

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Grant Aldonas, Under Secretary

FROM: Jeff May  
Deputy Assistant Secretary, Group I  
Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty  
Investigation of Polyvinyl Alcohol from the Republic of Korea

### Summary

We have analyzed the comments of the interested parties in the antidumping duty investigation of polyvinyl alcohol (PVA) from the Republic of Korea (Korea). As a result of our analysis of the comments received from interested parties, we have made changes in the rate assigned to the sole respondent in this case, DC Chemical Company, Ltd. (DC CHEM). We recommend that you approve the position we have developed in the "Discussion of the Issues" section of this memorandum.

#### 1. Selection of Adverse Facts Available

### Background

On March 20, 2003, the Department of Commerce (the Department) published the preliminary results of the antidumping duty investigation of PVA from Korea. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the Republic of Korea, 68 FR 13681 (Mar. 20, 2003) (Preliminary Determination). The product covered by this investigation is PVA. No hearing was requested by the parties in this investigation. The period of investigation (POI) is July 1, 2001, through June 30, 2002.

We invited parties to comment on the preliminary determination. We received comments only from the petitioners, Celanese, Ltd., and E.I. du Pont de Nemours & Co. Based on our analysis of the comments received, we have changed the weighted-average margins from those presented in the preliminary determination.

## Discussion of the Issues

### Comment 1:    *Selection of Adverse Facts Available*

On March 27, 2003, the sole respondent in this investigation, DC CHEM, informed the Department that it no longer would participate in the investigation. Consequently, we were unable to verify the home-market sales and cost data submitted by DC CHEM.

The petitioners argue that DC CHEM should be subject to the application of adverse facts available (AFA) under section 776(b) of the Tariff Act of 1930, as amended (the Act), because it has failed to cooperate to the best of its ability when it prevented the Department from verifying its submitted home-market sales and cost data as required by section 782(i)(1) of the Act. The petitioners contend that, for companies that withdraw from an investigation following the preliminary determination, it is the Department's established practice to base the final determination on total AFA and calculate an antidumping margin rate based on the highest rate alleged in the petition. They refer to Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55795-96 (August 30, 2002) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5554, 5567-68 (February 4, 2000).

The petitioners contend that it is not appropriate to assign the highest margin published in the initiation notice for Korea (*i.e.*, 31.54 percent) because this margin was based on incomplete data. Specifically, the petitioners comment that the Department recalculated the constructed value (CV) set forth in the petition at the initiation stage in order to base the rate on the net income of DC CHEM rather than the company's operating profit. Although this methodology yielded a profit rate of zero, the petitioners observe that the Department stated that it may re-examine the calculation of the profit rate if it were to be used for facts available under section 776 of the Act. Accordingly, the petitioners argue, because DC CHEM has refused to participate further in this investigation and is subject to total AFA, it should not receive the benefit of a margin determined using a profit rate of zero. Consequently, the petitioners contend that, for the final determination, the Department should revise the calculation of the AFA rate to use the profit rate from the petition and apply the highest margin alleged in the petition (*i.e.*, 35.78 percent).

DC CHEM did not comment on this issue.

### Department's Position:

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified,

the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request from the Department for information. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002). To examine whether the respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil, 65 FR 5554, 5567 (February 4, 2000).

In the instant investigation, the accuracy and completeness of the submitted information has not been established because the respondent did not agree to verification of all of its responses. Without verified data on the record, the Department cannot calculate accurate margins. Therefore, the respondent's refusal to allow a complete verification has hindered the calculation of accurate dumping margins and significantly impeded the proceeding. As a result, application of facts available pursuant to section 776(a)(2)(C) of the Act is appropriate. Moreover, by refusing to allow the Department to verify all of its responses, the respondent did not act to the best of its ability. Consequently, we have determined that it is appropriate to base the antidumping duty margin for DC CHEM on AFA. As AFA, in accordance with our practice, we have determined that it is appropriate to use the highest margin from the petition, as adjusted below.

For purposes of the AFA margin, we agree with the petitioners that DC CHEM should not receive the benefit of a profit rate of zero because it has not cooperated to the best of its ability in this investigation. Therefore, we have considered alternate sources for profit, including data derived from other "surrogate" companies.

The margin as alleged in the petition was based on CV. In the initiation notice, the Department relied conservatively on a profit rate of zero, indicating that it would revisit the rate should it be relied upon for the final determination.

In accordance with our practice, to determine an appropriate profit rate, we have considered several factors in the instant case: 1) the similarity of the potential surrogate company's business operations and products to the respondent's; 2) the extent to which the financial data of the surrogate company reflects sales in the United States as well as the home market; 3) the contemporaneity of the surrogate data to the POI. The greater the similarity in business operations and products, the more likely that there is a greater correlation in the profit experience of the two companies. Concerning the extent that

U.S. sales are reflected in the surrogate's financial statements, because the Department is typically comparing U.S. sales to a normal value from the home market or third country, it does not normally construct a normal value based on financial data that contains exclusively U.S. sales. Further, in accordance with section 773(e)(2)(B) of the Act, we seek home-market profit experience to the extent possible. Finally, contemporaneity is a concern because markets change over time and the more current the data the more reflective it would be of the market in which the respondent is operating. See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel, 66 FR 49349 (September 27, 2001), and the accompanying Decision Memo at Comment 8.

In this case, the Department has used LG Petrochemical as a surrogate company from which to select a reasonable CV profit rate. LG Petrochemical is in the business of producing petrochemicals. Evidence on the record shows that PVA is considered a petrochemical (see page A-6 of DC CHEM's November 22, 2002, response to section A of the questionnaire). **Therefore, LG Petrochemical is a producer of the same general category of merchandise as DC CHEM.** In addition, LG Petrochemical's business operations appear to be similar to DC CHEM's (*i.e.*, both companies make home market and U.S. sales). Finally, as to contemporaneity, the 2001 financial statements of LG Petrochemical are publicly available. Thus, the LG Petrochemical data is contemporaneous with the POI. Based on this analysis, we have applied a CV profit rate which we calculated based on LG Petrochemical's fiscal year 2001 income statement for the final determination. LG Petrochemical had home market sales, the product type of LG Petrochemical is similar to that of DC CHEM, and the data is contemporaneous.

Using a profit rate calculated with this data yields an AFA margin of 38.74 percent. See the memorandum from Jill Pollack to the file, entitled "Recalculation of the Petition Constructed Value Margin from the Antidumping Duty Investigation of Polyvinyl Alcohol from Korea," dated August 4, 2003.

#### Recommendation

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final determination in the investigation and the final AFA dumping margin for the investigated firm in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

---

Joseph A. Spetrini  
Acting Assistant Secretary  
for Grant Aldonas, Under Secretary

---

(Date)