



A-580-889

POI: 04/01/2015 – 03/31/2016

E&C AD/CVD OIII: LRL/SSL

Public Document

January 26, 2017

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: Gary Taverman  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair-Value Investigation of Dioctyl Terephthalate from  
the Republic of Korea

## I. SUMMARY

The Department of Commerce (“Department”) preliminarily determines that dioctyl terephthalate (“DOTP”) from the Republic of Korea (“Korea”) is being, or is likely to be, sold in the United States at less-than-fair-value (“LTFV”), as provided in section 733(b) of the Tariff Act of 1930, as amended (“the Act”). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice. In accordance with section 733(e)(1) of the Act, we preliminarily determine that critical circumstances do not exist for Aekyung Petrochemical Co., Ltd. (“AKP”) and LG Chem Ltd. (“LG Chem”) and for imports of DOTP from Korea by firms that are subject to the all-others rate.

## II. BACKGROUND

On June 30, 2016, the Department received an antidumping duty (“AD”) petition covering imports of DOTP from Korea, which was filed in proper form by Eastman Chemical Company (“Petitioner”).<sup>1</sup> The Department initiated this investigation on July 20, 2016.<sup>2</sup>

On August 9, 2016, the Department limited the number of mandatory respondents selected for individual examination to the two largest publicly-identifiable producers/exporters (*i.e.*, AKP

<sup>1</sup> See Petition for the Imposition of Antidumping Duties on Imports of Dioctyl Terephthalate (“DOTP”) from Korea, dated June 30, 2016 (“Petition”).

<sup>2</sup> See *Dioctyl Terephthalate from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 49628 (July 28, 2016) (“Initiation Notice”).



and LG Chem) of the subject merchandise by volume.<sup>3</sup> For a complete description of the Department's respondent selection methodology, see the "Selection of Respondents" section of this memorandum.

In the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of DOTP to be reported in response to the Department's questionnaire.<sup>4</sup> No interested party submitted comments on the scope of the investigation. On August 9, 2016, Petitioner submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.<sup>5</sup>

On August 19, 2016, the U.S. International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of DOTP from Korea.<sup>6</sup>

AKP and LG Chem submitted timely responses to the Department's AD questionnaire (sections A through D) from September 14, 2016, through October 10, 2016. The Department issued supplemental questionnaires to each company and received timely responses to these supplemental questionnaires from November 22, 2016, through January 25, 2017. During the same time, Petitioner submitted comments regarding AKP's and LG Chem's questionnaire responses.

On November 3, 2016, the Department postponed the time period for the preliminary determination of this investigation by 50 days, to January 26, 2017, in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1).<sup>7</sup>

On January 18, 2017, Petitioner and AKP submitted pre-preliminary comments and a response to Petitioner's pre-preliminary comments, respectively.<sup>8</sup>

We are conducting this investigation in accordance with section 733(b) of the Act.

---

<sup>3</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Selection of Respondents for the Antidumping Duty Investigation on Dioctyl Terephthalate from the Republic of Korea," dated August 9, 2016 ("Respondent Selection Memorandum"), at 5.

<sup>4</sup> See *Initiation Notice*, 81 FR at 49629.

<sup>5</sup> See Letter from Petitioner, "Re: Dioctyl Terephthalate ("DOTP") from Korea: Petitioner's Comments on Product Characteristics," dated August 9, 2016.

<sup>6</sup> See *Dioctyl Terephthalate (DOTP) From Korea; Determination*, 81 FR 55482 (August 19, 2016).

<sup>7</sup> See *Dioctyl Terephthalate from the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 81 FR 79435 (November 14, 2016).

<sup>8</sup> See Letter from Petitioner, "Re: Dioctyl Terephthalate ("DOTP") from Korea; Petitioner's Comments in Advance of the Preliminary Determination," dated January 18, 2017. See also Letter from AKP, "Re: Dioctyl Terephthalate from the Republic of Korea – Response to Petitioner's January 17 Letter," dated January 18, 2017.

### **III. PERIOD OF INVESTIGATION**

The period of investigation (“POI”) is April 1, 2015, through March 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2016.<sup>9</sup>

### **IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES**

Pursuant to section 735(a)(2) of the Act, on January 10, 2017, LG Chem requested the Department to postpone the final determination and extend provisional measures from four months to six months.<sup>10</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) our preliminary determination is affirmative; (2) the requesting exporter, LG Chem, accounts for a significant proportion of exports of the subject merchandise; and, (3) no compelling reasons for denial exist, we are granting the respondent’s request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

### **V. SCOPE COMMENTS**

In the *Initiation Notice*, the Department set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, “scope”).<sup>11</sup> No interested party submitted comments on the scope of this investigation.

### **VI. SELECTION OF RESPONDENTS**

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation. Pursuant to section 777A(c)(2) of the Act, the Department may limit its examination to: (A) a sample of exporters, producers or types of products that the Department determines is statistically valid based on the information available to the Department at the time of selection, or (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the Department determines can be reasonably examined. In selecting respondents in this AD proceeding, the Department found that, because of the large number of companies involved in the investigation and its limited resources, it was most appropriate to select respondents that account for the largest volume of the subject merchandise that can reasonably be examined, pursuant to section

---

<sup>9</sup> See 19 CFR 351.204(b)(1).

<sup>10</sup> See Letter from LG Chem, Ltd. “LG Chem’s Request for Extension of Final Determination and Provisional Measures,” dated January 10, 2017.

<sup>11</sup> See *Initiation Notice*, 81 FR at 49629.

777A(c)(2)(B) of the Act.

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports under the appropriate HTSUS subheadings listed in the scope of the investigation.<sup>12</sup> Accordingly, on July 22, 2016, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.<sup>13</sup> On July 29, 2016, we received comments regarding respondent selection from Petitioner and LG Chem.<sup>14</sup> On August 9, 2016, the Department limited the number of mandatory respondents selected for individual examination to the two largest publicly-identifiable producers/exporters (*i.e.*, AKP and LG Chem) of the subject merchandise by volume.<sup>15</sup>

## VII. PRELIMINARY NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

### Background

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination. Petitioner alleged that critical circumstances exist with respect to imports of the merchandise under consideration, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(h)(2), on November 15, 2016.<sup>16</sup> On November 28, 2016, the Department requested shipment data from AKP and LG Chem with respect to the critical circumstances allegation.<sup>17</sup> On December 15, 2016,<sup>18</sup> AKP and LG Chem responded to the Department’s request for shipment data.

#### A. Legal Framework

Section 733(e)(1) of the Act provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of

---

<sup>12</sup> See *Initiation Notice*, 81 FR at 49631.

<sup>13</sup> See Letter from the Department, “Antidumping Duty Investigation of Dioctyl Terephthalate from the Republic of Korea: U.S. Customs and Border Protection Import Data for Use in Respondent Selection,” dated July 22, 2016.

<sup>14</sup> See Letter from Petitioner, “Re: Petitioner’s Respondent Selection Comments, Dioctyl Terephthalate (“DOTP”) from Korea,” dated July 29, 2016; see also Letter from LG Chem, “LG Chem’s Comments on CBP Data and Mandatory Respondent Selection Dioctyl Terephthalate (DOTP) from Korea,” dated July 29, 2016.

<sup>15</sup> See Respondent Selection Memorandum, at 5.

<sup>16</sup> See letter from Petitioner, “Re: Dioctyl Terephthalate (“DOTP”) from Korea; Critical Circumstances Allegation,” dated November 15, 2016 (“Critical Circumstances Allegation”), at 3-5.

<sup>17</sup> See letters to AKP and LGC, “Antidumping Duty Investigation of Dioctyl Terephthalate from the Republic of Korea: Request for Monthly Quantity and Value Shipment Data,” dated November 28, 2016.

<sup>18</sup> See letter from AKP, “Dioctyl Terephthalate from the Republic of Korea – Quantity and Value Shipment Data,” dated December 15, 2016. See also letter from LGC, “LG Chem’s Response to the Department’s Request for Monthly Q&V Shipment Data: Dioctyl Terephthalate (“DOTP”) from the Republic of Korea,” dated December 14, 2016.

the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been “massive imports” of the subject merchandise over a relatively short period. Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

#### B. Critical Circumstances Allegation

Petitioner alleges that critical circumstances exist with respect to Korea under both prongs of section 733(e)(1) of the Act, which states that critical circumstances may be found if: (1) “there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise,” or (2) “the person by whom, or for whose account, the merchandise was imported knew or should have known” that the subject merchandise was being sold at less than fair value and that such sales were likely to cause material injury to an industry in the United States.<sup>19</sup>

Petitioner argues that based on the information provided in the petition, producers in Korea knew or should have known that subject imports were being sold at dumped prices and that there was likely to be material injury to the U.S. DOTP industry as a result.<sup>20</sup> Petitioner states that the Department initiated the instant investigation based on the margins alleged in the petition (*i.e.*, range from 24 to 48 percent), which exceeded the threshold margins to impute knowledge.<sup>21</sup> Petitioner further argues that an affirmative preliminary determination of material injury by the ITC further indicates that subject imports were sold at less than fair value in the U.S. and were likely a cause of material injury to the U.S. industry.<sup>22</sup>

Finally, pursuant to 19 CFR 351.206(h)(2), Petitioner submitted import statistics for the subject merchandise covered by the scope of this investigation for the period April 2016 through September 2016 as evidence of massive imports of DOTP from Korea during a relatively short period.<sup>23</sup> Petitioner claims that imports of subject merchandise have been massive over a relatively short period, beginning in April 2016, three months prior to the filing of the Petition, when it became clear that the filing of an AD petition was imminent.<sup>24</sup> Using a base comparison period of three months before and after July 2016, Petitioner found that imports increased by 26 percent during the comparison period.<sup>25</sup>

---

<sup>19</sup> See Critical Circumstances Allegation at 1 - 2.

<sup>20</sup> *Id.*, at 3.

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

<sup>22</sup> See *Dioctyl Terephthalate (DOTP) from Korea*, USTIC Pub. 4630 (August 2016) at 23-24. See also Critical Circumstances Allegation at 3-4.

<sup>23</sup> *Id.* at 5 and Exhibit 2. See also section 733(e)(1)(B) (requiring massive imports of the subject merchandise over a relatively short period).

<sup>24</sup> See Critical Circumstances Allegation at 4 - 5.

<sup>25</sup> *Id.*, at 5.

### C. Analysis

The Department's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria has been to examine evidence available to the Department, such as: (1) the evidence presented in Petitioner's critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted by the Department by the respondents selected for individual examination.<sup>26</sup> As further provided below, in determining whether the above statutory criteria have been satisfied in this case, we have examined: (1) evidence presented in Petitioner's November 15, 2016, allegation; (2) information obtained since the initiation of this investigation; and (3) the ITC's preliminary injury determination.

We considered each of the three statutory criteria for finding critical circumstances below:

*Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise*

In determining whether a history of dumping and material injury exists, the Department generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.<sup>27</sup> Because there have been no previous antidumping duty orders on DOTP from any country, we do not find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. For this reason, the Department does not find a history of injurious dumping of DOTP from Korea pursuant to section 733(e)(1)(A)(i) of the Act.

*Section 733(e)(1)(A)(ii) of the Act: Whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales*

---

<sup>26</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009).

<sup>27</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972 (June 5, 2008) ("*Carbon Steel Pipe Final Determination*"); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049 (January 14, 2009) ("*SDGE Final Determination*"). See also *Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

In determining whether importers of DOTP knew or should have known that exporters were selling subject merchandise at less than fair value, and that there was likely to be material injury by reason of such sales, the Department normally considers dumping margins of 25 percent or more, for export price sales, or 15 percent or more, for constructed export price sales, sufficient to impute knowledge of the exporter selling the subject merchandise at less than its fair value.<sup>28</sup> In this investigation, we find that AKP's and LG Chem's margins do not meet the quantitative thresholds utilized by the Department and, thus, we find that the criteria under section 733(e)(1)(A)(ii) of the Act are not met. We therefore find that critical circumstances do not exist with regard to AKP and LG Chem.<sup>29</sup>

Likewise, for all other producers or exporters of DOTP from Korea, the Department preliminarily finds that the criteria under sections 733(e)(1)(A)(i) and (ii) of the Act have not been met. Accordingly, the Department preliminarily determines that critical circumstances do not exist for all other producers or exporters of DOTP from Korea.

## **VIII. DISCUSSION OF THE METHODOLOGY**

### **Comparisons to Fair Value**

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether AKP's and LG Chem's sales of the subject merchandise from Korea to the United States were made at less than normal value ("NV"), the Department compared the EP and CEP, as applicable, to the NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

#### **A. Determination of the Comparison Method**

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B)

---

<sup>28</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from Indonesia*, 71 FR 15162, 15166 (March 27, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia*, 71 FR 47171 (August 16, 2006).

<sup>29</sup> We further note that because the criteria under section 733(e)(1)(A) of the Act are not met, it is not necessary for the Department to examine whether imports of subject merchandise from AKP and LG Chem were "massive" during the comparison period, as described under section 733(e)(1)(B) of the Act.

of the Act.<sup>30</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For AKP and LG Chem, purchasers are based on the reported unique customer codes.<sup>31</sup> Regions are defined using the reported destination code (*i.e.*, state)<sup>32</sup> and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of investigation based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the

---

<sup>30</sup> See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3; *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.

<sup>31</sup> See AKP's Section C response, Antidumping Duty Investigation of Dioctyl Terephthalate from Korea: Response to Sections B, C and D of the Department's August 17 Questionnaire, dated September 29, 2016, ("AKP's CQR") at 42 and LG Chem's Section C Response: Dioctyl Terephthalate (DOTP) from the Republic of Korea, dated October 3, 2016 ("LGC's CQR"), at 7.

<sup>32</sup> See AKP's CQR at 69 and LGC's CQR at 27.



small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## B. Results of the Differential Pricing Analysis

### 1. AKP

For AKP, based on the results of the differential pricing analysis, the Department preliminarily finds that 76.82 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>33</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for AKP, in accordance with 19 CFR 351.414(c)(1) and (d).

### 2. LG Chem

For LG Chem, based on the results of the differential pricing analysis, the Department preliminarily finds that 95.46 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>34</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for the preliminary determination, the Department is applying the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for LG Chem, in accordance with 19 CFR 351.414(c)(1) and (e).

## IX. **PRODUCT COMPARISONS**

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Korea during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

---

<sup>33</sup> See Memorandum to the File, "Analysis for the Preliminary Determination of the Less-Than-Fair Value Investigation of Dioctyl Terephthalate from the Republic of Korea," dated concurrently with this memorandum ("AKP's Preliminary Analysis Memorandum").

<sup>34</sup> See Memorandum to the File, "Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Dioctyl Terephthalate ("DOTP") from the Republic of Korea ("Korea"): LG Chem Ltd. ("LG Chem") and LG Chem America, Inc. ("LGCAI") ("collectively, "LGC")," dated concurrently with this memorandum ("LGC's Preliminary Analysis Memorandum").

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristics reported by the respondents in the following order of importance: color, acid value before heating, and specific gravity. AKP's and LG Chem's reported control numbers for sales to the United States of DOTP identify the characteristics of the DOTP as exported by AKP and LG Chem.<sup>35</sup>

## **X. DATE OF SALE**

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, under the regulation, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>36</sup> In addition, the Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>37</sup>

### **1. AKP**

For its comparison market sales, AKP reported the date of sale based on its shipping invoice.<sup>38</sup> AKP explained that the first written documentation confirming the quantity it shipped in each transaction was its "shipping invoice," which AKP issued on the date of shipment. Further, AKP's first written documentation confirming its selling price to the customer was its tax invoice.<sup>39</sup> AKP stated that during the POI, all of its shipments preceded tax invoices in the home market; therefore, the date of shipment was reported as the date of sale.<sup>40</sup> However, our examination of AKP's comparison market sales database found that the date of shipment did not always precede the date of tax invoice. Therefore, we preliminarily determine to use the earlier of date of tax invoice or date of shipment as the date of sale.<sup>41</sup>

---

<sup>35</sup> See AKP's Section B response, Antidumping Duty Investigation of Dioctyl Terephthalate from Korea: Response to Sections B, C and D of the Department's August 17 Questionnaire, dated September 29, 2016, ("AKP's BQR") at 3-5 and CQR at 39-41; and LG Chem's Section B Response: Dioctyl Terephthalate (DOTP) from the Republic of Korea, dated September 28, 2016, ("LGC's BQR") at 6-7 and CQR at 4-6.

<sup>36</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001)

<sup>37</sup> See, e.g., *Certain Oil Country Tubular Goods from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 38135 (June 13, 2016) and accompanying Decision Memorandum at 7, citing *Certain Oil Country Tubular Goods from Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 10495 (February 25, 2014) and accompanying Decision Memorandum at 14-15, unchanged in *Certain Oil Country Tubular Goods from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 41979 (July 18, 2014). See also, *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009) ("Staple Fiber from Korea").

<sup>38</sup> See AKP's BQR at 10.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> See AKP's Preliminary Analysis Memorandum.

For its EP sales, AKP explained that the date of the internal billing document was reported as the date of sale.<sup>42</sup> AKP further stated that this is the date on which terms of sale were fixed.<sup>43</sup> Nothing on the record suggests that there are differences between the date of sale and the date of the internal billing document in AKP's U.S. sales database.<sup>44</sup> Therefore, we preliminarily determine to use AKP's reported date of sale as the date of sale for AKP's U.S. sales transactions.

## 2. LG Chem

LG Chem reported the date of sale based on its internal billing document, which is consistent with the date of invoice for comparison market sales.<sup>45</sup> LG Chem explained that for bulk shipments (*i.e.*, non-drum shipments), the customer weighs the merchandise at the factory gate, and, in the event of any discrepancy between LG Chem's shipping weight and the customer's receiving weight, the "quantity ultimately recorded by LG Chem in its books and records and paid by the customer is based on the quantity as measured at the customer's location."<sup>46</sup> LG Chem explains further that this weight-determination process is handled through a series of internal bookings in SAP, "wherein the original transaction is reversed in its books and records and rebooked at the net quantity as measured at the customer's location (at the same unit price)."<sup>47</sup> Our examination of LG Chem's comparison market sales database revealed that the date of shipment did not always match the date of the internal billing documents.<sup>48</sup> Therefore, we have preliminarily determined to use the earlier of date of sale or date of shipment as LG Chem's date of sale for the purposes of this preliminary determination, in accordance with our practice.<sup>49</sup>

For its EP sales, LG Chem reported the date of sale using the date recorded on its internal billing document,<sup>50</sup> and the date of its commercial invoice issued upon delivery to the U.S. customer for its CEP sales.<sup>51</sup> Nothing on the record suggests that there are differences between the date of sale and the date of shipment in LG Chem's U.S. sales database.<sup>52</sup> Therefore, we have preliminarily determined to use LG Chem's reported date of sale as the date of sale for LG Chem's U.S. sales transactions for purposes of this preliminary determination.

---

<sup>42</sup> See AKP's CQR at 46.

<sup>43</sup> *Id.*

<sup>44</sup> See AKP's Preliminary Analysis Memorandum.

<sup>45</sup> See LGC's BQR at 10-12.

<sup>46</sup> *Id.*, at 11.

<sup>47</sup> *Id.*, at 11-12.

<sup>48</sup> See the Section B database.

<sup>49</sup> See LGC's Preliminary Analysis Memorandum.

<sup>50</sup> See LGC's CQR at 9.

<sup>51</sup> *Id.*

<sup>52</sup> See LGC's Preliminary Analysis Memorandum at Attachments 3 and 4.

## **XI. U.S. PRICE**

### **A. Export Price**

Section 772(a) of the Act defines EP as “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we calculated EP for AKP’s and certain of LG Chem’s U.S. sales where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record.

#### **1. AKP**

We based EP on a packed price to the first unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.<sup>53</sup> We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, including where appropriate: foreign inland freight, foreign brokerage and handling, international freight, marine insurance, and U.S. inland freight.

#### **2. LG Chem**

We based EP on a packed price to the first unaffiliated purchaser in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, including where appropriate: foreign inland freight, foreign brokerage and handling, and international freight.

### **B. Constructed Export Price**

Pursuant to section 772(b) of the Act, the CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,” as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for certain of LG Chem’s sales because the sales were made on its behalf by its U.S. sales affiliate in the United States (*i.e.*, LG Chem America, Inc. (“LGCAI”)) to unaffiliated purchasers in the United States.

For these sales, we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made additions to the starting price for packing in accordance with section 772(c)(1)(A) of the Act. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These adjustments included, where applicable, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight from the warehouse to the unaffiliated customer, and U.S. warehousing.

---

<sup>53</sup> See AKP’s Preliminary Analysis Memorandum for further discussion of export price used in the margin program.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted, where applicable, those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, commissions and credit expenses) and indirect selling expenses (*i.e.*, indirect selling expenses and inventory carrying costs). In accordance with section 772(d) of the Act, we calculated LG Chem's credit expenses and inventory carrying costs based on its short-term interest rate. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

### C. Duty Drawback

LG Chem did not request a duty drawback adjustment.<sup>53</sup> AKP requested a duty drawback adjustment.<sup>54</sup> Section 772(c)(1)(B) of the Act states that EP and CEP shall be increased by "the amount of any import duties imposed by the country of exportation...which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for this adjustment to be made to EP.<sup>55</sup> The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.<sup>56</sup>

In this investigation, AKP provided timely responses and supporting documentation regarding its duty drawback claims, including the regulation governing duty drawback in Korea, and a detailed list of the duty drawback refunds that it received for all of its U.S. sales during the POI.<sup>57</sup> Also AKP identified the raw materials on which it paid an import duty and provided worksheets: (1) detailing how it calculated the duty drawback on a transaction-specific basis; (2) linking the raw materials to production of merchandise under consideration; and (3) demonstrating that it imported sufficient volumes of raw materials to account for the duty drawback received on U.S. sales.<sup>58</sup> Based on these supporting documents, we preliminarily determine that AKP's duty drawback claims meet the two-pronged test. Consistent with our practice, we based the amount of duty drawback adjustment on the amount reported by AKP in

---

<sup>53</sup> See LGC's CQR at 28, stating that its duty drawback was so immaterial as to be irrelevant.

<sup>54</sup> See AKP's CQR at 70 and Appendix C-15.

<sup>55</sup> See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) ("*Saha Thai*").

<sup>56</sup> *Id.*; see also *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>57</sup> See AKP's CQR at 70 and Appendix C-15; see also AKP's 1<sup>st</sup> supplemental response, Antidumping Duty Investigation of Dioctyl Terephthalate from Korea: Response to the Department's October 27 Supplemental Questionnaire, dated November 23, 2016 ("AKP's 1st SQR") at 83-84 and Appendix SC-8; see also AKP's 2<sup>nd</sup> supplemental response, Antidumping Duty Investigation of Dioctyl {sic} Terephthalate from Korea – Response to the Department's December 14 Supplemental Questionnaire, dated January 4, 2017 ("AKP's 2nd SQR") at 42-43 and Appendix S2C-7.

<sup>58</sup> *Id.*

its cost of production (“COP”) database and, as described below, adjusted as necessary.<sup>59</sup> Because AKP demonstrated that it meets the two-pronged test, we preliminarily determine to make a duty drawback adjustment to U.S. price, pursuant to section 772(c)(1)(B) of the Act.

Consistent with recent practice, we have considered the import duty cost, embedded in the material costs of producing the merchandise under consideration, in determining the appropriate duty drawback adjustment so as not to introduce distortion into our calculation and to ensure a balanced comparison between U.S. price and NV.<sup>60</sup> Specifically, we limited the amount of the duty drawback adjustment to the amount of duty imbedded in the reported per-unit cost. Because, as explained in the “COP Analysis” section of this notice, we have preliminarily determined that a quarterly cost methodology is warranted for AKP, in those instances in which the duty drawback claimed on U.S. sales exceeds the corresponding per-unit quarterly-averaged import duty costs, we have limited the amount of the duty drawback adjustment granted to the amount of the corresponding per-unit quarterly-averaged import duty costs.<sup>61</sup>

## **XII. NORMAL VALUE**

### **A. Comparison Market Viability**

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare the respondent’s volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act and 19 CFR 351.404(b)(2). If we determine that no viable home market exists, we may, if appropriate, use a respondent’s sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that AKP’s and LG Chem’s aggregate volumes of home market sales of the foreign like product were greater than five percent of the aggregate volumes of U.S. sales of the subject merchandise.<sup>62</sup> Therefore, we used home market sales as the basis for NV for AKP and LG Chem, in accordance with section 773(a)(1)(B) of the Act. Consistent

---

<sup>59</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>60</sup> See *Certain Cold-Rolled Steel Flat Products from India: Final Determination of Sales at Less Than Fair Value*, 81 FR 49938 (July 29, 2016) and accompanying Issues and Decision memorandum at Comment 1 (“applying a duty drawback adjustment based solely on respondent’s claimed adjustment, without consideration of import duties included in respondent’s cost of materials, may result in an imbalance in the comparison of EP with NV.”)

<sup>61</sup> See AKP’s Preliminary Analysis Memorandum at Attachment 1, Comparison Market Program Log.

<sup>62</sup> See AKP’s section A response, Antidumping Investigation of Dioctyl Terephthalate from Korea: Response to Section A of the Department’s August 17 Questionnaire, dated September 14, 2016 (“AKP’s AQR”) at Appendix A-1. See also LG Chem’s Section A Response: Dioctyl Terephthalate (DOTP) from the Republic of Korea, dated September 14, 2016 (“LGC’s AQR”), at Exhibit A-1 and LG Chem’s Response to Supplemental ABC Questionnaire: Dioctyl Terephthalate (DOTP) from the Republic of Korea, dated November 22, 2016, (“LGC’s 1st SQR”) at Exhibit SABC-1.

with our practice, we included LG Chem's reported sales to affiliated parties for purposes of our viability analysis.<sup>63</sup> AKP reported that it made no sales in the home market to affiliated parties.

## B. Affiliated-Party Transactions and Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.<sup>64</sup> The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."<sup>65</sup>

During the POI, LG Chem made sales of DOTP in the home market to affiliated parties, as defined in section 771(33) of the Act.<sup>66</sup> Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all direct selling and packing expenses. Pursuant to 19 CFR 351.403(c) and, in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade ("LOT"), we determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>67</sup>

## C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>68</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for

---

<sup>63</sup> See *Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2 (use of affiliated party sales in viability determination).

<sup>64</sup> See 19 CFR 351.403(c).

<sup>65</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003).

<sup>66</sup> See LGC's AQR at 3. See also LGC's BQR at 8. LG Chem reported that its affiliated party consumed all of the DOTP purchased from LG Chem to manufacture non-subject merchandise. See LGC's AQR at 3, BQR at 8 and LG Chem's Second Supplemental ABC Questionnaire Response: Dioctyl Terephthalate (DOTP) from the Republic of Korea, dated January 25, 2017 ("LGC's 2nd SQR"), at 3-6. As a consequence, LG Chem reports that its affiliate party made no downstream sales of subject merchandise during the POI. *Id.*

<sup>67</sup> See section 771(15) of the Act; 19 CFR 351.102(b)(35).

<sup>68</sup> See 19 CFR 351.412(c)(2).



determining that there is a difference in the stages of marketing.<sup>69</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether home market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>70</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>71</sup>

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>72</sup>

In this investigation, we obtained information from AKP and LG Chem regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.<sup>73</sup> Neither AKP nor LG Chem claim LOT adjustments in either the home market or the U.S. market.<sup>74</sup>

## 1. AKP

In the home market, AKP stated that it made sales directly to unaffiliated customers, either through direct shipments from AKP's production factory ("Channel 1") or from its inventory ("Channel 2").<sup>75</sup> AKP reported that it performed the following selling functions to home market customers: sales forecasting; strategic/economic planning; personnel training/exchange;

---

<sup>69</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 ("*OJ from Brazil*").

<sup>70</sup> Where NV is based on constructed value ("CV"), we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative ("SG&A") expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>71</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>72</sup> See, e.g., *OJ from Brazil* and accompanying Issues and Decision Memorandum at Comment 7.

<sup>73</sup> See AKP's AQR at 14-21 and Appendix A-4. See LGC's AQR at 12 through 28 and Exhibits A-13 and A-14. See also LGC's BQR at 9-10 and 21 and Exhibit B-10; and LGC's CQR at 8-9 and 16 and Exhibit C-10.

<sup>74</sup> See, e.g., AKP's AQR at 14-21. See also LGC's AQR at 12-27.

<sup>75</sup> See AKP's AQR at 15 and Appendix A-3.

engineering services; marketing (which includes advertising, sales promotion, market research, and sales/marketing support); procurement/sourcing services; packing; inventory maintenance; order input/processing; direct sales personnel; technical assistance; warranty/after-sale services and guarantees; and freight and delivery.<sup>76</sup>

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support.<sup>77</sup> Based on these selling function categories, we find that AKP performed the same selling functions at the same level of intensity for all of its home market channels of distribution, and thus, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, AKP stated that it made sales through four channels of distribution: 1) direct exports to unaffiliated U.S. customers (“Channel 1”); 2) “local export” sales through unaffiliated Korean trading companies (“Channel 2”); 3) indirect exports to unaffiliated U.S. customers (“Channels 3 and 4”). AKP reported that it performed the following selling functions to U.S. market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; marketing (which includes advertising, sales promotion, market research, sales marketing support); procurement/sourcing services; packing; inventory maintenance; order/input processing; direct sales personnel; technical assistance; guarantees, and warranty/after-sales services; and freight and deliveries.

We compared the selling functions in the home market channels of distributions to the selling functions in the U.S. channels of distribution and found that the selling functions AKP performed for the home market customers are similar to the ones performed for U.S. customers at a similar level of intensity. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that AKP’s sales to the home market during the POI were made at the same LOT as AKP’s EP sales to the U.S. market. Consequently, we matched all EP sales to home market sales, and no LOT adjustment was warranted.

## 2. LG Chem

LG Chem reported that it made sales through four channels of distribution in the home market: sales through an outsourced warehouse to unaffiliated end users (“Channel 1”); sales through an outsourced warehouse to unaffiliated retailers (“Channel 2”); sales to an affiliated customer by linked pipeline (“Channel 3”); and sales from the factory direct to affiliated or unaffiliated end users or retailers (“Channel 4”).<sup>78</sup> LG Chem explained that it performed the following selling

---

<sup>76</sup> *Id.*

<sup>77</sup> See *OJ from Brazil* and accompanying Issues and Decision Memorandum at Comment 7; and *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (March 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009). See also *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016), and accompanying Issues and Decision Memorandum at Comments 9 and 18 (“*CRS from Korea*”).

<sup>78</sup> See LGC’s BQR at 9-10 and Exhibit B-10.

functions for all home market customers: sales forecasting, strategic/economic planning, marketing (including advertising, sales/marketing support, market research), inventory management, order input, and direct sales personnel.<sup>79</sup> It also provided packing services and freight and delivery arrangements for all channels of distribution but Channel 2.<sup>80</sup>

As described above, and consistent with our practice, we analyzed LG Chem's selling activities under four categories.<sup>81</sup> Based on these selling function categories, we find that LG Chem performed the same selling functions at a similar level of intensity for all of its home market channels of distribution. Therefore, despite minor differences in selling functions between Channel 2 and other channels, we determine that all home market sales are at the same LOT.

LG Chem reported that it had four channels of distribution in the U.S. market: 1) delivered CEP sales through LGCAI ("Channel 1"); 2) EP sales made through a trading company in Korea ("Channel 2"); 3) EP sales made directly to a U.S. customer ("Channel 3"); and 4) CEP sales picked up by the customer at the U.S. port ("Channel 4"). LG Chem claims that LGCAI performs selling functions in the United States that LG Chem normally performs in the home market for home market sales.<sup>82</sup> As a consequence, LG Chem maintains that the selling activities that LG Chem performs in connection with home market sales are greater in scope and intensity than the activities that LG Chem performs for its sales to LGCAI.<sup>83</sup> Therefore, LG Chem claims that the CEP level of trade from LG Chem to LGCAI is much less advanced than the single level of trade of LG Chem's home market sales, and as a result, LG Chem claims that it is entitled to a CEP offset in this investigation.<sup>84</sup>

LG Chem reports that it performed the following sales functions for CEP sales: strategic/economic planning, sales forecasting, marketing and direct sales personnel.<sup>85</sup> It reports packing, and inventory services for sales made through Channel 4 (but not through Channel 1); and it reports order processing, commissions and freight and delivery arrangements for sales made through Channel 1 (but not through Channel 4).<sup>86</sup> LG Chem reports that it performed the following sales functions for EP sales: packing, inventory and order input/processing.<sup>87</sup> It reports direct service personnel and freight and delivery arrangements for sales made through Channel 3 (but not through Channel 2).<sup>88</sup> It did not report any selling functions for sales made through Channel 2 (but not through Channel 3).<sup>89</sup>

Based on these selling function categories, we find that LG Chem performed the same selling functions at a similar level of intensity for all of its U.S. market channels of distribution.

---

<sup>79</sup> See LGC's AQR at Exhibit A-14, "Selling Functions Chart – Home Market," unchanged in LGC's 2nd SQR at Exhibit SABC-8, Selling Functions Chart – Home Market."

<sup>80</sup> *Id.*

<sup>81</sup> See e.g., *OJ from Brazil, Shrimp from India, and CRS from Korea.*

<sup>82</sup> See LGC's AQR at 28.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* See also LGC's 2nd SQR at 8, 9-12 and Exhibits SABC2-7 through SABC2-9.

<sup>85</sup> See LGC's AQR at Exhibit A-13, "Selling Functions," LGC's 2nd SQR at Exhibit SABC2-7, "Selling Functions Chart – U.S. Market (through LGCAI)," and Exhibit SABC2-9, "Revised Exhibit A-13."

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

Therefore, in spite of minor differences in selling functions in all four channels, we determine that all U.S. sales are at the same LOT.

We compared the selling functions in the home market channels of distribution to the selling functions in the U.S. channels of distribution and found that the selling functions LG Chem performed for its home market customers are similar to those performed for its U.S. customers at a similar level of intensity. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that LG Chem's sales to the home market during the POI were made at the same LOT as LG Chem's EP and CEP sales to the U.S. market. Consequently, we matched all EP and CEP sales to home market sales, and no LOT adjustment or CEP offset was warranted. Pursuant to 773(a)(7)(B) of the Act, we are not granting a CEP offset to LG Chem, because we disagree with LG Chem's contention that the LOT for sales made in the home market compared with the LOT for sales made to the United States were significantly different from each other as to warrant a CEP offset adjustment to NV. In order for the Department to grant a CEP offset to NV, the respondent must first demonstrate that substantial differences exist between the LOT of sales in each market, in accordance with 19 CFR 351.412(c)(2).<sup>90</sup>

#### D. COP Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act,<sup>91</sup> the Department requested CV and COP information from AKP and LG Chem. We examined AKP's and LG Chem's cost data. We determined that our quarterly cost methodology is not warranted for LG Chem and, therefore, we applied our standard methodology of using annual costs based on LG Chem's reported data. With respect to AKP, however, we have used quarterly cost methodology for the reasons noted below.

##### 1. Cost Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the POI. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) the change in the cost of manufacturing ("COM") recognized by the respondent during the POI must be deemed significant; (2) the

---

<sup>90</sup> See also *Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (Dec. 23, 2004) and accompanying "Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from Thailand," at Comment 5, dated December 23, 2004. See also *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 80 FR 19633 (April 13, 2015) and accompanying Issues and Decision Memorandum at Comment.

<sup>91</sup> The TPEA amended section 773(b)(2)(A) of the Act. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl> ("TPEA"). See also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.<sup>92</sup>

a. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.<sup>93</sup> In the instant investigation, record evidence shows that AKP experienced significant cost changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR.<sup>94</sup> This change in COM is attributable primarily to the price volatility for 2-Ethyl Hexanol (“2-EH”) used in the production of DOTP.<sup>95</sup>

b. Linkage between Sales and Cost Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POI.<sup>96</sup> Absent a surcharge or other pricing mechanism, the Department may alternatively look for evidence of a pattern that changes in selling prices reasonably correlate to changes in unit costs.<sup>97</sup> To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POI, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales in the comparison market and in the United States. Our comparison revealed that sales and costs for AKP showed reasonable correlation.<sup>98</sup> After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between AKP’s changing sales prices and costs during the POI.<sup>99</sup> Therefore, we preliminarily determine that a shorter cost period approach, based on a quarterly average COP, is appropriate for AKP because we found significant cost changes in COM as well as reasonable linkage between costs and sales prices.

---

<sup>92</sup> See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (“SSSSC from Mexico”) and accompanying Issues and Decision Memorandum at Comment 6; and, *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (“SSPC from Belgium”) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>93</sup> See *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

<sup>94</sup> See Memorandum to Neal M. Halper, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Aekyung Petrochemical Co., Ltd.,” dated concurrently with this memorandum (“AKP Cost Calculation Memorandum”).

<sup>95</sup> *Id.*

<sup>96</sup> See *SSSSC from Mexico* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

<sup>97</sup> *Id.*

<sup>98</sup> See AKP Cost Calculation Memorandum at 2-3.

<sup>99</sup> *Id.*; see also *SSSSC from Mexico* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

## 2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP for AKP and LG Chem based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (“G&A”) and interest expenses.<sup>100</sup> For AKP, we examined the cost data and preliminarily determine that our quarterly cost methodology is warranted.<sup>101</sup> Therefore, the COP is based on a quarterly average COP rather than an annual average COP. See the “Cost Averaging Methodology” section, above, for further discussion.

### a. AKP

We relied on the quarterly COP data submitted by AKP.

### b. LG Chem

We relied on the COP data submitted by LG Chem, except as follows:<sup>102</sup>

- We revised LG Chem’s reported G&A expense rate to reflect a company-wide rather than divisional expense rate.<sup>103</sup>
- Additionally, we adjusted the calculation to include the following non-operating expenses: 1) losses on the impairment of tangible assets; 2) losses on impairment of intangible assets; 3) losses on impairment of assets under construction; 4) losses on disaster; and, 5) other non-operating losses.

## 3. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared both respondents’ adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, movement charges, actual direct and indirect selling expenses, and packing expenses.

## 4. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities;<sup>104</sup> and 2) such sales were

---

<sup>100</sup> See “Test of Comparison Market Sales Prices” section, below, for treatment of home market selling expenses.

<sup>101</sup> See AKP Cost Calculation Memorandum at 2.

<sup>102</sup> See Memorandum to Neal M. Halper, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - LG Chem Ltd.,” dated concurrently with this memorandum (“LG Chem Cost Calculation Memorandum”).

<sup>103</sup> *Id.*

<sup>104</sup> See sections 773(b)(2)(B) and (C) of the Act (defining “extended period of time” and “substantial quantities”).

made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.<sup>105</sup> In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Where we find that more than 20 percent of a company's home market sales for a given product were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. Calculation of NV Based on Comparison Market Prices

1. AKP

We calculated NV based on delivered or ex-works prices to unaffiliated and affiliated customers where the sale was made at arm's length. We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and warehousing under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses, inventory carrying costs, and other direct selling expenses), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

We made no adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, because AKP reported that all U.S. and home market sales consisted of one single control number ("CONNUM").

2. LG Chem

We calculated NV based on delivered or ex-works prices to unaffiliated and affiliated customers where the sale was made at arm's length. We made a deduction from the starting price for movement expenses, including inland freight from the plant to the distribution warehouse, warehousing expenses and inland freight from the plant or distribution warehouse to the unaffiliated customer in the home market under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and inventory

---

<sup>105</sup> See section 773(b)(2)(D) of the Act (defining "recovery of costs").

carrying costs, and direct selling expenses), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

We made no adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, because LG Chem reported that all U.S. and home market sales consisted of one single CONNUM.

### **XIII. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.<sup>106</sup>

### **XIV. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

☒

☐

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

1/26/2017

**X** *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>106</sup> See <http://ia.ita.doc.gov/exchange/>.