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Investigation  
**Public Document**  
E&C/OI: TEAM

**DATE:** September 19, 2018

**MEMORANDUM TO:** Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less than Fair Value Investigation of  
Polytetrafluoroethylene Resin from India

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## **I. SUMMARY**

The Department of Commerce (Commerce) determines that imports of polytetrafluoroethylene (PTFE) resin from India is, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2016, through June 30, 2017.

As a result of our analysis, we made changes in the margin calculations for the final determination. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

- Comment 1: U.S. Sales of Waste and Fines
- Comment 2: U.S. Warehousing Expenses
- Comment 3: CEP Offset
- Comment 4: Sales and Costs Minor Corrections
- Comment 5: Cost Adjustments
- Comment 6: Low-Pressure Steam
- Comment 7: Power
- Comment 8: Hydrogen Gas
- Comment 9: Chlorine
- Comment 10: Calcium Chloride



- Comment 11: Exclusion of Packing Costs and Byproduct Revenues from the COGS Denominator
- Comment 12: Loss on Sale of Raw Material
- Comment 13: Certain Corrections to GFL's Further Manufacturing Costs Based on Verification Findings
- Comment 14: Certain Corrections to Commerce's Cost Verification Report

## II. BACKGROUND

On May 7, 2018, we published the *Preliminary Determination* of sales at LTFV of PTFE resin from India.<sup>1</sup> Between May 22, 2018, and June 29, 2018, we conducted sales and cost verifications of GFL, in accordance with section 782(i) of the Act.<sup>2</sup> The Chemours Company FC LLC (the petitioner) and GFL timely submitted case briefs on August 6, 2018 and August 7, 2018.<sup>3</sup> On August 10, 2018, the petitioner and GFL submitted rebuttal briefs.<sup>4</sup> The petitioner requested a public hearing on June 5, 2018.<sup>5</sup> On August 6, 2018, the petitioner withdrew its request for a public hearing.<sup>6</sup>

Based on our analysis of the comments received, our verification findings, and consideration of the data on the record, for this final determination we have revised the dumping margin for GFL.

## III. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Decision Memorandum.<sup>7</sup> No parties commented. As such, in the final determination in the concurrent countervailing duty

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<sup>1</sup> See *Polytetrafluoroethylene Resin from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*; 83 FR 20035 (May 7, 2018) and accompanying preliminary decision memorandum (Preliminary Decision Memorandum) (collectively, *Preliminary Determination*).

<sup>2</sup> See Memorandum, "CEP Verification of the Sales Response of Gujarat Fluorochemicals Ltd. Americas LLC in the Less-Than-Fair-Value Investigation of Polytetrafluoroethylene Resin from India," June 26, 2018 (CEP Verification Report); see also Memorandum, "Sales Verification of the Sales Response of Gujarat Fluorochemicals Ltd. in the Less-Than-Fair-Value Investigation of Polytetrafluoroethylene Resin from India," June 28, 2018 (Sales Verification Report); see also Memorandum, "Verification of the GFL Americas LLC in the Antidumping Duty Investigation of Polytetrafluoroethylene (PTFE) Resin from India," July 2, 2018 (CEP Cost Verification Report); see also Memorandum, "Verification of the Cost Response of Gujarat Fluorochemicals Ltd. in the Antidumping Duty Investigation of Polytetrafluoroethylene (PTFE) Resin from India," July 26, 2018 (Cost Verification Report).

<sup>3</sup> See "Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Case Brief," August 3, 2018 (Petitioner Case Brief); see also "Polytetrafluoroethylene Resin from India: Gujarat Fluorochemicals Ltd.'s Case Brief," August 3, 2018 (GFL Case Brief).

<sup>4</sup> See "Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Rebuttal Brief," August 10, 2018 (the petitioner's Rebuttal Brief); see also "Polytetrafluoroethylene Resin from India: Gujarat Fluorochemicals Ltd.'s Rebuttal Brief," August 10, 2018 (GFL's Rebuttal Brief).

<sup>5</sup> See Letter from the petitioner, "Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Request for Hearing," June 5, 2018.

<sup>6</sup> See Letter from the petitioner, "Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Withdrawal of Request for Hearing," August 6, 2018.

<sup>7</sup> See Memorandum, "Polytetrafluoroethylene Resin from India and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," (Preliminary Scope Decision Memorandum) dated February 28, 2018.

investigation on PTFE resin from India, we adopted the preliminary scope decision and made no modifications to the scope language;<sup>8</sup> accordingly, we have adopted the preliminary scope decision and made no modifications to the scope language for this final determination.

#### **IV. CHANGES SINCE THE PRELIMINARY DETERMINATION**

We calculated U.S. price and normal value using the same methodology stated in the *Preliminary Determination*, except as follows:

- We used the updated sales and cost data that GFL submitted after verification.
- We have removed language from the margin program assigning inland freight, indirect selling expenses and international freight values to certain U.S. sales.<sup>9</sup>
- We are granting GFL a CEP offset.
- Based on adverse facts available, we have used the highest warehousing expense reported by GFL and applied it to all U.S. sales for which GFL reported incurring warehousing expenses.
- Based on adverse facts available, we have applied the highest CONNUM-specific dumping margin to GFL's unreported waste and fines (WFS) sales.
- We are revising GFL's general and administrative (G&A) expenses to include a loss on the sale of obsolete raw material inventory, its manufacturing G&A expense rate to include the documentation and courier expenses, and further manufacturing material costs to include freight-in expenses.

#### **V. USE OF ADVERSE FACTS AVAILABLE**

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.<sup>10</sup> In doing so, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the

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<sup>8</sup> See *Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination*, 98 FR 23422 (May 21, 2018).

<sup>9</sup> A discussion of our analysis concerning these assigned values is only possible by means of reference to business proprietary information. See Memorandum, "Final Determination Analysis Memorandum for Gujarat Fluorochemicals Ltd.," (GFL Final Analysis Memorandum) dated concurrently with this notice at 2 for a detailed discussion.

<sup>10</sup> See section 776(b)(1)(B) of the Act.

request for information. Section 776(b)(2) provides that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce 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.”<sup>11</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>12</sup>

As discussed further in Comment 1 below, GFL failed to report its WFS sales in its U.S. database, despite the fact that Commerce specifically stated such merchandise was subject to this investigation. Because GFL failed to report these sales in its U.S. database, we determine that the use of facts available, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, is necessary. Further, we find that GFL did not act to the best of its ability in responding to our request for information. As such, an adverse inference is warranted in accordance with section 776(b) of the Act. Accordingly, we applied to GFL’s WFS sales the highest CONNUM-specific dumping margin we calculated for GFL.

As discussed further in Comment 2 below, Commerce was unable to verify the U.S. warehousing expenses reported in GFL’s U.S. sales data. Since we were unable to verify these expenses reported in GFL’s U.S. sales data, we determine that the use of facts available, in accordance with section 776(a)(2)(D) of the Act, is warranted to calculate the warehousing expenses for these sales. Moreover, for this same reason, we find that GFL did not act to the best of its ability in responding to our request for information and, therefore, an adverse inference is warranted in accordance with section 776(b) of the Act. We have used the highest warehousing expense reported by GFL and applied that expense to all U.S. sales for which GFL reported any warehousing expenses.

## **VI. DISCUSSION OF THE ISSUES**

### **Comment 1: U.S. Sales of Waste and Fines**

#### *The Petitioner’s Comments*

- In the companion countervailing duty investigation, Commerce determined that PTFE that is further processed in the United States into micropowder from WFS is not excluded from the scope of this investigation.
- GFL excluded its sales of WFS from its U.S. sales data. As such, GFL did not report all sales of subject merchandise.
- At verification, GFL officials confirmed that customers purchase and process WFS into micropowder. As such, WFS, as imported into the United States, are in-scope and should have been reported in the U.S. sales data.

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<sup>11</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

<sup>12</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*; and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

- Commerce should rely on adverse facts available and assign to these transactions the highest dumping margin found for any of GFL's U.S. sales.

#### *GFL's Rebuttal Comments*

- GFL has cooperated to the best of its ability and there is no reason for Commerce to apply adverse facts available.
- Because WFS products are not subject to the scope of this investigation, GFL did not fail to report any U.S. sales of subject merchandise. Throughout this investigation GFL has treated WFS as what they are, waste, and excluded their sales and costs from its submissions.
- GFL has consistently reported WFS as non-subject merchandise because they have no defined characteristics, defined uses, are not marketable to PTFE users, and unlike non-prime or off-spec PTFE products, are not suitable for the same applications as subject PTFE resin.
- Because the physical characteristics (purity level, particle sizes, defined reduction ratio) and applications of WFS are vastly different than PTFE resin, neither WFS nor micropowder can be processed back into subject merchandise.
- The scope of the investigation inherently covers only marketable PTFE products, not waste byproducts.
- Waste is different than "secondary," non-prime," or "off-spec" products.
- Even if Commerce considers WFS to be subject merchandise, it should not include those U.S. sales in its margin calculation. In LTFV investigations, Commerce is not required to examine all transactions.
- It is Commerce's practice to exclude insignificant quantities of U.S. sales of "damaged or defective" (or otherwise inferior quality) merchandise where they are so atypical as to be unrepresentative of the exporter's normal selling behavior.
- If Commerce finds that WFS are in scope, Commerce should apply the estimated weighted-average dumping margin for unfilled PTFE as the appropriate rate for WFS sales.

#### **Commerce's Position:**

We agree with the petitioner that WFS are included in the scope of this investigation. Commerce issued a Preliminary Scope Decision Memorandum<sup>13</sup> discussing this issue. In the Preliminary Scope Decision Memorandum, Commerce denied GFL's request to exclude WFS from the scope of this and the companion investigations and explained that WFS is subject merchandise to the extent that it meets the description of merchandise subject to the scope of this investigation.<sup>14</sup> Further, Commerce stated in response to a separate exclusion request that WFS is, along with certain other merchandise, subject to the scope of the investigations.<sup>15</sup> Parties were invited to

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<sup>13</sup> See Memorandum, "Polytetrafluoroethylene Resin from India and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated February 28, 2018 (Preliminary Scope Decision Memorandum).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* ("{W}e preliminarily find that PTFE further processed into micropowder (including wastes and fines and PTFE Feedstock) after importation into the United States is subject to the scope of this investigation as a product for which the petitioners are seeking relief.").

comment on the Preliminary Scope Decision Memorandum, and no parties filed comments.<sup>16</sup> As such, Commerce has adopted the findings made in the Preliminary Scope Decision Memorandum for the final determination in these investigations.

We agree with the petitioner that the application of adverse facts available is warranted in this situation. In its questionnaire responses, GFL stated that because it considered WFS not to be covered by the scope of the investigation, it was not reporting its sales of WFS.<sup>17</sup> However, GFL was aware at the time of its sales reporting that Commerce had made no determination regarding whether this merchandise was covered by the scope. In fact, as noted above, the company subsequently submitted a specific request to exclude WFS from the scope, which Commerce denied at that time. Thus, rather than reporting these WFS sales (and then arguing that such sales should not be included in the margin calculations), GFL unilaterally chose not to report these sales, and therefore assumed the risk that we would determine that WFS was included in the scope. Further, following the issuance of the Preliminary Scope Decision Memorandum, GFL was aware that these sales were subject to this investigation and nevertheless failed to augment its reporting. GFL did not report these sales following the issuance of the memorandum, nor did it seek clarification regarding whether it should report these sales.<sup>18</sup>

Accordingly, we determine that these sales are subject to the investigation and that GFL was on notice of the deficiency in its initial reporting by way of the Preliminary Scope Decision Memo. Because GFL did not report these sales and they are necessary to accurately calculate the weighted average dumping margin and to establish a cash deposit rate for GFL, we determine that the use of facts available is necessary to calculate the margins for these sales under sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act. Moreover, because GFL chose not to report these sales despite notice, *i.e.*, the Preliminary Scope Decision Memorandum, that this merchandise was included in the scope of this investigation, we determine that GFL did not act to the best of its ability in responding to our request for information and, therefore, an adverse inference is warranted under section 776(b) of the Act in selecting from among the facts available. As adverse facts available, we have applied to GFL's sales of WFS the highest CONNUM-specific dumping margin we calculated for GFL.

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<sup>16</sup> See *Polytetrafluoroethylene Resin from India: Final Affirmative Countervailing Duty Determination*, 83 FR 23422 (May 21, 2018) (CVD Final Determination) and accompanying Issues and Decision Memorandum (CVD IDM) at page 3.

<sup>17</sup> See *e.g.*, GFL's Initial Section A Questionnaire Response at Exhibit A-1.

<sup>18</sup> The Court of International Trade (CIT) has previously held that a respondent is responsible for seeking clarification from Commerce if the respondent is not clear on how it is to respond to Commerce's requests for information. See *Persico Pizzamiglio, S.A. v. United States*, 18 CIT 299, 304 (1994) ("any ambiguity should have been resolved through consultation with Commerce before the time Persico's response was due").



## **Comment 2: U.S. Warehousing Expenses**

### *The Petitioner's Comments*

- GFL reported warehousing expenses in its U.S sales data; however, at verification GFL was unable to support its allocation of these expenses.
- Commerce should apply Section 776(b) of the Act to account for these expenses because GFL failed to cooperate by not acting to the best of its ability to comply with the requirements of the questionnaire.

### *GFL's Comments*

- In its U.S. sales data, GFL attempted to report warehousing expenses on a per sale basis.
- While preparing for verification, GFL attempted to recreate its complicated calculations, but was unable to do so.
- GFL went to great lengths to report its warehousing expenses as accurately as possible and as a result, came up with a calculation that was so complicated, the company was unable to recreate it.
- For this final determination, Commerce should calculate a warehouse expense ratio based on the total warehousing cost and the total merchandise stored in the warehouse during the POI.

### *The Petitioner's Rebuttal Comments*

- Because Commerce could not verify the allocation U.S. warehousing expenses reported by GFL, Commerce should apply Section 776(b) and make an adverse inference.
- Having failed to substantiate its original claim, GFL is not entitled to change its methodology after verification.
- Commerce cannot substitute a new and untested methodology simply because the initially reported methodology failed to be verified.
- Commerce should continue to deny the alternative calculation methodology for warehouse expenses presented by GFL at verification and rely on “the facts otherwise available.”
- Given that GFL incurred warehousing expenses for its U.S. sales, GFL’s gross U.S. prices must be adjusted pursuant to Section 772(c)(2)(A).
- Commerce should assign the highest warehousing expense reported for any of GFL’s U.S. sales for which U.S. warehousing expenses were reported.

### *GFL's Rebuttal Comments*

- GFL correctly reported its total U.S. warehousing expenses.
- The petitioner’s claim that “the information submitted by GFL cannot be verified” is incorrect. Commerce examined GFL’s general ledger and verified that GFL did not incur warehousing expenses beyond the amount reported as incurred during the POI on all U.S. sales that went through the warehouse.
- GFL was unable to allocate its warehousing expenses on a transaction- or product-specific basis, however, it is Commerce’s policy to allow a respondent to allocate expenses in the manner in which they were incurred.

- Because GFL was unable to allocate warehousing expenses on a transaction-specific basis, Commerce should calculate a warehouse expense ratio that divides the total warehousing cost by the total volume of merchandise that was stored in the warehouse during the POI pursuant to 19 CFR 351.401(g)(1).
- The petitioner's proposal to "assign the highest warehousing expense reported for any of GFL's U.S. sales for which such expenses were reported" to its U.S. sales is inconsistent with Commerce's mandate to "calculate margins as accurately as possible."

### **Commerce's Position:**

In its questionnaire responses, GFL reported its U.S. warehousing expenses on a transaction-specific basis. On this basis, Commerce used these transaction-specific expenses to adjust U.S. price for the *Preliminary Determination*. However, at verification, GFL explained that it was unable to recreate the calculations it used to report these expenses.<sup>19</sup>

At verification, the company suggested an alternative methodology to calculate these expenses: specifically, GFL suggested that it could calculate a warehouse expense ratio which Commerce could use to adjust U.S. price for the relevant sales.<sup>20</sup> We rejected this suggestion, explaining that we would not discuss an alternative allocation methodology at verification.<sup>21</sup> As such, we were unable to verify the U.S. warehousing expenses reported in GFL's sales database.

Because Commerce was unable to verify the U.S. warehousing expenses reported in GFL's sales data, we determine that the use of facts available is warranted, in accordance with section 776(a)(2)(D) of the Act, to calculate the warehousing expenses for these sales. Moreover, because GFL provided information it was unable to verify, we determine that GFL did not act to the best of its ability in responding to our request for information and, therefore, an adverse inference is warranted under Section 776(b) of the Act. As adverse facts available, we have used the highest warehousing expense reported by GFL and applied that expense to all U.S. sales for which GFL reported any warehousing expenses in its U.S. sales data.

### **Comment 3: CEP Offset**

#### *GFL's Comments*

- Commerce should grant GFL a CEP offset for this final determination.
- GFL has clarified the inconsistencies between its selling functions chart and other record information that caused Commerce to not grant the offset in the *Preliminary Determination*.
- There are clear differences between GFL's selling practices in the home market and the U.S. market.

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<sup>19</sup> See CEP Verification Report at page 16.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*



### *The Petitioner's Rebuttal Comments*

- GFL failed to demonstrate its entitlement to a CEP offset.
- Commerce was able to verify that GFL reported inconsistent information regarding its performance of technical assistance, after-sale services, and advertising for CEP sales, and the level at which it performs these activities.
- The record demonstrates that the differences between the selling activities performed by GFL for the home and U.S. markets do not rise to the level of a substantial difference in selling activities, and do not indicate that the U.S. and home market sales were at different stages of marketing.
- The record demonstrates that Commerce properly denied GFL a CEP offset and should continue to do so in the final determination.

### **Commerce's Position:**

In the *Preliminary Determination*, Commerce found a number of inconsistencies when comparing the information GFL provided in this selling functions chart to other information on the record.<sup>22</sup> On that basis, we preliminarily determined not to grant GFL a CEP offset.<sup>23</sup> Following the *Preliminary Determination*, Commerce requested information from GFL regarding its selling functions<sup>24</sup> and discussed this information and these activities at verification.<sup>25</sup> Based on the additional information gathered by Commerce and the results of verification, we are granting GFL a CEP offset for this final determination.

The petitioner has noted discrepancies between the reported activities in the final selling functions chart and other information discussed during the course of verification. We agree with the petitioners that these discrepancies are cause for concern. As such, for this final determination, we have not considered these specific selling functions in making the comparison between the intensity of selling functions in the home and U.S. markets is necessary for determining whether GFL sells at different levels of trade in the home and U.S. markets. Our review of the remaining selling functions indicates the intensity of GFL's activities for its home market sales is much higher than for its U.S. CEP sales.<sup>26</sup> We determine that the difference in intensity for these selling functions provides the basis for granting a CEP offset. As such, for purposes of this final determination, we are granting GFL a CEP offset.

### **Comment 4: Sales and Cost Minor Corrections**

#### *GFL's Comments*

- Commerce should incorporate the minor corrections related to its reported costs and sales that GFL presented to Commerce during verification.

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<sup>22</sup> See Preliminary Decision Memorandum at page 11.

<sup>23</sup> *Id.*

<sup>24</sup> See GFL's May 8, 2018 Supplemental Questionnaire Response at pages 2SAC-1 to -3;

<sup>25</sup> See CEP Verification Report at pages 5 and 6; *see also* Sales Verification Report at page 6.

<sup>26</sup> A discussion of our analysis concerning these activities is only possible by means of reference to business proprietary information. See GFL Final Analysis Memorandum at 3 for a detailed discussion of Commerce's level of trade analysis.

**Commerce's Position:**

Commerce has incorporated the minor corrections related to GFL's reported costs and sales that GFL presented to Commerce at the beginning of verification.

**Comment 5: Cost Adjustments***GFL Comments*

- In its *Preliminary Determination*, Commerce denied GFL's reported adjustments related to the valuation of low-pressure steam, power, hydrogen gas, chlorine, and calcium chloride. Commerce explained that it denied the adjustments because the data and narrative provided to support these adjustments were "insufficient to evaluate the departures from GFL's normal books and records."<sup>27</sup>
- The Act uses the term "normally" to indicate that there may be circumstances where the respondent's recorded costs would fail to reflect the actual costs of producing the merchandise; in this case Commerce has the authority to use other reasonable means such as the actual production costs to calculate the COP.
- In its normal books and records, GFL allocates costs at the entity level and its cost system is based on product groups, not on individual products. GFL does not calculate product-specific costs as required by Commerce. Certain production costs are recorded at the aggregate level and averaged over product groups in ways that are sufficiently correct and detailed for overall financial presentation and inventory purposes, but which may not reflect an accurate actual cost of producing PTFE resin for Commerce.
- GFL reallocated certain costs from its normal books and records to ensure costs are accurately allocated to subject merchandise and GFL removed only theoretical elements in its product costing computations.
- The calculation of product-specific costs requires the preparation of specific purpose financial statements; therefore, suitable adjustments have to be made to the general purpose financial statement prepared by GFL in accordance with Indian Generally Accepted Accounting Principles (GAPP). These adjustments are necessary for a more appropriate and relevant presentation of cost for Commerce.

*The Petitioner's Rebuttal Comments*

- In the *Preliminary Determination*, Commerce correctly rejected cost adjustments made by GFL to its books and records for steam, power, hydrogen gas, chlorine and calcium chloride because GFL failed to report the actual costs incurred as recorded in its normal books and records.
- GFL removed certain theoretical elements in the cost computation despite the fact that the removed costs are relevant to PTFE resin production. The adjustments caused GFL's total cost of manufacturing to be inconsistent with its books and records, not in accordance with Indian GAAP and not reflective of GFL's actual PTFE resin operations.

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<sup>27</sup> See GFL's Case Brief at 3.

- In this case, the cost adjustments deviate from GFL's normal books and records and do not reasonably reflect costs incurred to produce the merchandise. GFL's theoretical cost adjustments are unreliable for the dumping analysis and should be rejected.
- Commerce verified that the cost adjustments were clear departures from GFL's normal books and records.
- Though GFL claimed that it has not really departed from its normal books and records because the cost adjustments only applied to theoretical figures, each adjustment changed the cost of steam, power, hydrogen gas, chlorine and calcium chloride from the actual costs recorded in their normal books and records.
- It was only at verification that Commerce truly understood the adjustments made by GFL and for that reason GFL's explanation of the adjustments it made is untimely. Moreover, the verification report in no way substantiates that the cost adjustments should be accepted.

#### **Commerce's Position:**

We agree with the petitioner that GFL has not provided sufficient reasoning or support for these adjustments to justify the departure from their normal books and records. Therefore, we have adjusted GFL's reported costs to reflect the costs as recorded in its normal books and records, which are kept in accordance with Indian GAAP and which we have determined are reasonable.

When Commerce evaluates a respondent's submitted costs, section 773(f)(1)(A) of the Act provides that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, Commerce is instructed to rely on a company's normal books and records, if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and 2) the books reasonably reflect the cost to produce and sell the merchandise. In this case, the record demonstrates that the unadjusted per-unit costs are derived from GFL's normal books and that those books are kept in accordance with Indian GAAP.

GFL departed from its normal books and records when reporting its costs to Commerce by making cost adjustments to steam, power, hydrogen gas, chlorine and calcium chloride. At the preliminary determination, we denied these adjustments because the data and narrative provided to support these adjustments were insufficient to evaluate whether the departures from GFL's normal books and records reasonably reflected the cost incurred to produce subject merchandise. We therefore used the unadjusted reported costs from GFL's Indian-GAAP compliant books and records for the preliminary determination. At verification, Commerce reviewed how the unadjusted per-unit costs were maintained in the company's normal cost accounting system, confirmed the details regarding the nature of the adjustments GFL made to the normal accounting records, and discussed the adjustments.<sup>28</sup> Upon further review of the record evidence, as discussed below, Commerce concludes that GFL has not provided sufficient reasoning or support for these adjustments to justify the departure from its normal books and records. Where a respondent deviates from the costs as recorded in its normal accounting records, it is incumbent upon the respondent to clearly demonstrate how the normal books and

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<sup>28</sup> See Cost Verification Report at 15, 18, 19.

records are unreasonable and how such departures satisfy our requirements that manufacturing costs reasonably reflect the cost associated with producing the subject merchandise. In this case, GFL has not done so. Therefore, we have continued to adjust GFL's reported costs to reflect the costs as recorded in its normal books and records, which are kept in accordance with Indian GAAP and which we have determined reasonably reflect the costs associated with the production of subject merchandise.

## **Comment 6: Low-Pressure Steam**

### *GFL's Comments*

- In its *Preliminary Determination*, Commerce denied GFL's steam adjustment, explaining that GFL had not demonstrated that calculating the cost for low pressure steam used as an energy source in production using the enthalpy of steam and caloric value of coal was unreasonable.<sup>29</sup>
- The low-pressure steam does not have a net realizable value outside the confines of its recycled use in the production process because the low-pressure steam cannot be sold to outside customers, and if it is not used in the production process then it will be vented to the atmosphere and wasted.
- If the steam were not used in the production process, then it would have been vented into the atmosphere and therefore has no net realizable value.
- Byproducts such as this steam should be valued at their net realizable value, unlike main or coproducts, which are valued at their normal production cost.
- Commerce should accept the reported steam adjustment for the final determination.

### *The Petitioner's Rebuttal Comments*

- GFL acknowledges that the value of steam was allocated to its production plants including PTFE resin.
- In its normal books and records GFL treats steam as an input and allocates the values to PTFE resin production.
- GFL's failure to account for steam costs is distortive and should be rejected.
- GFL's notional steam adjustment has changed its reported COM.
- For the final determination, Commerce should continue to deny GFL's steam adjustment.

### **Commerce's Position:**

We agree with the petitioner that GFL's adjustment for low-pressure steam costs should be rejected. At GFL's production facilities, low-pressure steam is generated during the operation of the back-pressure power turbine. The company uses the low-pressure steam as an energy source in its production processes. For inventory valuation purposes, the low-pressure steam is valued in GFL's normal books and records, which are kept in accordance with Indian GAAP, based on the "enthalpy of steam and the calorific value of coal."<sup>30</sup> For reporting to Commerce, however, GFL deviated from its normal accounting records and did not assign a value to the low-pressure

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<sup>29</sup> See GFL's Case Brief at 12.

<sup>30</sup> See GFL's March 5, 2018 section D supplemental questionnaire response at 10.

steam that was consumed in production, asserting that the steam has no value outside the confines of the Dahej facility. We find that this departure from GFL's normal books and records is not reasonable. GFL's argument is based on its evaluation of what the company would do with the steam if it didn't consume it internally. However, the proper evaluation should be of the benefit of being able to consume the internally generated steam. As noted above, the low-pressure steam is used as an energy source in GFL's production processes. Thus, this input has inherent value for the company, and its normal, Indian GAAP-compliant accounting records reflect this. The assignment of a zero value to low-pressure steam fails to acknowledge any element of value in GFL's production activities and thus leads to an understatement of manufacturing costs. As such, GFL's departure from its normal books and records does not reasonably reflect the costs associated with the production of subject merchandise as required by the statute. Therefore, for the final determination, we have continued to deny the steam adjustment made by GFL. Instead, we are relying on the company's costs for PTFE resin as recorded in its normal books and records, which are kept in accordance with Indian GAAP.

#### **Comment 7: Power**

##### *GFL's Comments*

- The purpose of the construction of the electricity plant was to maintain and ensure a steady, reliable supply of electricity for the polymer plant.
- An interruption in power supply at the polymer plant could lead to a catastrophic explosion and environmental disaster.
- For company-specific inventory valuation purposes, GFL computes the power costs on a weighted average basis for all sources of power purchased or generated.
- Like most companies', GFL's financial statements are prepared at the overall entity level and not at product-specific level; this method is not appropriate for Commerce because it does not reflect the actual costs incurred at the polymer plant.
- GFL separately identified the cost from its own power plant because it is the only reliably steady source of supply to the polymer plant.

##### *The Petitioner's Rebuttal Comments*

- In the ordinary course of business, GFL allocates all power costs on a weighted-average basis to all products regardless of the source of power.
- GFL's power costs adjustment not only departs from its normal books and records, but also contradicts GFL's own admission that all sources of power are weight-averaged.
- For the final determination, Commerce should deny GFL's power cost adjustment to reflect the actual production costs consistent with GFL's normal accounting books and records.

#### **Commerce's Position:**

We agree with the petitioner that GFL's adjustment to power costs should be rejected. In its normal books and records, GFL computes the power cost on a weighted-average basis for all sources of power whether purchased or self-generated, and GFL allocates the same average cost per unit of power consumed to all power consumption for producing all products. For reporting to Commerce, GFL deviated from its books and records by identifying the power cost based only

on the coal-based captive power plant, rather than allocating the power costs from all sources, and assigning that average power cost to all products, including the subject PTFE resin. We do not find that this departure from the company's normal accounting records is reasonable. Electricity is a fungible input that can be used interchangeably to produce multiple products. Where companies have the ability to distinguish between otherwise fungible inputs based solely on the source and/or price of the input, the calculation of the cost of production may also be subject to distortion on this basis. Specifically, the cost calculation should not depend upon a respondent's ability to demonstrate that it selected particular inputs for use in the production of subject merchandise, particularly when such a selection might have been based solely on the price of inputs that were otherwise fungible.<sup>31</sup> For the final determination, we have continued to deny GFL's power cost adjustment and have instead relied on the company's average power cost regardless of source, as recorded in its Indian GAAP-compliant normal books and records.

## **Comment 8: Hydrogen Gas**

### *GFL's Comments*

- In the *Preliminary Determination*, Commerce denied GFL's hydrogen gas cost adjustment, stating that "GFL has not demonstrated that hydrogen gas used in the hydrogen boiler and charged to the boiler at net realizable value is unreasonable."<sup>32</sup>
- GFL generates a certain amount of steam from the hydrogen boiler using the byproduct hydrogen gas generated by the Chlor-Alkali Plant.
- In GFL's normal books and records, the byproduct hydrogen gas is charged to the boiler at net realizable value and credit is given to the Chlor-Alkali plant for the purposes of company-specific inventory valuation.
- The surplus hydrogen gas has no net realizable value; if it were not used in the hydrogen boiler, it would otherwise be vented to the atmosphere.
- GFL set the value of the waste hydrogen gas to zero in its reported cost of manufacturing which represents the actual costs incurred in the production of subject merchandise.
- Commerce has obtained sufficient information and data regarding the adjustment and should grant the hydrogen gas cost adjustment in its final determination.

### *The Petitioner's Rebuttal Comments*

- In GFL's normal course of business, GFL charges hydrogen gas costs to the boiler at net realizable value, and then applies the credit to the production cost of chlor-alkali products for the hydrogen gas that is recovered at that plant.
- In reporting production costs to Commerce, GFL set the value of the hydrogen gas energy input to zero.
- The hydrogen boiler adjustment ignores an important component of GFL's energy inputs.
- For the final determination, Commerce should continue to deny this adjustment.

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<sup>31</sup> For example, in *Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium from France*, 66 FR 65877 (December 21, 2001), Commerce found that, because electricity is a fungible input used to produce all products, it was appropriate to calculate a single weighted-average cost for all electricity consumed rather than calculate separate costs depending on the customer as the respondent proposed.

<sup>32</sup> See GFL's Case Brief at 16.



**Commerce's Position:**

We agree with the petitioner that GFL's adjustment for hydrogen gas should be rejected. Hydrogen gas generated in one of GFL's production facilities is consumed in a hydrogen boiler, which generates steam that is consumed in the company's chemical and polymer production processes. In GFL's normal books and records, the hydrogen gas is charged to the boiler at its net realizable value. For reporting to Commerce, GFL departed from its normal accounting records and set the value of the hydrogen gas to zero. We agree with the petitioner that this adjustment ignores an important component of GFL's energy inputs. In GFL's view, the fact that the hydrogen gas that is consumed in the boiler would otherwise be vented to the atmosphere justifies its valuation at zero. We are not convinced by GFL's argument. Were GFL to vent the gas rather than to consume it, the company would need an alternate energy source for the hydrogen boiler to produce steam. The assignment of zero value to the hydrogen gas consumed in the boiler results in an understatement of the cost of steam that the hydrogen boiler generates. As such, this departure from the company's normal books and records does not reasonably reflect the cost associated with the production of subject merchandise as required by the statute. For the final determination, Commerce has continued to deny the hydrogen gas cost adjustment GFL made to its reported costs. Instead, we are relying on the company's normal books and records, which are consistent with Indian GAAP.

**Comment 9: Chlorine***GFL's Comments*

- In the *Preliminary Determination*, Commerce denied the chlorine cost adjustment on the basis that the explanation of the adjustment and the data provided were insufficient to evaluate whether the departure from its books and records reasonably reflected the cost incurred to produce PTFE resin.
- The Chlor-Alkali Plant produces caustic soda and generates chlorine as a byproduct, and that chlorine is generally treated as a noxious liquid in India and it is an environmental hazard.
- Chlorine is not an input in the production of PTFE resin, rather it is an input in the production of chloromethane and is used in the chloromethane plant, not the Tetrafluoroethylene (TFE) or PTFE plants.
- Allocating chlorine costs on the basis of volume as is done in the normal cost accounting records of the GFL is an artificial cost allocation and ignores the actual value of the chlorine consumed.
- GFL does not pay to purchase chlorine; rather, other companies pay GFL to remove the chlorine from their facilities. In addition, GFL is not able to sell chlorine it produces as byproduct at any commercial value. Rather, it would need to pay for removal of the chlorine from its facilities which results in a negative net realizable value.
- It was appropriate to allocate joint cost of caustic soda and chlorine on relative net realizable values (*i.e.*, chlorine is valued at zero because it has a negative net realizable value) for reporting purposes to Commerce.
- To ensure the actual value of chlorine consumed and reported, GFL departed from its normal cost accounting to set the chlorine value to zero.
- Commerce should accordingly accept this adjustment for the final determination.

### *The Petitioner's Rebuttal Comments*

- GFL switched to a volume-based cost allocation methodology to eliminate the distortive chlorine price fluctuations because of the erratic fluctuations in the price of chlorine caused anomalies and distortions in its cost allocation in its normal cost accounting.
- Commerce should reject GFL's valued-based allocations that depart from GFL's normal books and records.
- For the final determination, Commerce should deny GFL's chlorine cost adjustment in order to accurately reflect PTFE production costs consistent with its normal accounting books and records.

#### **Commerce's Position:**

We agree with the petitioner that the chlorine cost adjustment should be rejected for the final determination. Liquid chlorine is produced in the Chlor-Alkali Plant and is used as an input into other downstream processes that ultimately result in the subject PTFE resin. In GFL's normal accounting system, the company assigns a cost to the chlorine consumed. According to GFL, chlorine is more appropriately valued for reporting at zero because it is a noxious liquid that, if not used in production, must be removed from GFL's facility at a cost to the company. Chlorine, however, is an important input in the PTFE production process, and GFL uses large volumes of this input as part of its integrated production activities.<sup>33</sup> If GFL were not able to generate the required significant volumes of chlorine internally, it would have to find a large and steady source for purchasing the input. This is precisely why the company's normal books and records assign a value to the chlorine consumed. The assignment of a zero value to this input fails to recognize its importance in producing subject merchandise and, as such, does not reasonably reflect the costs associated with its production as required by the statute. For the final determination, Commerce has continued to deny this cost adjustment and has instead relied on the GFL's normal books and records, which are kept in accordance with Indian GAAP.

#### **Comment 10: Calcium Chloride**

##### *GFL's Comments*

- In the *Preliminary Determination*, Commerce denied GFL's calcium chloride cost adjustment on the basis that GFL's explanation of its adjustment was unclear, and the data submitted was insufficient for Commerce to evaluate whether the departure from its books and records reasonably reflected the cost incurred to produce PTFE resin.
- The calcium chloride cost adjustment accurately reflects the actual production costs of PTFE resin and requires deviating from the books and records. GFL argues that not making this adjustment would lead to the distortion of actual costs.
- Hydrochloric acid is produced as a byproduct from upstream production processes.
- GFL's normal books inaccurately assign a portion of the net further processing costs associated with the production of calcium chloride granules from the hydrochloric acid to PTFE resin.

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<sup>33</sup> See Cost Verification Exhibit 12 at 15.

- GFL argues that the net further processing costs are more accurately separated and allocated solely to the calcium chloride granules as an independent product and separate profit center.
- In the final determination, Commerce should grant the calcium chloride cost adjustment.

#### *The Petitioner's Rebuttal Comments*

- GFL incurs costs to process the hydrochloric acid for sale in the home market and to neutralize some hydrochloric acid into slurry for disposal.
- GFL's accounting records combined the costs of both of these processes in the same process order/cost center and allocate the combined cost to PTFE resin production.
- The further processing costs of the hydrochloric acid byproduct should remain with the main product.
- For the final determination, Commerce should continue to reject GFL's calcium chloride cost adjustment.

#### **Commerce's Position:**

We agree with the petitioner that the calcium chloride cost adjustment should be rejected. In GFL's normal books and records, the costs for PTFE resin bear a portion of the net costs to process hydrochloric acid into calcium chloride granules for sale. That is, the costs incurred to process the hydrochloric acid into calcium chloride granules, less the revenue earned on such sales, *i.e.*, the net costs, are normally allocated to PTFE production. For reporting to Commerce, however, the company removed this cost element. We do not find that this departure from the normal books and records is reasonable. The costs incurred to process the hydrochloric acid byproduct are necessary in transforming the byproduct into either a saleable or disposable product. As such, the net costs incurred in transforming the hydrochloric acid into calcium chloride granules are properly assigned to PTFE resin production, because the hydrochloric acid is a direct result of the upstream processes in PTFE resin production. For the final determination, we have continued to deny GFL's adjustment for the cost of net further processing of hydrochloric acid. Instead, we are relying on the company's normal books and records, which are kept in accordance with Indian GAAP.

#### **Comment 11: Exclusion of Packing Costs and Byproduct Revenues from the COGS Denominator**

##### *The Petitioner's Comments*

- For the *Preliminary Determination*, Commerce revised the cost of goods sold included in the financial expense rate worksheet to exclude packing expenses and include the offset for the sale of byproducts.
- The cost of goods sold is the denominator of the financial expense ratio.
- Because product-specific costs to which the financial expense ratio is applied exclude packing and have been reduced by the byproduct revenue, the denominator of the product-specific financial expense ratios must likewise be reduced by packing and the byproduct revenue in order for the G&A expense rate to be on the same basis as the cost of manufacture.

**Commerce's Position:**

We agree with the petitioner. It is Commerce's normal practice to exclude packing expenses from the cost of goods sold used as the denominator in the calculation of the financial expense rate and to include the byproduct sale offset.<sup>34</sup> For this final determination, we have continued to make these adjustments.

**Comment 12: Loss on Sale of Raw Material***GFL's Comments*

- On page 12 of the Cost Verification Report, Commerce states: "It may be appropriate to include this miscellaneous loss in general and administrative expenses." However, because this is a loss on sales of raw material, it is not appropriate to include this item in general and administrative expenses.

**Commerce's Position:**

We disagree with GFL's argument that it is not appropriate to include the loss on the sale of obsolete raw material in the calculation of the G&A expense rate. Record evidence regarding the loss on the sale of obsolete raw material did not identify the nature of the obsolete material or to what it is specifically related. As a result, we have concluded that the loss is related to the general operations of the company and is appropriately treated as a G&A expense. Therefore, for the final determination, Commerce has included the loss on the sale of obsolete raw material in the G&A expenses.

**Comment 13: Certain Corrections to GFL's Further Manufacturing Costs Based on Verification Findings***The Petitioner's Comments*

- During the further manufacturing verification, Commerce found that GFL USA excluded property taxes from its reported further manufacturing G&A expenses.
- Commerce's normal practice is to include taxes such as land, property taxes, and fringe benefit taxes in the calculation of G&A expenses because they are related to the general operation of the company.
- Commerce also identified freight expenses related to obtaining raw materials that the company excluded from its reported further manufacturing costs. Commerce stated in its verification report that these types of expenses are normally part of raw material costs.
- Additionally, Commerce identified miscellaneous documentation and courier service expenses that GFL USA did not include in its G&A expenses.
- For the final determination and consistent with Commerce's practice, Commerce should implement its observed corrections to GFL USA's further manufacturing G&A expenses and raw material costs.

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<sup>34</sup> See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipments Determination*, 77FR 63291 (October 16, 2012), IDM at Comment 2.

**Commerce's Position:**

We agree with the petitioner. We have included property taxes, miscellaneous documentation and courier expense in the further manufacturing G&A expenses as expenses related to the general operations of GFL USA. We have also included in the materials costs freight expenses related to raw materials purchased by GFL USA that were used in further manufacturing.

**Comment 14: Certain Corrections to Commerce's Cost Verification Report***GFL's Comments*

- Commerce's Cost Verification Report contains some identified inaccuracies.
- On page 10 of the Cost Verification Report, "The Change In Inventory of Finished Goods" represents the difference between opening and closing stock valuations.
- GFL changed their method of allocating cost between chlorine and caustic soda in 2013-14 not 2016 as stated in the Cost Verification Report.
- Steam is consumed in the production process and is not used to generate power.

**Commerce's Position:**

Regarding GFL's claim that the GFL Cost Verification Report contains factual inaccuracies and should be altered, we disagree. Although interested parties are free to contest and present arguments pertaining to the information and observations presented by Commerce in verification reports, in the form of case and rebuttals briefs, the verification report itself constitutes the observations and findings of Commerce's verifiers. It is a final document when it is issued, and it is not subject to revision by interested parties.<sup>35</sup>

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<sup>35</sup> See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) at Comment 10.

## VI. RECOMMENDATION


Based on our analysis of the comments received, we recommend adopting all the above positions. If this recommendation is accepted, we will publish the final determination of this investigation and the final estimated weighted-average dumping margins in the *Federal Register*.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

9/19/2018

X 

Signed by: CHRISTIAN MARSH

\_\_\_\_\_  
Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance