

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

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

SUBJECT: Issues and Decision Memorandum for the Administrative Review
of the Antidumping Duty Order on Magnesium Metal from the
Russian Federation

I. Summary

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. As a result of our analysis, we have made the appropriate changes in the margin calculation. We recommend that you approve the positions described in the Recommendation section of this memorandum.

II. Background

On May 7, 2007, the Department of Commerce (the Department) published in the Federal Register its preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. See Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 25740 (May 7, 2007) (Preliminary Results). The review covers two respondents, PSC VSMPO-AVISMA Corporation and its affiliated U.S. reseller VSMPO-Tirus, U.S. Inc. (collectively AVISMA), and Solikamsk Magnesium Works (SMW). The period of review (POR) is October 4, 2004 through March 31, 2006. We invited interested parties to submit comments on our Preliminary Results. On June 6, 2007, U.S. Magnesium LLC (U.S. Magnesium), one of the petitioners in the original investigation, submitted a case brief regarding the cost calculation of certain by-products internally consumed by SMW. On June 6, 2007, AVISMA submitted a case brief commenting on the calculation of AVISMA's General and Administrative (G&A) expenses and a small number of sales of cylinders in the home market. On June 15, 2007, SMW filed a

rebuttal brief regarding U.S. Magnesium's case brief and U.S. Magnesium submitted a rebuttal brief regarding AVISMA's case brief. All case and rebuttal briefs were timely filed.

III. List of issues

Part I. AVISMA

1. Fiscal Year Versus POR G&A Expenses
2. Error in Reported G&A Expenses
3. Auxiliary Services in G&A Expenses
4. Impact of AVISMA's Merger with VSMPO on G&A Expense Rate
5. Financial Expense Ratio
6. Certain Sales of Cylinders in the Home Market

Part II. SMW

7. Chlorine Gas Offset

IV. Discussion of Interested Party Comments

Part I. AVISMA

Comment 1: Fiscal Year Versus POR G&A Expenses

AVISMA argues that the Department erred in the Preliminary Results when it based the G&A expense rate calculation on the twelve months of its 2005 fiscal year rather than on the eighteen months of the POR. While AVISMA recognizes that the Department's normal practice is to base the G&A expense rate on the fiscal year audited financial statements that most closely correspond to the POR, the company cites CTL Plate from Canada as proof that the Department has deviated from this practice in the past.¹ According to AVISMA, the Department calculated the G&A expense rate in CTL Plate from Canada using data from two fiscal years. Furthermore, AVISMA states that the Department was upheld by the Court of International Trade (CIT), which confirmed that the Department was within its discretion to use the information from the two periods where "the POR covered substantially more than one year, and audited annual financial statements were available" for both periods.²

¹ Final Determination of Less Than Fair Value Investigation: Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 61 FR 13815 (at Comment 30) (March 28, 1996) (CTL Plate from Canada).

² Bethlehem Steel Corp. et al. v. United States, 24 CIT 375, Slip Op. 2000-63 (June 2, 2000) (Bethlehem Steel).

AVISMA maintains that not only does the Department have latitude in determining the cost of production, but according to the courts, the Department “also has been charged with the duty to make determinations as accurately as possible.”³ Because the goal in antidumping duty calculations is accuracy, and because the use of only fiscal year 2005 G&A expenses would ignore one third of the POR, AVISMA believes that the Department should deviate from its normal practice for the final results. Moreover, the POR G&A expense rate calculation was submitted in AVISMA’s questionnaire responses and was obtained from the companies’ audited financial statements which are also on the record. Thus, AVISMA concludes that the Department should rely on the reported POR G&A expense rate for the final results.

The petitioner argues that the use of the 2005 fiscal year G&A expenses in the Preliminary Results is consistent with the Department’s longstanding practice of using the audited financial statements for the fiscal year that most closely corresponds to the POR. The petitioner explains that because G&A expenses are not directly related to particular sales, the Department has developed a practice of capturing these period expenses based on companies’ experience during their standard reporting periods (i.e., their fiscal years). While allowing that the Department in CTL from Canada did base G&A expenses on two fiscal years, the petitioner points out that all following reviews of the case were based on the expenses from the single fiscal year that most closely corresponded to the POR.

The petitioner further finds unpersuasive AVISMA’s complaint that using fiscal year 2005 financial statements for purposes of calculating the G&A expense ratio ignores one third of the POR. The petitioner observes that the Department’s normal practice will never cover the entire period of a first administrative review since such reviews typically cover an eighteen-month period. However, the petitioner points out that rarely does the fiscal year mirror the POR in subsequent reviews either. In fact, referencing SSSSC from Taiwan,⁴ the petitioner notes that the Department has in previous reviews used a fiscal year for the calculation of the G&A expense rate that overlapped only six months of the POR. In SSSSC from Taiwan, the respondent urged the Department to average the G&A from two fiscal years. However, for the final calculation the Department applied its normal practice by using the single fiscal year data that most closely corresponded with the POR, even though this fiscal year overlapped only six months of the POR.

Finally, the petitioner points out that the POR happens to perfectly straddle the 2005 fiscal year, with three months falling outside of both the beginning and the end of the fiscal year. Thus, the Department’s selection of fiscal year 2005 for the calculation of the G&A expense rate is both entirely logical and consistent with prior practice. As such, the petitioner argues that AVISMA has failed to provide a valid reason that would justify the Department to deviate from its normal

³ Id.

⁴ Final Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Taiwan, 67 FR 76721 (December 13, 2002) (SSSSC from Taiwan).

practice. Therefore, for the final results, the Department should continue to rely on the 2005 fiscal year data for the calculation of the G&A expense rate.

Department's Position:

We agree with the petitioner and have continued to rely on the fiscal year 2005 G&A expenses for the final results. Section 773(b)(3)(B) of the Tariff Act of 1930, as amended (the Act) states that the Department shall include “an amount for selling, general, and administrative expenses based on the actual data pertaining to the production and sales of the foreign like product by the exporter in question” for purposes of calculating the COP. However, the statute does not prescribe a specific method for calculating either the G&A or the financial expense rate. When the statute is silent or ambiguous, the determination of a reasonable and appropriate method is left to the discretion of the Department. Because there is no bright-line definition in the Act of how the G&A or the financial expense rates should be calculated, the Department has, over time, developed a consistent and predictable practice for calculating and allocating G&A and financial expenses. This reasonable, consistent, and predictable method is to calculate the G&A and financial expense rates using the data from the fiscal year that most closely corresponds to the POR.⁵

The Department follows this methodology because G&A expenses are period costs and thus are not incurred consistently throughout a fiscal year and are often accrued in a company's year end adjustments. As such, picking the months that correspond to the POR may not reflect the actual G&A expenses incurred by the company throughout the entire accounting period. Also, because G&A expenses are period costs, we use the corresponding cost of sales as the denominator. We use this G&A expense rate as representative of a company's experience for the POR. The Department's normal fiscal year methodology rarely, if ever, matches the POR or POI, especially in a first review where we use an 18 month period. Therefore, we disagree with the respondent that the 18-month G&A expense rate would be more accurate.

The Department's approach in CTL Plate from Canada was a reasonable G&A expense rate calculation methodology and was affirmed by the CIT. See Bethlehem Steel. However, as with many cost allocation issues that arise during the course of an antidumping proceeding, there may be more than one reasonable way allocate the costs at issue. This is precisely why the Department has developed a consistent and predictable approach to calculating and allocating G&A and financial costs. The Department's practice affords consistency across cases and is not results driven. Thus, while the G&A expense rate calculation methodology that was used in the 1996 case may be reasonable, straying from the Department's practice without good cause opens

⁵ See, e.g., Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 70 FR 73444, (December 12, 2005) and accompanying Issues and Decision Memorandum at Comment 5; Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 71 FR 74900, (December 13, 2006) and accompanying Issues and Decision Memorandum at Comment 6; and, Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico, 69 FR 53677 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 24.

the calculation to manipulation dependent on the desired results. In certain instances, an unusual fact pattern may present itself which makes it appropriate to deviate from the Department's normal practice. However, such a fact pattern does not exist in this case. Furthermore, we find the respondent's reliance on CTL Plate from Canada to be misplaced because it is not arguing for the use of the average of two fiscal years, but instead is requesting the use of piecemeal information from three different fiscal years.⁶ Consequently, we have continued to rely on the fiscal year 2005 G&A expense rate calculation for the final results.

Comment 2: Error in Reported G&A Expenses

AVISMA requests that the Department correct an error in the G&A expenses it reported for the second half of 2005. The company states that the financial statement information on the record shows that AVISMA mistakenly reported the selling rather than the general expenses line item in its G&A expense rate calculation worksheets. The petitioner did not comment on this issue.

Department's Position:

We agree with AVISMA and have corrected the 2005 G&A expenses for the final results.

Comment 3: Auxiliary Services in G&A Expenses

In the Preliminary Results, the Department increased AVISMA's reported G&A expenses to include the fiscal year 2005 net loss on certain auxiliary services. AVISMA argues that these services are not related to the production or sale of titanium sponge or magnesium; therefore, they are not part of the general operations of the company and should not be included in the G&A expense rate calculation.

Relying on Beams from Taiwan, AVISMA asserts that only items "closely related" to the "general activities associated with the company's core business"⁷ are included by the Department in G&A expenses. In further support of its position, AVISMA cites OCTG from Korea, in which the Department stated that its practice was to "exclude expenses from the G&A expense calculation when they are not related to the general manufacturing activities of a company."⁸ Because AVISMA's core business is the manufacture of titanium sponge and magnesium, the company believes its auxiliary services, which include a sanatorium, a children's camp, and a

⁶ See Case Brief filed on behalf of PSC VSMPO - AVISMA Corporation, 3, citing Exhibit 2 and AVISMA's July 25, 2006 Section D Response.

⁷ Final Determination of the Less Than Fair Value Investigation: Structural Steel Beams from Taiwan, 67 FR 35484 (May 20, 2002) (Beams from Taiwan) and accompanying Issues and Decision Memorandum at Comment 3.

⁸ Final Results of the Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe from Korea, 72 FR 9924 (March 6, 2007) (OCTG from Korea) and accompanying Issues and Decision Memorandum at Comment 1.

canteen, are not related to the general operations of the company. Thus, the company concludes that in the Preliminary Results the Department contradicted its past practice by including these activities in G&A expenses. Furthermore, AVISMA maintains that several of the facilities are not located at the manufacturing site and are used by both AVISMA employees and non-employees. Additionally, AVISMA states that the internal maintenance costs included in auxiliary services relate to the guest houses and the children's camp.

The petitioner contends that AVISMA's arguments with regard to auxiliary services are flawed and the Department should reject them. While agreeing that the auxiliary services in question are not AVISMA's "core business," the petitioner disputes AVISMA's claim that the services are unrelated to the company's general manufacturing activities. Additionally, the petitioner believes that the location of the auxiliary activities is irrelevant to whether the services should be classified as G&A expenses.

First, the petitioner points out that the very term "general" in G&A denotes that the category is intended to capture expenses that do not directly support the manufacturing function, but instead support the company as a whole. According to the petitioner, the internal maintenance, medical center, sanatorium, and canteen (normally, the dining facility provided for factory workers) included in auxiliary services, are clearly general support services provided to AVISMA employees, clients, and/or business connections. Referencing SSSSC from Mexico,⁹ the petitioner notes that the Department "does not require G&A expenses to relate only to the production of subject merchandise but rather considers those expenses related to the general operations of the company as a whole." As an example, the petitioner cites SSSSC from Mexico¹⁰ in which the Department included profit-sharing expenses because they represented a "legal obligation that benefits employees" and to Rebar from Latvia¹¹ in which the Department included expenses related to a recreational facility, reasoning that the center "provides benefits to company employees." Similarly, in the instant case, the petitioner asserts that the auxiliary services are additional expenses incurred to benefit employees for their contribution to the company. In fact, citing the record, the petitioner points out that according to AVISMA's own questionnaire responses many of the auxiliary services are "required under AVISMA's 'Collective Agreement'" and they provide "social guarantees to the employees."¹²

⁹ Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 70 FR 73444, (December 12, 2005) (SSSSC from Mexico) and accompanying Issues and Decision Memorandum at Comment 5.

¹⁰ Id.

¹¹ Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 71 FR 74900, (December 13, 2006) (Rebar from Latvia) and accompanying Issues and Decision Memorandum at Comment 3.

¹² See AVISMA's April 12, 2007 Supplemental Questionnaire Response at 2.

Second, the petitioner disputes AVISMA's inference that activities are required to be performed at the main production facility in order to be appropriately classified as G&A expenses. According to the petitioner, many production companies routinely locate certain specialized functions such as research and development, data processing, and accounting at locations away from the main production facility. Indeed, the petitioner observes that the very nature of G&A expenses encompasses tasks that are not directly linked to production and consequently, do not require close geographic proximity to the plant. Therefore, the Department should instead focus on the function, rather than the location, of the activity. As such, the petitioner concludes that AVISMA's auxiliary services are clearly within the range of corporate activities normally classified as G&A expenses and the Department should continue to include the net loss on services in the G&A expense rate calculation for the final results.

Department's Position:

We disagree with AVISMA that because the auxiliary services in question are not directly related to manufacturing activities, the related loss (i.e., the auxiliary revenues less auxiliary expenses) incurred on these services should be excluded from the G&A expense rate calculation. The Department does not require G&A expenses to relate only to the production of subject merchandise but rather considers those expenses related to the general operations of the company as a whole. While the services are not direct expenses of the manufacture of titanium sponge and magnesium, the canteen, recreational facilities, and maintenance of such facilities are benefits provided to the company's employees and to guests of the company. Because these auxiliary services are provided as a benefit to the company's employees and visitors, we consider it appropriate to include the related loss on these services as a general expense of the company. Therefore, we have continued to include the loss on auxiliary services in the calculation of the G&A expense rate for the final results.

Finally, AVISMA's reliance on OCTG from Korea is misplaced. In that case, the expenses in question, i.e., those that were deemed to be unrelated to the general manufacturing activities of the company, were losses on the disposition of trade receivables, on an allowance for bad debt, on gains from the disposals of marketable securities, and on a gain from the valuation of equity.¹³ These are items that would be considered either selling, financing, or investment related, and not general expenses. Thus, those gains and losses, and the Department's basis for excluding them from the G&A expense rate in OCTG from Korea, are inapposite to AVISMA's auxiliary services and the Department's basis for including them in AVISMA's G&A expense rate.

Comment 4: Impact of AVISMA's Merger with VSMPO on G&A Expense Rate

AVISMA merged with its parent company VSMPO on July 1, 2005, exactly halfway through the POR. Because the merged company's 2005 financial statements only incorporated AVISMA's activities from July 1, 2005 to the end of the fiscal year, the Department relied on AVISMA's

¹³ See OCTG from Korea at Comment 1.

own 2005 financial statements for the calculation of the G&A expense rate in the Preliminary Results.

AVISMA argues that the Department's G&A expense rate calculation in the Preliminary Results fails to account for the company's merger with VSMPO and consequently leads to distorted results. Comparing AVISMA's own cost of sales figures for the first and second semesters of 2005, the company notes a steep decline. The company points out that prior to the merger, AVISMA sold its titanium sponge production to VSMPO; however, after the merger, these sales were treated as inter-company transfers. As a result, AVISMA states that its cost of sales, the denominator to the G&A expense rate, dropped by more than 50 percent in the second half of 2005, creating a "dramatic" increase in AVISMA's G&A expense rate.

Furthermore, AVISMA contends that the addition of auxiliary services illustrates the noticeable distortive impact of the merger on G&A expenses. AVISMA points out that auxiliary services remained fairly constant throughout 2005. Thus, AVISMA argues that, as a percentage of cost of sales for the first and second half of 2005, auxiliary services have a disproportionate impact on G&A expenses because of the merger and the corresponding reduction in cost of sales. As a result, AVISMA maintains that the Department should modify its G&A expense rate calculation and the allocation of auxiliary services to ensure a fair treatment in light of the mid-POR AVISMA-VSMPO merger.

AVISMA points out that the statute does not prescribe a specific method for calculating the G&A expense rate. Consequently, in its past practice, the Department has recognized that a respondent's normal accounting practices or its transition to newly-adopted accounting principles may create distortions to the reported costs that may require the Department to exercise its discretion to avoid such distortions. In fact, AVISMA points out that in SSBar from France, the Department stated that "{i}n instances where we determine that a company's normal accounting practices result in a misallocation of production costs, Commerce adjusts the respondent's costs, or uses alternative calculation methodologies, in order to more reasonably reflect the costs incurred to produce the merchandise."¹⁴ AVISMA argues that such an evaluation is warranted in this case due to the company's merger with VSMPO.

To alleviate the noted distortions, AVISMA proposes either the use of a six-month or nine-month G&A expense rate corresponding to the pre-merger POR, or the use of an adjusted auxiliary services figure. First, AVISMA believes that a six-month or nine-month calculation would accurately reflect the company-wide G&A expenses and cost of sales and at the same time avoid the potential distortion of combining a non-consolidated cost of sales with a cost of sales that as a result of the inter-company transactions is, in effect, a consolidated cost of sales. Additionally, the proposed six and nine-month periods are entirely within the POR and account for a significant portion of the POR. Because there is no statute-prescribed methodology for the

¹⁴ Final Results Administrative Review: Stainless Steel Bar from France, 70 FR 46482 (August 10, 2005) (SSBar from France) and accompanying Issues and Decision Memorandum at Comment 3.

calculation of G&A expenses, AVISMA believes the Department has the flexibility to deviate from its normal practice. In PET Resin from India, the Department stated that “{i}n certain instances, an unusual fact pattern may present itself where it may be appropriate to deviate from Commerce’s normal practice.”¹⁵ Additionally, AVISMA claims that in both Wire Rod from Canada¹⁶ and Lumber from Canada,¹⁷ when faced with a lack of non-consolidated audited financial statements, the Department necessarily made adjustments to the information available to arrive at a non-distortive G&A expense rate calculation. As the Department routinely makes adjustments to respondents’ fiscal year data in the calculation of the G&A expense rate, the Department should exercise its discretion in this case by adapting its G&A methodology to use a six-month or nine-month period rather than the full year period used in the Preliminary Results.

AVISMA’s second option for alleviating the distortion to the G&A expense rate that was created by the mid-POR merger is to adjust the second half of 2005 net auxiliary loss based on the ratio of auxiliary losses to cost of sales for the first half of 2005. AVISMA believes that the nature of the services indicate that the expenses are not seasonal, and thus their impact on the company’s G&A should not fluctuate between the first and second half of the year. Accordingly, AVISMA believes it would not be distortive to allocate auxiliary expenses to fiscal year 2005 using the ratio of auxiliary losses to cost of sales in the first half of 2005.

Thus, AVISMA concludes that the unique nature of this case requires the Department to make an adjustment that would account for the impact of the intercompany transfers on G&A expenses. As a result, AVISMA urges the Department to utilize one of the suggested methodologies for the calculation of the G&A expense rate in the final results.

According to the petitioner, AVISMA’s argument focuses on the “steep decline” of the cost of sales denominator for the G&A calculation between the first and second halves of 2005; however, the respondent fails to disclose the parallel decline evident in the G&A expense numerator. Thus, the petitioner argues that because there were similar declines in both the numerator and denominator, the newly formed company adjusted both AVISMA’s G&A and cost of sales values to reflect the changes in business structure. In the end, the petitioner concludes that the merger had very little impact on the G&A expense rate, and the impact is certainly not at a level that respondent would be accurate in describing as dramatic.

¹⁵ Final LTFV Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India, 70 FR 13451 (March 21, 2005) (PET Resin from India) and accompanying Issues and Decision Memorandum at Comment 13.

¹⁶ Final LTFV Determination: Carbon and Certain Alloy Steel Wire Rod from Canada, 67 FR 55782 (August 30, 2002) (Wire Rod from Canada) and accompanying Issues and Decision Memorandum at Comment 26.

¹⁷ Final Results Administrative Review: Certain Softwood Lumber Products from Canada, 69 FR 75921 (December 20, 2004) (Lumber from Canada) and accompanying Issues and Decision Memorandum at Comment 23.

In fact, the petitioner argues, the information on the record indicates that the G&A expense rate indicated by AVISMA's 2003 and 2004 financial statements proves a certain routine variability from period to period, quite independent of any effects of the merger. A calculation of the G&A expense rate based on these financial statements shows a variation in rates much greater than the variation in the rates under question during the first and second halves of 2005. Thus, it would appear that variability in the G&A expense rate is not unusual. Furthermore, the petitioner points out that despite the rather significant fluctuation in G&A expense rates from the second half of 2005 to the first quarter of 2006, AVISMA did not feel compelled to exclude the first quarter data from its own proposed POR-wide G&A expense rate calculation.

Likewise, the petitioner also disputes AVISMA's call for the use of six-month or nine-month G&A expense rate calculations. In the petitioner's view, these proposals both contradict the Department's standard practice of relying on the fiscal period that most closely matches the POR and fail the common sense test. Fiscal year 2005 covers the second through fourth quarters of a six-quarter POR and, as such, it is indisputably the fiscal year that most closely matches the POR. The respondent's six-month and nine-month proposals would clearly exclude any post-merger data; however, the petitioner points out that one half of the POR falls within the time period after the merger. Thus, the petitioner believes that any attempt to specifically exclude the post-merger data, as AVISMA urges the Department to do, ensures that the G&A expense rate would be unrepresentative for fully one half of the POR. Further, the petitioner believes that the departure from the Department's normal practice creates more problems than it solves. Under either the six-month or nine-month methodology, the G&A expense rates would be calculated on the basis of a time period that is not a fiscal year and that matches the POR for only one-half of the period or less. As such, the representativeness of the rate with regard to the POR as a whole would be seriously in question.

The petitioner concludes that the Department should therefore reject AVISMA's proposed calculations which deviate from normal practice and only serve to selectively mix and match time periods in order to obtain a lower G&A expense rate. Therefore, for the final results, the petitioner urges the Department to maintain the normal practice of calculating the G&A expense rate over the fiscal year that most closely corresponds to the POR.

Department's Position:

We disagree with AVISMA that the Department's G&A expense methodology failed to account for AVISMA's merger with VSMPO. This case presents an unusual fact pattern in that we do not have a single financial statement that appropriately captures all of the activities for the fiscal year that most closely matches the POR. Because the merger took place in the middle of fiscal year 2005, AVISMA's last financial statement would only cover six months of the fiscal year, while the newly merged company's financial statements would only cover AVISMA's activities for the last six months of the fiscal year. Therefore, the Department could not rely on its normal methodology of using audited financial statements and, instead, we needed to adopt a methodology that was reasonable given the facts of this case.

The Department found that, in light of the merger, a reasonable alternative was for the Department to rely on AVISMA's fiscal year 2005 own financial statements. These financial statements are specific to AVISMA and thus avoid most of the distortions created by relying on the financial statements of the merged entity. AVISMA argues that reliance on these financial statements is unreasonable because as a result of the merger, the cost of goods sold (*i.e.*, the denominator to the calculation) steeply declined between the first and second halves of the fiscal year. We reject AVISMA's argument because both the numerator and the denominator for the G&A expense rate calculation declined over the fiscal year and thus the reported G&A expenses reflect the realities of the newly-formed merged company. Thus, we believe that AVISMA's stand-alone financial statements are reasonable to use for the calculation. However, we agree with AVISMA that after the merger the auxiliary services appear to have been maintained to benefit employees of both the magnesium and the titanium sponge operations, while the related cost of sales for titanium sponge is no longer reflected in the G&A expense rate denominator. As a result, an adjustment was necessary to apportion the July 1 to December 31, 2005 net loss on auxiliary services to both the titanium sponge and the magnesium metal operations. Therefore, we adjusted the reported G&A expense rate to exclude the net losses on auxiliary services that were allocated to titanium sponge production.¹⁸

Finally, we do not agree with AVISMA's alternative proposals to rely on a six-month or nine-month period for the G&A expense rate calculation. As noted above, the Department's long-standing practice with regard to G&A and financial expenses is to calculate the rates based on the fiscal year period (*i.e.*, the twelve months) that most closely corresponds to the POR and the facts of this case do not warrant varying from this practice. See Comment 1 above. Therefore, for the final results, we relied on AVISMA's fiscal year 2005 data and adjusted the net loss on auxiliary services to reflect the relative experience for the first half of 2005.

Comment 5: Financial Expense Ratio

AVISMA argues that to the extent that Commerce makes adjustments to the G&A expense rate, the financial expense rate should likewise be adjusted. The petitioner did not comment on this issue.

Department's Position:

The Department disagrees with AVISMA. The Department's changes to the G&A expense rate in these final results include an adjustment for the error in G&A expenses reported for the second half of 2005 (see Comment 2 supra) and an adjustment to the net loss in auxiliary services for the second half of 2005 (see Comment 4 supra). Both of these changes are to the G&A expense rate numerator and do not impact either the financial expense numerator or denominator. Therefore, it was not necessary for the Department to adjust the financial expense rate for these final results.

¹⁸ See Memorandum from Heidi K. Schriefer to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - PSC VSMPO-AVISMA", dated concurrently with this memorandum.

Comment 6: Certain Sales of Cylinders in the Home Market

AVISMA argues that it reported a small number of small-quantity sales of an experimental type of cylinders (a trial lot produced in the experimental section of AVISMA's plant) in its home market sales database. AVISMA argues that these sales should be treated as sales outside of the ordinary course of trade, and such sales should not be used to match to any U.S. sales.

Petitioner argues that AVISMA routinely produces specialty products and sells them to its customers in the normal course of business. Therefore, petitioner contends the Department should not grant AVISMA's request to classify these particular sales in the home market as sales outside the ordinary course of business, since there is nothing extraordinary about either the sales or the circumstances surrounding them. As such, petitioner concludes the Department should continue to include these sales in the home market in the margin calculation.

Department's Position:

The Department has examined the home market and the U.S. margin programs, and found that these specific cylinder sales are not used as home market sales models for U.S. sales matching purposes in the margin calculation. Specifically, all U.S. sales were matched to home market sales (on a CONNUM average basis); no U.S. sales were matched to these cylinder sales.

Furthermore, the inclusion or exclusion in the database of these sales would have no impact on AVISMA's dumping margin. Thus, there is no need for the Department to reach the issue of whether these sales are outside the ordinary course of trade. See Memorandum from Jack Zhao to Dana Mermelstein, Final Analysis Memorandum for Magnesium Metal from the Russian Federation: PSC VSMPO-AVISMA, dated concurrently with this memorandum, and on file in the Central Records Unit (CRU), room B-099 of the Department of Commerce building.

Part II. SMW

Comment 7: Chlorine Gas Offset

Below is a public summary of interested parties' comments and the Department's position. A more detailed discussion is only possible by means of reference to business proprietary information. Where necessary, we have addressed the parties' arguments and our position in a separate business proprietary memorandum. See Memorandum from Christopher Zimpo through Michael Martin to Neal Halper, Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Solikamsk Magnesium Works, dated concurrently with this memorandum.

Petitioner notes that in the normal course of business most of the chlorine gas generated at the magnesium plant is transferred to other SMW production units, which means that the valuation of the chlorine gas is a critical element in determining whether SMW's magnesium costs are reported accurately. Petitioner argues that SMW's sales of chlorine to outside customers in theory are assigned a market-based value, however, because of losses incurred in the non-

magnesium production units, SMW is using these units to dispose of the toxic chlorine, thus transferring disposal costs from the magnesium unit to non-magnesium units.¹⁹

Petitioner points out that SMW's market-based sales quantity of liquid chlorine in 2005 is not representative when compared to the quantity internally transferred for a credit to magnesium production costs. Petitioner further argues that for normal business reasons, internal allocations of revenues and costs between product lines and business units may be decided at SMW's own discretion as it does not affect the accuracy of the company-wide financial statement.

Furthermore, petitioner adds that if the value assigned by SMW is so conservative in that unaffiliated prices are so much higher than transfer price, SMW could significantly increase company-wide profits by closing down all of its non-magnesium lines and selling chlorine that is currently consumed by these lines in the open market. As a result, petitioner contends the Department should reject SMW's transfer price of chlorine to non-magnesium units and use the net realizable value (NRV) as the basis for the offset.

SMW claims that it properly valued chlorine gas generated during the POR and that the value used for chlorine gas (for purposes of a by-product offset) is market value based. In addition, SMW objects to petitioner's argument that the Department should recalculate the chlorine gas transfer price to account for disposal losses for chlorine gas after the chlorine gas is internally transferred to other production units. Respondent agrees that the reported value of the chlorine gas was established based on SMW's analysis of Russian market prices for liquid chlorine. Respondent, citing to the Department's cost verification report in the original investigation, points out that the market prices for liquid chlorine were established and that the chlorine value has not changed since the original investigation.

In support of their use of the internal transfer price under SMW's accounting policy, respondent notes that it placed on the record for this proceeding internal cost reports for the three stages of the production of magnesium demonstrating the quantity and value data for chlorine gas at each stage and demonstrating that the unit value for chlorine used in these cost reports is the value assigned by its accounting policy (*i.e.*, reported based on normal books and records). In addition, SMW has stated that it placed on the record information regarding its sales of chlorine to unaffiliated third party customers.²⁰ Respondent also notes that in response to the Department's request, SMW provided published price lists for each quarter of the POR showing prices varied from 3,000 to 17,000 rubles per metric ton.²¹ As a result of this price range for chlorine and actual unaffiliated sales of chlorine gas, SMW claims that the value assigned to chlorine in the accounting policy is actually a conservative value.

¹⁹ Petitioner notes that under SMW's internal accounting practices the gross revenues generated by non-magnesium production units fail to cover direct costs.

²⁰ Section D supplemental at Exhibit D-10.

²¹ Second section D supplemental at Exhibit D-5.

Department's Position:

We disagree with Petitioner that because SMW incurred an overall loss on the sales of its other products, the Department must reject SMW's internal valuation for transfers of chlorine and shift the losses associated with these other production units to the magnesium production unit. While SMW's other business units incur losses, this fact alone does not provide a basis to reject SMW's internal valuation for transfers of chlorine. SMW's other business units produce tangible products for which actual markets exist. Moreover, it is uncontroverted that chlorine is but one of many inputs used to produce these products, representing a relatively insignificant part of the total cost of production. Thus, the Department finds that the record supports a conclusion that these internal chlorine transfers are a legitimate business decision and the Department finds no basis on which to shift the losses associated with these other production units to the magnesium unit.

It is the Department's established practice to offset the cost of producing subject merchandise by the cost of producing by-products. See Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil 65 FR 7497 (February 15, 2004) at Comment 3. Normally, the Department looks to the net revenue or loss from the sale of the by-product to establish this offset. Id. However, in SMW's case, some of the chlorine gas is used internally. Therefore, we do not have a total net sales value of chlorine with which to offset the cost of producing magnesium and we must rely on alternative means to determine a reasonable value for the chlorine.

To assess the reasonableness of this value, we compared the value recorded in SMW's records with Russian chemical industry publication prices for chlorine gas and to prices at which SMW was able to sell chlorine to unaffiliated parties. In this review, we found the range to be from 3,000 to 17,000 RUB per MT, depending on the type of packaging and the mode of delivery.²² See Second Section D Supplemental at Exhibit D-5. Thus, the internal transfer is on the low end of published market prices. We note that it would be expected that the internal transfer value would be on the low end of the range of published market prices because there would be no costs associated with converting the gas to liquid or for packaging.

In addition, the prices charged by SMW for sales of liquid chlorine to unaffiliated parties increased from the LTFV investigation. In the LTFV investigation, these selling prices were outside the range of publicly available prices and were not considered a market price due to the

²² During the less than fair value (LTFV) investigation, we computed SMW's NRV for chlorine gas using Russian chemical industry publication prices and SMW's actual costs incurred to transform chlorine gas into a saleable liquid form. In the LTFV investigation, we found that publicly available market prices for liquid chlorine ranged from 10,000 to 12,000 RUB per MT. We compared the average market price of chlorine gas adjusted for total conversion cost incurred by SMW to transform chlorine gas into a liquid form (See Memorandum to Neal Halper from Ernest Z. Gziryan etc. Verification Report on the Cost of Production of Magnesium Metal from the Russian Federation Antidumping Duty Investigation of Magnesium Metal from the Russian Federation- Solikamsk Magnesium Works, 2 (December 30, 2004)), noting that the NRV of chlorine gas was in line with the value used by SMW.

circumstances surrounding those sales. In this POR, the average selling price to unaffiliated purchasers falls in the range of prices from publicly available sources.

Therefore, after comparing the internal transfer value with SMW's own sales of chlorine and to published market prices, we found no evidence to support petitioner's argument that by assigning a specific value to chlorine, SMW shifted costs from magnesium production to other production units. We note that the reported costs by SMW follow its normal business practice of establishing values for the chlorine gas, and these practices are reflected in SMW's internal accounting policy documents. Accordingly, we find that SMW's methodology for assigning value to chlorine gas is reasonable and no adjustment is necessary.

Recommendation

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

Agree ____ Disagree ____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)