

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT—  
Continued

[4/1/2009 through 5/8/2009]

Firm	Address	Date accepted for filing	Products
Tottser Tool and Die Shop, Inc.	1630 Republic Road, Huntington, PA 19006 .....	5/8/2009	Metal stampings and die sets for the automotive industry.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 15, 2009.

**William P. Kittredge,**  
Program Officer for TAA.

[FR Doc. E9-12115 Filed 5-22-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-421-811

#### Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from petitioner Aqualon Company, a division of Hercules Incorporated (Aqualon), a U.S. manufacturer of purified carboxymethylcellulose (CMC), and respondent CP Kelco B.V. (CP Kelco), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified CMC from the Netherlands. This administrative review covers imports of subject merchandise produced and exported by CP Kelco (formerly known as Noviant B.V.).<sup>1</sup> The period of review

(POR) is July 1, 2007, through June 30, 2008.

We preliminarily determine that sales of subject merchandise by CP Kelco have been made at less than normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** May 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Patrick Edwards or Brian Davis, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-8029 or (202) 482-7924, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 11, 2005, the Department published the antidumping duty order on purified CMC from the Netherlands. See *Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, 70 FR 39734 (July 11, 2005) (CMC Order). On July 11, 2008, the Department published the opportunity to request an administrative review of, *inter alia*, purified CMC from the Netherlands for the period July 1, 2007, through June 30, 2008. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 39948 (July 11, 2008).

In accordance with 19 CFR 351.213(b)(2), on July 11, 2008, CP Kelco and its U.S. affiliates (CP Kelco U.S., Inc. and JM Huber Corporation) timely requested that the Department

from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 72 FR 44099, 44101 (August 7, 2007), unchanged in the final, *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 72 FR 70821, 70822 (December 13, 2007) (*Final Results of First Administrative Review*).

initiate and conduct an administrative review of its sales of subject merchandise during the POR. Aqualon timely requested that the Department conduct an administrative review of sales of subject merchandise by Akzo Nobel Functional Chemicals B.V. (Akzo Nobel) and CP Kelco on July 14, 2008. On July 31, 2008, Akzo Nobel timely requested that the Department conduct an administrative review of its sales of merchandise covered by the order. On August 26, 2008, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering sales, entries and/or shipments of purified CMC for the period July 1, 2007, through June 30, 2008, from CP Kelco and Akzo Nobel. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008).

On September 5, 2008, and September 22, 2008, the Department issued its antidumping duty questionnaire to CP Kelco and Akzo Nobel, respectively. CP Kelco submitted its section A questionnaire response (AQR) on October 7, 2008. Akzo Nobel withdrew its request for review on October 9, 2008. Subsequently, petitioner withdrew its request for review of sales by Akzo Nobel on October 10, 2008. See 19 CFR 351.213(d)(1). CP Kelco submitted both its section B questionnaire response (BQR) and section C questionnaire response (CQR) on October 20, 2008, and its section D questionnaire response (DQR) on November 3, 2008.

On November 6, 2008, Aqualon provided deficiency comments for CP Kelco's BQR and CQR relating to, *inter alia*, data inconsistencies in both the home and U.S. markets.<sup>2</sup>

On November 12, 2008, the Department rescinded the administrative review with respect to Akzo Nobel. See *Purified Carboxymethylcellulose from the Netherlands: Partial Rescission of Antidumping Duty Administrative*

<sup>1</sup> In a prior review, the Department determined that CP Kelco was the successor-in-interest to Noviant B.V. See *Purified Carboxymethylcellulose*

<sup>2</sup> The Department addressed Aqualon's comments in its December 16, 2008, issuance of its supplemental questionnaire.

Review, 73 FR 66841 (November 12, 2008).

On December 16, 2008, the Department issued its first sections A–C supplemental questionnaire to CP Kelco. On January 9, 2009, the Department issued its first section D supplemental questionnaire to CP Kelco. On January 22, 2009, CP Kelco submitted its sections A–C supplemental questionnaire response (SQR). On February 2, 2009, CP Kelco submitted its supplemental section D questionnaire response (SDQR). On February 4, 2009, the Department issued its second sections A–C supplemental questionnaire to CP Kelco. On February 9, 2009, Aqualon submitted comments on CP Kelco's February 2, 2009, SDQR. On February 11, 2009, CP Kelco submitted its second sections A–C supplemental questionnaire response (SSQR).

On March 27, 2009, the Department extended the deadline for the preliminary results by 46 days from April 2, 2009, until May 18, 2009. See *Purified Carboxymethylcellulose from the Netherlands; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 14959 (April 2, 2009).

Following the release of the Department's sales verification reports, the Department requested CP Kelco revise its home market and U.S. sales databases pursuant to the Department's verification findings and the minor corrections presented by company officials at the start of the verifications. See Letter to CP Kelco from Angelica L. Mendoza, Program Manager, regarding Submission of Revised Sales Databases, dated May 5, 2009. CP Kelco submitted its revised sales databases on May 11, 2009. On May 15, 2009, the Department issued an additional supplemental questionnaire to CP Kelco requesting further cost information for one particular control number, due May 20, 2009 (*i.e.*, after the date of these preliminary results). Given that we will not receive this information until after the issuance of these preliminary results, we intend to address this issue in our final results. For further detail, see Memorandum to the File through Angelica L. Mendoza, Program Manager, Office 7, from Patrick Edwards, Senior Case Analyst, titled "Analysis of Data Submitted by CP Kelco B.V. in the Preliminary Results of the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose (CMC) from the Netherlands," dated May 18, 2009, (Preliminary Analysis Memorandum) at 9.

#### Period of Review

The POR is July 1, 2007, through June 30, 2008.

#### Scope of the Order

The merchandise covered by this order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of this order is dispositive.

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.307, we conducted a sales verification of the questionnaire responses of CP Kelco from February 23, 2009, through February 27, 2009, and CP Kelco's U.S. sales affiliate, CP Kelco U.S., Inc. (CP Kelco US) from March 2, 2009, through March 4, 2009. We used standard verification procedures, including on-site inspection of CP Kelco's production facility in Nijmegen, the Netherlands. Our verification results are outlined in the following memoranda: (1) Memorandum to the File, through Angelica L. Mendoza, Program Manager, "Verification of the Home Market and Export Price Sales Responses of CP Kelco, B.V. in the Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from the Netherlands," dated April 30, 2009 (Home Market Verification Report), and (2) Memorandum to the File, through Angelica L. Mendoza, Program Manager, "Sales Verification of Sections A–C Questionnaire Responses Submitted by CP Kelco B.V. and CP Kelco U.S., Inc. in the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands: Verification of United States Affiliate CP Kelco U.S., Inc.," dated April 30, 2009 (CEP Verification

Report). The Department conducted a verification of CP Kelco's cost responses in Nijmegen, the Netherlands, from March 16, 2009, through March 21, 2009. See Memorandum to the File from Christopher Zimpo, through Neal M. Halper, Director, and Peter Scholl, Lead Accountant, regarding "Verification of the Cost Response of CP Kelco B.V. in the Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands," dated May 18, 2009 (Cost Verification Report). Public versions of these reports are on file in the Central Records Unit (CRU) located in room 1117 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC.

#### Date of Sale

CP Kelco reported the invoice date as the date of sale for its U.S. sales. The Department considers invoice date to be the presumptive date of sale (*see* 19 CFR 351.401(i)). For purposes of this review, we examined whether invoice date or another date better represents the date on which the material terms of sale were established. The Department, in reviewing CP Kelco's questionnaire responses, found that the material terms of sale are set on the date on which the invoice is issued. CP Kelco reported that, following the receipt of purchase orders, the terms of sale are susceptible and subject to changes in price and quantity until issuance of the sales invoice. See SQR at page 12; *see also* SQR at page 31; *see also* CEP Verification Report at page 14. Furthermore, in reviewing sales documentation during verification, we noted instances where the material terms of sale changed prior to the date of invoice (*see, e.g.*, CEP Verification Report at Exhibit 16). Therefore, we preliminarily determine that invoice date is the appropriate date of sale for CP Kelco's U.S. sales in this administrative review because it represents the date upon which the material terms of sale are established. This is consistent with the most recently completed administrative review of this order. See *Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 45943, 45944 (August 8, 2008) (Preliminary Results of Second Administrative Review), unchanged at the final results, *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 73 FR 75393 (December 11,

2008) (*Final Results of Second Administrative Review*).

However, for instances where the date of shipment preceded the date of invoice, we have preliminarily determined to use the date of shipment for those sales. Normally, the Department employs invoice date as the date of sale in accordance with 19 CFR 351.401(i). However, it is the Department's practice to use shipment date as the date of sale when shipment date precedes invoice date. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998); *see also Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079–80 (April 10, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007), and the accompanying Issues and Decision Memorandum at Comments 4 and 5.

Similarly, based on our review of CP Kelco's questionnaire responses, we preliminarily find that the date of invoice constitutes the date on which the material terms of sale are established in the home market (*i.e.*, the Netherlands). *See* SQR at 12; *see also* Home Market Verification Report at pages 23–42; *see also* Home Market Verification Exhibit 21. CP Kelco reported that the terms of sale recorded on purchase orders in the home market are also subject to change, typically in the form of packing and product grade (which can affect price). *See* CP Kelco's AQR at 30–34. Therefore, we are using the invoice date as the date of sale for home market sales. For a further discussion of our date of sale analysis, *see* Preliminary Analysis Memorandum at 2.

### Fair Value Comparisons

To determine whether sales of purified CMC from the Netherlands to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(2) of the Act, we compared the EPs and CEPs of individual U.S. transactions to monthly weighted-average NVs.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all purified CMC produced and sold by the respondent in the Netherlands during the POR that fit the description in the "Scope of Order" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales with sales of the foreign like product in the home market. Where there were no sales of identical or similar merchandise made in the ordinary course of trade, we made product comparisons using constructed value (CV). Specifically, in making our comparisons, we used the following methodology. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondent in the following order of importance: (1) grade, (2) viscosity, (3) degree of substitution, (4) particle size, and (5) solution characteristics. If an identical home-market model was reported, we made comparisons to weighted-average home market prices that were based on all sales which passed the cost of production (COP) test of the identical product during the relevant or contemporary month. *See* sections 771(16) and (35); *see also* 773(b)(1) of the Act. If there were no contemporaneous sales of an identical model, we identified the most similar home-market model. *See* section 773(b)(1) of the Act.

### Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculate either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. CP Kelco classified two types of sales to the United States: (1) direct sales to end-users (*i.e.*, EP sales); and (2) sales via its U.S. affiliate, CP Kelco US, to end-users and distributors (*i.e.*, CEP sales). For purposes of these preliminary results,

we have accepted CP Kelco's classifications.

We calculated EP based on prices charged to the first unaffiliated U.S. customer. We used the sale invoice date as the date of sale.<sup>3</sup> We based EP on the packed, delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included foreign inland freight, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight offset by freight revenue (*see* below for further discussion), and U.S. customs duties. As noted below, we are relying upon adverse facts available with respect to the reported factoring transaction fees incurred by CP Kelco on its EP sales. Specifically, we are adjusting the EP using the highest reported factoring transaction fee. *See* "Use of Adverse Facts Available" section below; *see also* Preliminary Analysis Memorandum at 9, for further details.

We calculated CEP based on prices charged to the first unaffiliated U.S. customer after importation. We used the sale invoice date as the date of sale. We based CEP on the gross unit price from CP Kelco US to its unaffiliated U.S. customers, making adjustments where necessary for billing adjustments. Where applicable, and pursuant to sections 772(c)(2)(A) and (d)(1) of the Act, the Department made deductions for movement expenses (foreign inland freight, international freight, marine insurance, U.S. inland freight offset by freight revenue (*see* below for further discussion), U.S. warehousing, U.S. brokerage and handling, and U.S. customs duties).

In accordance with the recently completed administrative review of polyethylene retail carrier bags from the People's Republic of China, we capped the amount of freight revenue deducted at no greater than the amount of corresponding movement expenses for CP Kelco's sales of purified CMC to the United States and in the home market. *See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857, 6858 (February 11, 2009) (*Bags from the PRC*), and the accompanying Issues and Decision Memorandum at Comment 4. As the Department explained in *Bags from the PRC*, section 772(c)(1) of the Act provides that the Department shall increase the price used to establish either export price or constructed export

<sup>3</sup> *See* Preliminary Analysis Memorandum at page 2 for a further discussion of this issue.

price in only the following three instances: (1) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States; (2) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States; and (3) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy. Section 773(a)(6) of the Act provides that the Department shall increase the price used to establish normal value by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States.

In addition, 19 CFR 351.401(c) of the Department's regulations directs the Department to use a price in the calculation of U.S. price and normal value that is net of any price adjustments that are reasonably attributable to the subject merchandise or the foreign-like product (whichever is applicable). The term "price adjustment" is defined under 19 CFR 351.102(b)(38) as a "change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates, and post-sale adjustments, that are reflected in the purchaser's net outlay."

In past cases, we have declined to treat freight-related revenues as additions to U.S. price under section 772(c) of the Act or price adjustments under 19 CFR 351.102(b). Rather, we have incorporated these revenues as offsets to movement expenses because they relate to the transportation of subject merchandise or the foreign-like product. See, e.g., *Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 51414, 51415 (September 7, 2007) (*SSWR Preliminary Results*) (unchanged in *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008)).

Further, our offset practice limits the granting of an offset to situations where a respondent incurs expenses and realized revenue for the same type of activity. See *SSWR Preliminary Results*, 72 FR at 51415; see also *Bags from the PRC*, and accompanying Issues and Decision Memorandum at Comment 4; see also *Certain Orange Juice from Brazil: Final Results and Partial*

*Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008), and accompanying Issues and Decision Memorandum at Comment 7. According to CP Kelco's responses, freight revenues are revenues received from customers for invoice items covering transportation expenses, and arise when freight is not included in the selling price under the applicable terms of delivery, but when CP Kelco arranges and prepays freight for the customer. See CP Kelco's BQR at B-20 and CP Kelco's CQR at C-20 through C-21. Accordingly, CP Kelco incurred expenses and realized revenue for this activity. Therefore, we have limited the amount of the freight revenue used to offset CP Kelco's movement expenses to the amount of movement expenses incurred on the sale of subject merchandise or the foreign-like product. For further discussion of our treatment of freight revenue, see *Preliminary Analysis Memorandum* at 13 and 17.

In accordance with section 772(d)(1) of the Act, we also deducted, where applicable, U.S. direct selling expenses, including credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs incurred in the United States and the Netherlands associated with economic activities in the United States. We also deducted CEP profit in accordance with section 772(d)(3) of the Act. As discussed below, we are relying upon adverse facts available with respect to the reported factoring transaction fees incurred by CP Kelco on its CEP sales. Specifically, we are adjusting the CEP using the highest reported factoring transaction fee. See "Use of Adverse Facts Available" section below; see also *Preliminary Analysis Memorandum* at 9, for further details.

#### Normal Value

##### A. Home Market Viability and Comparison Market Selection

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (e.g., whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of the subject merchandise sold in the United States), we compared respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Pursuant to section 773(a)(1)(B)(ii)(II) of the Act, because CP Kelco's aggregate volume of home market sales of the foreign-like

product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

##### B. Cost of Production (COP) Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, because we determined CP Kelco to have made sales below the cost of production in the most recently completed administrative review, the Department requested that CP Kelco respond to section D of the Department's antidumping duty questionnaire, as there were reasonable grounds to believe or suspect that CP Kelco made home market sales at prices below the cost of producing the merchandise in the current POR. See *Preliminary Results of Second Administrative Review*, 73 FR at 45946 (unchanged in *Final Results of Second Administrative Review*).

##### C. Calculation of Cost of Production

We have preliminarily relied on the COP information provided by CP Kelco. In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for each model based on the sum of CP Kelco's material and fabrication costs for the foreign like product, plus amounts for selling, general, and administrative (SG&A) expenses, as well as packing costs.

##### D. Test of Home Market Prices

We compared CP Kelco's weighted-average COP figures to CP Kelco's home market sales prices (net of billing adjustments, any applicable movement expenses, direct and indirect selling expenses, and packing) of the foreign like product, as required under section 773(b) of the Act, to determine whether sales to the home market had been made at prices below COP. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time, in the normal course of trade.

##### E. Results of Cost Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of CP

Kelco's sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of CP Kelco's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were made: (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Act. In this instant review, we found sales below the COP and have, as described above, disregarded such sales from our margin calculations. *See* Preliminary Analysis Memorandum at 8.

#### F. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. *See* 19 CFR 351.403(c). We used the sale invoice date as the date of sale. *See* 19 CFR 351.401(i). We increased or decreased price, as appropriate, for certain billing adjustments where applicable. We made deductions, where appropriate, for foreign inland freight incurred in the comparison market, pursuant to section 773(a)(6)(B) of the Act. Following the methodology described in the "Export Price and Constructed Export Price" section above, where applicable, we offset foreign inland freight expenses by freight revenue. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*e.g.*, DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Specifically, we made COS adjustments for imputed credit expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Act. *See* "Level of Trade" section below. Additionally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

We have not made a deduction from NV for factoring transaction fees incurred by CP Kelco on certain home market sales, as noted in the "Use of Adverse Facts Available" section below.

#### G. Price-to-Constructed Value Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find a contemporaneous home market match of identical or similar merchandise for the U.S. sale. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, SG&A expenses, and profit. We calculated the cost of materials and fabrication for CP Kelco based on the methodology described in the COP section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts CP Kelco incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country (*i.e.*, the Netherlands). Accordingly, for sales of purified CMC for which we could not determine the NV based on comparison market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the sales-below-cost test, we based NV on CV.

#### Use of Adverse Facts Available

For the reasons discussed below, we determine that the use of adverse facts available is appropriate for the preliminary results with respect to factoring transaction fees incurred by CP Kelco on certain home market and U.S. sales.

##### A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use facts otherwise available in reaching the applicable determination.

In its SQR, CP Kelco explained that factoring is the process by which CP Kelco sells its accounts receivables to an affiliated finance company for payment of the receivables at a date earlier than CP Kelco would have received payment

from the customer.<sup>4</sup> The factoring entity charges a transaction fee to CP Kelco, which is discounted from the face value of the actual receivable; per the Department's prior decisions in this case, CP Kelco reports these transaction fees as factoring expenses. *See* pages 30–31 of CP Kelco's SQR.

During our verification of the pre-selected and surprise home market and U.S. sales, we noted several discrepancies with regard to CP Kelco's reported transaction fees for factored sales. These transaction fees were reported on a percentage and per-unit basis. Specifically, the factoring transaction fee expressed as a percentage of gross unit price is reported in field FACTOR\_PCTH, where the factoring transaction fee on a per-metric ton basis is reported in field FACTOR\_DSTH. For the majority of the sales traces examined, we found systemic errors in CP Kelco's calculation and reporting of this expense.

Specifically, we discovered that CP Kelco miscalculated the reported and allegedly "corrected" (per the company's minor corrections presentation) factoring transaction fees in several instances where it used total invoice price, inclusive of value-added tax (VAT) and shipping costs, in its factoring calculations. In these instances, CP Kelco should have used the total invoice price less the VAT and shipping costs. Moreover, for the U.S. sales examined, we noted instances where factoring transaction fees were unreported, as well as instances in which factoring transaction fees were reported although the sales were not factored.<sup>5</sup> Therefore, considering all of the above, the Department is unable to rely upon CP Kelco's reporting of factoring transaction fees for certain home market and U.S. sales.

Because CP Kelco has failed to accurately report its factoring transaction fees to the best of its abilities, the Department must rely on facts available.

##### B. Application of Adverse Inference for Facts Available

Section 776(b) of the Act provides that, if the Department finds that an

<sup>4</sup> In past segments of this proceeding, the Department has included the transaction fees relating to the factoring of certain comparison market and U.S. sales by CP Kelco through an affiliated finance company in its dumping margin calculations. However, the Department intends to re-examine the appropriateness of including these affiliated transactions in its calculations in subsequent reviews of this proceeding.

<sup>5</sup> In some instances, the sale was initially factored but later reversed because the customer paid CP Kelco directly.

interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA), explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870. It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation. See, e.g., *Id.*

Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*). We find that, by failing to accurately report the transaction fees associated with its factored sales in both the home and U.S. markets, CP Kelco failed to cooperate to the best of its abilities. CP Kelco failed to provide accurate, verifiable information with regard to this expense and, as such, we are unable to determine that CP Kelco’s factoring transaction fees are either an accurate or a reasonable reflection of the company’s own sales experience.<sup>6</sup> These errors were systemic for the vast majority of home market sales traces examined and, thus, call into question the accuracy of the universe of these reported factoring transaction fees in CP Kelco’s sales databases. The Federal Circuit has stated that, “\$w\$hile the adverse facts available standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.” See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). The AFA standard, moreover, assumes that because respondents are in control of their own information, they are required to take reasonable steps to present information that reflects its experience for reporting purposes before the

Department. Therefore, we find it appropriate to use an inference that is adverse to the company’s interests in selecting from among the facts otherwise available.

As adverse facts available, we have denied an adjustment to price for CP Kelco’s factoring transaction fees incurred on all its home market sales for which factoring was reported. As stated above, with regard to CP Kelco’s U.S. sales, we have selected the highest reported factoring transaction fee in the company’s U.S. sales database and used that fee as the factoring transaction fee for all of CP Kelco’s U.S. sales which were factored. While the discrepancies were less prevalent with respect to CP Kelco’s factored U.S. sales, we have selected the highest reported factoring transaction fee in order to ensure that the company will not obtain a more favorable rate by failing to cooperate than had they cooperated fully. Moreover, because we are relying on the company’s own information, there is no need to corroborate the chosen facts available under section 776(c) of the Act. For a detailed discussion on the Department’s application of adverse facts available for factored home market sales in its margin calculations, see Preliminary Analysis Memorandum at 9.

#### Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the home market is the LOT of the starting-price sales in the home market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. See 19 CFR 351.412(b)(2)(c). With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. *Id.* For CEP, the LOT is that of the constructed sale from the exporter to the importer. *Id.*

To determine whether home market sales are at a different LOT from U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with

section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. See 773(a)(7)(A) of the Act.

Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the home market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. See section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. See *Preamble*, 62 FR 27296, 27371. If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

In the present review, CP Kelco did not claim a LOT adjustment. See CP Kelco’s BQR at page B-18. In order to determine whether the home market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the “chain of distribution”),<sup>7</sup> including selling

<sup>6</sup> CP Kelco, like all respondents, was provided ample opportunity to report correct and accurate information with regard to its factoring transaction fees in its AQR, BQR, CQR, two supplemental questionnaire responses (SQR and SSQR), as well as in its minor corrections presentation during the home market sales verification, which were also found to be incorrect. See Home Market Verification Report at Section X and VE-1.

<sup>7</sup> The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution involved in the two markets may have many or few links, and the respondent’s sales occur somewhere along this chain. In performing this evaluation, we considered

functions, class of customer (customer category), and the level of selling functions for each type of sale.

CP Kelco reported one LOT in the home market, the Netherlands, with two channels of distribution to two classes of customers: (1) direct sales from the plant to end users, and (2) direct sales from the plant to distributors. *See* Section CP Kelco's BQR at page B-11. Based on our review of evidence on the record, we find that home market sales to both customer categories and through both channels of distribution were substantially similar with respect to selling functions and stages of marketing. CP Kelco performed the same selling functions for sales in both home market channels of distribution, including sales negotiations, customer care, credit risk management, logistics, inventory maintenance, packing, freight and delivery services, collection, sales promotion, and guarantees, *etc.* *See* CP Kelco's AQR at pages A-14 through A-26. Each of these selling functions was identical in the intensity of their provision or only differed minimally, the exception being that CP Kelco provided direct sales personnel and technical support to a "high" degree of frequency to end-users, whereas these selling functions were provided with a "moderate" frequency to HM distributors. *See* CP Kelco's AQR at page A-26. However, after considering all of the above, we preliminarily find that CP Kelco had only one LOT for its home market sales.

CP Kelco reported one EP LOT and one CEP LOT, each with two separate channels of distribution in the United States. EP sales were made to end users and distributors either from inventory or made to order, and CEP sales were also made to end users and distributors and were either made from inventory or made to order. Upon examining CP Kelco's questionnaire responses, we preliminarily find that it has two channels of distribution. *See* CP Kelco's AQR at pages A-14 through A-15. *See also* CP Kelco's CQR at page C-11. Therefore, we preliminarily find that CP Kelco has two channels of distribution for EP sales, and two channels of distribution for CEP sales.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Tech. Inc. v. United States*, 243 F.3d 1301, 1314-15 (Fed. Cir. 2001). We reviewed the selling functions and services performed by CP Kelco on CEP sales as described in its questionnaire

responses, after these deductions. We found that CP Kelco provides almost no selling functions to its U.S. affiliate in support of the CEP LOT. CP Kelco reported that the only services it provided for the CEP sales were logistics for freight, delivery and packing, and very limited customer care and inventory maintenance. *See* CP Kelco's AQR at page A-14 through A-26.

We then examined the selling functions performed by CP Kelco on its EP sales in comparison with the selling functions performed on CEP sales (after deductions). We found that CP Kelco performs an additional layer of selling functions at a greater frequency on its direct sales to unaffiliated U.S. customers which are not performed on its sales to its affiliate (*e.g.*, sales negotiations, credit risk management, collection, sales promotion, direct sales personnel, technical support, guarantees, and discounts). *See* CP Kelco's AQR at page A-26. Because these additional selling functions are significant, we find that CP Kelco's direct sales to unaffiliated U.S. customers (EP sales) are at a different LOT than its CEP sales.

Next, we compared the home market and EP sales. CP Kelco's home market and EP sales were both made to end users and distributors. In both cases, the selling functions performed by CP Kelco were almost identical for both markets. Particularly, in both markets, CP Kelco provided the following services: sales negotiations, credit risk management, customer care, logistics, inventory maintenance, packing, freight/delivery, collection, sales promotion, direct sales personnel, technical support, guarantees and discounts. *See* CP Kelco's SQR at page 26. Because the selling functions and channels of distribution are substantially similar, we preliminarily determine that the home market LOT is the same as the EP LOT. It was, therefore, unnecessary to make a LOT adjustment for comparison of CP Kelco's home market and EP prices.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market is at a more advanced stage than the LOT of the CEP sales and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. CP Kelco reported that it provided minimal selling functions and services for the CEP LOT and that, therefore, the home market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by CP Kelco for sales in the home market and CEP sales in the U.S. market (*i.e.*, sales support and activities

provided by CP Kelco on sales to its U.S. affiliate), we preliminarily find that the home market LOT is at a more advanced stage when compared to CEP sales because CP Kelco provides many selling functions in the home market at a higher level of service (*i.e.*, sales negotiations, customer care, collection, direct sales personnel, technical support, *etc.*) as compared to selling functions performed for its CEP sales (*i.e.*, CP Kelco reported that the only services it provided for the CEP sales were logistics for freight, delivery and packing, and very limited inventory maintenance and customer care). *See* CP Kelco's AQR at page A-26. Thus, we find that CP Kelco's home market sales are at a more advanced LOT than its CEP sales. As there was only one LOT in the home market, there were no data available to determine the existence of a pattern of price differences, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment; therefore, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted the home market indirect selling expenses from NV for home market sales that were compared to U.S. CEP sales. As such, we limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act. *See* section 773(a)(7)(B) of the Act.

#### Currency Conversion

We made foreign currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415 based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. *See* Import Administration website at: <http://ia.ita.doc.gov/exchange/index.html>.

#### Preliminary Results of Review

We preliminarily determine that for the period July 1, 2007, through June 30, 2008, the following dumping margin exists:

Manufacturer/Exporter	Weighted-Average Margin (percent)
CP Kelco B.V. ....	24.46

#### Disclosure and Public Comment

Pursuant to 19 CFR 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days

CP Kelco's narrative response to properly determine where in the chain of distribution the sale occurs.



after the date of publication of this notice. Pursuant to 19 CFR 351.309(c)(ii) of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and (d)(1). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities. See 19 CFR 351.309(c)(2). Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f) of the Department's regulations. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

Also, pursuant to 19 CFR 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. See 19 CFR 351.310(d)(1). Parties will be notified of the time and location.

The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended. See section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions for CP Kelco directly to CBP 15 days after the date of publication of the final results of this administrative review.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR

produced by companies included in the final results of this review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate non-reviewed entries at the all-others rate if there is no rate for any intermediate company involved in the transaction. For a full discussion of this clarification, see *Assessment Policy Notice*.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(c) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 14.57 percent, which is the all-others rate established in the LTFV investigation. See *CMC Order*. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 18, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-12128 Filed 5-22-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Strategic Environmental Research and Development Program, Scientific Advisory Board

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** This Notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). The topic of the meeting on June 9-10, 2009 is to review new start and continuing research and development projects requesting Strategic Environmental Research and Development Program funds in excess of \$1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

**DATES:** Tuesday, June 9, 2009 from 8 a.m. to 5:15 p.m. and Wednesday, June 10, 2009 from 8:30 a.m. to 12:30 p.m.

**ADDRESSES:** Allen/McGhee/Page meeting room of the Washington Duke Inn, 3001 Cameron Blvd., Durham, NC 27705.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan Bunger, SERDP Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696-2126.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9-12041 Filed 5-22-09; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Veterans' Advisory Board on Dose Reconstruction; Meeting

**AGENCY:** Defense Threat Reduction Agency, DoD.

**ACTION:** Advisory Board Meeting Notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) the Defense Threat Reduction Agency