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Investigation  
**Public Document**  
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September 17, 2018

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
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  
Polyethylene Terephthalate Resin from Brazil

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## **I. SUMMARY**

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

We analyzed the comments of the interested parties. As a result of this analysis, and based on our findings at verification, we made certain changes to M&G Polimeros Brasil S.A.'s (MGP Brasil's) margin calculation program with respect to packing expenses. In addition, we applied total facts otherwise available, with an adverse inference, to Companhia Integrada Textil de Pernambuco (Textil de Pernambuco). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from parties.

- Comment 1: Whether MGP Brasil's Unverified Bank Charges Should Result in the Application of Adverse Facts Available.
- Comment 2: Whether Commerce Should Modify the Conversions Used for MGP Brasil's Packing Expenses.



Comment 3: Whether Commerce Should Make Adjustments Based on the Cost Verification Findings.

Comment 4: Whether Commerce Should Include Certain Investment Expenses in MGP Brasil's Financial Expenses.

## II. BACKGROUND

On May 4, 2018, Commerce published the *Preliminary Determination*.<sup>1</sup> On May 7, 2018, mandatory respondent, Textil de Pernambuco, alleged that Commerce made significant ministerial errors in the *Preliminary Determination*.<sup>2</sup> On June 25, 2018, Commerce issued a memorandum determining that the allegations raised by Textil de Pernambuco were methodological in nature and did not constitute ministerial errors as defined by 19 CFR 351.224(f).<sup>3</sup> Accordingly, Commerce did not amend the *Preliminary Determination*. Subsequently, on May 10, 2018, Textil de Pernambuco withdrew its participation in the investigation.<sup>4</sup>

Between May 14, 2018, and June 8, 2018, we conducted sales and cost verifications of mandatory respondent MGP Brasil, in accordance with section 782(i) of the Act.<sup>5</sup> The petitioners<sup>6</sup> and MGP Brasil submitted case and rebuttal briefs on July 12, 2018 and July 17, 2018, respectively.<sup>7</sup> No party requested a public hearing.

## III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is PET resin from Brazil. Commerce did not receive any scope comments subsequent to the *Preliminary Determination* and, therefore, the scope has

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<sup>1</sup> See *Polyethylene Terephthalate Resin from Brazil: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19699 (May 4, 2018) (*Preliminary Determination*).

<sup>2</sup> See Textil de Pernambuco's Letter, "Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil: Request of Companhia Integrada Textil de Pernambuco (CITEPE) to Correct Significant Ministerial Errors in the Preliminary Determination," May 7, 2018.

<sup>3</sup> See Memorandum, "Ministerial Error Memorandum for the Affirmative Preliminary Determination of the Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil," dated June 25, 2018.

<sup>4</sup> See Textil de Pernambuco's Letter, "Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil: Withdrawal of Companhia Integrada Textil de Pernambuco (CITEPE)," dated May 10, 2018 (Textil de Pernambuco's Withdrawal).

<sup>5</sup> See Memorandum, "Verification of the Sales Response of M&G Polimeros Brasil S.A. and M&G Polymers USA LLC in the Antidumping Investigation of Polyethylene Terephthalate from Brazil," dated June 30, 2018 (MGP Brasil's Sales Verification Report); see also Memorandum, "Verification of M&G Polimeros Brasil, S.A., in the Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil," dated July 3, 2018 (MGP Brasil's Cost Verification Report).

<sup>6</sup> The petitioners in this investigation are DAK Americas LLC, Indorama Ventures USA, Inc., M&G Polymers USA, LLC, and Nan Ya Plastics Corporation, America. See, e.g., Petitioners' Letter, "Polyethylene Terephthalate ("PET") Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petition for the Imposition of Antidumping Duties," dated September 26, 2017 (Petition).

<sup>7</sup> See Petitioners' Rebuttal Brief, "Petitioners' Rebuttal Brief on MGP Brasil," dated July 17, 2018 (Petitioners' Rebuttal Brief); see also MGP Brasil's Rebuttal Brief, "Polyethylene Terephthalate (PET) Resin from Brazil: MGP Brasil's Rebuttal Brief," dated July 17, 2018 (MGP Brasil's Rebuttal Brief).

not been updated since the *Preliminary Determination*. For a complete description of the scope of this investigation, *see* Appendix I of the accompanying *Federal Register* notice.

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

Based on our review and analysis of the comments reviewed from parties, minor corrections presented at verifications, and various errors identified, we made certain changes to the weighted-average dumping margins for both respondents. Specifically, we made the following changes:

##### **A. MGP Brasil**

As discussed in “Use of Facts Otherwise Available and Adverse Inferences,” we applied partial facts otherwise available, with an adverse inference, to unverified bank charges MGP Brasil reported on certain U.S. sales. We also corrected a conversion error with respect to MGP Brasil’s reported packing expenses.

##### **B. Textil de Pernambuco**

As discussed in “Use of Facts Otherwise Available and Adverse Inferences,” we applied total facts otherwise available, with an adverse inference, to Textil de Pernambuco for the *Final Determination*.

#### **V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

##### **A. Legal Authority**

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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. 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 request for information.<sup>8</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed

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<sup>8</sup> *See* section 776(b)(1)(B) of the Act.

on the record.<sup>9</sup> In selecting a rate based on adverse facts available (AFA), Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>10</sup>

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>11</sup> The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.<sup>12</sup> To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. However, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party. Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.<sup>13</sup>

For the reasons explained below, Commerce determines that application of facts otherwise available, with an adverse inference, are appropriate, pursuant to sections 776(a) and (b) of the Act, for Textil de Pernambuco’s antidumping duty margin. Commerce further determines that the application of partial facts otherwise available, with and adverse inference, is appropriate, pursuant to sections 776(a) and (b) of the Act, for certain bank charges incurred by MGP Brasil in the United States.

## **B. Textil de Pernambuco**

### *Application of Facts Otherwise Available with an Adverse Inference*

Textil de Pernambuco was selected as a mandatory respondent in this investigation.<sup>14</sup> As noted above, on May 10, 2018, Textil de Pernambuco withdrew from further participation in this investigation.<sup>15</sup> For the reasons stated below, we determine that the use of total facts otherwise available, with an adverse inference, is appropriate for the *Final Determination* with respect to Textil de Pernambuco.

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<sup>9</sup> See section 776(b)(2); see also 19 CFR 351.308(c).

<sup>10</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R.Rep. No. 103–316 (1994), reprinted in 1994 U.S.C.C.A.N. 4040 (SAA) at 870.

<sup>11</sup> See SAA at 870.

<sup>12</sup> *Id.*

<sup>13</sup> See section 776(c)(2) of the Act.

<sup>14</sup> See Memorandum, “Respondent Selection for the Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil,” dated November 27, 2017.

<sup>15</sup> See Textil de Pernambuco’s Withdrawal at 1.

Furthermore, Textil de Pernambuco significantly impeded the investigation and rendered information previously submitted unverifiable by withdrawing from further participation in the investigation.<sup>16</sup> Section 776(a)(2)(D) of the Act provides that, if an interested party provides information we requested but the information cannot be verified, as provided in section 782(i) of the Act, we shall use facts otherwise available in reaching the applicable determination. Because Textil de Pernambuco withdrew its participation in the investigation, thereby significantly impeding the investigation and preventing Commerce from verifying the information submitted, the application of facts available is justified.

Textil de Pernambuco's withdrawal from the investigation demonstrates its failure to cooperate by not acting to the best of its ability to comply with a request for information.<sup>17</sup> Commerce has previously relied on the use of facts available with adverse inferences when a respondent withdraws participation from an investigation, preventing Commerce from verifying its information.<sup>18</sup> Therefore, for the reasons stated above, Commerce is relying on facts otherwise available with an adverse inference in determining Textil de Pernambuco's estimated weighted-average dumping margin in the *Final Determination*.

#### *Selection of AFA Rate*

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that Commerce may rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In selecting a rate as AFA, Commerce selects a rate sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."<sup>19</sup> Further, it is Commerce's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>20</sup>

Therefore, in order to induce the respondents to provide Commerce with complete and accurate information in a timely manner, Commerce's practice is to select, as AFA, the higher of: (a) the highest margin alleged in the initiation; or (b) the highest calculated rate for any respondent in the investigation.<sup>21</sup> In the *Preliminary Determination*, Commerce calculated a 226.91 percent estimated average dumping margin for Textil de Pernambuco. This rate was insufficiently adverse to induce Textil de Pernambuco to continue and participate in this investigation. As such, Commerce's practice is to select a higher rate to ensure that Textil de Pernambuco does not obtain a more favorable result by failing to cooperate than if it

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<sup>16</sup> See sections 776(a)(2)(C) – (D) of the Act.

<sup>17</sup> See section 776(b) of the Act.

<sup>18</sup> See, e.g., *Galvanized Steel Wire from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) and accompanying Issues and Decision Memorandum at 3-4; see also *Certain Lined Paper Products from Indonesia*, 71 FR 47171 (August 16, 2006) and the accompanying Issues and Decision Memorandum at Comment 6.

<sup>19</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>20</sup> See SAA at 870.

<sup>21</sup> See section 776(d)(1)(B) of the Act; see also, e.g., *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 20.

had fully cooperated.<sup>22</sup> The highest calculated rate for any respondent in this investigation is the highest transaction-specific margin for Textil de Pernambuco, which is 275.89 percent.<sup>23</sup> Application of this rate as AFA is consistent with section 776(b)(2)(D), and is sufficiently adverse so “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”<sup>24</sup> Because this rate was a calculated rate, based on a mandatory respondent’s data in this segment of the proceeding, it does not constitute secondary information within the meaning of section 776(c) of the Act and, therefore, there is no need to corroborate it. Accordingly, we are applying, as AFA, the highest transaction-specific margin on the record, *i.e.*, 275.89 percent, to Textil de Pernambuco.

### C. MGP Brasil

#### *Partial Application of Facts Otherwise Available, with an Adverse Inference*

For the reasons stated below, we determine that the partial use of facts otherwise available with an adverse inference is appropriate for the final determination with respect to MGP Brasil.

With respect to its bank charges, MGP Brasil significantly impeded the investigation by reporting bank charges in its U.S. sales to a certain customer,<sup>25</sup> but then not providing any support for these or their traceability during either, the U.S. sales verification in Houston, Texas, or the sales verification in Sao Paulo, Brazil. Specifically, Commerce stated in the verification outline released to MGP Brasil and to its U.S. affiliate, M&G Polymers USA LLC (M&G USA) that it intended to verify its direct selling expenses incurred both in the United States and in the country of manufacture. While the listing of variables is not all inclusive, Commerce listed, among other direct selling expenses, the bank charges incurred on the respondent’s U.S. sales, which were incurred with respect to just one particular customer.<sup>26</sup>

During the sales verification at M&G USA in Houston, and at MGP Brasil in Sao Paulo, Commerce verifiers requested to review documents and account information to confirm the

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<sup>22</sup> See, *e.g.*, Certain Tool Chests and Cabinets From the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value, 83 FR 15361 (April 10, 2018) and accompanying Issues and Decision Memorandum at 9.

<sup>23</sup> See *Polyethylene Retail Carrier Bags from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 16431 (April 1, 2010) and accompanying Issues and Decision Memorandum at Comment 6 (where Commerce used uncooperative respondent’s own information as basis for AFA rate); see also *Nan Ya Plastics Corporation v. United States*, 810 F.3d 1333, 1346 (Fed. Cir. January 19, 2016) (“The statute gives Commerce substantial discretion to decide which record information to use {as AFA} and certainly encompasses {the} single highest transaction-specific margin”). For the highest transaction-specific margin, taking into consideration the results of our differential pricing analysis, see Memorandum, “Preliminary Determination Margin Calculation for Companhia Integrada Textil de Pernambuco,” dated April 27, 2018 at Attachment 2.

<sup>24</sup> See *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*) and the accompanying Issues and Decision Memorandum at “V. Use of Adverse Facts Otherwise Available and Adverse Inferences;” see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998) (*Semiconductors from Taiwan*).

<sup>25</sup> See MGP Brasil’s February 16, 2018 Supplemental Section B-C Questionnaire (MGP Brasil’s February 16, 2018 SQR) at S1-C7-8, S1-C27, and Exhibit S1-C-43.

<sup>26</sup> See MGP Brasil’s Verification Outline, dated May 21, 2018, at 4-5 and 12-13.

accuracy of the expenses reported for bank charges to its customer. However, MGP Brasil stated that those bank charges were not incurred in Brazil, and M&G USA stated that it was unable to obtain any supporting documentation regarding the reported bank charges.<sup>27</sup>

Despite Commerce's detailed and specific instructions in the verification outline, including reference to the procedures and documentation required to complete successfully the verification process, MGP Brasil and M&G USA did not provide all of the information requested either prior to, or during, the verification. Again, the verification outline clearly listed the documents Commerce planned to review, including a full reconciliation of the expenses incurred in the respondent's books and records. Instead, MGP Brasil and M&G USA did not provide any documentation reconciling the reported bank charges to its accounting system.

Accordingly, we find that necessary information is not available on the record.<sup>28</sup> Specifically, there is no information to tie the bank charges from MGP Brasil's responses to its accounting system and to its financial statements to confirm the accuracy and completeness of its reporting with respect to this direct selling expense. Without this information, we cannot rely on the bank charges report by MGP Brasil. Moreover, MGP Brasil and M&G USA withheld information Commerce requested, failed to provide information by the specified deadlines, significantly impeded the proceeding, and failed to provide information which could be verified.<sup>29</sup> Accordingly, we will rely on partial facts available to determine MGP Brasil's dumping margin.

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit clarified that the "best of its ability" standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.<sup>30</sup> We note that the information in question is the type of information that an international company such as MGP Brasil and its U.S. affiliate, should reasonably be able to provide. Commerce's initial questionnaire explains that the responses must be fully verifiable and may affect the consideration accorded to the information.<sup>31</sup> Commerce's verification outline clearly detailed how to prepare for this process and what the verifiers expected to see.<sup>32</sup> Moreover, Commerce requested this information at verification.<sup>33</sup> At no time prior to verification did MGP Brasil or its U.S. affiliate indicate that there were difficulties in complying with Commerce's requests, as they should have pursuant to section 782(c) of the Act. Thus, we find that MGP Brasil would have been able to provide this information if it had made the appropriate effort when it received Commerce's verification outline. MGP Brasil's failure to provide accurate and verifiable information on its reported bank charges demonstrates that it has failed to cooperate to the best of its ability.<sup>34</sup> Therefore, pursuant to section 776(b) of the Act,

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<sup>27</sup> See MGP Brasil' Sales Verification Report, dated June 30, 2018.

<sup>28</sup> Section 776(a)(1) of the Act.

<sup>29</sup> Sections 776(a)(2)(A)-(D).

<sup>30</sup> See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>31</sup> Commerce Letter re: Antidumping Duty Questionnaire, dated November 28, 2017 (Initial AD Questionnaire) at G-8, I-8-9, I-15-16, and requested certifications.

<sup>32</sup> See MGP Brasil's Verification Outline, dated May 21, 2018, at 4-5 and 12-13.

<sup>33</sup> See MGP Brasil' Sales Verification Report, dated June 30, 2018.

<sup>34</sup> See *Final Affirmative Countervailing Duty Determinations*; see also *Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 1268 (January 10, 1986).

we find that the application of adverse inferences is appropriate in selecting from among the facts available to determine MGP Brasil's bank charges incurred on sales to a particular customer in the United States.

Consistent with our practice, as AFA, we have applied the highest transaction-specific bank charges reported by MGP Brasil for its U.S. sales to this specific customer to all of MGP Brasil's U.S. sales made to this customer during the POI.<sup>35</sup> Further, because the AFA rate applied to all bank charges on the sales to that particular customer is obtained from the respondent reported data provided in this investigation, it is not secondary information. Therefore, it is unnecessary for Commerce to corroborate the AFA rate applied to MGP Brasil's bank charges.<sup>36</sup>

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

### **Comment 1: Whether MGP Brasil's Unverified Bank Charges Should Result in the Application of Adverse Facts Available.**

#### *Petitioners' Case Brief*

- Because Commerce could not verify MGP Brasil's reported bank charges,<sup>37</sup> Commerce should apply an adverse inference equal to the highest reported per-unit amount for all U.S. sales, or, at a minimum, the highest per-unit amount for sales to that customer.<sup>38</sup>

#### *MGP Brasil's Rebuttal Brief*

- MGP Brasil did not comment on this issue.

**Commerce's Position:** We agree with the petitioners that we were unable to verify the accuracy of MGP Brasil's reporting of bank charges incurred on sales to one U.S. customer during verification and that, accordingly, the application of AFA is warranted for the bank charges reported by MGP Brasil on those sales to that customer during the POI.

### **Comment 2: Whether Commerce Should Modify the Conversions Used for MGP Brasil's Packing Expenses**

#### *MGP Brasil's Case Brief*

- Commerce should revise MGP's Brasil's preliminary margin to convert the U.S. packing expenses (PACKU) (1) from Brazilian reais to U.S. dollars; and (2) from a per metric ton basis to a per kilogram basis.<sup>39</sup>

#### *Petitioners' Rebuttal Brief*

- Commerce should adjust the currency conversion.

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<sup>35</sup> See MGP Brasil's Final Calculation Memorandum at 2-3.

<sup>36</sup> See section 776(c) of the Act; see also SAA at 870 (providing examples of secondary information); see also *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>37</sup> See MGP Brasil's Sales Verification Report at 15.

<sup>38</sup> See MGP Brasil's February 16, 2018 SQR) at C-8 and Exhibit S1-C-46.

<sup>39</sup> See MGP Brasil's Case Brief at 1-2.



- Commerce should not convert the unit of measure because MGP Brasil reported its U.S. selling price and associated expenses on a metric ton basis.<sup>40</sup> Converting the PACKU expense to a per kilogram basis would result in an incorrectly calculated normal value.

**Commerce’s Position:** We agree with the petitioners and MGP Brasil that the packing expenses incurred on MGP Brasil’s U.S. sales were reported in Brazilian real and should have been converted into U.S. dollars in Commerce’s SAS margin calculation program. Exhibit S3-C-68 of MGP Brasil’s third supplemental questionnaire response clearly indicates that the unit of measure MGP Brasil applied to its packing expense calculation was Brazilian reals per metric ton.<sup>41</sup> Therefore, for the *Final Determination*, we converted the reported U.S. packing expense MGP Brasil incurred on its U.S. sales and reported in Brazilian reals into U.S. dollars in our margin calculation program.

We agree with the petitioners and disagree with MGP Brasil that Commerce should have converted U.S. packing from a per metric ton basis to a per kilogram basis in its margin calculation program. MGP Brasil reported that its home market sales database is reported in kilograms, whereas the U.S. sales database is reported in metric tons.<sup>42</sup> However, in response to Commerce’s follow-up questions regarding its packing expenses, MGP Brasil stated in its first supplemental section B response that it reported its home market and U.S. packing expenses on a per metric ton basis, and refers to the accompanying exhibit to its calculations, and this Exhibit is identical to the exhibit included in its third supplemental response. Exhibits S1-B&C-28, “Currency and Unit Charts,” identify U.S. packing expenses as reported in metric tons.<sup>43</sup> Notwithstanding the contradictory descriptions of the unit measure of MGP Brasil’s packing expenses in the home market and in the United States,<sup>44</sup> an analysis of the home market and U.S. sales data indicates that MGP Brasil reported its packing expenses in both the home market and the U.S. sales databases in Brazilian reals per metric ton. Therefore, we made no changes in the margin calculation program regarding the unit measure for packing expenses reported on U.S. sales in the *Final Determination*.

### **Comment 3: Whether Commerce Should Make Adjustments Based on the Cost Verification Findings**

#### *Petitioners’ Case Brief*

- Commerce should adjust MGP Brasil’s costs to reflect the correction of misreported market and transfer pricing data related to the major input analysis for purified terephthalic acid (PTA), a major input in PET resin, as noted at verification.
- MGP Brasil’s costs should be adjusted to correct for the overstatement of finished production quantities as identified at verification.

<sup>40</sup> See MGP Brasil’s April 3, 2018 Supplemental Questionnaire Response (MGP Brasil’s April 3, 2018 SQR) at Exhibit S3-C-68.

<sup>41</sup> *Id.*

<sup>42</sup> See MGP Brasil’s February 16, 2018 SQR at Exhibits S1-B&C-28.

<sup>43</sup> *Id.* and MGP Brasil’s February 16, 2018 SQR at B-10-11 and C-32.

<sup>44</sup> See MGP Brasil’s February 16, 2018 SQR at B10-11 and Exhibits S1-B 1 (at B-19-20) and S1-B&C-28.

- The financial expense ratio calculation should be revised to exclude the interest income offsets for which MGP Brasil was unable to demonstrate whether they are short term in nature.

*MGP Brasil's Rebuttal Brief*

- MGP Brasil did not comment on this issue.

**Commerce's Position:** We agree with the petitioners that we should adjust MGP Brasil's costs to reflect the correction of the market and transfer pricing data related to the major input analysis. At verification, we determined that the previously submitted amounts were incorrectly reported, and that the revised amounts tie directly to the financial accounting system.<sup>45</sup> We have, therefore, used the verified amounts in calculating the major input adjustment related to the purchases of PTA from affiliated parties for the *Final Determination*.

We also agree with the petitioners that we should adjust MGP Brasil's costs to correct for the overstatement of finished production quantities. At verification, we found that MGP Brasil had incorrectly used semi-finished production quantities in the calculation of its reported costs, rather than finished production quantities.<sup>46</sup> Accordingly, for the *Final Determination*, we have used the verified finished production quantities in the calculation of the reported costs.

Finally, we agree with the petitioners that the financial expense ratio calculation should be revised to exclude the interest income offsets for which MGP Brasil was unable to demonstrate that they were short term in nature. Accordingly, in light of the lack of any record evidence to support MGP Brasil's claim that the offsets were generated from the company's current assets and working-capital accounts, we find no reason to allow the interest income as an offset to the reported financial expenses. Therefore, consistent with our established practice,<sup>47</sup> we have excluded the interest income offsets from the financial expense ratio calculation in the *Final Determination*.

**Comment 4: Whether Commerce Should Include Certain Investment Expenses in MGP Brasil's Financial Expenses.**

*Petitioners' Case Brief*

- Commerce should include the write-downs on the valuation of affiliates in MGP Brasil's total financial expenses in the *Final Determination*.
- The fact that the cost relates to equity investments in affiliated companies and was not an interest expense in no way precludes consideration of this cost in the financial expense ratio calculation.

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<sup>45</sup> See MGP Brasil's Cost Verification Report at 2.

<sup>46</sup> *Id.*

<sup>47</sup> See, e.g., *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016) and accompanying Issues and Decision Memorandum at Comment 6.

- Commerce determines the overall financial expenses of the company at the highest level of consolidation.<sup>48</sup> Only by including such typical financial expenses will Commerce accurately determine the true experience at the highest level of consolidation.

#### *MGP Brasil's Rebuttal Brief*

- The write-downs of assets are not financial expenses.
- A write-down is performed to reduce the value of an asset and an impairment loss is recognized by a company upon recognizing that the historical value of an asset is unrecoverable through future use.
- Commerce's established practice with regards to impairment losses is to treat them as general expenses and include them in a respondent's general and administrative (G&A) expense ratio calculation.<sup>49</sup> To treat these write-downs as financial expenses would be inconsistent with Commerce practice.
- The write-downs are not the G&A expenses of MGP Brasil, but rather its consolidated parent company. MGP Brasil has already reported its own G&A expenses.

**Commerce's Position:** We disagree with the petitioners. The record evidence demonstrates that the write-downs at issue here are directly related to equity investments, rather than financing activity.<sup>50</sup> Commerce has a well-established practice of excluding such investment-related expenses from the reported cost of production (COP).<sup>51</sup> The reasoning is that, in calculating the COP and constructed value (CV), we seek to capture the cost of producing the foreign like product and subject merchandise, and to exclude the cost of investment activities.<sup>52</sup> Investment activities constitute a separate profit-making activity not related to the company's normal operations.<sup>53</sup> Therefore, consistent with our established practice, we have continued to exclude the write-downs on the valuation of its equity investments from the calculation of COP and CV for the *Final Determination*.

With regard to MGP Brasil's assertion that the write-downs are impairment losses that should be treated as G&A expenses, we disagree. While Commerce does have an established practice of including impairment losses in the G&A expense ratio calculation,<sup>54</sup> we note that our practice

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<sup>48</sup> See *Certain Cold-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 44946 (July 20, 2016) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>49</sup> See, e.g., *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774 (October 1, 2009) and accompanying Issues and Decision Memorandum at Comment 1 (*Chlor-Isos from Spain*); see also *Certain Hot-Rolled Steel Flat Products from the United Kingdom: Final Determination of Sales at Less Than Fair Value*, 81 FR 53436 (August 12, 2016) at Comment 5 (*Hot-Rolled Steel from the UK*).

<sup>50</sup> See MGP Brasil's January 31, 2018 Section A Response at Exhibit 16.

<sup>51</sup> See, e.g., *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018) and accompanying Issues and Decision Memorandum at Comment 26 (*Ripe Olives from Spain*); *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not to Revoke Antidumping Duty Order in Part, and Final No Shipment Determination*, 76 FR 50176 (August 12, 2011) and accompanying Issues and Decision Memorandum at Comment 7; see also *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 53428 (August 12, 2016) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>52</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 56739, 56758 (October 21, 1999).

<sup>53</sup> See, e.g., *Ripe Olives from Spain*.

<sup>54</sup> See, e.g., *Chlor-Isos from Spain* and *Hot-Rolled Steel from the UK*.

pertains to the write-down of a respondent's own productive assets. This practice is unrelated to the impairment of equity investments, where a company writes down its investment in the net assets of another company.

## VII. RECOMMENDATION

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

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Agree

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Disagree

9/17/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance