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5th Administrative Review
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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 Fifth Antidumping Duty
Administrative Review of Certain Polyester Staple Fiber from the
Republic of Korea

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the fifth administrative review of certain polyester staple fiber from the Republic of Korea. As a result of our analysis, we have made changes to the preliminary results. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this memorandum. Below is a complete list of the issues in this review for which we received comments and rebuttals from interested parties:

General Comments

Comment 1: Major Inputs
Comment 2: Overseas Office Expenses
Comment 3: Inclusion of Extraordinary Losses in the G&A Calculation
Comment 4: Interest Earned On Retirement Insurance
Comment 5: Credit Period Recalculation
Comment 6: Computer Program Errors

BACKGROUND

On May 31, 2006, the Department of Commerce (the Department) published in the Federal Register the preliminary results of the fifth administrative review of the antidumping duty order on certain polyester staple fiber (PSF) from the Republic of Korea.¹ The period of review (POR) is May 1, 2004, through April 30, 2005. We invited interested parties to comment on the Preliminary Results.

On June 30, 2006, we received case briefs from Arteva Specialties S.a.r.l.; d/b/a KoSa; and Wellman, Inc. (collectively, the petitioners); and Huvis Corporation (Huvis). On July 7, 2006, we received rebuttal briefs from the petitioners and Huvis. On July 26, 2006, consistent with 19 CFR 351.301(b)(2) and 19 CFR 351.104(a)(2)(ii)(A), we rejected the petitioners' rebuttal brief because it contained untimely filed new information. On July 27, 2006, we received a revised rebuttal brief from the petitioners.

DISCUSSION OF ISSUES

GENERAL

Comment 1: Major Inputs

Huvis's Argument: In the preliminary results of the instant review, the Department used the market price of middle-terephthalic acid (MTA) as a proxy for the missing market price of qualified terephthalic acid (QTA),² in setting the value of QTA under the major input rule. MTA and QTA are both forms of terephthalic acid (TPA). Huvis claims that the evidence on the record does not support the Department's upward adjustment to the transfer price of QTA. Instead, Huvis claims the Department should rely on cost of production (COP) and transfer price of QTA for purposes of the major input rule.

Huvis asserts that the production processes of MTA and QTA are different, as confirmed by the Department at verification.³ According to Huvis, the differences in the production processes result in purity differences between MTA and QTA, and these differences were explained by Huvis's supplier of MTA.⁴ Huvis states that QTA's higher range of organic impurities makes it

¹ See Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review, Intent to Rescind, and Partial Rescission of Antidumping Duty Administrative Review, 71 Fed. Reg. 30,867 (May 31, 2006) (Preliminary Results).

² See Huvis's Case Brief at 2 (citing Preliminary Results, 71 Fed. Reg. at 30,871; Preliminary Results Calculation Memorandum for Huvis Corporation (May 23, 2006) (Calculation Memorandum) at 2.

³ Id. at 4 (citing Verification of Sales and Cost Response of Huvis Corporation (May 23, 2006) (Verification Report), at 32, Exhibit 37 at 24-29).

⁴ Id. at 3.

less valuable than MTA.⁵ Huvis argues that it only substitutes different forms of TPA in exceptional circumstances because a substitution could affect the quality and physical characteristics of the finished product.⁶

Huvis notes that the Department adjusted Huvis's QTA price using the market price for MTA in the preliminary results of the fourth administrative review of this order.⁷ Huvis claims that it did not dispute this adjustment in the fourth review because Huvis had not placed information on the record to disprove the adjustment. In contrast, Huvis argues that there is information on the record for the instant review demonstrating that MTA and QTA are not interchangeable. Therefore, Huvis asserts that the Department should not rely on the decision made in the fourth administrative review.⁸

According to Huvis, in the second and third reviews of this order, the Department used only one comparison basis (either market price or affiliated supplier's cost of production) to determine whether the transfer prices Huvis paid for its major inputs were at arm's-length.⁹ Huvis points to other cases where the same methodology has been used.¹⁰ Consistent with these precedents, Huvis asserts that the Department should employ this methodology and rely on Huvis's affiliated supplier's COP as the comparison basis for Huvis's QTA purchases. Huvis argues that the Department should not make an adjustment to the transfer price of QTA, because Huvis paid a price above the QTA's COP,¹¹ and because the nature of Huvis's affiliation with its supplier

⁵ Id. at 2.

⁶ Id. at 5 (citing Huvis Nov. 29, 2005 Supplemental Questionnaire Response (Nov. 2005 SQR) at 30).

⁷ Id. at 2 (citing Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 70 Fed. Reg. 32,756 (June 6, 2005) (PSF from Korea - Fourth AR (Preliminary Results))).

⁸ Id. at 5.

⁹ Id. at 6 (citing Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 68 Fed. Reg. 59,366 (Oct. 15, 2003) (PSF from Korea - Second AR (Final Results))), and accompanying Issues and Decision Memorandum at Comment 5; Memorandum to Neal Halper, Cost of Production and Constructed Value Adjustments {for Huvis} for the Final Results, Oct. 6, 2003, (Calculation Memorandum - Second AR) at 1-2; Memorandum from Team to Judith Rudman, Preliminary Results Calculation Memorandum for Huvis Corporation, June 2, 2004, (Calculation Memorandum - Third AR) at 2).

¹⁰ Id. at 6 (citing Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico, 67 Fed. Reg. 55,800 (Aug. 30, 2002) (Steel Wire Rod from Mexico), and accompanying Issues and Decision Memorandum at Comment 13; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, 62 Fed. Reg. 18,448 (Apr. 15, 1997) (Certain Carbon Products from Canada)).

¹¹ Id. at 7 (citing Huvis's Sept. 2, 2005 sections B-D Questionnaire Response (Sept. 2005 QR) at Appendix D-4).

supports the conclusion that this input was purchased at an arm's-length price.¹²

Petitioners' Argument: The petitioners claim that the Department's adjustment for purchases of QTA in the Preliminary Results is correct and should be continued for the final results.

The petitioners assert that Huvis's use of MTA versus QTA is based on historical supplier relationships. The petitioners argue that the Department should not consider trade names in its application of the major input rule. The petitioners explain Huvis's factual evidence of MTA's superiority as self-serving statements made by the supplier of MTA. Further, the petitioners assert that much of Huvis's argument about production differences is bracketed, business proprietary information, and that Huvis failed to provide any publicly available data, e.g., industry standards for MTA and QTA, to support its differentiation between the two TPA types.¹³

Moreover, the petitioners disagree with Huvis's statement that it was unable to argue this issue in the previous review because it had not placed its evidence on the record to dispute the Department's adjustment. The petitioners claim that there is no actual evidence on the record in this review that was not before the Department in the prior review.¹⁴

Finally, the petitioners point to Huvis's COP computer listing as evidence of the interchangeability of MTA and QTA. The petitioners argue that the listing shows that Huvis did use MTA and QTA frequently to produce the same PSF end products. Thus, the petitioners contend that Huvis's own data support the Department's conclusion that MTA and QTA are interchangeable.¹⁵

Department's Position: We agree with Huvis that it has placed sufficient information on the record to show that MTA and QTA have different chemical characteristics. Therefore, for the final results, we did not compare the transfer price of QTA to the market price for MTA. Huvis, however, did not provide available market prices of purified terephthalic acid (PTA) and QTA, which are the two types of terephthalic acid (TPA) that Huvis purchased from an affiliated supplier. Thus, in accordance with section 773(f)(3) of the Tariff Act of 1930, as amended (the Act), we used information on the record to establish market values for these inputs. We calculated the profit rate from the affiliated supplier's fiscal year ending (FYE) 2004 financial statements and derived a profit to add to the supplier's COP for PTA and QTA. We used the resulting values as proxy for the missing market prices of these two TPA inputs.

As background for this issue, in the fourth administrative review, because Huvis did not provide market prices for PTA and QTA, we used information on the record to establish market values

¹² Id. (citing Nov. 2005 SQR at 31).

¹³ See Petitioners' Rebuttal Brief at 2.

¹⁴ Id. at 5.

¹⁵ Id. at 6.

for these inputs, in accordance with section 773(f)(3) of the Act. Specifically, because record information¹⁶ supported interchangeability between MTA and QTA, the Department used the market price of MTA as a proxy for the market price of QTA.¹⁷ Huvis did not dispute this approach in the final results of the fourth review, and, hence, the Department made the same adjustment for QTA in the preliminary results of the instant review.¹⁸

However, for the instant review, Huvis placed new information on the record indicating that MTA has chemical properties that are different from QTA.¹⁹ In light of the new information, we re-evaluated whether QTA and MTA are interchangeable. We concluded that, even if we were to determine that MTA could successfully be used in place of QTA without changing the intended final product, this does not render them interchangeable. In particular, there is no information on the record of this review that would allow us to determine whether the amounts of MTA and QTA needed to produce a specific PSF product would be the same. Without this information, we cannot make a determination as to the interchangeability of MTA and QTA. Further, contrary to the petitioners' allegation, Huvis's COP database is not dispositive of a finding of interchangeability between MTA and QTA. Therefore, based on the record of this review, we do not agree with the petitioners that the market price of MTA is an appropriate proxy for the missing market value of QTA. Accordingly, we are not using the market price of MTA as a proxy for the market price of QTA in this review.

For the instant review, Huvis submitted business proprietary information from its affiliated supplier to establish its supplier's COP for QTA and PTA. Although Huvis obtained its affiliate's proprietary COP information, Huvis explained that this affiliate was unwilling to provide the proprietary market price information requested by the Department.²⁰ Accordingly, Huvis supplied only the transfer prices and COPs for QTA and PTA.

However, section 773(f)(3) of the Act, the major input rule, states the following:

If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of

¹⁶ In both the fourth and fifth administrative reviews, Huvis stated that forms of TPA are theoretically interchangeable, although it only substitutes them in exceptional circumstances. See, e.g., Nov. 2005 SQR at 28.

¹⁷ See PSF from Korea - Fourth AR (Preliminary Results), 70 Fed. Reg. at 32,758 (unchanged in final, Notice of Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the Republic of Korea, 70 Fed. Reg. 73,435 (Dec. 12, 2005) (PSF from Korea - Fourth AR (Final Results))).

¹⁸ See Preliminary Results, 71 Fed. Reg. 30,867.

¹⁹ See Verification Report, at 32, Exhibit 37 at 24-29.

²⁰ See Nov. 2005 SQR at 28.

the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

In accordance with section 773(f)(3) of the Act and 19 CFR 351.407(b), the Department normally will determine the value of a major input from an affiliated person based on the higher of the transfer price, the market price, or the affiliate's COP.

Because Huvis failed to provide the necessary information (i.e., transfer price, market price, and COP) to determine whether Huvis's affiliated purchases were at arm's-length, pursuant to section 773(f)(3) of the Act, the Department searched the record to find a suitable proxy for market price. In accordance with section 776(a) of the Act, the Department is employing facts available to calculate a proxy for the missing market price information. Thus, for the final results, we calculated the supplier's profit rate from the supplier's FYE 2004 financial statements, and added the amount for profit to the supplier's COP to arrive at a market value. We compared this calculated market value to the transfer price reported by Huvis, and found that the market value exceeded the transfer price. Therefore, we adjusted Huvis's reported transfer price by the percent difference. For consistency, we made this adjustment to both QTA and PTA, which are sourced from the same supplier and for which we are missing market prices. See Memorandum from Team to Brandon Farlander, Final Results Calculation Memorandum for Huvis Corporation (5th Review) (Sept. 28, 2006) (Final Results Calculation Memorandum), at 2.

This adjustment is consistent with the guidance set forth in 19 CFR 351.407(b), which explains that the Department will normally determine the value of a major input from an affiliated person based on the highest of COP, transfer price, and market price. Huvis cited Steel Wire Rod from Mexico, Certain Carbon Products from Canada, and its own second and third administrative reviews to urge the Department to rely on only COP and transfer prices for the major input rule.²¹ However, unlike Steel Wire Rod from Mexico and Certain Carbon Products from Canada, the facts on the record of this case demonstrate that market prices do exist for the inputs at issue: Huvis stated that its supplier makes sales to unaffiliated customers.²² Further, the second administrative review involved a shift from comparing an average TPA market price to evaluating each form of TPA separately.²³ Because Huvis did not supply market prices in either the second or the third review, the Department compared transfer price to COP as an alternate measure. However, when the Department used the market price of MTA - in addition to the transfer price and COP of QTA - to determine the market value of QTA in the fourth administrative review,²⁴ it put Huvis on notice that transfer price and the affiliate's COP alone

²¹ See Huvis's Case Brief at 6.

²² See Nov. 2005 SQR at 31.

²³ See PSF from Korea - Second AR, 68 Fed. Reg. 59,366, and accompanying Issues and Decision Memorandum at Comment 5; Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke the Order in Part, 69 Fed. Reg. 61,341 (Oct. 18, 2004) (PSF from Korea - Third AR (Final Results)).

²⁴ See PSF from Korea - Fourth AR (Final Results).

were not sufficient to determine whether purchases of major inputs were made at arm's-length prices.

Comment 2: Overseas Office Expenses

Petitioners' Argument: The petitioners claim that the Department's findings at verification concerning the activities of Huvis's America Branch (AB) office contradict what Huvis had reported in its questionnaire and supplemental questionnaire responses. The petitioners argue that, because Huvis consistently denied the AB office's role in U.S. sales, the exact extent of the AB office's activities could not be verified. The petitioners contend that the Department should draw an adverse inference and determine that the entire sum of the expenses incurred by the AB office is directly related to Huvis's U.S. sales during the POR.

The petitioners assert that in its questionnaire and supplemental questionnaire responses, Huvis stated that its AB office staff did not have direct contact with Huvis's customers.²⁵ The petitioners argue that, at verification, the Department found that Huvis's AB office staff did have contact with Huvis's PSF customers and performed activities that could be considered direct selling activities. Moreover, the petitioners note that the AB office staff may have acted as the *de facto* importer of record for these customers.

The petitioners contend that, because Huvis consistently denied the AB office's role, the exact extent of the AB office's activities could not be verified. The petitioners claim that, in accordance with section 776(b) of the Act, the Department should make an adverse inference in selecting from among the facts otherwise available, because Huvis made repeatedly incorrect and misleading statements.²⁶ According to petitioners, to ensure that the allocation of AB expenses will impact the final margin analysis, the Department should determine that the entire amount of these expenses are directly related to Huvis's U.S. sales during the POR and the Department should make a circumstance of sale adjustment in the final margin analysis.

Huvis's Argument: Huvis asserts that it did not misreport the activities of its AB office. Moreover, Huvis claims that any expenses incurred by the AB office are (1) trivial in magnitude, and (2) should not be deducted in the dumping margin calculation for export price (EP) sales. Huvis contends that the Department does not have grounds to resort to using adverse facts available.

Huvis claims that it did state that its AB office may have contact with downstream customers

²⁵ See Petitioners' Case Brief at 6 (citing Nov. 2005 SQR at 1-2; Huvis's March 20, 2006 Supplemental Questionnaire Response (Mar. 2006 SQR) at 1).

²⁶ *Id.* at 7, 8 (citing Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan, 70 Fed. Reg. 48,538 (Aug. 18, 2005), Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Circular Welded Carbon-Quality Line Pipe From Mexico, 69 Fed. Reg. 59,892 (Oct. 6, 2004); Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, at 870 (1994) (SAA), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4198-4199; Antidumping Duties; Countervailing Duties, 62 Fed. Reg. 27,355 (May 19, 1997)).

(i.e., Huvis's customers' customers) who consume PSF.²⁷ According to Huvis, this statement is accurate, because Huvis's downstream customers were also present at the meetings between Huvis and its direct customers. Likewise, Huvis disagrees that the statement it made in a supplemental questionnaire response is inconsistent with verification findings, because Huvis argues that the types of activities the AB office engaged in could be characterized as gathering “market information.”

Huvis claims that the amount of expenses incurred by the AB office is trivial, and only a portion of the expenses is potentially attributable to subject merchandise. Moreover, Huvis contends that these expenses are irrelevant, as indirect expenses incurred in the United States are not deducted in calculating the dumping margin for EP sales. Huvis asserts that nothing on the record indicates that Huvis's AB office had any direct involvement in activities related to Huvis's U.S. sales of subject merchandise. Instead, Huvis maintains that the Department documented that the AB office employee's contact with Huvis's customers was limited to facilitating visits with downstream customers. Huvis argues that the petitioners' speculation that the AB office may have been involved in the customs clearance process is absurd, as the Department verified that Huvis employs a customs broker to clear customs on merchandise imported by Huvis. Therefore, Huvis contends that the Department does not have grounds to make adjustments to U.S. price for Huvis's AB office expenses.

Department's Position: We agree with Huvis that the AB office expenses should not be reclassified as direct selling expenses. The evidence gathered at Huvis's verification indicates that these are indirect selling expenses. Therefore, the AB office expenses are correctly accounted for in Huvis's general and administrative (G&A) expenses, which include indirect selling expenses.²⁸

Huvis's supplemental questionnaire response could have been more forthcoming or provided greater detail about the activities of its AB office. However, we disagree with the petitioners that the AB office may have acted in a *de facto* role to assist the customs clearance process. Verification findings clearly confirm that Huvis hired a customs broker to clear customs on merchandise imported by Huvis.²⁹

We also disagree with the petitioners that the Department was unable to verify the exact extent of the AB office's POR activities. The Department carefully reviewed the accounting records showing all the expenses incurred by the AB office.³⁰ We also reviewed numerous e-mail communications authored by the AB office staff during the POR in order to determine what

²⁷ See Huvis's Rebuttal Brief at 4 (citing Mar. 2006 SQR at 1).

²⁸ See Nov. 2005 SQR at 2; Sept. 2005 QR at Appendix D-12; Verification Report at Exhibit 20, at 12-24.

²⁹ See Verification Report at 21, Exhibit 15 at 32.

³⁰ *Id.* at Exhibit 20.

activities the AB office performed.³¹ These e-mails revealed that the AB office staff engaged in activities that the Department would normally characterize as indirect selling functions. Because the Department confirmed at verification that Huvis's AB Office expenses were properly accounted for as indirect selling expenses in Huvis's G&A calculation, we have not reclassified these expenses for the final results.

Comment 3: Inclusion of Extraordinary Losses in the G&A Calculation

Huvis's Argument: Huvis asserts that the Department erred when it included the expenses associated with the closure of a facility producing non-subject merchandise in the calculation of net G&A expenses.³² Huvis claims that these expenses should be excluded because (1) they were related to the discontinuation of production of a non-subject product,³³ and (2) because they were recorded as extraordinary losses in Huvis's normal accounting records. Huvis claims that, in accordance with prior practice, the Department should exclude these expenses from the G&A calculation.³⁴

Huvis asserts that the Department considers extraordinary expenses on a case-by-case basis.³⁵ Huvis contends that the circumstances in the cases cited in the Preliminary Results³⁶ are different from those experienced by Huvis. In OCTG from Argentina, the respondent was writing off an unfinished plant, not a well-established line of business like Huvis's PFY operation. Moreover, Huvis argues that it has only had two business lines, PSF and PFY, since its inception in 2000,

³¹ Id. at Exhibit 20 at 12-24.

³² Huvis cites its audited financial statements which describe the loss as having resulted from Huvis's cessation of its polyester filament yarn (PFY) production at its Suwon and Chonju factories. See Huvis's Case Brief at 8 (citing Aug. 2005 QR at 27; Sept. 2005 QR at 1-2).

³³ See Huvis's Case Brief at 8, 9 (citing Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Antidumping Duty Administrative Review, 60 Fed. Reg. 44,009, 44012 (Aug. 24, 1995) (Lead and Bismuth Steel from the UK), at Comment 9, where the respondent demonstrated that the closure costs related to an operation that produced only non-subject merchandise; Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 Fed. Reg. 24,329, 24,357 (May 6, 1999) (Hot-Rolled Steel from Japan), at Comment 28; SSA, at 835; Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea, 64 Fed. Reg. 73,196, 73,209 (Dec. 29, 1999), at Comment 14).

³⁴ Id. at 9, 10 (citing PSF from Korea - Third AR (Final Results), 69 Fed. Reg. 61,341, and accompanying Issues and Decision Memorandum at Comment 2).

³⁵ Id. at 11 (citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Belgium, 64 Fed. Reg. 15,476, 15,492 (Mar. 31, 1999), at Comment 16).

³⁶ Id. at 11, 12 (citing Notice of Final Results and Rescission in Part of Antidumping Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe From Argentina, 68 Fed. Reg. 13,262 (Mar. 19, 2003) (OCTG from Argentina), and accompanying Issues and Decision Memorandum at Comment 4; Silicomanganese from Brazil: Preliminary Results of Antidumping Administrative Review, 62 Fed. Reg. 1320, 1322 (Jan. 9, 1997) (unchanged in Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 62 Fed. Reg. 37,869, 37,870-71 (July 15, 1997))).

and the decision to shut down one of these lines after four years is unusual and infrequent.

Huvis claims that Silicomanganese from Brazil is different because the costs in that case were classified as ordinary operating expenses and pertained to the company's on-going business operations. In contrast, Huvis states that its costs were classified as extraordinary losses and pertained to an operation it was closing down. Thus, Huvis argues that its situation is more analogous to that of Saehan Corporation in PSF from Korea - Third AR (Final Results) and of the respondent in Lead and Bismuth Steel from the UK, both of whom were able to exclude extraordinary losses from their G&A calculation.

Huvis asserts that the cessation of PFY production generated losses that were (1) non-recurring; (2) related to a business unit that had ongoing operations related to the production and sale of non-subject merchandise; (3) neither part of Huvis's normal business operations nor related to the general operations of the company; (4) not representative of the costs incurred to produce subject merchandise; (5) greater than Huvis's entire G&A expense and, thus, unquestionably significant enough to be treated separately from Huvis's normal business activities; and (6) unusual and infrequent. Huvis argues that, pursuant to precedent, the Department should exclude the extraordinary losses related to the cessation of Huvis's PFY operations from the G&A calculation.

Petitioners' Argument: The petitioners argue that the Department should continue to rely on Huvis's company-wide financial results. The petitioners assert that this practice is reasonable, consistent, predictable, and avoids distortions that may result if, for business reasons, great amounts of company-wide general expenses are allocated disproportionately between divisions.³⁷

The petitioners assert that the Department calculates a respondent's costs based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country.³⁸ Therefore, the petitioners assert that the Department properly included the losses that were recorded in Huvis's audited financial statements in the calculation of G&A expenses in this review. The petitioners claim that whether the losses were related to the production of the subject merchandise is not a consideration in calculating Huvis's company-wide G&A expenses. The petitioners also assert that the size of the loss should not be a consideration, because the amount was recorded in Huvis's audited financial statements.

³⁷ See Petitioners' Rebuttal Brief at 8 (citing Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada, 69 Fed. Reg. 75,921 (Dec. 20, 2004) (Softwood Lumber from Canada), and accompanying Issues and Decision Memorandum at Comment 23).

³⁸ Id. at 9 (citing 19 U.S.C. 1677b(f)(1)(A); Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago, 67 Fed. Reg. 55,788 (Aug. 30, 2002), and accompanying Issues and Decision Memorandum at Comment 5; Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta From Italy, 69 Fed. Reg. 18,869 (Apr. 1, 2004), and accompanying Issues and Decision Memorandum at Comment 2; Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India, 70 Fed. Reg. 13,451 (Mar. 21, 2005), and accompanying Issues and Decision Memorandum at Comments 13, 15).

The petitioners claim that Huvis's argument that the losses were related to a business unit closure and were “non-recurring” and “unusual and infrequent” is misplaced, because business restructuring is not an unusual or extraordinary event.³⁹ The petitioners argue that restructuring activities are part and parcel of normal business practice. Moreover, the petitioners assert that the Department has since reconsidered its exclusion of restructuring expenses related to non-subject merchandise.⁴⁰ Therefore, the petitioners assert the Department should continue to include Huvis's extraordinary loss in the G&A ratio calculation.

Department's Position: We disagree with Huvis. In recent decisions, the Department has explained that the costs associated with the idling of assets, such as occurred with Huvis's PFY operation, are different from the sale of entire production facilities or the permanent shut-down of production facilities, and should be included in G&A expenses.⁴¹ Therefore, we have included these losses in Huvis's G&A ratio calculation.

Huvis's reliance on Lead and Bismuth Steel from the UK and Hot-Rolled Steel from Japan is misplaced because the question of whether the factory produced the merchandise under review is not relevant to this issue. As explained in Certain Softwood Lumber from Canada - Second AR, the question is not whether the closed or sold facility pertains to the merchandise under review.⁴² Once a facility is sold or shut down, by definition it no longer relates to the ongoing or remaining production, and it becomes either an asset owned by another party or an asset awaiting sale or disposal. The policy of not basing our decision on whether the facility in question produced the merchandise under review is consistent with our treatment of such costs in past cases.⁴³

In Certain Softwood Lumber from Canada - Second AR, the Department excluded the losses from the G&A calculation because the respondents either sold or shut down entire production

³⁹ See Petitioners' Rebuttal Brief at 9 (citing Preliminary Results, 71 Fed. Reg. at 30,871).

⁴⁰ Id. at 10 (citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From the United Kingdom, 67 Fed. Reg. 3146 (Jan. 23, 2002) (Stainless Steel Bar from the UK), and accompanying Issues and Decision Memorandum at Comment 3; Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Antidumping Duty Administrative Review, 65 Fed. Reg. 8940-8941).

⁴¹ See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada, 70 Fed. Reg. 73,437 (Dec. 12, 2005) (Certain Softwood Lumber from Canada - Second AR), and accompanying Issues and Decision Memorandum at Comment 8.

⁴² Id.

⁴³ See, e.g., Stainless Steel Bar from the UK, 67 Fed. Reg. 3146, and accompanying Issues and Decisions Memorandum at Comment 3; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From Germany: Final Results of Antidumping Duty Administrative Reviews and Revocations of Orders in Part, 65 Fed. Reg. 49,219 (August 11, 2000) and accompanying Issues and Decision Memorandum at Comment 64.

facilities during the POR.⁴⁴ The Department also excluded Saehan's losses in PSF from Korea - Third AR (Final Results) because the respondent disposed of an entire business unit.⁴⁵ However, the Department distinguishes between sales of entire production facilities and the idling of production assets held for future purposes.⁴⁶ Idle assets are still owned by the company, can be brought online quickly to fulfill a preplanned function, and represent extra capacity held by the company.⁴⁷ As such, idle assets are considered an overhead burden like any other excess capacity and are appropriately picked up as a part of G&A expenses.⁴⁸

In both its FYE 2004 and first half 2005 financial statements, Huvis notes that it ceased operations of some lines of PFY production in Suwon and Chonju factories due to decreased profitability of the PFY products. Both financial statements also explain that, “the company plans to resume operations of {P}FY production if the profitability improves in consequent periods.”⁴⁹ Because Huvis's financial statements noted that Huvis plans to resume its PFY operations if profitability improves, and because there is no record evidence that Huvis sold or permanently shut-down these assets, we have classified these as idle assets.

The decision in Certain Softwood Lumber from Canada - Second AR also explained that how a particular item of income or expense is recorded on the company's financial statement, as well as an item's significance, is not relevant to determining whether the item should be accounted for in G&A.⁵⁰ The Department considers the nature of the item, not its classification in the company's financial statement or its size, in determining whether it should be included or excluded from the

⁴⁴ See Certain Softwood Lumber from Canada - Second AR, 70 Fed. Reg. 73,437, and accompanying Issues and Decisions Memorandum at Comment 8. The sale of an entire production facility differs from the sale of a piece of equipment, or even large pieces of equipment. We consider an entire facility to be one that is capable of producing a product. It encompasses many pieces of production equipment, the buildings, land and fixtures. Sales of these facilities are transactions that change the organization and structure of the company and its operations.

⁴⁵ See PSF from Korea - Third AR (Final Results), 69 Fed. Reg. 61,341, and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁶ See Certain Softwood Lumber from Canada - Second AR, 70 Fed. Reg. 73,437, and accompanying Issues and Decision Memorandum at Comment 8.

⁴⁷ Id.

⁴⁸ See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review, 68 Fed. Reg. 41303 (July 11, 2003) (Mushrooms from India 2003 Final), and accompanying Issues and Decision Memorandum at Comment 10; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Brazil, 67 Fed. Reg. 62,134 (October 3, 2002) (Cold-Rolled Steel from Brazil), and accompanying Issues and Decision Memorandum at Comment 22.

⁴⁹ See Aug. 2005 QR at Appendix 1-9, Note 22; see also Sep. 2005 QR at Appendix A-17, Note 21.

⁵⁰ See Certain Softwood Lumber from Canada - Second AR, 70 Fed. Reg. 73,437, and accompanying Issues and Decision Memorandum at Comment 8.

costs.⁵¹ Therefore, we disagree with Huvis that the size of the loss means it should be treated separately from Huvis's normal business activities. Accordingly, for the final results, we have continued to include this loss in Huvis's G&A calculation.

Comment 4: Interest Earned On Retirement Insurance

Huvis's Argument: Huvis argues that the Department should deduct interest earned on retirement insurance deposits from Huvis's net interest expenses. Huvis claims that these annually recurring deposits are short-term because their maturity terms are limited to one year.⁵² Huvis refers to the Department's verification report, which references statements made by Huvis officials that these funds could be withdrawn if Huvis wanted to change insurance providers.⁵³ Huvis claims that the fact that it is required to maintain this account is not relevant to the question of whether the deposits to the account are long-term or short-term in nature.⁵⁴ Huvis claims that the record shows that the interest is generated from short-term investments and is related to the company's normal operation, and therefore, qualifies as an offset to interest expense.

Petitioners' Argument: The petitioners claim that the Department correctly denied the deposit-for-retirement-insurance deduction from Huvis's net interest expense. The petitioners argue that this position is consistent with PSF from Korea - Fourth AR (Final Results).⁵⁵ The petitioners contend that Huvis has failed to identify new facts that would support allowing the offset. Moreover, the petitioners note that Huvis's company officials could not negate the fact that Huvis is required to maintain the retirement account. Because Huvis is required to maintain the account, it cannot be used as working capital to satisfy Huvis's daily operational needs. Therefore, because this account should be considered a long-term investment, the Department should continue to deny the offset proposed by Huvis for the final results.

Department's Position: We agree with the petitioners that the "deposit for retirement insurance" deduction was properly excluded from Huvis's net interest expense calculation. It is the Department's normal practice to deduct interest earned on short-term deposits of working

⁵¹ Id.

⁵² See Huvis's Case Brief at 14 (citing Nov. 2005 SQR, at 38-39).

⁵³ Id. at 15 (citing Verification Report at 46, Exhibit 44 at 13-15, 17 (contract providing that retirement insurance deposits should be calculated on the date of year-ending)).

⁵⁴ Id. at 15, 16 (citing Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 70 Fed. Reg. 12,443 (Mar. 14, 2005), and accompanying Issues and Decision Memorandum at Comment 9).

⁵⁵ See Petitioners' Rebuttal Brief at 11 (citing PSF from Korea - Fourth AR (Final Results), 70 Fed. Reg. 73,435, and accompanying Issues and Decision Memorandum at Comment 5).

capital⁵⁶ to calculate a company's net interest expense.⁵⁷ In accordance with Korean GAAP,⁵⁸ Huvis is not able to freely divert the “deposit for retirement insurance” funds and, thus, these funds are not a working capital reserve that Huvis can use to meet its daily cash requirements (e.g., payroll, suppliers, etc.). The Department verified that Huvis’s ability to change insurance providers does not mitigate its requirement to maintain this investment.⁵⁹ Huvis’s use of a short-term investment vehicle for the retirement insurance account does not change the fact that these funds are not used as working capital and that the retirement insurance account is a long-term investment. Accordingly, for the final results, we have continued to deny this deduction from Huvis's net interest expense calculation.

Comment 5: Credit Period Recalculation

Huvis's Argument: Huvis asserts that the Department erred in adjusting the credit period for one of Huvis's home market customers. Huvis claims that in the Preliminary Results, the Department likened the adjustment to an adjustment made for a different home market customer in the 2002-2003 administrative review. Huvis argues that the adjustment in the 2002-2003 review was made because the payments could be tied to sales, and the Department thus adjusted the credit period to account for negative amounts.⁶⁰ Huvis claims that the Department has not tied payments to sales in the instant review, and that there are no negative amounts that need to be accounted for.⁶¹ Therefore, Huvis argues that the Department should not adjust the credit period for this customer in the final results.

Petitioners' Argument: The petitioners contend that the Department’s preliminary methodology for adjusting the credit period is both correct and supported by substantial record evidence. The petitioners claim that the principle behind the adjustment in the instant review is the same as the recalculation that was made in prior review for a different customer. The petitioners assert that

⁵⁶ Working capital is defined as current assets minus current liabilities. Working capital is widely used to measure a business's ability to meet its short-term obligations with its current assets. Charles T. Horngren and Walter T. Harrison, Jr., Accounting, 879-80 (Prentice Hall 2nd ed. 1992).

⁵⁷ See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the Antidumping Duty Administrative Review, 70 Fed. Reg. 3677 (Jan. 26, 2005), and accompanying Issues and Decision Memorandum at Comment 11; Stainless Steel Sheet and Strip in Coils From Germany: Notice of Final Results of Antidumping Duty Administrative Review, 69 Fed. Reg. 75,930 (Dec. 20, 2004), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁸ See 3 Larry L. Orsini et al., World Accounting, § ROK.26{1} (2001).

⁵⁹ See Verification Report at 46.

⁶⁰ See Huvis's Case Brief at 17 (citing PSF from Korea - Fourth AR (Final Results), 70 Fed. Reg. 73,435, and accompanying Issues and Decision Memorandum at Comment 5).

⁶¹ Id. at 17 (citing Nov. 2005 SQR at App. S-18).

there is sufficient information regarding the customer's purchases to make the adjustment.⁶² Therefore, the petitioners claim that the Department should continue to make the adjustment.

Department's Position: We agree with the petitioners that the adjustment to the credit period for Huvis's home market customer is supported by the record. The monthly-ending balances for this customer's account demonstrate a certain payment pattern exists that allows us to tie monthly sales to monthly payments.⁶³ This payment pattern is not adequately addressed in the calculation normally used to determine credit period. Therefore, consistent with the methodology used by the Department in a previous review for a different home market customer with a similar payment pattern,⁶⁴ we have continued to adjust the credit period for this customer.

Comment 6: Computer Program Errors

Petitioners: The petitioners assert that the Department should correct the preliminary calculation programs to remove a line of generic program language relating to total cost of manufacture. Also, the Department should apply the revised G&A and financial expense ratios to the revised total cost of manufacture (COM).

Huvis's Argument: Huvis asserts that the Department should not make any adjustments for total cost of manufacture or G&A. If, however, the Department chooses to make an adjustment, Huvis argues that the Department should make a symmetrical adjustment to the G&A and interest ratios by including any increases to the reported COM in the calculation of cost of goods sold.⁶⁵

Huvis also states that the program incorrectly uses a letter "O" rather than the number "0" in the customer code for a certain customer, which the Department should correct.

Department's Position: We agree, in part, with both the petitioners and Huvis. As explained in the preceding comments, we have continued to make adjustments to Huvis's financial expense and G&A ratios.

We agree with the petitioners that adjustments to the G&A and financial expense ratios should be applied to the total cost of manufacture. However, we also agree with Huvis that an adjustment

⁶² See Petitioners' Rebuttal Brief at 13 (citing Nov. 2005 SQR at App. S-18).

⁶³ See Nov. 2005 SQR at App. S-18.

⁶⁴ See PSF from Korea - Third AR (Final Results), 69 Fed. Reg. 61,341, and accompanying Issues and Decision Memorandum at Comment 5.

⁶⁵ See Huvis's Rebuttal Brief at 2 (citing Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 Fed. Reg. 29,310 (May 22, 2006) (Diamond Sawblades from Korea), and accompanying Issues and Decision Memorandum at Comment 34).

to COM should also be reflected in the cost of goods sold.⁶⁶ As stated in Diamond Sawblades from Korea, it is the Department's normal practice to adjust its G&A expense ratio calculation to ensure that the denominator for the calculation of the G&A ratio and the amount to which it is applied are on the same basis. We have, therefore, applied the revised G&A and financial expense ratio to the COM reported by Huvis, not the recalculated COM. We have used the revised COM, the revised G&A ratio, and the revised financial expense ratio to calculate COP. We have made the appropriate changes to the computer program.

We also agree with Huvis's assertion that there was a typographical error for a certain customer code, and we have made this correction to the computer program.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final weighted-average dumping margins for all firms reviewed in the Federal Register.

AGREE _____

DISAGREE _____

Stephen J. Claeys
Acting Assistant Secretary

⁶⁶ See Diamond Sawblades from Korea, 71 Fed. Reg. 29,310, and accompanying Issues and Decision Memorandum at Comment 34; Final Results Calculation Memorandum for Huvis Corporation at page 3.

for Import Administration

Date