

October 7, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review of Purified
Carboxymethylcellulose from the Netherlands

SUMMARY

We have analyzed the case brief and comments of interested parties in the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from the Netherlands. We recommend that you approve the Department of Commerce's (the Department's) position described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum.

BACKGROUND

On May 26, 2009, the Department published the preliminary results of the administrative review of the antidumping duty order covering purified CMC from the Netherlands. See Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 74 FR 24823 (May, 26 2009) (Preliminary Results). The merchandise covered by the order is purified CMC from the Netherlands, as described in the "Scope of the Order" section of the Final Results Federal Register notice. The period of review (POR) is July 1, 2007, through June 30, 2008. This review covers CP Kelco B.V. and its U.S. affiliate, CP Kelco U.S., Inc. (collectively referred to as CP Kelco or respondent).

In the Preliminary Results, we invited parties to comment. Preliminary Results, at 24830. In response, CP Kelco submitted a case brief and a request for a public hearing on June 26, 2009.

See Case Brief from Arent Fox LLP (counsel for respondent) titled “Purified Carboxymethylcellulose from the Netherlands; Case Brief of CP Kelco B.V.,” dated June 26, 2009 (Case Brief). The Aqualon Company, a division of Hercules, Incorporated (petitioner), submitted comments on June 30, 2009. See Letter from Haynes & Boone, LLP (counsel for petitioner), titled “Comment by Petitioner Aqualon Company in Lieu Reply Brief,” dated June 30, 2009 (petitioner’s comments). On July 2, 2009, CP Kelco subsequently withdrew its request for a public hearing. See CP Kelco’s “Withdrawal of Hearing Request,” dated July 2, 2009. In its withdrawal request, in lieu of a public hearing, counsel for respondent requested a meeting with Department officials. Department officials met with counsel for CP Kelco on July 15, 2009. See Ex-parte Memorandum to the File through Angelica L. Mendoza, Program Manager, Office 7, from Patrick Edwards and Brian Davis, Case Analysts, titled “Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from the Netherlands: Meeting with Counsel for Respondent,” dated July 17, 2009.

DISCUSSION OF INTERESTED PARTY COMMENTS

Comment 1: The Department’s Use of Factoring Discounts

CP Kelco argues that the Department’s treatment of factoring discounts as selling expenses in Preliminary Results is unsupported by substantial record evidence and otherwise is not in accordance with law. CP Kelco also argues that for its final results, the Department must rely on either CP Kelco’s realized short-term borrowing rates or a preferred surrogate borrowing rate when calculating credit expenses rather than treating intra-affiliate factoring discounts as selling expenses.

In its Case Brief, CP Kelco states that the Department adopted its methodology of treating factoring expenses as selling expenses during the first administrative review of this proceeding and has continued to do so despite the fact that the entities factoring the receivables are affiliated with CP Kelco. See Case Brief at page 2, citing to Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review, 72 FR 70821, 70822 (December 13, 2007) (2004-2006 CMC Final Results). Respondent noted, that in the prior segments of this proceeding, the Department’s treatment of factoring discounts (i.e., the discounts on accounts receivable sold to its affiliated finance company) as adjustments had little effect on the outcome of the Department’s antidumping margin calculation. Id. at 3

Now, respondent argues that the Department’s treatment of factoring discounts as adjustments to export price (EP), constructed export price (CEP), and normal value (NV) in its Preliminary Results is unsupported by substantial record evidence and is otherwise not in accordance with the law. As discussed further below, CP Kelco asserts that the Department was incorrect in rejecting the short-term borrowing rates negotiated at arm’s-length between CP Kelco and its affiliated finance company, but accepting the factoring discount amounts negotiated between the same parties as having been made at arm’s-length (and using those factoring discounts to make circumstance of sale adjustments for credit expenses instead of using CP Kelco’s reported short-term borrowing rates). CP Kelco cites Imputed Credit Expenses and Interest Rates, Import Administration Policy Bulletin 98.2 (February 23, 1998) (Policy Bulletin 98.2) (see Case Brief at 3 for citation).

Respondent contends that the Department normally uses the weighted-average borrowing rate realized by a respondent on its short-term borrowings in the appropriate currency when calculating imputed credit expenses. See Case Brief at page 4. CP Kelco further asserts that this practice has been applied by the Department in a consistent and predictable manner. Id. at 4, citing Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (March 17, 2008) (Corrosion-Resistant Steel from Korea) and accompanying Issues and Decision Memorandum at Comment 14. However, CP Kelco states that in the investigation underlying this review, the Department found that the interest rates charged to CP Kelco by an affiliated finance company could not be used in the Department's calculations because the interest rates were not negotiated at arm's-length. See Case Brief at 4, citing the Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose from the Netherlands, 69 FR 77205, 77208 (December 27, 2004) (unchanged in final determination and followed in the first and second administrative reviews) (Investigation).

CP Kelco asserts that during the instant review, it has provided the Department with evidence demonstrating the arm's-length nature of the interest rates charged to CP Kelco by an affiliated finance company, including (1) a copy of its Revolving Credit Facility Agreement negotiated with its affiliated finance company and (2) a certified statement that the rate negotiated with its affiliated finance company was conducted at arm's-length. See Case Brief at pages 4 through 5 which cite CP Kelco's response to the Department's section A questionnaire, dated October 7, 2008, (AQR) at Exhibit 6, and CP Kelco's response to the Department's first supplemental questionnaire, dated January 22, 2009 (SQR), at Exhibit A-24, respectively, as evidence that the rate negotiated with its affiliated finance company was conducted at arm's-length.

Respondent argues that the Department's Preliminary Results ignored this evidence but accepted without scrutiny the factoring discounts negotiated between the same parties as having been made at arm's-length, and as a result, suitable for inclusion in the Department's calculation. See Case Brief at page 5. Respondent argues that the Department's methodology is contradictory because if the Department determined that the short-term borrowing rates negotiated between CP Kelco and its affiliated finance companies were not made at arm's-length, then the factoring discounts negotiated between the same parties cannot be presumed to have been conducted at arm's-length. Id.

Additionally, CP Kelco argues that its factoring discounts cannot be used as a proxy for the weighted-average short-term borrowing rate of CP Kelco for three reasons further discussed below.

1. Factored Receivables are Not Loans and Discount Amounts Do Not Equate to Short-Term Borrowing Rates

Respondent argues that record evidence in this review demonstrates that when CP Kelco B.V. and CP Kelco U.S. factor their receivables, they are selling those receivables, not using them to secure debt or for some other purpose related to debt-financing. See Case Brief at page 8. CP Kelco asserts that this record evidence shows that factoring is a complete sales transaction with

no element of borrowing or repayment. Instead, CP Kelco claims, the factoring discount amount is the, “financial expense associated with this type of accelerated realization – it is not an interest rate and it is not debt ...the account receivable is being sold to a purchaser, and the sale in no part resembles any form of debt financing.” Id. CP Kelco cites to the Memoranda to the File, through Angelica L. Mendoza, Program Manager entitled, “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 (HM) Verification Report) and “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) at Exhibits 15 and 21, respectively, as evidence to support its assertions that when CP Kelco factors its receivables, it is selling them in order to accelerate access to the present cash value of the receivables. Id. at 8-10.

Respondent states that the document located at Exhibit 15 and Exhibit 21 of the HM Verification Report and CEP Verification Report, respectively, is a “Notification of *Purchase* (emphasis added by respondent)” which show two purchases of bundled receivables by CP Kelco’s affiliated finance companies. See Case Brief at page 8. Specifically, respondent asserts that as the document indicates a “Date of Purchase” and a “Purchase Price” and the second page of each document has multiple columns, the first showing “Invoice ID,” which corresponds with a CP Kelco invoice number (i.e., a receivable) and the last column showing a “*Purchase Price*” (emphasis added by respondent), demonstrate that CP Kelco sold the receivables. Id.

CP Kelco states that it “assesses and manages the credit risk of its unaffiliated customers by monitoring its accounts receivable, collections, cash flow, and by assessing the business and financial conditions of their customers.” See Case Brief at page 9. As a result, CP Kelco claims, the factoring discount, in part, “compensates the purchaser for the *risk premium* (emphasis added by respondent) associated with the customer” (i.e., unaffiliated customer) “ultimately responsible for payment (i.e., to cover the possibility of non-payment by the customer).” Id. CP Kelco emphasizes the fact that, “there is no risk premium associated with CP Kelco because CP Kelco is the seller of the receivable and is not ultimately liable for payment.” Id.

CP Kelco states that the concepts (i.e., the risk premium associated with the unaffiliated customer and the risk premium associated with the seller (CP Kelco)) of the receivable are distinct, and that, treating factoring discounts as a proxy for the creditworthiness of the company selling the receivable is unsupported by any record evidence in the instant review. See Case Brief at page 10. Because it is not using the factoring of receivables to secure debt or for some other purpose related to debt-financing, CP Kelco states that the factoring of receivables is an opportunity cost equal to what it would have realized had the receivables been paid immediately. Id. at 7-8.

2. Factoring Discounts are Short-Term Financial Expenses, Not Selling Expenses, and, Therefore, Can Not Be Used as Circumstance of Sale Adjustments

Respondent cites Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 71 FR 76978 (December 22, 2006) (2004-2005 S4 Mexico) and accompanying Issues and Decision Memorandum at Comment 8 (see Case Brief at page 10), and Stainless Steel Sheet and Strip in Coils from Germany; Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 73729 (December 13, 2005) (2003-2004 S4 Germany), and accompanying Issues and Decision Memorandum at Comment 2, in which the Department found that the discounts associated with the sale of bundled receivables were not attributable to specific sales. *Id.* at 10 through 12. Respondent states that the facts in the 2004-2005 S4 Mexico are nearly identical to the instant case and that the final results of that case provide analysis as to the invalidity of the Department's handling of credit expenses with the discounts associated with factoring receivables. *Id.* at 11. CP Kelco states that receivables eligible for factoring (on a given day) are uploaded to a file transfer protocol internet site (to the affiliated finance companies) into a single "Notification of Purchase." *Id.* The affiliated finance companies then pay a, "lump sum based on the combined total of the factored receivables, less a discount which accounts for present value and a risk premium." *Id.* CP Kelco states that once the bundled receivables are purchased, they are no longer owned by CP Kelco, and that the discounts associated with the bundled receivables sold to the affiliated finance company cannot be attributed to specific sales (as the Department also determined in the 2004-2005 S4 Review). *Id.* at 12. Therefore, CP Kelco insists that in keeping with the precedent set by the Department in the 2004-2005 S4 Mexico, factoring discounts are short-term financial expenses, not selling expenses, and, therefore, cannot be used as circumstance of sale adjustments.

3. The Discounts on Sales of Factored Receivables are Not "Transaction Fees"

CP Kelco takes issue with the Department's referring to factoring discounts as "transaction fees." Respondent asserts that these discounts are not transaction fees. See Case Brief at pages 12-13. CP Kelco states that it has never described the discounts on its factored receivables as transaction fees. *Id.* at 12. CP Kelco cites to its AQR at page A-9 where it describes factoring and the price associated with it as a form of, "accounts receivable financing." *Id.* Respondent asserts that CP Kelco's affiliated finance company does not process CP Kelco's receivables, or perform some other kind of service, rather, respondent claims, they simply purchase financial assets at discounted rates. *Id.*

CP Kelco further contends that the Department's deductions of factoring discount amounts from EP, CEP, or NV violates the statute. See Case Brief at pages 13 through 18. Respondent cites to 19 U.S.C. 1677a(c)(2) which specifies two types of expenses (*i.e.*, (1) costs incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and (2) export tax, duty, or other charge imposed by the exporting country) that may legally be deducted from a respondent's reported EP and CEP. *Id.* at page 13 for citations to the statute. Respondent claims that the discounts incurred by CP Kelco through the factoring of its receivables cannot be classified as either type of expenses. *Id.* at 13-14. Respondent also cites 19 U.S.C. 1677a(d), which provides for certain additional reductions that may be made to CEP, and asserts that the discounts associated with the factoring of receivables do not comport with any of these additional deductions primarily because no credit is being extended in the sale of the receivable. *Id.* at 14. CP Kelco states that nowhere in the statute does it allow for EP or CEP to be reduced by the discount amount generated through

the intra-affiliate sale of assets at present value with a risk premium. *Id.* at 16. Respondent cites 19 U.S.C. 1677b(a)(6)(B) and (C), which states what can be deducted from NV, and states that its factoring discounts do not comport with any of these deductions. *Id.* at 17-18.

Next, in its Case Brief, respondent argues that subtracting the discount on the sale of an asset from EP, CEP, or NV violates the Department's own regulations. Respondent cites 19 CFR 351.410 which allows for adjustments based on differences in circumstances of sale for either direct selling expenses, assumed expenses, or commissions paid in one market. *See* Case Brief at 18. Respondent asserts that the record in the instant review is devoid of any evidence that would indicate that factoring discounts constitute direct selling expenses associated with any sale of subject merchandise during the POR. Respondent states that because the factoring discounts incurred on the sale of CP Kelco's accounts receivable do not represent selling expenses, assumed expenses, or commissions paid in one market, the continued use of them to reduce EP, CEP, or NV can only be classified as a "price adjustment." *Id.* at 19. Respondent cites 19 CFR 351.401(c) (which provides guidelines regarding the types of price adjustments that may be made to EP, CEP, and NV) and 19 CFR 351.102(b)(38) which defines a price adjustment as, "any 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* (emphasis added by respondent)." *Id.* at 19-20. Respondent argues that the discounts associated with CP Kelco's factoring of its accounts receivable do not meet the Department's definition primarily because, "the discount arises from the factoring sale, not the sale of subject merchandise, and there is no relevant legal or factual bridge between the two transactions." *Id.* at 20.

Respondent also cites the Department's regulations which state that, "the Secretary will not double-count adjustments." *See* Case Brief at page 20 for citation to 19 CFR 351.401(b)(2). CP Kelco argues that the Department's treatment of CP Kelco's short-term financing costs do, in fact, double-count price adjustments because the Department deducts the factor discount amount from EP, CEP, or NV, which is included in CP Kelco's financing expenses via the consolidated financial statement of its parent company. *Id.* CP Kelco states that those expenses then flow into CP Kelco B.V.'s cost file and are used to generate CP Kelco's cost of production. *Id.* for CP Kelco's citation to its November 3, 2008, response to the Department's section D questionnaire at page 37. Respondent states that the methodology adopted in the Department's Preliminary Results reduces NV while simultaneously increasing COP and CV. *Id.*

Finally, respondent argues that prior agency practice dictates that short-term financial expenses should be appropriately reported in CP Kelco B.V.'s cost file, not deducted from EP, CEP, or NV. *See* Case Brief at pages 21 through 24. Respondent cites Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty New Shipper Review, 73 FR 35366 (June 23, 2008) (NSR Corrosion-Resistant Steel from Korea), and accompanying Issues and Decision Memorandum at Comment 5. *Id.* at 22 for citation. NSR Corrosion-Resistant Steel from Korea states that the Department's standard section D questionnaire instructs that selling, general, and administrative (SG&A) and interest rate expenses should be calculated as the ratio of total company-wide SG&A and interest expenses divided by the cost of goods sold. Therefore, respondent argues, the expenses must be allocated over the company-wide actual COP. *Id.*

Respondent also cites Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review, 74 FR 17951 (April 20, 2009) (Hot-Rolled Steel from India), and its accompanying Issues and Decision Memorandum at Comment 5, as evidence that the Department recognizes that due to the fungible nature of financial expenses, they must be allocated at the highest level consolidated entity within a group. See Case Brief at 23. Respondent argues that if the Department treats the short-term financing expenses incurred by CP Kelco as price adjustments or direct selling expenses, the Department contradicts its established practice. Id. at 24.

In its rebuttal comments, petitioner agrees with the Department's Preliminary Results (i.e., that respondent failed to cooperate to the best of its abilities by failing to provide accurate, verifiable information with regard to its reporting of factoring expenses). Petitioner contends that the Department's use of adverse facts available (AFA) is appropriate and consistent with the applicable law. Petitioner believes the Department's selection of the highest factoring rate from CP Kelco's U.S. sales database was appropriate for purposes of AFA. Petitioner states that this figure constitutes a reasonably accurate estimate of the respondent's actual factoring rate given the Department's application of AFA. With respect to respondent's arguments, petitioner argues that respondent's questioning of the Department's request for factoring information is untimely. Petitioner states that respondent readily admits in its Case Brief that the Department has been consistent in applying its factoring methodology. Petitioner cites Shikoku Chemical Corporation v. United States, 795 F Supp 417 (CIT 1992), to demonstrate that the Department may not change methodologies mid-proceeding to the detriment of a respondent and argues that, similarly, a respondent may not hold fast to a methodology until it becomes disadvantageous. Petitioner also asserts that during the first administrative review of this proceeding, this issue was thoroughly vetted and that respondent was given ample time to dispute the Department's methodology. Therefore, petitioner requests that the Department continue to apply AFA with respect to these expenses in calculating CP Kelco's final dumping margin.

Department's Position:

The Department continues to find that because CP Kelco has failed to accurately report its factoring transaction fees in both the home and U.S. markets, the Department must rely on facts available, in accordance with section 776(a)(2) of the Tariff Act of 1930, as amended (the Act). Also, because CP Kelco did not provide accurate, verifiable information with regard to this expense, 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. Therefore, the Department continues to find that CP Kelco did not cooperate to the best of its ability, and that applying partial facts available with an adverse inference is appropriate pursuant to section 776(b) of the Act.

In prior segments of this proceeding, the Department adjusted EP, CEP, and NV for CP Kelco's factoring discounts. CP Kelco did not challenge the Department's methodology in any prior segments of this proceeding, as well as prior to the issuance of the Preliminary Results in the current review. As the Department did in prior segments of this proceeding (without challenge), we continued to consider the factoring expenses for the Preliminary Results. Accordingly, we requested the reporting of these expenses in order to calculate credit costs for both home market and U.S. sales. CP Kelco originally reported the information (as it had in prior proceedings) and did not, at any time, argue that the Department should not collect this information. At verification, CP Kelco provided corrections to its factoring information with no allegation that the Department should not consider the information.

CP Kelco failed to accurately report its factoring transaction fees in its response to the Department's initial questionnaire and subsequent supplemental questionnaires and, furthermore, the Department could not verify this information during its sales verifications. See Preliminary Results at page 24827. Accordingly, the Department applied partial facts available with an adverse inference with regard to CP Kelco's factoring transaction fees. The statute and regulations afford the Department discretion in deciding which information to apply as facts available with an adverse inference and permit the Department to use any information which is on the record of the ongoing proceeding. See section 776(b) of the Act; 19 CFR 351.308(c). Therefore, in order to account for these expenses, the Department relied upon information on the record as partial adverse facts available for CP Kelco's home market and U.S. credit expenses. For a more in-depth discussion of the Department's decision to apply partial facts available with an adverse inference, see Preliminary Results at pages 24827 through 24828; see also 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 at pages 10-12.

Therefore, for purposes of these final results, we continue to find it appropriate to use an inference that is adverse to the company's interests in selecting from among the facts otherwise available for CP Kelco's factoring expenses. Accordingly, we have continued to deny an adjustment to price for CP Kelco's factoring transaction fees incurred on all of its reported HM sales for which factoring was reported. With regard to CP Kelco's reported U.S. sales, we have continued to select 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. See Preliminary Results at 24825. For further explanation of the Department's determination at the Preliminary Results, see also Memorandum to the File, through Angelica L. Mendoza, Program Manager, "Analysis of Data Submitted by CP Kelco BV and CP Kelco U.S. Inc. in the Preliminary Results of the 2007-2008 Administrative Review of Purified Carboxymethylcellulose (CMC) from the Netherlands," dated May 18, 2009.

However, we have determined it necessary to revise our margin calculation program with regard to these factoring expenses. In the Preliminary Results, the Department adjusted U.S. price for the factoring expenses as a gross price adjustment (specifically, as a discount to price), which was applied to both EP and CEP sales. See Memorandum to the File through Angelica L. Mendoza, Program Manager, Office 7, from Patrick Edwards and Brian Davis, Case Analysts,

titled “Analysis of Data Submitted by CP Kelco BV and CP Kelco U.S. Inc. in the Preliminary Results of the 2007-2008 Administrative Review of Purified Carboxymethylcellulose (CMC) from the Netherlands,” dated May 18, 2009, at page 12. As discussed further below, and for purposes of these final results, the Department is continuing to make adjustments to NV and CEP for CP Kelco’s factoring expenses. However, we have revised the margin calculation program to account for these factoring expenses as direct selling expenses. To account for factoring expenses incurred on CP Kelco’s EP sales, we are making a circumstance of sale adjustment to NV in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For CEP sales, we have deducted these expenses from the CEP starting price in accordance with 772(d)(1)(B) of the Act.¹ For a detailed explanation of the Department’s application of this methodology, see Memorandum to the File through Angelica L. Mendoza, Program Manager, Office 7, from Patrick Edwards and Brian Davis, Case Analysts, titled “Final Results of Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands: Analysis of the Sales Responses Submitted by CP Kelco B.V.,” dated October 7, 2009.

In its Case Brief, CP Kelco argues that there is a disconnect with our rationale for rejecting short-term borrowing rates between itself and its affiliated finance companies while at the same time accepting the factoring transactions between the same parties. See Case Brief at pages 3 through 6. In the original investigation underlying this review, the Department conducted a full arm’s-length analysis of the short-term borrowing rates between CP Kelco and its affiliates, and found them to not be at arm’s-length. See Investigation at 77208 and 77211-77212.² In this review, CP Kelco did not report its own short-term borrowing rates because any short-term borrowings they had were from affiliates and thus, consistent with our decision in the investigation, it did not report them. Moreover, CP Kelco simply reported the alternate, public rates that we have consistently used in previous segments and, as such, accepted these rates for the instant review.³ To this end, CP Kelco’s reference to Corrosion-Resistant Steel from Korea is not relevant as CP Kelco, consistent with the Department’s prior decision, did not report its own short-term borrowing rate. Additionally, factoring expenses, while a type of credit expense, are different from the imputed credit expenses for which the Department typically examines short-term borrowing activity (i.e., factoring expenses are not imputed, but arise from actual transactions, and the expense is based on a different set of transactions than the short-term borrowing expenses examined for imputed credit). Thus, the fact that the Department did not use CP Kelco’s short-term borrowing rates in this review is not a basis for finding that factoring transactions are not at arm’s-length.

¹ As is explained above, the Department is continuing to apply a finding of adverse facts available to CP Kelco’s factoring expenses reported in the home and U.S. markets. See Preliminary Results.

² In a prior review, the Department determined that CP Kelco was the successor-in-interest to Noviant B.V. See Purified Carboxymethylcellulose 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).

³ For home market sales, CP Kelco reported the interest rates of the European Central Bank; for U.S. sales, it reported the Federal Reserve rate. See CP Kelco’s response to the Department’s section B questionnaire, dated October 20, 2008, at page 22 and CP Kelco’s response to the Department’s section C questionnaire, also dated October 20, 2008, at page 28, respectively.

We disagree with respondent that factoring discounts are short-term financial expenses rather than selling expenses (as the Department found in its Preliminary Results). See Case Brief at pages 5 through 12, citing to Hot-Rolled Steel from India). In its Case Brief, CP Kelco characterizes the factoring transaction fees as “risk premiums” or “accelerated realizations of securitized assets” (i.e., the factored receivable), as a means to blur the line between a “fee” and an “expense” and whether that expense is “financial” or “sales” related. The Department, neither in the instant review or past reviews of this order, has indicated that it considers CP Kelco’s practice of selling its receivables as a form of debt-financing or a proxy for CP Kelco’s realized short-term borrowing costs. Id. at 7. The Department understands and does not take issue with the practice of selling a receivable to obtain cash at a time earlier than when the company selling the receivable otherwise would have, which is a common practice. However, we continue to find, as we had in the Preliminary Results and prior proceedings, that these factoring transaction fees (or discounts) constitute direct selling expenses incurred by CP Kelco, because they are a direct business cost charged by the factoring entity for the service (and assumed risk) of purchasing the receivable from CP Kelco. As such, CP Kelco’s reliance on Hot-Rolled Steel from India is incorrect as the Department finds these factoring transaction fees to be direct sales expenses rather than financial expenses. Effectively, the fee charged by the factoring entity for purchasing the receivable lowers the final payment received by CP Kelco for the sale of purified CMC, and thus, reduces the value of the sale from that which CP Kelco originally invoiced to the customer. This set of circumstances is similar to other direct, post-sale (i.e., post date of sale) adjustments, such as warranty claims or commissions (which can occur either before or after the customer has remitted payment to the seller).

The Department’s regulations hold that a direct expense is an expense “which results from, and bears a direct relationship to, the particular sale in question.” See 19 CFR 351.410(c). Moreover, the Department’s antidumping duty questionnaire appropriately characterizes those expenses which qualify as being direct in nature and ought to be disclosed to the Department by the respondent company as direct selling expenses:

Direct expenses generally must be (1) variable and (2) traceable in a company’s financial records to sales of the merchandise under review. Direct expenses are typically variable expenses that are incurred as a direct and unavoidable consequence of the sale (i.e., in the absence of the sale these expenses would not be incurred). Selling expenses must be reasonably dependent upon sales of the merchandise under review to qualify as direct selling expenses.

See the Department’s Antidumping Duty Questionnaire at Appendix I.

As discussed below, record evidence, as well as documentation reviewed during our verifications, demonstrates that CP Kelco’s factoring transaction fees were both variable and traceable to its financial records. Furthermore, they are directly linked to specific home market and U.S. sales of purified CMC.

During the sales verifications, Department officials examined, among other documents,

documents related to factoring. This documentation included (1) a “Notification of Purchase,” issued to CP Kelco from the factoring entity, (2) a detail of those receivables purchased under the “Notification of Purchase,” (listing invoice number, invoiced value, amount (or percentage) of the receivable value purchased, and the withheld transaction fee, or “discount amount”), and (3) documentation showing payment to CP Kelco from the factoring entity for the factored invoices.⁴ We noted that the payment documentation included bank statements from CP Kelco’s bank and print screens of the payment as received and booked to CP Kelco’s accounting system. See CEP Verification Exhibit 21 at pages 37-40. See also HM Verification Exhibit 15 at page 30 for the detail of the total eligible receivables (sold to CP Kelco’s affiliated finance company) shown on the “Notification of Purchase” letter at page 29 of HM Verification Exhibit 15. These documents are further discussed in detail below.

Company officials have explained that the “Notification of Purchase” document is provided by the factoring entity and displays the total amount of receivables purchased from CP Kelco during a given factoring transaction. See CP Kelco’s response to the Department’s first supplemental questionnaire, dated January 22, 2009, at pages 30 through 31; see also Case Brief at page 11. The “Notification of Purchase” also indicates the date of the purchase, the total discount amount (the sum of all the factored transactions included in the purchase), the nominal amount purchased (i.e., the total amount purchased prior to the application of any factoring discounts), as well as the total purchase price (with the factoring discounts applied). Also during verification, company officials explained that the documentation following the “Notification of Purchase” (i.e., at page 38 of CEP Verification Exhibit 21) contains the supporting detail for the total amounts shown on the “Notification of Purchase.” The detail shows transaction invoice numbers, customer names, invoice dates, the amount originally invoiced to the customer, the factoring discount amount, and the amount that the factoring entity paid to purchase each sale-specific line item included in the purchase. *Id.* This detail clearly shows that the factoring transaction fees are transaction-specific and, bear a direct relationship with sales factored by CP Kelco. In other words, in the absence of the factoring of these sales, this expense would not have been incurred. Therefore, because the Department finds that CP Kelco’s factoring expenses are attributable to specific sales,⁵ the Department continues to find that factoring expenses are an actual, non-imputed, direct opportunity cost applied to each respective transaction that is reported to have been factored and, therefore, are selling expenses.

We find 2004-2005 S4 Mexico, cited by CP Kelco, to be inapposite. In 2004-2005 S4 Mexico, the factoring (or “securitized asset”) expenses were not part of Mexinox (the respondent)’s own sales activity. Rather, the gains and losses associated with these securitized assets stemmed from the financial expense of its corporate parent. Nowhere within the context of 2004-2005 S4 Mexico final results or issues and decision memorandum is it indicated that Mexinox factored or securitized its own receivables. See *id.* and accompanying Issues and Decision Memorandum at

⁴ In its Case Brief, CP Kelco acknowledges that these expenses are invoice-specific. See Case Brief at page 8.

⁵ As observed during verification, CP Kelco’s factoring transaction fees are not fixed, and are in fact attributable to specific sales. See discussion above for further information regarding the Department’s finding in the Preliminary Results that factoring transaction fees are in fact attributable to specific sales. See also CEP Verification Exhibit 21 at pages 37-40. See also HM Verification Exhibit 15 at page 30 for the detail of the total eligible receivables (sold to CP Kelco’s affiliated finance company) shown on the “Notification of Purchase” letter at page 29 of HM Verification Exhibit 15.

Comment 8. The same holds true for CP Kelco's reliance upon 2004-2005 S4 Germany. Again, the expenses at issue in these cases were the gains and losses which stemmed from the parent company's sale of its receivables to its investors, and at no point did those gains or losses manifest sales-specific expenses (or revenues) reported by the respondent. Thus, the facts of these two cases are inherently different. CP Kelco reported on the record of this review actual, transaction-specific factoring expenses which are attributable and can be linked to the sales reported in its home market and U.S. sales databases. In 2004-2005 S4 Germany, the Department found that, as noted by CP Kelco in its Case Brief, "{T}hese expenses are not attributable to specific sales, but related to management's decision to use its accounts receivable as a financing source." Id. and accompanying Issues and Decision Memorandum at Comment 2. Therefore, contrary to CP Kelco's argument, we find that 2004-2005 S4 Mexico and 2004-2005 S4 Germany are distinguishable from the instant review; namely, we find CP Kelco's reported factoring expenses to be actual, realized costs on the part of CP Kelco and are, furthermore, representative of CP Kelco's own production and sales experience. Moreover, as discussed above, they are traceable to specific, reported sales.

The Department has previously reached similar determinations involving such factoring expenses. In the final results of the administrative review of certain welded carbon steel pipe and tube from Turkey, the Department adjusted for differences in the circumstances of sale including "...direct selling expenses such as the expense related to bank charges and factoring." See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review, 74 FR 6368 (February 9, 2009) (unchanged in the final results) (Pipe and Tube from Turkey). As with CP Kelco in the instant case, the Department requested that the respondent in Pipe and Tube from Turkey explain how it accounted for all of the expenses related to factoring. The respondent, the Borusan Group, explained that it "revised the database to account for the difference between the invoice value and the funds received from the factoring entity." Id. at page 6370. The Borusan Group also explained that it adjusted the payment date and recalculated credit expenses for these particular sales, because it reported a separate field for factoring expenses. The details and reporting methodology in Pipe and Tube from Turkey are nearly identical to that of the instant case.

In another proceeding, the Department concluded that the respondent incurred factoring transaction fees and that those fees constituted direct selling expenses. See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order, 73 FR 18259 (April 3, 2008) (PET Film from Korea), and the accompanying Issues and Decision Memorandum at Comment 10. In PET Film from Korea, the Department concluded that because the respondent (Kolon Industries, Inc. (Kolon)) was charged a fee by its U.S. bank for factoring Kolon's receivables, these charges represented a direct expense to Kolon. Furthermore, because these factoring transaction fees were deemed to be distinct and separate from Kolon's reported inventory carrying cost and imputed credit expenses, the Department made a deduction from CEP to account for the factoring transaction fees Kolon incurred on its CEP sales.

Additionally, we disagree with CP Kelco's argument that the Department's deduction, generally, of factoring discount amounts from NV and U.S. price violates the statute and the Department's own regulations. See Case Brief at pages 13 through 21. CP Kelco argues that sections 772(c)

and (d) of the Act and the Department's regulations at 351.410(b) support that the factoring transaction fees incurred by CP Kelco are not directly related to its home market and U.S. sales of purified CMC, and thus no adjustment to price is warranted. Yet, as discussed in detail above, the Department considers these expenses to be direct selling expenses appropriately accounted for under sections 772(d)(1)(B) (CEP sales) and 773(a)(6)(C)(iii) (EP sales) of the Act and 19 CFR 351.410(b), as these fees are directly incurred on specific sales of subject merchandise.

CP Kelco asserts that the "discount arises from the factoring sale, not the sale of subject merchandise, and there is no relevant legal or factual bridge between the two transactions." *Id.* at 20. However, we disagree with this contention. While we note that not all of CP Kelco's sales were factored (see CP Kelco's AQR at page 23 and its SQR at page 30), as discussed below, it appears that it is the company's established practice to factor its receivables in this manner. See e.g., 2004-2006 CMC Final Results; see also Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review, 73 FR 75393 (December 11, 2008). The evidence on the record demonstrates a relationship between CP Kelco's sale and the factoring of its receivable due. A sale is inherently incomplete until payment is received and booked (lest the sale remain open in the company's normal books and records until payment is received or it is written-off) and CP Kelco incurs a loss on the value of each invoice when it is factored. That loss is transaction-specific and traceable via the verification documentation mentioned above, as well as being not of a fixed or imputed nature, and, moreover, in the absence of the sale, there would be no incurred expense involved in CP Kelco's sale (or factoring) of its receivables. Based on record evidence, we continue to find that the nature of CP Kelco's factoring expenses satisfies the Department's requirements for classification as a direct selling expense (noted at 19 CFR 351.410(c)) and these expenses are appropriately considered direct selling expenses in accordance with sections 772(d)(1)(B) and 773(a)(6)(C)(iii) of the Act.

Finally, with regard to CP Kelco's contention that the Department's methodology is double-counting price adjustments for the factoring transaction fees, we find that the record evidence does not enable the Department to make such a determination. CP Kelco states that its "factoring discounts... are included in CP Kelco's financing expenses via the consolidated financial statement of JM Huber, the parent company of CP Kelco B.V. and CP Kelco U.S." See Case Brief at 20. However, at no point in this proceeding has CP Kelco demonstrated the method or any quantifiable designation by which JM Huber absorbs these factoring expenses in its consolidated financial statements. Moreover, within the context of its Case Brief, CP Kelco neglects to direct the Department to evidence which would demonstrate that the factoring expenses are double-counted or by how much. As such, there is no record evidence which would allow the Department to discern whether its methodology "double-counts" the factoring transaction fees as circumstance of sale adjustments and also as adjustments to the company's cost of production.

Therefore, after considering all of the above, we have continued to apply partial AFA to CP Kelco's credit expenses for factored sales in the home and U.S. markets. Furthermore, the Department continues to find it appropriate to treat these expenses as direct expenses in calculating CEP, and for EP sales, adjusting NV.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the position set forth above. If this recommendation is accepted, we will publish the final results and the final weighted average dumping margin for CP Kelco in the Federal Register.

Agree_____

Disagree_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date