72 FR 1980, January 17, 2007

A-475-703
Administrative Review
08/01/2004-07/31/2005
Public Document
Office 1: SMB

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

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

DATE: January 9, 2007

SUBJECT: Issues and Decision Memorandum for the Final Results 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 17th administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy. As a result of our analysis, we have made changes to the margin calculation. We recommend that you approve the positions we describe 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's General and Administrative (G&A) Expense Ratio

Comment 2: Clerical Error Allegation

Background

On September 11, 2006, the Department of Commerce (the Department) published the preliminary results of the 17th administrative review of PTFE resin from Italy.[1] The period of review (POR) is August 1, 2004, through July 31, 2005. We invited parties to comment on the *Preliminary Results*. The respondent, Solvay Solexis Inc. and Solvay Solexis S.p.A.

[1] *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy,* 71 FR 53400 (September 11, 2006) *(Preliminary Results).*

(collectively, Solvay), submitted a case brief on October 11, 2006; the petitioner[2] submitted a rebuttal brief on October 17, 2006.

Discussion of the Issues

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

For the *Preliminary Results*, the Department revised Solvay's G&A expense ratio calculation to reflect the G&A expenses and cost of goods sold (COGS) recorded in the company's unaudited statutory financial statements,[3] those records on which Solvay based its reported cost of manufacturing (COM).[4]

The respondent argues that the Department's *Preliminary Results* departed from its long standing policy of using audited financial statements to calculate the G&A expense ratio. Solvay also argues that the Department's questionnaire instructed the company to use audited financial statements.[5] Solvay adds that the Department "has invariably shown a preference to rely on the most recently completed audited financial statements of respondents."[6] Solvay states that the courts and the Department itself have consistently maintained that audited statements should be used in calculating financial expense ratios, and cites to *Bethlehem Steel v. United States*,[7] *Prestressed Concrete Steel Wire Strand from Mexico*[8] and *Furyfuryl Alcohol from Thailand*[9] in

---

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

[3] Solvay's financial statements are referred to as *statutory* because the statements are based on Italian law, which is consistent with Italian generally accepted accounting principles (GAAP).

[4] *See* Memo to Constance Handley from Salim Bhabhrawala Re: 2004-2005 Administrative Review of the Antidumping Duty Order on Granular Polytetrafluoroethylene Resin from Italy - Solvay Solexis, Inc. and Solvay Solexis S.p.A, (August 31, 2006).

[5] *See* Letter from the Department to Solvay, III.D-1 (December 6, 2005) at page D-15.

[6] *See* Case Brief submitted on behalf of Solvay (October 11, 2006) at page 2.

[7] Within this case, the Court of International Trade (CIT) stated that the "{r}eliance on full-year audited financial statements provides a more accurate picture of general production costs than expenses attributed to a shorter period." See *Bethlehem Steel v. United States*, 24 C.I.T. 375, 383 (Ct. Int'l Trade 2000).

[8] Within these final results, the Department stated that at verification, the respondent incorrectly used its unadjusted trial balance G&A figure for the numerator of the G&A expense ratio instead of the adjusted figures reported within its audited financial statements. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 68350 (December 8, 2003) and accompanying Issues and Decision Memorandum at Comment 4.

[9] In the *Final Determination of Sales at Less Than Fair Value: Furyfuryl Alcohol from Thailand*, 60 FR 22557 (May 8, 1995), and accompanying Issues and Decision Memorandum at Comment 11, the Department stated that "{u}nder ordinary circumstances, the most appropriate full-year G&A period is that represented by the latest fiscal year for which the respondent has completed and audited financial statements."

support of its argument.

Solvay also argues that G&A expenses relate to a company as a whole and, thus, should be allocated on that basis. Solvay states that the Department "does not generally allocate G&A expenses on a divisional or affiliated basis, but rather considers the company as a whole, calculates a ratio, and applies said ratio to each product line."[10] Solvay argues that there is no reason for the Department to separate certain affiliates and facilities from others, calculate a G&A ratio from un-audited financial statements, and then apply that ratio to a smaller group of closely-affiliated companies. Solvay maintains that the Department should calculate a ratio based on the performance of the company as a whole, as it has done in many recent cases.[11] Solvay argues that for the above-stated reasons, the Department should use Solvay's company-wide, audited G&A expense-based ratio, as reported in its October 6, 2006, section D supplemental response for the final results of this review.

The petitioner rebuts that the Department did not err within the *Preliminary Results*, and the Department should continue to base its G&A calculation on Solvay's statutory financial statements because they most accurately reflect Solvay's G&A expenses. The petitioner also contends that the statute and regulations do not require the Department to rely on audited financial statements, rather the statute directs the Department to rely on actual data pertaining to the production and sales of the company at issue.[12] The petitioner adds that within the *Preliminary Results*, the Department relied upon Solvay's statutory financial statements, which are based on Solvay's general ledger, and reconcile directly to Solvay's International Financial Reporting Standards (IFRS) statements. Thus, contrary to Solvay's claim, it is reasonable for the Department to use Solvay's statutory financial statements for calculating G&A because they most accurately reflect Solvay's actual costs.[13]

The petitioner adds that Solvay's statutory financial statements reconcile to its audited management profit and loss statements and more accurately capture Solvay's G&A expenses, and that the audited IFRS statements that Solvay is urging the Department to use, do not capture all of Solvay's G&A expenses, but rather capture Solvay's parent company's G&A expenses incurred on behalf of Solvay.

---

[10] *See* Case Brief submitted on behalf of Solvay (October 11, 2006) at pages 2-3; *see also Rautaruukki Oy v. United States*, 19 C.I.T. 438 (Ct. Int'l Trade 1995).

[11] *See* Case Brief submitted on behalf of Solvay (October 11, 2006) at pages 3-4.

[12] *See* 19 U.S.C. § 1677b(b)(3)(B).

[13] *See* Rebuttal Brief submitted on behalf of DuPont (October 17, 2006) at page 2.

Finally, the petitioner argues that the Department has used income statements, such as Solvay's statutory financial statements, as the basis for calculating G&A, in previous cases.[14] The petitioner states that in a previous review of this proceeding, the Department instructed Ausimont (now Solvay) to calculate its G&A expense ratio based on the income statement it used in preparing its financial statements. The petitioner noted that it is entirely feasible to derive G&A from Italian financial statements[15] and that the use of these statutory financial statements in this review is a continuation of that methodology. Therefore, the petitioner argues that there is no reason that the Department should not use these statutory financial statements to calculate Solvay's G&A expense ratio within this review.

Department's Position:

We agree with the petitioner and have continued to rely on the statutory financial statements for purposes of calculating Solvay's G&A expense ratio. For reporting purposes, Solvay based its COM on its normal books and records (*i.e.*, statutory financial statements) in accordance with Italian generally accepted accounting principles (GAAP). However, for the calculation of its G&A expense ratio, Solvay relied on management profit and loss statements that are prepared in accordance with IFRS and are consolidated into Solvay's parent company's financial statements. The reported G&A rate was more favorable to Solvay due to a difference between the statutory financial statements and IFRS treatment of the amortization of goodwill.

As the Department has stated in *Silicomanganese from India*,[16] it is the Department's long-standing practice, codified at section 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act), to rely on data from the respondent's normal books and records, where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing the merchandise. Therefore, the Department is mandated to rely on Solvay's normal books and records because they are in accordance with GAAP and there is no record evidence, and Solvay did not allege, that its normal books and records (*i.e.,* unaudited statutory financial statements) are distortive.

---

[14] *See Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Duty Administrative Review*, 53 FR 49706 (December 9, 1988).

[15] *See Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy*, 68 FR 2007 (January 15, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

[16] *See Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 67 FR 15531 (April 2, 2002), and accompanying Issues and Decision Memorandum Comment 13.

Further, within *Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*[17] *and Shrimp From Thailand*,[18] the Department stated that section 773(b)(3) of the Act provides a general description of the G&A expense calculation for COP. However, the Act does not prescribe a specific method for calculating the G&A expense rate. Because there is no bright line definition in the Act of what the G&A expense is or how the G&A expense rate should be calculated, the Department has, over time, developed a consistent and predictable practice of calculating and allocating G&A expenses. This practice is to calculate the rate based on the company-wide G&A costs incurred by the producing company allocated over the producing company's company-wide cost of sales.[19] It is identified in the Department's standard section D questionnaire, which instructs that the G&A expense rate should be calculated as the ratio of total company-wide G&A expenses divided by the cost of goods sold.[20] *See also Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 69 FR 75921 (December 20, 2004), and accompanying Issues and Decision Memorandum at Comment 23.

Although the Department acknowledges that it does prefer audited financial statements to unaudited financial statements, this preference does not supersede the statute's requirement that the Department rely on a company's normal books and records, as long as those books and records are in accordance with the home-country GAAP, and are not distortive. In this case, Solvay's statutory financial statements, which were not audited, rely on the normal books and records of the company that follow Italian GAAP, and have not been proven distortive. Therefore, the Department continues to rely on Solvay's unaudited financial statements rather than the audited IFRS statements which were not based on Solvay's normal books and records, and do not follow Italian GAAP. Further, for consistency purposes, the Department has relied on the statutory financial statements as the basis for calculating Solvay's G&A expense ratio because that ratio is applied to COM, and COM is also based on Solvay's unaudited statutory financial statements.

---

[17] *See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13451 (March 21, 2005), and accompanying Issues and Decision Memorandum at Comment 14.

[18] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 12.

[19] *See Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review*, 68 FR 59366 (October 15, 2003) and accompanying Issues and Decision memorandum at Comment 6; *see also Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 67 FR 55780 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 35.

[20] *See* Letter from the Department to Solvay at page D-14 (October 11, 2005).

Comment 2: Clerical Error Allegation

Solvay argues that for the *Preliminary Results*, the Department incorrectly applied Solvay's per-unit U.S. warehousing expenses to certain sales of imported and further manufactured subject merchandise from a specific warehouse.

The petitioner did not comment on this issue.

Department's Position:

We agree with the respondent. We have revised Solvay's U.S. warehousing expenses accordingly. *See Memorandum to David Layton from Salim Bhabhrawala Re: 2004-2005 Administrative Review of the Antidumping Duty Order on Granular Polytetrafluoroethylene Resin from Italy Final Results Sales Calculation Memorandum - Solvay Solexis, Inc. and Solvay Solexis S.p.A.*

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__________

____
David M. Spooner
Assistant Secretary
for Import Administration

____
Date