptable COP analysis. This is because even if goodwill

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[5] *See* Solvay Solexis' case brief at 6; *see also Lumber 2002; Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756, (July 19, 1999) (Hot-Rolled Steel from Brazil)* at Comment 44; and *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, 67 FR 62134 (October 3, 2002) (*Cold-Rolled Steel from Brazil*) and accompanying Issues and Decision Memorandum at Comment 23.

[6] Id.

[7] Id.; *see also*: *Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Stainless Steel Angle from Japan*, 60 FR 16608 (March 31, 1995) (*Stainless Steel Angle from Japan*), and *Fresh and Chilled Atlantic Salmon from Norway; Final Results of Antidumping Administrative Review*, 58 FR 37912 (July 14, 1993) (*Salmon from Norway*).

[8] Solvay Solexis states in its case brief that the goodwill in question was tested by Solvay Solexis' parent company for impairment during the POR, and was found not to have declined in value. See Solvay Solexis' case brief at 7.

recognized in a purchase could in principle affect COP calculations, it could only affect them for the POR in which the purchase occurred.[9] Solvay Solexis argues that pertinent accounting rules such as IFRS and U.S. GAAP provide that goodwill of this nature cannot be amortized because the assumption that goodwill declines in value like other assets was proved inaccurate, and was therefore banned by both national and international accounting authorities in favor of an impairment test.[10] Solvay Solexis argues that the Italian tax law during the POR provided for goodwill amortization in tax accounting, but tax accounting rules may bear little relation to economic reality and are not dispositive in the COP context.[11] Solvay Solexis cites to *Lumber 2002,* where the Department faced a similar situation in that Canadian rules requiring a 40-year amortization of goodwill were revised after the period of investigation (POI) to make goodwill subject to write-down only through an impairment test. In *Lumber 2002*, the Department imported the 40-year amortization into its G&A calculation for Abitibi, including an allocated amount of goodwill depreciation as a G&A expense and holding the post-POI change in accounting rules as irrelevant. Solvay Solexis notes that this determination was upheld on review by a NAFTA panel. Solvay Solexis contends that financial accounting for Solvay Solexis was governed during the POR by IFRS, and the audited IFRS-compliant financial statements submitted to the Department correctly treated goodwill as non-amortizable.

Third, Solvay Solexis argues that concentrating any amortized goodwill amount solely on Solvay Solexis is inaccurate and contrary to Department precedent because even if goodwill of the type at issue here could, in principle, affect COP calculations, and could, in principle, be amortized, it would have to be allocated fairly.[12] Solvay Solexis contends that to the extent that "monetizing" Ausimont's goodwill in 2002 resulted in a cost to anyone, it was to the purchaser, Solvay SA. It argues that Department precedents treat goodwill as relevant, if at all, only at the parent (purchaser) company level and spreading it over the cost of goods sold (COGS) of the parent. Solvay Solexis states that in *LEU from France*, the Department treated the amortization of goodwill as "a cost which relates to the acquiring company."[13] It also states that in the Department's NAFTA defense of *Lumber 2002*, the Department argued the benefit of goodwill related to the acquiring company as a whole, and, therefore, the Department treats goodwill expense as a G&A cost spread across the operations of the entire company.[14] Solvay Solexis

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[9] *See* Solvay Solexis' case brief at 7.

[10] *See* Solvay Solexis' Supplemental Questionnaire Response, July 2, 2007 at Attachments A and B.

[11] *See* Solvay Solexis' case brief at 8.

[12] *See id.* at 9.

[13] *Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 54359 (September 14, 2005) (*LEU from France)* and accompanying Issues and Decision Memorandum at Comments 8 and 9.

[14] *Softwood Lumber from Canada*, USA/CDA-2002-1904-02, *Response Brief of the Investigating Authority* at III-35 (October 21, 2002).

indicates that in the instant review it has provided audited financial statements which account for goodwill recognized in 2002 in a manner consistent with the acquiring company approach previously adopted by the Department. However, Solvay Solexis asserts that the Department has chosen not to use its standard approach and has, instead, inserted an annual depreciation expense based on 100 percent of the goodwill amount into the G&A calculation for Solvay Solexis, the purchased company. Solvay Solexis states that if the Department treats goodwill as a depreciable asset, it must, at least, match the resulting POR depreciation to an appropriate denominator, which, in its view, is Solvay SA's COGS.

Fourth, Solvay Solexis argues that the Department's use of information from the unaudited "statutory" financial statements to restate G&A figures in the audited financials was wrong. Solvay Solexis disputes the Department's position that it was justified in making this revision because it believes "that the statutory financial statements most clearly reflect the data recorded in Solvay Solexis' normal books and records."[15] Solvay Solexis contends that the Department failed to disclose why it considers the statutory financial statements to be more strongly connected to Solvay Solexis' normal books and records than alternative records. It asserts that the Department's preference for the unaudited financial statements reflects major misunderstandings of Solvay Solexis': (1) normal books and records; (2) COM; (3) linkage of incurred expenses; and (4) whether use of the statutory financial statements is distortive.

Normal Books and Records: Solvay Solexis disputes the Department's position in the last review that the audited IFRS-compliant financial statements are "not based on Solvay Solexis' normal books and records" and that the statutory statements *are* the normal books and records. Solvay Solexis states that both the audited, and statutory statements are based on the company's normal books and records data maintained in its SAP accounting system. It indicates that most expenses in the audited IFRS-compliant statements and the statutory statements are booked identically. However, Solvay Solexis notes that a number of items, including depreciation, are booked differently in the two sets of financial statements. It states that Solexis creates the statutory statements for Italian tax purposes and develops the audited IFRS-compliant financial statements separately for financial reporting and consolidation purposes. Based on Italian tax law and GAAP, depreciation is treated differently in the IFRS-compliant and statutory financial statements. Solvay Solexis contends that the fact that it applies different methodologies regarding goodwill, depending on which financial statements it is preparing, does not mean that the two sets of statements are based on different books and records. It concludes that the Department's "belief" that one set of financial statements is more reflective of Solvay Solexis' normal books and records than the other has no factual basis.

COM: Solvay Solexis contests the Department's position from the last segment of this proceeding that Solexis' COM is "based on {the} unaudited statutory financial statements," and that using the same statutory statements for G&A is appropriate "for consistency purposes." It argues that, as with its various financial statements, Solvay Solexis generates COM information

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[15] *See* Solvay Solexis' case brief at 11.

by running queries through its SAP accounting database. Thus, according to Solvay Solexis, the COM data provided in the response does not come from the statutory financial statements or from some special set of statutory records, and there is, thus, no consistency rationale for using the statutory financial statements.

Incurred Expenses: Solvay Solexis contends that the Department has failed to follow its practice of calculating the G&A ratio "based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide cost of sales."[16] As it states earlier, Solvay Solexis insists that goodwill recognized in 2002 can only be viewed as representing a cost incurred by Solvay SA and not Solvay Solexis. It states that there is no evidence of goodwill depreciation actually incurred by Solvay Solexis and asserts that the depreciation reported in the statutory financial statements is based on a fiction espoused in tax accounting.

Whether Use of Certain Financial Information is Distortive: Solvay Solexis claims that the statutory financial statements are distortive because they present, solely for Italian tax purposes, a large goodwill depreciation expense during the POR which, respondent asserts, Solvay Solexis did not incur. Solvay Solexis argues that section 773(f)(1)(A) of the Act and the Department's practice both call for using the respondent's normal books and records, provided they conform to the home country GAAP and reasonably reflect the cost of producing the subject merchandise. Solvay Solexis insists that the statutory financial statements are not the respondent's "normal books and records" and, thus, do not even qualify for this statutory test. Solvay Solexis adds that, even if the statutory financial statements could be considered as normal books and records, they would fail the test's second prong as they do not reasonably reflect the cost of producing the subject merchandise.

The petitioner argues that the Department should continue to base its G&A calculation on Solvay Solexis' statutory financial statements because they most accurately reflect Solvay Solexis' G&A expenses. The petitioner rebuts Solvay Solexis' assertions that *Aramid Fiber* and *Uranium from France* demonstrate that the Department's precedent does not permit the inclusion of goodwill deprecation in cost calculations. The petitioner argues that the Department does factor goodwill depreciation and amortization into its cost calculations when the costs are reflected in the books and records of the company under review.[17] The petitioner argues that in *Cold-Rolled Steel from Brazil*, the Department explained that it considers goodwill as related to the general operations of the company as a whole and includes amortized goodwill in the G&A expense ratio calculation. Also in that case, the petitioner asserts that the Department found that the respondent recognized goodwill costs in its normal books and records, and that the costs were not distortive, so it

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[16] *See* Solvay Solexis case brief at 14.

[17] *See* Letter from Dupont to the Department, September 11, 2007 (Petitioner's rebuttal brief), at 2; *see also Certain Cold-Rolled Steel from Brazil* at Comment 23 and *Notice of Final Determination of Sales at Not Less than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea*, 69 FR 17645 (April 5, 2004) (*Thermal Transfer Ribbon from Korea*) at Comment 12.

included them in the G&A expense ratio calculation. The petitioner also cites to *Thermal Transfer Ribbons from Korea* in which the Department refused to spread amortization of goodwill between selling functions and production functions. According to petitioner, goodwill is an unidentifiable asset, it is impossible to split it between marketing and production, and, therefore, it should be attributed to all of the income producing activities of the company.[18]

The petitioner asserts that in *Aramid Fiber* and *Uranium from France*, the goodwill charges in question were recorded on the books of the acquiring company, not the company under review. Petitioner argues that in the present case, by contrast, the goodwill depreciation expenses that Solvay Solexis contests are recorded in the statutory accounts of the company under review, relate solely to its operations, and are treated as cost items in its statutory accounts. The petitioner argues that whatever the origin of the goodwill asset on Solvay Solexis' balance sheet, the excess is subject to depreciation under Italian law.[19]

Department's Position:

Consistent with the preliminary results of this administrative review, we have relied on Solvay Solexis' unaudited financial statements, prepared in accordance with the generally accepted accounting principles ("GAAP") in Italy, for purposes of calculating Solvay Solexis' G&A expense ratio. As such, we have continued to include the amount of goodwill expense reported in the unaudited financial statements in the calculation of Solvay Solexis' G&A expense ratio.

Section 773(f)(1)(A) of the Act states that the COP and CV shall normally be calculated based on the records of the exporter or producer of the merchandise if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.

In fiscal year 2002, Solvay SA purchased Italian PTFE producer, Ausimont SpA, and renamed the company Solvay Solexis. On the record of the instant case, we have the separate financial statements of Solvay Solexis and its parent company Solvay SA. In Italy, Solvay Solexis issues unaudited financial statements on activity specific to the entity and made in accordance with statutory requirements (*i.e.*, Italian GAAP), as outlined in the Italian Civil Code. *See* Exhibit 5 of Solvay Solexis' June 1, 2007 submission. For consolidation purposes, Solvay Solexis sends its accounting information to its parent company, Solvay SA, who in turn prepares audited consolidated financial statements in accordance with IFRS as required by the Belgian stock exchange where the parent company's shares are listed. *See* Exhibit A-15 of Solvay Solexis' October 20, 2006 submission. We acknowledge that Solvay Solexis' information in the IFRS-compliant consolidated financial statements issued by Solvay SA and in the Italian GAAP-compliant financial statements issued by Solvay Solexis itself, are sourced from the same accounting system. Information from an accounting system may be reported according to

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[18] *See* Petitioner's rebuttal brief at 6.

[19] *Id*. at 3-4.

different rules, such as Italian GAAP or IFRS. For purposes of calculating a G&A expense ratio for COP purposes, the Department must rely on G&A expenses calculated in accordance with Italian GAAP, consistent with our statutory preference for records kept in accordance with the GAAP of the exporting country, where it is not distortive. *See* section 773(f)(1)(A) of the Act. *See, e.g., Certain Frozen Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 52061 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 5, *Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524 (February 12, 2007) and accompanying Issues and Decision Memorandum at Comment 7, and *Laclede Steel Co. v. United States,* 18 CIT 965, 975 (October 12, 1994). In this case, those G&A expenses are reported in the statutory financial statement of Solvay Solexis, and as discussed below, Solvay Solexis has not demonstrated that the costs are distortive.

In regard to Solvay Solexis' arguments that the statutory financial statements (*i.e.*, Italian GAAP) are for tax purposes only, the evidence on the record of this proceeding does not provide a basis on which the Department can opine on the statutory purpose of Italian GAAP. In addition, we do not find, in the instant case, that Solvay Solexis' arguments regarding the unreasonableness of using G&A expenses from the statutory financial statements are conclusive. Solvay Solexis associates the goodwill recorded on its statutory financial statements with the purchase of Ausimont (renamed Solvay Solexis) by Solvay SA and, thus, argues that Solvay Solexis did not actually incur any goodwill-related expenses or diminution of goodwill value. However, Solvay Solexis has failed to substantiate its arguments with any record evidence that shows that the goodwill expenses in question relate directly to the purchase of Ausimont by Solvay SA and were incurred by Solvay SA rather than Solvay Solexis. Instead, the record indicates that Solvay Solexis recognized the goodwill in its records, and thus, incurred the related expenses. As long recognized by the U.S. Court of International Trade, the burden is on the respondent, not the Department, to create a complete and accurate record. *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1336 (Fed. Cir. 2002) (citing *Zenith Elecs. Corp. v. United States*, 988 F. 2d 1573, 1583 (Fed. Cir. 1993)).

As noted by Solvay Solexis in its case brief, goodwill is in some cases recognized as an asset by the acquiring entity upon consolidation. Goodwill is then normally amortized over a set number of years or is expensed if it is impaired depending upon the GAAP governing the acquiring entity. In the instant case, however, Solvay Solexis' statutory financial statements show that the goodwill in question was recognized as an asset by Solvay Solexis and was amortized in accordance with Italian GAAP.[20] Since goodwill is normally recorded by the purchaser and without record evidence to the contrary, the Department finds it reasonable to determine that the goodwill in question was recognized by Solvay Solexis when Solvay Solexis acquired other

[20] *See* Solvay Solexis Supplemental Questionnaire Response (June 1, 2007) at Exhibit SQD-5, Solexis SpA Financial Statement as of 12/31/2005, translated at 1and 5).

controlled companies and subsidiaries.[21] As such, the Department concludes that the related goodwill expenses were incurred by Solvay Solexis and should be included in Solvay Solexis' G&A expense ratio.

Solvay Solexis has argued that treating goodwill as an amortizable item resulting in annual depreciation violates pertinent accounting standards such as the IFRS and U.S. GAAP and constitutes a further departure from acceptable COP analysis. Contrary to this position, the Department normally treats the amortization of goodwill as a cost of production if this is consistent with the GAAP of the exporting company. *See Lumber 2002* at Comment 16 and discussion below. Goodwill is recognized when a company purchases another company for an amount in excess of the acquired company's market value. As the amortization of goodwill in this case reflects the current year's portion of the decrease in value of the acquired assets, we find it reasonable to include this cost in Solvay Solexis' reported costs. Although we acknowledge that accounting authorities in the United States and under IFRS have different positions in regard to the treatment of the amortization of goodwill, the pertinent standard in this case is Italian GAAP in effect during the POR. Thus, as this treatment is in accordance with the contemporaneous GAAP of the respondent's country and reasonably reflects production costs, we find no reason to exclude Solvay Solexis' goodwill amortization from the cost of production. Our inclusion of the amortization of goodwill in our calculation of Solvay Solexis' G&A expense is consistent with a number of other decisions by the Department involving goodwill. *See*, *e.g.*, *Lumber 2002* at Comment 16; and *Cold-Rolled Steel from Brazil* at Comment 23.

While Solvay Solexis cites to *Lumber 2002* to support its position, its citation is misplaced. First, Solvay Solexis cites to *Lumber 2002* for the definition of when goodwill is recognized (when a company purchases another company), which is not in dispute. Second, Solvay Solexis cites to *Lumber 2002* in support of its assertion that Solvay Solexis' financial accounting was governed by IFRS during the POR thus goodwill is correctly treated as non-amortizable.[22] We disagree with Solvay Solexis' argument. The producer Solvay Solexis is in Italy, and financial accounting in Italy is governed by Italian GAAP and not IFRS. Thus, as discussed above, we are using Solvay Solexis' statutory financial statements that are in accordance with Italian GAAP. In *Lumber 2002*, the Department relied on Canadian GAAP and not IFRS, even though in a subsequent period Canada changed its position in regard to the amortization of goodwill.[23] Third, Solvay Solexis cites to *Lumber 2002* to argue that the benefit of goodwill relates to the acquiring company as a whole, and, thus in this case, the Department should allocate the goodwill over Solvay SA's COGS. As discussed above, we find that there is no evidence to substantiate that the goodwill in question was related to Solvay SA's acquisition of Ausimont, and it is reasonable to determine it related to Solvay Solexis' purchase of other companies.

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[21] *See id*. at 4 and 10-11.

[22] Solvay Solexis also cites to *LEU from France* in support of this argument.

[23] *See Lumber2002* at Comment 16.

Therefore, we are continuing to divide Solvay Solexis' G&A, including goodwill related to the producing company (*i.e.*, Solvay Solexis) as a whole, by its own COGS.

Solvay Solexis cited to *Cold-Rolled Steel from Brazil*, to support its claim that in those instances where goodwill is recognized in a purchase, that goodwill is recorded by the purchaser, and in *Cold-Rolled Steel from Brazil*, that is what the Department focused on. In *Cold-Rolled Steel from Brazil*, the Department included goodwill in the G&A calculation because the goodwill was recognized by the purchaser/producer in its books and records in accordance with Brazilian GAAP.[24] Similarly, the Department is including the goodwill in its calculations of G&A for Solvay because Solvay recognized it in its books and records in accordance with Italian GAAP. In addition, Solvay Solexis cited to *Aramid Fiber* to show that goodwill represented a cost to the purchaser and not the producer, which was the purchased company, and, therefore, the Department did not consider it in the production costs of the producer. In this case, however, as discussed above, we find that Solvay Solexis has not demonstrated that the goodwill in question relates to Solvay SA's purchase of Solvay Solexis. Rather, the record demonstrates that the goodwill was recognized by Solvay Solexis in its records pursuant to Italian GAAP.

To support its argument that the treatment of goodwill is for tax accounting purposes of the type that the Department rightly ignores, Solvay Solexis cited to *Stainless Steel Angle from Japan* and *Salmon from Norway*. In those cases, the Department declined to include in COP certain depreciation expenses because they were made solely for tax purposes. In this case, however, the goodwill is recognized by Solvay Solexis not just for tax purposes but is also recognized pursuant to Italian GAAP.

Comment 2: Offsets for Non-Dumped Sales

In the *Preliminary Results*, we followed our standard methodology of not using non-dumped comparisons to offset or reduce the dumping margins found on other comparisons. Solvay Solexis argues that the Department should discontinue its use of this methodology in calculating the overall weighted-average dumping margin for purposes of the final results.

Specifically, Solvay Solexis contends that this practice has been found to be inconsistent with U.S. obligations under the World Trade Organization (WTO) in *United States – Laws, Regulations and Methdology for Calculating Dumping Margins*, WT/DS294/AB/R (Apr. 18, 2006) (*U.S. – Zeroing (EC)*),[25] and the United States has officially declared its intentions to bring its conduct in the affected proceedings into WTO-conformity. Therefore, Solvay Solexis asserts that in accordance with the formal statement of the United States, negative comparisons should not be zeroed.

The petitioner did not comment on this issue.

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[24] *See Cold-Rolled Steel from Brazil* at Comment 23.

[25] See "U.S. Statements at the WTO Dispute Settlement Body Meeting" (May 30, 2006) at Item 1.

Department's Position:

We disagree with Solvay Solexis and have not changed our calculation of the respondent's weighted-average dumping margins for these final results.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise" (emphasis added). 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 Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347 (Fed. Cir. 2005), *cert. denied*, 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006) (*Corus Staal II*); *see also Timken Co. v. United States*, 354 F.3d 1334, 1342 (Fed. Cir. 2004), cert. denied sub nom. (*Timken*).

The Department notes it has taken action with respect to two WTO dispute settlement reports finding the denial of offsets to be inconsistent with the WTO Antidumping Agreement.[26] With respect to *U.S. – Softwood Lumber*, consistent with Section 129 of the Uruguay Round Agreements Act (URAA), the United States' implementation of that WTO report affected only the specific administrative determination that was the subject of the WTO dispute: the antidumping duty investigation of softwood lumber from Canada. *See* 19 U.S.C. § 3538.

With respect to *U.S. - Zeroing (EC)*, the Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations. *See Antidumping Proceedings: Calculation of the Dumping Margin*, 71 FR 77722 (December 27, 2006). 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.* at 77724. With respect to the specific administrative reviews at issue in that dispute, the United States determined that each of those reviews had been superseded by a subsequent administrative review and the challenged reviews were no longer in effect.

As such, the WTO's Appellate Body's (AB's) reports in *U.S. – Softwood Lumber* and *U.S. – Zeroing (EC)* have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law. *See Corus Staal II* at 1347-49; *Timken*

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[26] The Department notes that the WTO's Appellate Body (AB) has made several previous decisions with respect to this methodology including: *United States – Antidumping Measure on Shrimp from Ecuador*, WT/DS335/AB/R (Jan. 30, 2007); *U.S. – Zeroing (EC)*; *United States -Final Dumping Determination on Softwood Lumber from Canada*, Appellate Body Report, WT/DS264/AB/R (Aug. 11, 2004) (adopted August 31, 2004) (*U.S. – Softwood Lumber*); *United States – Sunset Review of Antidumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R (Dec. 15, 2003); and *European Communities – Antidumping Duties on Imports of Cotton-Type Bed Linen from India*, WT/DS141/AB/R (Mar. 1, 2001).

at 1342. Accordingly, the Department has continued in this case to deny offsets to dumping based on export transactions that exceed NV.

The AB recently determined in *U.S. – Zeroing (Japan)*[27] that zeroing in administrative reviews was inconsistent with U.S. WTO obligations, and therefore, the Department should eliminate its practice of "zeroing" in calculating margins for its administrative reviews. Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. *See* 19 U.S.C. § 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement 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); *see also* the Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103-316, Vol. 1 (1994) at 354 ("{ a}fter considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is 'not inconsistent' with the panel or Appellate Body recommendations)." Because no change has yet been made with respect to the issue of "zeroing" in administrative reviews, the Department has continued with its current approach to calculating and assessing antidumping duties in this administrative review. *See*, *e.g.*, *Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Administrative Review*, 72 FR 28676 (May 22, 2007), and accompanying Issues and Decision Memorandum at Comment 4.

For the foregoing reasons, we have not changed the methodology employed in calculating the respondent's weighted-average dumping margins for these final results.

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[27] *See United States – Measures Related to Zeroing and Sunset Reviews*, WT/DS322/AB/R (Jan. 9, 2007) (*U.S. – Zeroing (Japan)*).

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish in the *Federal Register* the final results of the antidumping review and the final weighted-average dumping margin.

Agree__________ Disagree__________

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David M. Spooner
Assistant Secretary
for Import Administration

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Date