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DATE: June 19, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Erin Begnal
Director, Office III
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Diethyl Terephthalate from the Republic of Korea

I. SUMMARY

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of diethyl terephthalate (DOTP) from the Republic of Korea (Korea). As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for LG Chem Ltd. (LG Chem) and Aekyung Petrochemical Co., Ltd. (AKP), the mandatory respondents in this investigation. 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 LTFV investigation for which we received comments from interested parties:

- Comment 1: Whether the Department’s Quarterly Cost Methodology Justifies Comparing Sales on a Quarterly Basis
- Comment 2: Whether AKP’s Reporting Supports the Department’s Decision to Rely on Quarterly Costs for the Final Determination
- Comment 3: Whether to Adjust the Reported Cost of Purchases of Raw Material 2-Ethyl Hexanol (2-EH)
- Comment 4: The Structure of AKP’s Paper Transactions and the Basis for U.S. Price for AKP’s Channel 3 and 4 Sales
- Comment 5: AKP’s Affiliate’s Financial Statements and Indirect Selling Expenses Calculation
- Comment 6: Duty Drawback for AKP’s U.S. Sales
- Comment 7: LG Chem’s Duty Drawback Adjustment
- Comment 8: LG Chem’s Constructed Export Price (CEP) Offset



- Comment 9: Reported Currency for LG Chem's Bank Charges
 Comment 10: LG Chem's General and Administrative Expense (G&A) Ratio
 Comment 11: LG Chem's Raw Material and Variable Overhead Costs

II. BACKGROUND

On February 3, 2017, the Department of Commerce (Department) published the *Preliminary Determination* of sales at LTFV of DOTP from Korea.¹ The period of investigation (POI) is April 1, 2015, through March 31, 2016.

In February and March 2017, we conducted verification of the sales and cost of production (COP) data reported by AKP, LG Chem and its U.S. affiliate, LG Chem America, Inc. (LGCAI), in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).² We invited parties to comment on the *Preliminary Determination*. The petitioner,³ AKP, and LG Chem submitted case and rebuttal briefs during May 2017.⁴ On May 15, 2017, the petitioner and LG Chem each withdrew their requests for a hearing.

Based on our analysis of the comments received, as well as our verification findings, we revised the weighted-average dumping margins for AKP and LG Chem from those calculated in the *Preliminary Determination*, as detailed below.

III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is dioctyl terephthalate (DOTP), regardless of form. DOTP that has been blended with other products is included within this scope when such blends include constituent parts that have not been chemically reacted with each other to produce

¹ See *Dioctyl Terephthalate from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 82 FR 9195 (February 3, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Dioctyl Terephthalate from the Republic of Korea" (Preliminary Decision Memorandum).

² See memorandum to the file, "Less Than Fair Value Investigation of Dioctyl Terephthalate from the Republic of Korea: Verification of the Sales Response of Aekyung Petrochemical Co., Ltd.," dated April 21, 2017 (AKP's Sales Verification Report), and memorandum to the file, "Verification of the Cost Response of Aekyung Petrochemical Co., Ltd. in the Antidumping Duty Investigation of Dioctyl Terephthalate (DOTP) from Korea," dated April 7, 2017 (AKP's Cost Verification Report). See also memorandum to the file, "Antidumping Duty Investigation of Dioctyl Terephthalate from the Republic of Korea: Export Price, Constructed Export Price and Home Market Sales Verifications of LG Chem Ltd. and LG Chem America, Inc.," dated April 20, 2017 (LG Chem's Sales Verification Report), and memorandum to the file, "Verification of the Cost Response of LG Chem Ltd. in the Antidumping Duty Investigation of Dioctyl Terephthalate (DOTP) from the Republic of South Korea," dated April 12, 2017 (LG Chem's Cost Verification Report).

³ The petitioner is Eastman Chemical Company.

⁴ See letter from the petitioner, "Affirmative Case Brief; Dioctyl Terephthalate (DOTP) from Korea," dated May 5, 2017 (Petitioner's Case Brief); letter from AKP, "Antidumping Investigation of Dioctyl Terephthalate from Korea - Case Brief of Aekyung Petrochemical Co., Ltd.," dated May 4, 2017 (AKP's Case Brief); and letter from LG Chem, "LG Chem's Antidumping Case Brief," dated May 5, 2017 (LG Chem's Case Brief). See also letter from the petitioner, "Rebuttal Case Brief on behalf of East Chemical Company," dated May 10, 2017 (Petitioner's Rebuttal Brief); letter from AKP, "Rebuttal Brief of Aekyung Petrochemical Co., Ltd.," dated May 10, 2017 (AKP's Rebuttal Brief); and letter from LG Chem, "LG Chem's Antidumping Rebuttal Brief," dated May 10, 2017 (LG Chem's Rebuttal Brief).

a different product. For such blends, only the DOTP component of the mixture is covered by the scope of this investigation.

DOTP that is otherwise subject to this investigation is not excluded when commingled with DOTP from sources not subject to this investigation. Commingled refers to the mixing of subject and non-subject DOTP. Only the subject component of such commingled products is covered by the scope of the investigation.

DOTP has the general chemical formulation $C_6H_4(C_8H_{17}COO)_2$ and a chemical name of “bis (2-ethylhexyl) terephthalate” and has a Chemical Abstract Service (CAS) registry number of 6422-86-2. Regardless of the label, all DOTP is covered by this investigation.

Subject merchandise is currently classified under subheading 2917.39.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheadings 2917.39.7000 or 3812.20.1000 of the HTSUS. While the CAS registry number and HTSUS classification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

IV. FINAL NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

On November 15, 2016, the petitioner alleged that critical circumstances exist with regard to Korea under 733(e)(1)(A) of the Act.⁵ In the *Preliminary Determination*, we found that the record did not support an affirmative finding of critical circumstances under section 733(e)(1)(A) of the Act.⁶ Specifically, we found that the criteria under section 733(e)(1)(A)(i) of the Act - 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 - were not met.⁷ We found further that the criterion under section 733(e)(1)(A)(ii) of the Act was not met because neither AKP’s nor LG Chem’s margins exceeded the quantitative thresholds required to demonstrate that 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 LTFV, and that there was likely to be material injury by reason of such sales.⁸

No party provided further information or comment regarding the Department’s negative preliminary finding of critical circumstances in the *Preliminary Determination*. Accordingly, we continue to find that there is no evidence on the record indicating that there is a “history of dumping and material injury by reason of dumped imports in the United States or elsewhere of subject merchandise,” as specified in section 733(e)(1)(A)(i) of the Act. We also continue to find that AKP and LG Chem failed to meet the quantitative thresholds specified in section 733(e)(1)(A)(ii) of the Act, which the Department normally considers sufficient to impute knowledge of dumping (*i.e.*, 25 percent or more for export price (EP) sales or 15 percent or more for CEP sales).⁹ We, therefore, continue to find that critical circumstances do not exist with regard to AKP or LG Chem.

⁵ See letter from the petitioner, “Re: Dioctyl Terephthalate from Korea; Critical Circumstances Allegation,” dated November 15, 2016 (Critical Circumstances Allegation).

⁶ See *Preliminary Determination*, 82 FR at 9195.

⁷ See Preliminary Decision Memorandum at 6.

⁸ *Id.*, at 7.

⁹ See, *e.g.*, *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).

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

V. MARGIN CALCULATIONS

We calculated the EP, CEP, and normal value (NV) using the same methodology as the *Preliminary Determination*,¹⁰ with the following exceptions:

- We made revisions to the margin calculations for both respondents based on minor corrections submitted at verification.¹¹
- We revised AKP's financial expense ratio. We converted net cost of goods sold from Korean Won to the unit thousand Won, to be consistent with the financial expense numerator which was reported in thousand Won.¹²
- We revised the indirect selling expense ratio for one of AKP's third-country affiliates by including all administrative expenses listed in its financial statement. *See* Comment 5.
- We converted the variable for bank charges (BANKCHARU) reported by LG Chem from Korean Won to U.S dollars. *See* Comment 9.
- We revised LG Chem's G&A ratio to exclude the impairment losses from investment assets and to include additional maintenance and travel expenses. We also revised the cost of goods sold denominator to the G&A expense ratio calculation to exclude packing expenses based on the minor correction submitted at verification.¹³ *See* Comment 10.

¹⁰ *See Preliminary Determination*, and accompanying Preliminary Decision Memorandum.

¹¹ *See* the Department's memorandum, "Antidumping Duty Investigation of Dioctyl Terephthalate (DOTP) from Korea, Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Aekyung Petrochemical Co., Ltd.," (AKP's Final Cost Calculation Memorandum) dated concurrently with this memorandum; and, "Antidumping Duty Investigation of Dioctyl Terephthalate (DOTP) from Korea, Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – LG Chem, Ltd.," (LG Chem's Final Cost Calculation Memorandum) dated concurrently with this memorandum. *See also* memorandum to the file, "Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Dioctyl Terephthalate from the Republic of Korea: LG Chem Ltd. (LG Chem)" (LG Chem's Final Analysis Memorandum), dated concurrently with this memorandum; and, memorandum to the file, "Analysis Memorandum for the Final Determination of the Less-than-Fair-Value Investigation of Dioctyl Terephthalate from the Republic of Korea: Aekyung Petrochemical Co., Ltd." (AKP's Final Analysis Memorandum), dated concurrently with this memorandum.

¹² *See* AKP's Final Cost Calculation Memorandum at 1.

¹³ *See* LG Chem's Final Cost Calculation Memorandum at 1-2.

VI. DISCUSSION OF ISSUES

Comment 1: Whether the Department's Quarterly Cost Methodology Justifies Comparing Sales on a Quarterly Basis

Petitioner's Case Brief

- The statute and the Department's regulations express a preference for price comparisons between the U.S. and the home market prices based on weighted-average prices over the entire period of investigation.¹⁴
- The Department is not required to rely on the same shorter (*i.e.*, quarterly) periods for purposes of price comparisons in calculating the dumping margin as the periods used for the cost test.¹⁵
- The Department's departure from its standard practice in antidumping investigations of price comparisons on a POI-wide basis is unsupported by past practice and decisions. The petitioner cites to *Live Swine from Canada* in support of its argument.¹⁶
- The Department should not conflate the two analyses, *i.e.*, the home market pricing trends as related to costs which are addressed by the quarterly cost methodology, and the U.S. pricing trends over time.¹⁷

AKP's Rebuttal Brief

- The Department properly applied its normal quarterly cost methodology in calculating the dumping margins for AKP.¹⁸
- The only case the petitioner cited in support of its claim is a case that predates the Department's adoption of its quarterly cost methodology.¹⁹
- The Department's quarterly cost analysis requires a comparison of trends in costs to trends in both home market and U.S. sales. The petitioner has not explained why such a quarterly calculation does not provide a more accurate result than using a POI-average prices.²⁰

Department's Position: We agree with AKP and have continued to compare home market and U.S. prices occurring within the same quarter. We applied our standard quarterly cost analysis based on the two-prong test (*i.e.*, significant cost changes and linkage between changes in cost and prices), and found that the application of the quarterly cost methodology is warranted for AKP. While we agree with the petitioner that the Department "...normally will calculate weighted averages for the entire period of investigation or review,"²¹ we note that the Department has a practice of using shorter averaging periods under certain circumstances, such as during periods of significant cost changes.²² The Department's analysis is not dependent on

¹⁴ See Petitioner's Case Brief at 3.

¹⁵ *Id.*, at 4.

¹⁶ See Petitioner's Case Brief at 5, citing *Final Determination in the Antidumping Duty Investigation of Live Swine from Canada*, 70 FR 12181 (March 11, 2005) (*Live Swine from Canada*), and accompanying issues and decision memorandum.

¹⁷ *Id.*, at 6.

¹⁸ See AKP's Rebuttal Brief at 2.

¹⁹ *Id.*

²⁰ *Id.*, at 3-4.

²¹ The petitioner cites to 19 CFR 351.414 (d)(3).

²² See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSS 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*

whether a party requests a different methodology. The Department's practice of using weighted averages for the shorter time periods is described, for example, in *Hot-Rolled Steel from Turkey*:²³

In the preliminary determination, we explained that the Department has established a predictable and consistent practice for determining whether or not we should deviate from the normal methodology of calculating an annual weight-average cost and resort to an alternative cost reporting methodology. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, the Department has established two criteria that must be met, *i.e.*, significance of cost changes and the linkage between costs and sales information. The first criteria, significance of cost changes, must first be met before evaluating the linkage between cost and sales information. A significant change in cost for this purpose is defined as a greater than 25 percent change in COM {cost of manufacturing} between the high and low quarters during the POI/POR.

The petitioner argues that the Department is not required to rely on the same shorter periods for purposes of price to price comparisons as it uses for costs, and should use annual average prices after below cost home market sales have been eliminated under the quarterly cost methodology. We disagree. The Department's practice is to compare prices using the same shorter periods as are used for deriving costs.²⁴ This issue of comparing prices only within the same quarter was addressed in *CORE from Korea* and upheld by the Court of International Trade (CIT).²⁵ In *CORE from Korea*, we declined to expand the period for comparing home market and U.S. prices to outside each quarterly period, stating that, "... we find that price-to-price comparisons should be made within the shorter cost averaging period to lessen the margin distortions caused by changes in sales price which result from significantly changing costs. As such, comparing home market sales from one quarter to U.S. sales during another quarter of the POR when the unadjusted home market price does not reflect the contemporaneous price changes that have occurred through the date of the U.S. sale distorts the dumping analysis." The CIT upheld the Department's price to normal value comparison methodology. The CIT deferred to the Department's reasoning, stating that if the Department "... considers it inappropriate to compare sales prices with quarterly COPs or {constructed values} incurred outside of the quarter in which the sale occurred, then it is similarly inappropriate to compare U.S. sales prices occurring in a given quarter to NVs based on comparison market sales prices occurring in a quarter outside of that in which the U.S. sale occurred."²⁶

Similar to *Core from Korea*, in *SeAH Steel Corp. v. United States*, the CIT also upheld the Department's use of matching prices on the same quarterly (shorter time period) basis as costs were derived.²⁷ While the petitioner in that case argued for an annual period for price

Review, 73 FR 75398 (December 11, 2008) (*SSPC from Belgium*), and accompanying Issues and Decision Memorandum at Comment 4.

²³ See *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) (*Hot-Rolled Steel from Turkey*), and accompanying Issues and Decision Memorandum at Comment 6.

²⁴ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 FR 13490 (March 22, 2010) (*CORE from Korea*), and accompanying Issues and Decision Memorandum at Comment 1.

²⁵ See *Union Steel Manufacturing Company Ltd. v. United States*, 190 F. Supp. 3d 1326, 1339 (CIT 2016).

²⁶ *Id.*

²⁷ See *SeAH Steel Corp. v. United States*, No. 09-00248, at 46 (CIT 2010).

comparisons, the CIT and the Department found that price-to-price comparisons should be made over a shorter period to lessen the distortive effects of changes in sales price which result from significantly changing costs.²⁸

The petitioner argues that the Department should not depart from its normal practice of using annual averages as it did in *Live Swine from Canada*. However, we agree with AKP that *Live Swine from Canada* is not applicable, as it predates the Department's adoption of its current quarterly cost methodology. Therefore, for the final determination we have continued to restrict price matches to those occurring within the same quarter.

Comment 2: Whether AKP's Reporting Supports the Department's Decision to Rely on Quarterly Costs for the Final Determination

Petitioner's Case Brief

- The Department normally calculates an annual weighted-average cost, and the record does not support anything other than the use of the normal, annual cost calculation methodology.²⁹
- The Department should not use its quarterly cost methodology because AKP did not request a quarterly cost assessment.³⁰
- Even if AKP requested the quarterly cost assessment, the record indicates that AKP's reported costs and sales prices do not link in a way that can be captured by the Department's quarterly cost methodology. The petitioner argues that AKP purchased 2-EH input from the company which was also a customer for subject DOTP sales; thus, purchases of 2-EH and sales of DOTP are not independent from each other, and given that AKP also purchased 2-EH from a Chinese supplier, the Department cannot rely on the reported material cost and sales information in its quarterly cost analysis.³¹
- Additional factors, such as erratic quarterly production quantities, impact the timing and accuracy of the quarterly costs analysis.³²
- The Department has mischaracterized the changes in cost of 2-EH as "price volatility" while the prices of 2-EH merely dropped during the POI.³³
- The Department's should not rely on AKP's home market sales file to support application of the quarterly cost methodology³⁴ because AKP has repeatedly characterized the starting price of its home market database as "random" numbers and changed its description completely at verification.
- In the *Preliminary Determination*, the Department accepted AKP's reported home market sales prices, notwithstanding the fact that AKP repeatedly mischaracterized the starting point of its home market prices.
- Only at verification did AKP disclaim the random price language; such a dramatic shift in its explanation questions the reliability of its responses. AKP, therefore, should not benefit from a shorter margin calculation period.

²⁸ *Id.*

²⁹ See Petitioner's Case Brief at 8-9.

³⁰ *Id.*, at 9.

³¹ *Id.*, at 10.

³² *Id.*, at 17.

³³ *Id.*, at 18.

³⁴ *Id.*

AKP's Case Brief

- The Department properly applied its normal quarterly cost calculation methodology for AKP.³⁵
- The petitioner's criticism of AKP's reporting of its 2-EH purchase cost and home market sales prices is incorrect.³⁶
- There was no requirement for AKP to ask the Department to apply the quarterly-cost methodology, especially when the Department had already requested AKP to provide the quarterly data.³⁷
- There is no basis for rejecting the quarterly cost data submitted by AKP.³⁸
- AKP's POI quarterly production levels were not "erratic."³⁹
- The quarterly cost methodology applies when there has been a significant change in cost of manufacture, regardless of whether the trend is consistent or fluctuating ("volatile").⁴⁰
- AKP's reported home market prices accurately reflect the amounts invoiced and paid by customers.⁴¹

Department's Position: We agree with AKP that there is no basis for rejecting its submitted quarterly cost data. The petitioner argues that the Department normally calculates annual costs and unreasonably deviated from this normal methodology in the *Preliminary Determination*. However, as stated in 19 CFR 351.414(d)(3), "when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation or review, the Secretary may calculate weight averages for such shorter period as the Secretary deems appropriate." As discussed above under Comment 1, in *Hot Rolled Steel from Turkey* and *SSPC from Belgium* the Department outlined its practice of using an alternative cost approach for periods of significant changes in costs that match with corresponding movement in home market and U.S. prices.⁴² In this case, we compared AKP's cost trends over four quarters and concluded that it was appropriate to use our quarterly cost methodology.⁴³

The petitioner further argues that AKP's reporting does not support our decision to rely on the quarterly cost methodology. As an initial matter, we disagree with the petitioner's contention that our quarterly cost methodology should not be applied because AKP did not request it. As noted in *Hot-Rolled Steel from Turkey* and *Union Steel Manufacturing Company Ltd. v. United States*, the "Department has established a predictable and consistent practice for determining whether or not we should deviate from the normal methodology of calculating an annual weight-average cost and resort to an alternative cost reporting methodology."⁴⁴ When the significance of cost changes and linkage between changes in cost and prices tests are met, the Department

³⁵ See AKP's Rebuttal Brief at 2.

³⁶ *Id.*, at 4.

³⁷ *Id.*, at 5.

³⁸ *Id.*, at 6.

³⁹ *Id.*, at 8.

⁴⁰ *Id.*, at 10.

⁴¹ *Id.*, at 11.

⁴² See *Hot Rolled Steel from Turkey* and *SSPC from Belgium*.

⁴³ See Memorandum to Neal M. Halper through Ernest Z. Gziryman from Christopher J. Zimpo, "Antidumping Duty Investigation of Dioctyl Terephthalate ("DOTP") from Korea, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Aekyung Petrochemical Co., Ltd.," dated January 26, 2017, at 1-3.

⁴⁴ See *Hot Rolled Steel from Turkey* and *SSPC from Belgium*.

applies its quarterly cost methodology, and there is no need for the respondent to request that the Department undertake such analysis.

The petitioner questions whether the record shows that AKP's costs and prices are linked, primarily because, as the petitioner claims, AKP purchased the material input 2-EH from the same company to which it sells subject product, DOTP, in the United States. The petitioner argues that in this case, AKP's purchase prices of 2-EH are not independent from its sales prices of DOTP and therefore, the Department cannot rely on these prices in its quarterly cost analysis, and should use the annual cost and price methodology.⁴⁵ We disagree with the petitioner's assertion that the supplier of 2-EH and the customer that purchases DOTP in the United States represent the same company. First, orders for 2-EH were placed with a supplier office in Korea, which determines which production facility (in two other countries) will supply the 2-EH.⁴⁶ Second, AKP purchased the 2-EH input from, and sold subject DOTP to, two independently operating entities.⁴⁷ At verification, AKP supported its claim that there is no link between the purchase and sales contracts, and that AKP has no commitment with either of the companies regarding the quantity purchased and sold as they are negotiated deal by deal.⁴⁸ Moreover, the petitioner does not claim that the 2-EH supplier at issue is affiliated with AKP, and we did not make such a finding. Therefore, we find no reason to disregard the prices paid to this supplier for the material input 2-EH.

Regarding the petitioner's questioning of AKP's 2-EH purchases from China, we note that while the 2-EH was purchased from a Hong Kong company, there is no information on the record indicating that the input was produced in mainland China. In addition, as with the 2-EH supplier noted above, the petitioner did not claim that AKP is affiliated with the Hong Kong supplier, and the petitioner did not make any specific allegations with regard to these purchases.⁴⁹ Accordingly, we relied on all purchases of 2-EH in our analysis of the significance of the cost changes over the POI.

The petitioner maintains that the Department's two-pronged quarterly cost test may not be accurate because of "erratic" production quantities between quarters, and because the Department mischaracterizes the cost changes of the 2-EH.⁵⁰ Specifically, the petitioner claims that the record does not support the characterization of changes in AKP's material cost as "price volatility" because material prices were not volatile, but they were dropping precipitously during the POI.⁵¹ The petitioner further argues that, assuming changes in cost affected prices of subject merchandise, this suggests injurious dumping into the U.S. market, the effect of which was eliminated by using the quarterly cost methodology.⁵² First, we note that "erratic production quantities" has never been a reason for the Department for not resorting to the quarterly cost

⁴⁵ See Petitioner's Case Brief at 7.

⁴⁶ See AKP's Sales Verification Report at 5 and Exhibit VE-5.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ We note that for the only alleged Chinese purchase during the POI, the Chinese price was slightly higher than the weighted average of all purchases of 2-EH in that same month, and was also higher than the POI weighted-average purchase price. Since Korea is a market-economy country, and since there has been no allegation that AKP is affiliated with its Hong Kong supplier, there is no basis for disregarding the prices that AKP paid for its purchases from those companies.

⁵⁰ See Petitioner's Case Brief at 8, and 17-18.

⁵¹ See Petitioner's Case Brief at 18.

⁵² *Id.*

methodology as claimed by the petitioner, and even if it were a relevant factor, the record shows that AKP's quarterly production quantities in this case were not erratic.⁵³ As to the petitioner's "price volatility" argument, we note that, as described above, it is the Department's practice to apply the quarterly cost methodology if there were significant changes in costs during the period, not price volatility, and there is no indication that such methodology "conflicts with the goal of calculating an accurate dumping margin and amounts to a windfall for AKP" as claimed by the petitioner.⁵⁴

We disagree with the petitioner's claim that AKP's starting prices of its home market database are "random numbers" and that our reliance on its home market sales file is concerning. At verification, we examined how AKP recorded its home market sales into its accounting system. We found that AKP first creates an internal billing document by entering either the most recent sales prices approved by the senior sales manager or the last price offered to the customer at issue.⁵⁵ At the end of the month, senior management reviews and approves the negotiated prices by considering the following factors: AKP's relationship with the customer; the market situation; and the prices of raw materials obtained from published sources. Then the sales personnel enter billing adjustments to reflect the difference between the price recorded on the internal billing document and management's final approved price. AKP reported the initial price recorded on the billing document in the Section B database as the gross unit price (GRSUPRH), and the billing adjustment as billing adjustments (BILLADJH).⁵⁶ We traced all reported prices to proof of payment and found no discrepancies with the information recorded in the questionnaire response.⁵⁷ We also determined that AKP reported these net prices to the Korean government on its VAT invoices.⁵⁸ Therefore, we have no basis for disregarding AKP's home market sales database and have relied upon it for the quarterly cost analysis.

Comment 3: Whether to Adjust the Reported Cost of Purchases of Raw Material 2-EH

Petitioner's Case Brief

- The Department should make an adjustment to AKP's costs based on the inconsistencies regarding purchases of 2-EH from a supplier who is also a customer purchasing DOTP.⁵⁹
- Because purchases of 2-EH from the supplier who also buys DOTP in the United States were at prices lower than prices paid to other suppliers, AKP's costs should be adjusted to reflect the difference in prices.⁶⁰

AKP's Comments

- There is no basis for adjusting AKP's 2-EH cost, as there has been no allegation that AKP is affiliated with the supplier at issue, and, as a result, there is no basis for the Department to apply the major input rule of section 773(f)(3) of the Act.⁶¹

⁵³ See AKP's Rebuttal Brief at 8.

⁵⁴ See Petitioner's Case Brief at 18.

⁵⁵ See AKP's Sales Verification Report at 7.

⁵⁶ See letter from AKP, "Response to Sections B, C and D of the Department's August 17 Questionnaire," dated September 29, 2016 (AKP's BQR, CQR, and DQR) at 18-19.

⁵⁷ See AKP's Sales Verification Report at 8, 13-14.

⁵⁸ *Id.*

⁵⁹ See Petitioner's Case Brief at 21; see also Comment 2 of this memorandum.

⁶⁰ *Id.*

⁶¹ See AKP's Rebuttal Brief at 13-14.

- The petitioner's analysis is based on a typographical error which, if corrected, shows that prices paid to the supplier at issue for 2-EH are higher than prices paid to other suppliers.⁶²

Department's Position: We agree with AKP that no adjustment to its 2-EH cost is warranted. We found no basis for the Department to apply the major input rule of section 773(f)(3) of the Act because, as discussed in Comment 2 of this memorandum, there has been no finding that the 2-EH supplier at issue is affiliated with AKP. Thus, there is no reason to disregard the prices paid to this supplier for the material input 2-EH.

Further, we disagree with the petitioner that the prices paid for the 2-EH input to the supplier at issue were lower than prices paid to other suppliers. At verification, we obtained information on purchases of 2-EH from all suppliers, which shows that the average purchase price of 2-EH from the supplier at issue was higher than the price paid to the other suppliers.⁶³ Accordingly, for the final determination we have not adjusted AKP's reported cost for purchases of 2-EH.

Comment 4: The Structure of AKP's Paper Transactions and the Basis for U.S. Price for AKP's Channel 3 and 4 Sales

AKP explained that it made certain U.S. sales through an unaffiliated trading company in Korea with paper transactions through AKP affiliated parties in a third country.⁶⁴ AKP described these sales as Channel 3 and 4 sales. Specifically, AKP arranged Channel 3 sales on paper, through its affiliates in a third-country, which then sold the merchandise to an unaffiliated Korean trading company. AKP shipped these sales directly to the unaffiliated Korean trading company's unaffiliated U.S. customer.

AKP arranged Channel 4 sales on paper, to an unaffiliated Korean trading company, which resold the DOTP through AKP's affiliates in a third-country, to the U.S. customer. AKP shipped the merchandise directly from Korea to the unaffiliated trading company's U.S. customer in all instances.⁶⁵ Other than these paper transactions, AKP's affiliates in a third-country did not participate in the development, production (including inputs), sale and/or distribution of the merchandise under investigation.⁶⁶ In the *Preliminary Determination*, we treated Channel 3 and 4 sales as indirect exports to unaffiliated U.S. customers⁶⁷ and determined EP based on AKP's or its affiliate's first price to the unaffiliated Korean trading company.⁶⁸ Parties now contend that the Department should review the nature and purpose of these transactions and determine the basis for EP for the final determination.

⁶² *Id.*, at 13-14.

⁶³ We agree with AKP that a typographical error was made in the cost verification report on page 14 where the quantity in metric tons was inadvertently substituted for the per-unit price, as described in AKP's Rebuttal Brief at 13-14. The correct per-unit price is shown on the copy of the purchase invoice provided in AKP's Cost Verification Report at Exhibit 7B.

⁶⁴ See memorandum to the file, "Aekyung Petrochemical Co., Ltd.'s Phone Call/Email Correspondence," dated January 26, 2017 (Email Correspondence).

⁶⁵ See Email Correspondence.

⁶⁶ See letter from AKP, "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 10.

⁶⁷ See Preliminary Decision Memorandum at 18.

⁶⁸ See memorandum to the file, "Analysis Memorandum for the Preliminary Determination of the Less-than-Fair-Value Investigation of Dioctyl Terephthalate from the Republic of Korea: Aekyung Petrochemical Co., Ltd.," dated January 26, 2017 (AKP Preliminary Analysis Memo) at 4.

Petitioner's Case and Rebuttal Briefs

- AKP failed to provide a clear explanation and appropriate documentation for the nature and purpose of AKP's paper transactions through the unaffiliated Korean trading company and AKP's affiliates in a third country.⁶⁹ The petitioner claims that AKP's statements regarding its relationship to its unaffiliated trading company raise concerns because:
 - AKP did not document the purpose and/or support the substance of these transactions in a formal agreement.⁷⁰
 - AKP's description of its relationship with its unaffiliated Korean trading company that willingly agreed to participate in the paper transactions suggests affiliation.⁷¹ AKP provided no evidence to support its assertion that the Korean trading company is an unaffiliated entity, or that the agreement with the unaffiliated trading company was terminated after the POI.⁷² Thus, AKP cannot claim both that the unaffiliated Korean trading company is an independent trading company and also that it maintains such a close, particular relationship that it willingly and actively engaged in the paper transactions at issue, which suggest affiliation.⁷³
 - AKP's relationship with its unaffiliated trading company in Korea calls into question not simply the prices used for AKP's Channel 4 sales, but those reported for its entire U.S. sales database, including reported expenses and selling activities.⁷⁴
 - AKP must determine the U.S. price in accordance with section 772(a) of the Act which defines "export price" as "the price at which the subject merchandise is first sold... by the producer or exporter ... outside of the United States to an unaffiliated purchaser for exportation to the United States."⁷⁵ AKP's case brief notes that the first sale to an unaffiliated party with knowledge of the destination of the United States occurred before the "other prices in the paper transaction."⁷⁶ Thus, regardless of the "knowledge" under which AKP established the prices in this chain, the U.S. price is documented before the final purchase by the U.S. customer. As a consequence, the last transaction in the chain does not control the selection of the export price.
- AKP's treatment of the Korean trading company's mark-up as a commission undermines its contention that this trading company is an unaffiliated entity.⁷⁷ Moreover, the cases that AKP cited in support of its argument refer to commissions between affiliated parties, whether related trading companies or selling agents.⁷⁸ Thus, AKP's attempt to bypass the related nature of the parties in the cases it cited by referring to them as "intermediaries" must fail.⁷⁹

⁶⁹ See Petitioner's Case Brief at 22.

⁷⁰ See Petitioner's Rebuttal Brief at 6.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*, at 6-7.

⁷⁴ *Id.*, at 6.

⁷⁵ *Id.*, at 7.

⁷⁶ *Id.*, citing AKP's Case Brief at 7.

⁷⁷ *Id.*, at 7.

⁷⁸ *Id.*, citing *Certain Internal-Combustion, Industrial Forklift Trucks from Japan: Final Results of Antidumping Duty Administrative Review*, 57 FR 3167 (January 28, 1992) (*Industrial Forklift Trucks from Japan*) and accompanying Issues and Decision Memorandum at Comment 64; *see also* *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from France*, 56 FR 56380 (November 4, 1991) (*Coated Paper from France*) and accompanying Issues and Decision Memorandum at Comment 1.

⁷⁹ *Id.*, at 7.

- The “economic substance” of the transaction is highly concerning. Thus, the Department must continue to use the reported price to the unaffiliated trading company for the Channel 4 sale.⁸⁰
- The record shows that AKP made sales of subject merchandise to customers in a third country.⁸¹
- In the *Preliminary Determination*, the Department appropriately took these facts into account and should continue to do so in the final determination. Thus, for the final determination, the Department should continue to use the reported price to the unaffiliated trading company for Channel 3 and 4 sales, as it did in the *Preliminary Determination*.⁸²

AKP’s Case and Rebuttal Briefs

- The email correspondence placed on the record between AKP, its unaffiliated trading company, and the unaffiliated trading company’s U.S. customer fully supports AKP’s description of its transactions, and demonstrates that the price from the unaffiliated trading company to its customer and the amount of the trading company’s mark-up were fixed before the “paper” transactions between AKP and its affiliates were created.⁸³
- The structuring of these transactions began with an agreement between the unaffiliated trading company and its U.S. customer. Basic terms of sale, including price offered by the unaffiliated trading company to its U.S. customer, were fixed before AKP arranged the paper transactions.⁸⁴
- AKP structured the transactions with its affiliates and the unaffiliated Korean trading company to ensure that the unaffiliated customer would pay the price agreed with the trading company and that the trading company would earn the agreed-upon mark-up. Thus, any other prices in the paper transactions do not have any economic significance.⁸⁵
- In its *Preliminary Determination*, the Department ignored the economic substance and based its determination of U.S. price for these transactions using the nominal price that AKP charged the trading company. This is incorrect because the nominal price: 1) is not AKP’s first sales price to the unaffiliated U.S. customer; and, 2) has no independent economic significance except as a means for providing the agreed-upon mark-up.⁸⁶
- Thus, the Department should revise its calculation and base its U.S. price on the actual price paid by the unaffiliated U.S. customer.⁸⁷
- The Department should treat the trading company’s mark-up as a commission. Should the Department base the U.S. price on the price paid by the intermediate, it would open the door to price circumvention.⁸⁸

Department’s Position: We agree that AKP provided sufficient explanation and documentation on the record, and as corroborated at verification, to demonstrate the nature and purpose of the paper transactions. Further, we have continued to determine the U.S. price for Channels 3 and 4

⁸⁰ *Id.*

⁸¹ *Id.*, at 23.

⁸² *Id.*

⁸³ See AKP’s Rebuttal Brief at 15.

⁸⁴ See AKP’s Case Brief at 7.

⁸⁵ *Id.*

⁸⁶ *Id.*, at 7-8.

⁸⁷ *Id.*, at 8.

⁸⁸ *Id.*, at 8-9.

sales based on AKP's first sales price to an unaffiliated party, as we did in the *Preliminary Determination*.

Throughout the proceeding, the Department requested that AKP explain, in detail, how the paper transactions were set up, provide documentation, and describe the relationship between AKP and other entities that are involved in these transactions.⁸⁹ In its original Section A and C questionnaire responses, and its first and second supplemental questionnaire responses, AKP provided a detailed description of these transactions including sales flow charts, financial statements of the participating entities, and proofs of payment.⁹⁰

At verification, we reviewed the relevant information (*i.e.*, AKP's financial statements, the affiliates' audited or unaudited financial statements (as applicable), organizational charts, charts of accounts) that was available in Korea and confirmed that they are affiliated parties with whom AKP did business during the POI.⁹¹ We also traced the information to proof of payment and reviewed the prices offered and paid by parties in each string of the transaction.⁹² We found no discrepancies compared to evidence previously submitted on the record. Thus, we determine that there is no basis for discounting the authenticity of the paper transactions as identified as Channel 3 and 4 of AKP's U.S. sales.

We disagree with the petitioner that the unaffiliated Korean trading company that willingly agreed to participate in the paper transactions constitutes an affiliated party. At verification, we examined, in detail, the relationship between AKP and the unaffiliated trading company.⁹³ We reviewed the unaffiliated trading company's list of shareholders and business registration submitted to the Korean governing agency and found that the shareholders of this unaffiliated trading company are not employed by AKP, and that there was no indication of significant potential for manipulation, as defined in 19 CFR 351.401(f)(2).⁹⁴ Therefore, we determine that the Korean trading company is an unaffiliated entity, pursuant to section 771(33) of the Act.

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) by the producer ... to an unaffiliated purchaser in the United States to an unaffiliated purchaser for exportation to the United States." Further, 19 CFR 351.402(a) identifies this price to an unaffiliated purchaser as a "starting price." Our findings at verification confirmed that AKP made Channel 3 and 4 sales on paper, through an unaffiliated Korean trading company and through AKP's third-country affiliates.⁹⁵ The email correspondence presented at verification confirmed that AKP was not involved in the initial sales negotiation between the unaffiliated Korean trading company and its unaffiliated U.S. customer, where the

⁸⁹ See letter from the Department, "First Supplemental Questionnaire for the Sections A, B, and C Questionnaire Responses of Aekyung Petrochemical Co., Ltd.," dated October 27, 2016 at 4-5; *see also* "Second Supplemental Questionnaire for the Sections A, B, and C Questionnaire Responses of Aekyung Petrochemical Co., Ltd.," dated December 14, 2016.

⁹⁰ *See, e.g.*, AKP's AQR at 17-18; *see also* letter from AKP, "Response to the Department's October 27 Supplemental Questionnaire," dated November 23, 2016 (AKP's SQR) at 24, Appendix SA-5; *see also* letter from AKP, "Response of Aekyung Petrochemical Co., Ltd. to the Department's December 14 Supplemental Questionnaire," dated January 4, 2016 {sic} (AKP's SSQR) at 5, Exhibit S2C-1-E and S2C-1-F.

⁹¹ *See* AKP's Sales Verification Report at 4, 6, and 12-13; *see also* Verification Exhibit (VE)-2 and VE-3 at 17-34.

⁹² *Id.*, at VEs-23 and 24.

⁹³ *See* AKP's Sales Verification Report at 5; *see also* VE-2 at 39-43.

⁹⁴ *Id.*

⁹⁵ *Id.*, at VE-23 and 24.

basic terms of sale (*i.e.*, price and quantity) were set.⁹⁶ Thus, consistent with the *Preliminary Determination*, we find that price that AKP (and/or its third-country affiliate) offered to the unaffiliated Korean trading company most accurately represents AKP's first transaction with an unaffiliated party.

Moreover, we disagree with AKP's claim that the unaffiliated trading company's mark-up should be treated as a commission. Section 772(d)(1)(A) of the Act instructs the Department to deduct from the price used to establish *CEP* (emphasis added), the amount of commissions generally incurred by, or for the account of, the producer or exporter, or the affiliated seller in the United States, as well as the profit allocated to such commissions. Section 351.410(e) of the Department's regulations states that "the Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one markets under consideration, and no commission is paid in the other market under consideration. The Statement of Administrative Action (SAA) further clarifies the treatment of U.S. commissions. It states that CEP "will be calculated by reducing the price of the first sale to an unaffiliated customer in the U.S."⁹⁷ The statute and regulations clearly state that the treatment of commissions incurred in the United States as a selling expense (and a downward adjustment from the U.S. selling price) is for the purposes of establishing CEP, rather than establishing EP. AKP did not make any sales of subject merchandise to the United States through an affiliated entity during the POI.⁹⁸ Moreover, as described above, we confirmed that the trading company whose mark-up was reported as a commission is, indeed, an unaffiliated entity. Thus, we determine that the mark-up that the unaffiliated Korean trading company received does not constitute a commission.

The cases that AKP cites to support its argument, *Industrial Forklift Trucks from Japan* and *Coated Paper from France*, are inapplicable because they do not contain the same fact pattern as AKP.⁹⁹ Specifically, these two cases found commissions (and the trading company mark-ups) as actual movement expenses and payments to an affiliated entity, respectively. Rather, we find that: 1) the Korean trading company is unaffiliated with AKP; and, 2) the mark-up was a form of remuneration, an incentive for the trading company to engage in the paper transactions, not an actual selling expense. Therefore, we find AKP's argument moot and will disregard the unaffiliated Korean trading company's mark-up as a commission in the margin calculation.

Finally, we are not addressing the petitioner's statement that, "the record shows that AKP made sales of subject merchandise to customers in a third country,"¹⁰⁰ because the petitioner did not identify the relevance of this statement to its argument with respect to AKP's Channel 3 and Channel 4 sales.

⁹⁶ *Id.*, *e.g.*, at VE-24 at 3-5.

⁹⁷ See SAA, H.R. Rep. No 103-316, Vol. 1 (1994), at 823.

⁹⁸ See AKP's AQR at 21.

⁹⁹ In *Industrial Forklift Trucks from Japan*, the Department determined that the respondent and the trading company are affiliated, and the trading company's mark-ups represented actual movement expenses. Similarly, *Coated Paper from France* referred to commissions that the respondent paid related parties.

¹⁰⁰ See Petitioner's Case Brief at 23.

Comment 5: AKP's Affiliate's Financial Statements and Indirect Selling Expenses Calculation

AKP's Case and Rebuttal Briefs

- The Department's verification report incorrectly identified the currency in which one of AKP's affiliates recorded its financial statements,¹⁰¹ when the "\$" symbol reflected in its balance sheet indicates that AKP's affiliate recorded its financial statements in dollars.¹⁰²
- Because the affiliate's largest administrative expense, bad debt written off, did not apply to U.S. sales, it should not be included in the indirect selling expense (ISE) calculation for U.S. sales.¹⁰³
- The other expenses - accounting fees, bank charges, business registration fees, and preliminary expenses - represent administrative, rather than selling expenses, and, therefore, should not be included in the U.S. ISE calculation.¹⁰⁴

Petitioner's Case and Rebuttal Briefs

- AKP's supplemental questionnaire response identifies at least two different currencies in the same exhibit for the affiliate's financial statements. Thus, AKP's reported currencies are neither clear or consistent.¹⁰⁵
- At verification, the Department found that this affiliate did not include all of its administrative expenses in its ISE calculation.¹⁰⁶ The Department should include the additional administrative expenses in the ISE calculation.¹⁰⁷
- The Department should consider the verified ISE ratio for the second third-country affiliate, and should use that ISE ratio for both companies.¹⁰⁸

Department's Position: We have continued to use ISE ratios determined for each of AKP's third-country affiliated parties in the margin calculation. Additionally, we have revised the ISE ratio of one of its affiliates to include all of its administrative expenses.

We agree with the petitioner that AKP made conflicting statements in its supplemental questionnaire responses regarding the currency in which the affiliate's financial statements were reported.¹⁰⁹ At verification, we examined the financial statements and clarified the currency in which they were reported.¹¹⁰ However, we noted in AKP's verification report that AKP failed to report all appropriate expenses recorded on its affiliated company's income statement as indirect selling expenses.¹¹¹ Therefore, we have recalculated its ISE ratio by dividing all administrative expenses recorded on the income statement by total sales.¹¹² Because we verified the indirect selling expenses of AKP's affiliate at issue, we will not apply the ISE ratio of its other affiliate in

¹⁰¹ See AKP's Case Brief at 10.

¹⁰² *Id.*

¹⁰³ See AKP's Rebuttal Brief, at 15.

¹⁰⁴ *Id.*, at 16-17.

¹⁰⁵ See Petitioner's Rebuttal Brief at 8-10.

¹⁰⁶ See Petitioner's Case Brief at 22.

¹⁰⁷ *Id.*

¹⁰⁸ See Petitioner's Rebuttal Brief at 10.

¹⁰⁹ See AKP's SQR at Appendices SA-1-G (where its financial statements are recorded "\$," "USD") and SC-11; see also AKP's SSQR at 13.

¹¹⁰ See AKP's Sales Verification Report at 15-16.

¹¹¹ *Id.*

¹¹² See AKP's Final Analysis Memorandum at 3.

a third-country to both companies. Thus, for this final determination, we have continued to calculate indirect selling expenses incurred in the country of manufacture for AKP's U.S. sales as the sum of the ISEs incurred in AKP and its third-country affiliates, as we did in the *Preliminary Determination*, with the revision noted above.

Comment 6: Duty Drawback for AKP's U.S. Sales

AKP's Case Brief

- In the *Preliminary Determination*, the Department departed from its longstanding practice and limited the duty drawback adjustment to the amount of duty embedded in the reported cost of manufacture.¹¹³ The Department did not explain the logic underlying its concern regarding an “imbalance” in the dumping calculations if the full amount of duty drawback adjustment was granted.¹¹⁴
- As required by the statute, the Department's longstanding practice has been to allow a full adjustment for duty drawback whenever a respondent demonstrates that it had sufficient imports of the dutiable inputs to account for the drawback received on the exports to the United States, without requiring respondents to demonstrate that they never used inputs sourced from non-dutiable domestic sources.¹¹⁵
- The recent CIT decision supporting the Department's methodology suggests that there might be an inconsistency between the Department's duty drawback adjustment and its cost calculation for products sold domestically.¹¹⁶ Specifically, the statute does not make the duty drawback adjustment dependent on demonstrating that the exporter's costs for product sold in the domestic market were affected by the imposed duties.¹¹⁷
- The analysis set forth in the CIT's recent decision is based on the erroneous assumption that a duty imposed on imported materials has no impact on the price of domestically-produced inputs that compete with the imports.¹¹⁸ Rather, it is logical to expect the imposition of a duty on the imported material would result in an equivalent *increase* in the price charged for the domestically-produced material.¹¹⁹
- Alternatively, the price for domestically-produced goods might rise by less than the full amount of the duty imposed so that the duty imposed on imports will not be “passed through” fully to purchasers. However, the Department and the Courts decided long ago (in the context of the statutory provision concerning rebated or uncollected direct taxes) that a measurement of “pass through” was not necessary or feasible.¹²⁰ Instead, the Department has

¹¹³ See AKP's Case Brief at 2.

¹¹⁴ *Id.*, at 3.

¹¹⁵ *Id.*, at 2.

¹¹⁶ *Id.*, at 3, citing *Rebar Trade Action Coalition v. United States*, Slip Op. 2016-88 (CIT 2016) (*Rebar Trade Action Coalition*) at 9-21.

¹¹⁷ *Id.*, at 2.

¹¹⁸ *Id.*, at 3-4.

¹¹⁹ *Id.*, at 5.

¹²⁰ *Id.*, at 5 citing, e.g., *Daewoo Electronics v. United States*, 6 F.3d 1511, 1518-19 (September 30, 1993); *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38766 (July 19, 1999) (“The {i}f an exporter's records show that a tax was either a separate “add on” to the domestic price or, although not separately stated, was, in fact, included in the price and that the taxes were paid to the government, that satisfies the tax inquiry required by the statute for an adjustment of the U.S. price.’ The CAFC further stated that the statute does not speak to tax incidence, shifting burdens, or pass-through, nor does it contain any hint that an econometric analysis must be performed. The statutory language does not mandate that the ITA look at the effect of the tax on consumers rather than on the. . . company. The CAFC reasoned

consistently interpreted the statute to assume that all duties and taxes are fully passed through.¹²¹

- The assumption of full pass through means that, when a producer uses both imported and domestically-produced items, the price paid for the domestically-produced items will be expected to equal the *duty-included* price of the competing imported item. The rebate of duties on exports will, therefore, lower the effective cost for the exported good compared to the effective cost for the same good sold in the domestic market, regardless of whether the producer uses domestically-produced or imported materials in the goods sold in the domestic market.¹²²
- By limiting the duty drawback adjustment to the amount of import duties actually paid, the Department effectively assumes that the imposition of an import duty has no impact on the prices for domestically-produced inputs that compete with those imports, even though such an assumption is not supported in any way by the evidence on the record of this investigation.¹²³
- Rather, basic logic, as well as the plain meaning of the statutory language, require an adjustment for the full amount of any duties that are rebated or not collected due to the export of the merchandise under investigation.¹²⁴

Petitioner's Rebuttal Brief

- The Department's recent practice determined the appropriate duty drawback adjustment and, thus, limited the amount of the duty drawback adjustment to the import duties embedded in AKP's per-unit costs.¹²⁵
- The record shows that the import duty cost embedded in AKP's material cost of producing DOTP is less than the drawback adjustment claimed on its EP sales. The Department should continue to limit the drawback in accordance with its current practice.¹²⁶

Department's Position: We agree with the petitioner and have continued to calculate duty drawback using the methodology as employed in the *Preliminary Determination*.¹²⁷ Consistent with our practice, we applied our two-prong test to determine whether a duty drawback adjustment is appropriate. In addition, we have continued to limit AKP's duty drawback adjustment by the amount of import duty cost embedded in the material cost of producing the subject merchandise.

In the *Preliminary Determination*, we found that AKP had fulfilled the two criteria in our two-prong test, and found that AKP provided rules from the Korean governing agency describing the duty drawback program and a detailed list of the duty drawback refunds that it received for all of its U.S. sales during the POI.¹²⁸ AKP also 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

that as an unavoidable incident of any sale by the company, these taxes can only be recouped in their entirety from purchasers.").

¹²¹ *Id.*, at 5-6.

¹²² *Id.*, at 6.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ See Petitioner's Rebuttal Brief at 2-3.

¹²⁶ *Id.*, at 5.

¹²⁷ See Preliminary Decision Memorandum at 14-15.

¹²⁸ *Id.*

consideration; and (3) demonstrating that it imported sufficient volumes of raw materials to account for the duty drawback received on U.S. sales.¹²⁹ Specifically, we reviewed AKP's import declarations and preliminarily determined that AKP demonstrated the sufficient importation and consumption of the raw material, 2-EH.¹³⁰ At verification, we examined all the relevant documentation submitted to the record (*i.e.*, export declaration, import declaration, duty drawback application, and the calculation of per-unit duty drawback amount) and found no basis to change our preliminary determination.¹³¹

A duty drawback adjustment to EP is based on the principle that the "goods sold in the exporter's domestic market are subject to import duties while exported goods are not."¹³² In other words, home market sales prices and COP may be import duty "inclusive," while U.S. (and third-country) export sales prices are import duty "exclusive."¹³³ Therefore, this inconsistency in whether prices or costs are import duty exclusive or inclusive will result in an imbalance in the comparison of EP with NV. Thus, it is incumbent on the Department to ensure that the comparison of EP with NV is undertaken on a duty neutral basis. Accordingly, when warranted, the Department will make the duty drawback adjustment to EP in a manner that will render this comparison duty neutral.¹³⁴ In the *Preliminary Determination*, as a result of a review of the facts in this investigation, the Department determined that following its historical practice of applying the duty drawback adjustment (*i.e.*, generally accepting the claimed duty drawback adjustment reported by the respondent) would not result in the desired import duty neutrality resulting in a duty neutral comparison of EP and NV.

In calculating the duty drawback adjustment for this final determination, we disagree with AKP that the statute requires the Department to accept the full adjustment claimed by the respondent. As we explained in the *Preliminary Determination*, applying a duty drawback adjustment based solely on a respondent's claimed adjustment, without consideration of import duties included in a respondent's cost of materials, may result in an imbalance in the comparison of EP with NV. For example, this inequity may be created because a producer sources a material input from both domestic and foreign suppliers. In this situation, on the NV side of the comparison, the annual average cost for the input is the average cost of both the foreign sourced input, which incurs import duties, and the domestic sourced input on which no duties were imposed. As such, a full measure of the claimed duty drawback adjustment cannot be presumed to be present in COP or reflected in the NV of the foreign like product. On the EP side of the comparison, adjusting U.S. sales prices for the full measure of the import duty which has been refunded, as advocated by AKP, assumes that the exported products were produced solely from foreign sourced, and thus import duty inclusive, inputs. This will result in a larger amount of refunded import duties, as well as a larger per-unit duty drawback adjustment to EP, than the per-unit duty cost, reflected in the product's COP, therefore creating an imbalance.

The amount of the duty drawback adjustment should be determined based on the import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration. That is, we assume for dumping purposes that imported raw material and the

¹²⁹ *Id.*

¹³⁰ See AKP's SSQR at Appendix S2C-7.

¹³¹ See, *e.g.*, AKP's VE-21.

¹³² See *Saha Thai Steel Pipe (Pub.) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*).

¹³³ *Id.*, at 1341-42.

¹³⁴ 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.

domestically sourced raw material are proportionally consumed in producing the merchandise, whether sold domestically or exported. The average import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration is the only amount of duty that can reasonably be reflected in the NV of the subject merchandise. The average import duty cost imbedded in the cost of producing the merchandise is the duty cost “reflected in NV,”¹³⁵ whether NV is based on home market prices or constructed value.

In *Saha Thai*, the CAFC stated:

The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty drawback is granted only for exported inputs, the cost of the duty is reflected in NV but not in EP. The statute corrects this imbalance, which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback.¹³⁶

Thus, the CAFC recognized that the purpose of the duty drawback adjustment is to create a comparison of EP with NV that is duty-neutral such that the amount included in both sides of this comparison is equitable and the weighted-average dumping margin is not distorted because of the inclusion or exclusion of *import* duties. In accordance with *Saha Thai*, the Department’s approach in this investigation results in a duty-neutral comparison. The CAFC decision in *Saha Thai* affirmed the Department’s adjustment to costs to remedy a distortion caused by an increase to a duty-exclusive U.S. price compared to a duty-inclusive NV based on a COP that is duty-exclusive.¹³⁷ In *Saha Thai*, we made an adjustment for duty drawback to Saha Thai’s reported U.S. sale prices, and also made a corresponding “imputed” adjustment to COP for exempted import duties which were never collected because Saha Thai’s production and exportation of subject merchandise was located in a duty-free zone exempt from import duties.¹³⁸ The Court found that we reasonably made an imputed adjustment for import duties to COP, against Saha Thai’s complaint that these costs were not recorded in its books and records, to preserve the equity of the comparison of NV with U.S. price.¹³⁹

Section 772(c)(1)(B) of the Act states that the EP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise.” The statute does not specify a particular methodology for making a duty drawback adjustment. When the statute is silent, the Department has the discretion to reasonably interpret the language to formulate a reasonable methodology that best ensures a duty neutral dumping margin.¹⁴⁰

As explained in the *Preliminary Determination*, the Department calculates the drawback adjustment based on case-specific facts. This approach has not changed, and was affirmed in

¹³⁵ See *Saha Thai*, 635 F.3d at 1342.

¹³⁶ *Id.*, at 1338.

¹³⁷ *Id.*, at 1342.

¹³⁸ *Id.*, at 1344.

¹³⁹ *Id.*

¹⁴⁰ See, e.g., *Chevron, U.S.A., Inc. v. Natural Resource Defense Council, Inc.*, 467 U.S. 837, 843 (1984); *Union Steel v. United States*, 823 F. Supp. 2d 1346, 1358 (Ct. Int’l Trade 2012) (holding that “because the statute is silent, it is within Commerce’s discretion to adopt a new reasonable methodology...”).

Saha Thai, where the Department utilized investigation-specific information to calculate the allocation of the duty drawback, while taking into account certain distortions (see above). Further, in *Saha Thai*, the court also recognized the Department's discretion in modifying its own practices. Thus, the Department is entitled to change its practices and methodology when needed.¹⁴¹ Therefore, for this final determination, we find that record evidence allows the Department to calculate a CONNUM specific duty drawback adjustment in the manner described in the *Preliminary Determination*.

AKP submitted to the record and presented at verification a list of raw material suppliers.¹⁴² We reviewed AKP's total purchases of the primary raw materials as well as the total cost of manufacturing (or raw material cost) and found that AKP purchased its raw materials, 2-EH and terephthalic acid (TPA), from both Korean and foreign suppliers.¹⁴³ Thus, we find that there is sufficient evidence to determine that AKP purchased and used inputs from both foreign and domestically sourced inputs.¹⁴⁴ Moreover, we find that a full duty drawback adjustment will result an imbalance in the comparison of duty-exclusive EP with duty-inclusive NV. Consistent with *Saha Thai*,¹⁴⁵ the Department is using its discretion to remedy a distortion caused by an increase to a duty-exclusive EP compared to a duty-inclusive NV based on a COP that is duty-exclusive by comparing NV and EP on a duty-neutral basis. Thus, for the final determination, we find no basis to disregard the Department's recent practice of relying on the average import duty absorbed into, or imbedded in, the overall cost of producing the subject merchandise.

Comment 7: LG Chem's Duty Drawback Adjustment

Petitioner's Case and Rebuttal Briefs

- The Department should reject LG Chem's duty drawback claim because LG Chem initially reported that it received no duty drawback, then filed an untimely claim weeks before the verification.¹⁴⁶ As a consequence, the Department did not have an adequate opportunity to review LG Chem's duty drawback claim.¹⁴⁷
- The Department examined supporting information for only one of LG Chem's pre-selected (not surprise) sales at verification,¹⁴⁸ which does not adequately account for the links between the import duty and the rebate granted, or, demonstrate that there are sufficient imports of the imported material to account for the duty drawback received for the exports of the manufactured product for all of LG Chem's sales.¹⁴⁹ Thus, LG Chem failed to establish entitlement to a duty drawback adjustment.¹⁵⁰

LG Chem's Case and Rebuttal Briefs

- The Department should calculate a duty drawback adjustment for LG Chem, because the Department has a more complete evidentiary record than prior to the *Preliminary*

¹⁴¹ See, 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 1.

¹⁴² See AKP's AQR at Appendix A-2-I.

¹⁴³ See AKP's Cost Verification Report at 3-4 and Cost Verification Exhibit (CVE)-7B at 11.

¹⁴⁴ *Id.*

¹⁴⁵ See *Saha Thai* at 1342.

¹⁴⁶ See Petitioner's Case Brief at 27 and Petitioner's Rebuttal Brief at 14.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

Determination, and because the Department conducted comprehensive on-site verifications of that record at both LG Chem’s headquarters in Korea and LGCAI’s facility in Atlanta, Georgia.¹⁵¹

- LG Chem did not include a claim for a duty drawback adjustment in its original Section C response because the information was not available to it until the year-end closing of its books.¹⁵² Thus, LG Chem provided a timely duty drawback claim, which was “directly responsive to” 19 CFR 351.301(c)(1), in its second supplemental response (filed on January 25, 2017).¹⁵³
- The Department cannot reject LG Chem’s claim for a duty drawback adjustment in accordance with 19 CFR 351.301(c)(5) (“30 days before the scheduled date of the preliminary determination in an investigation, or 14 days before verification, whichever is earlier . . .”) is not applicable because:
 - Section 351.301(c)(5) applies to “factual information not directly responsive to or relating to paragraphs (c)(1)-(4) of {section 19 CFR 351.301},” whereas LG Chem’s duty drawback claim constitutes a correction to its own factual information, “directly responsive to” or “relating to” 19 CFR 351.301(c)(1).¹⁵⁴
 - It is not the Department’s practice to refuse to allow mandatory respondents to submit corrections to their own information and databases within 30 days of the Department’s preliminary determination, even if such corrections are unsolicited.¹⁵⁵
 - The CAFC has repeatedly required the Department to allow an interested party to correct its own errors when a request for correction is made prior to the final determinations.¹⁵⁶
- The Department requested LG Chem to submit a request for reconsideration of the information,¹⁵⁷ and ultimately granted LG Chem’s request to submit corrected information concerning its claims for a duty drawback adjustment.¹⁵⁸
- The information LG Chem submitted provides evidence that LG Chem’s claim for a duty drawback adjustment meets the first prong of the Department’s duty drawback test. Specifically:

¹⁵¹ See LG Chem’s Case Brief at 11-13.

¹⁵² See LG Chem’s Rebuttal Brief at 2, citing letter from LG Chem, “LG Chem’s Submission of the Second Supplemental ABC Response: Dioctyl Terephthalate (DOTP) from the Republic of Korea,” dated January 4, 2017 (LG Chem’s Original 2nd SQR) (which was rejected but retained on the record).

¹⁵³ *Id.*

¹⁵⁴ See LG Chem’s Rebuttal Brief at 3, citing letter from LG Chem, “LG Chem’s Request for Reconsideration of the Department’s Rejection of LG Chem’s Questionnaire Response Correction in Dioctyl Terephthalate (DOTP) from the Republic of Korea,” dated January 27, 2017.

¹⁵⁵ *Id.*, at 3-4, citing the following documents: letter from the Department, “Less-Than-Fair-Value investigation of Certain Polyethylene Terephthalate Resin from Canada: Request to Resubmit Submissions,” dated September 18, 2015 (Barcode: 3307465-01); letter from Toyo Kohan Co., Ltd., “Section B&C Corrections and Updated Databases: Diffusion-Annealed, Nick-Plated Flat Rolled Steel Products from Japan,” dated October 23, 2013 (Barcode 3159386-01); letter from Thuan Phuoc Seafoods and Trading Corporation, “Certain Frozen Warmwater Shrimp from Vietnam: Thuan Phuoc Seafoods and Trading Corporation Response to the Department’s Third Supplemental Section A Questionnaire,” dated February 13, 2015 (Barcode: 3259860-01); and, letter from Sao Ta Foods Joint Stock Company, aka Fimex VN, (“Certain Frozen Warmwater Shrimp from Vietnam: Sao Ta Foods Joint Stock Company, aka Fimex VN: Second Supplemental Section D Farming Response,” dated February 11, 2015 (Barcode 3259256-0).

¹⁵⁶ *Id.*, at 4-5, citing *NTN Bearing Corp. v. US*, 74 F. 3d 1204, 1208-09 (CAFC 1995).

¹⁵⁷ *Id.*, at 5, citing letter from the Department, “Investigation of Dioctyl Terephthalate from the Republic of Korea - Request for Information Concerning LG Chem’s Questionnaire Response Correction,” dated January 27, 2017.

¹⁵⁸ *Id.*, at 6, citing letter from the Department, “Investigation of Dioctyl Terephthalate from the Republic of Korea - Granting LG Chem’s Request to Submit Duty Drawback Information,” dated January 30, 2017.

- LG Chem provided a direct trace of the link between the duties imposed and those rebated or exempted.¹⁵⁹
- LG Chem added the information regarding a very few import declarations in its minor corrections to the response at verification, and the Department accepted the information as a minor correction to the response.¹⁶⁰
- The Department verified duty drawback for all pre-selected and surprise sales at verification, rather than one sale only, as claimed by the petitioner.¹⁶¹

Department's Position: We determine that it is inappropriate to calculate a duty drawback adjustment for LG Chem.

As an initial matter, we continue to find that LG Chem's duty drawback claim was not timely filed until February 3, 2017. In its first questionnaire response, LG Chem reported that its "duty drawback was so immaterial as to be irrelevant."¹⁶² In its original second supplemental questionnaire response, LG Chem claimed for the first time that it qualified for a duty drawback adjustment.¹⁶³ The Department rejected this response and required LG Chem to refile it without the new factual duty drawback information, because it contained information not directly responsive to the specific questions identified in the preceding questionnaire, and was submitted after the deadline for new factual information.¹⁶⁴ Rather than immediately refiling, LG Chem asked the Department to reconsider its rejection of its duty drawback claims as new factual information.¹⁶⁵ The Department declined, explaining that its "established practice with respect to correction/late-discovered information not explicitly covered by 19 CFR 351.102(a)(21) and 19 CFR 351.301(c) requires a party to first notify the Department requesting to submit such information. . .,"¹⁶⁶ and, if the Department agreed that the party's request was reasonable, it would request the party to provide the information in question.¹⁶⁷

Then, in sequence, LG Chem requested that the Department reconsider its duty drawback claims,¹⁶⁸ the Department considered this request, and granted LG Chem permission to "submit the identified information pertaining to the claimed duty drawback adjustment on the record."¹⁶⁹ LG Chem then submitted its revised duty drawback claims at the Department's request on February 3, 2017, the date of our *Preliminary Determination*.¹⁷⁰ The Department accepted LG

¹⁵⁹ See LG Chem's Rebuttal Brief at 6-7.

¹⁶⁰ *Id.*, at 7.

¹⁶¹ *Id.*

¹⁶² See letter from LG Chem, "LG Chem's Section C Response: Dioctyl Terephthalate (DOTP) from the Republic of Korea," dated October 3, 2016 (LG Chem's CQR).

¹⁶³ See LG Chem's Original 2nd SQR at 1 and Exhibit SABC2-18.

¹⁶⁴ See letter from the Department, "Investigation of Dioctyl Terephthalate from the Republic of Korea: Request to Strike New Factual Information and Resubmit Second Supplemental Questionnaire," dated January 24, 2017.

¹⁶⁵ See letter from LG Chem, "Request for Reconsideration of the Department's Rejection of LG Chem's Questionnaire Response Correction," dated January 25, 2017.

¹⁶⁶ See letter from the Department, "Investigation of Dioctyl Terephthalate from the Republic of Korea: Request for Information Concerning LG Chem's Questionnaire Response Correction," dated January 27, 2017, at 1-2.

¹⁶⁷ *Id.*

¹⁶⁸ See letter from LG Chem, "Request for Including LG Chem's Duty Drawback Information on the Record: Dioctyl Terephthalate (DOTP) from the Republic of Korea," dated January 30, 2017.

¹⁶⁹ See letter from the Department, "Investigation of Dioctyl Terephthalate from the Republic of Korea - Granting LG Chem's Request to Submit Duty Drawback Information," dated January 30, 2017 (Granting LG Chem's Request to Submit Duty Drawback Information), at 3.

¹⁷⁰ See letter from LG Chem, "LG Chem's Duty Drawback Submission: Dioctyl Terephthalate (DOTP) from the Republic of Korea," dated February 3, 2017 (LG Chem's Duty Drawback Submission).

Chem's Duty Drawback Submission, and, as a consequence, LG Chem's response is timely. However, as explained above, the Department continues to disagree with LG Chem's interpretation of the Department's regulations concerning the submission of new factual information in LG Chem's Original 2nd SQR.¹⁷¹

LG Chem's Duty Drawback Submission and subsequent verification exhibits provide the following documentation with respect to demonstrating that import duty and its rebate or exemption be directly linked to, and dependent upon, one another (*i.e.*, the first-prong):

- Korean regulations regarding the issuance of duty drawback;¹⁷²
- Duty drawback applications tracking information regarding the import declarations and the export declarations relevant to the specific application, and demonstrating the drawback granted for each applicable raw material pertinent to exported product identified on the export declaration;¹⁷³
- Worksheets tying to the duty drawback applications demonstrating that the amount of imported material was sufficient to account for the amount of the claimed duty drawback adjustment.¹⁷⁴
- Worksheets demonstrating for each applicable U.S. pre-selected and surprise sale how LG Chem applied the drawback amount recorded on the duty drawback application to the amount recorded on the Section C database.¹⁷⁵
- Proof of payment for the duty drawback granted by the Korean government for each applicable duty drawback application.¹⁷⁶
- A summary by export declaration number reporting the total duties paid and duty drawback received for each applicable input by import declaration number.¹⁷⁷

Although these exhibits demonstrate how LG Chem attempted to link the reported duty drawback for each sale to the relevant import declarations, LG Chem failed to provide sufficient information for the Department to determine whether LG Chem is entitled to an adjustment for duty drawback.¹⁷⁸ Specifically, LG Chem did not include copies of any of its import declarations referenced in its responses and verification exhibits, and thus, failed to demonstrate that it imported the inputs and paid any related duties.¹⁷⁹ Although LG Chem submitted

¹⁷¹ See the Department's letter Granting LG Chem's Request to Submit Duty Drawback Information for a fulsome description of the Department's reasoning.

¹⁷² See LG Chem's Duty Drawback Submission at Attachment Duty-5, "Act on Special Cases Concerning the Refund of Customs Duties, *Etc.* Levied on Raw Materials for Export."

¹⁷³ *Id.*, at Attachment Duty-2, "Support for Duty Drawback - Transaction Specific." See also LG Chem's Sales Verification Report at 19-20 and Verification Exhibits VE-24 through VE-30.

¹⁷⁴ *Id.*, at Attachment Duty-4, "Support for Import Quantity." See also LG Chem's Sales Verification Report at Verification Exhibit VE-1, "Minor Corrections," at Attachment G.

¹⁷⁵ See LG Chem's Sales Verification Report at Verification Exhibits VE-24 through VE-30. (LG Chem did not request a duty-drawback adjustment for every U.S. sale. As a consequence, it did not provide any duty drawback information for the first pre-selected U.S. sale in Verification Exhibit VE-23.)

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*, at Verification Exhibit Verification Exhibit VE-31, "Duty Drawback Exhibit."

¹⁷⁸ See, e.g., *Phosphor Copper from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 3, 2017) and accompanying Issues and Decision Memorandum at Comment 4.

¹⁷⁹ See, e.g., LG Chem's Duty Drawback Submission, LG Chem's Sales Verification Report at Verification Exhibits VE-1 and VE-24 through VE-31.

information that identified certain import declarations,¹⁸⁰ and revised this information prior to verification,¹⁸¹ we find this information insufficient to demonstrate that LG Chem paid the duties for which it is claiming drawback. Thus, LG Chem did not establish a link between the import duty paid and the rebate payment, or determine whether the import duty paid and rebate payment are directly linked and dependent upon one another, as required by our two-prong test. As a consequence, we are denying LG Chem a duty drawback adjustment for this final determination.

In addition, even if the Department could determine whether LG Chem's import duties paid were directly linked to the rebate payments, LG Chem did not submit sufficient information to determine an adjustment. Specifically, LG Chem provided an export declaration for only one sale in its U.S. sales traces, and that export declaration did not include any government stamps or signatures.¹⁸² In addition, LG Chem did not provide documentation of total duties paid on direct and indirect imports of raw materials embedded in its raw material costs.¹⁸³ LG Chem's Cost Verification Report states that, although LG Chem provided worksheets outlining the total refund requested for U.S. and world-wide exports during the POI, such worksheets do not account for the total POI duties paid on direct and indirect imports of raw materials.¹⁸⁴ Thus, LG Chem did not provide the information required to determine the amount of duties embedded in its reported material costs of producing the merchandise under consideration. As a consequence, even if LG Chem had provided sufficient evidence to demonstrate that it met the criteria for the Department's two-pronged test, the Department would not be able to calculate the appropriate duty-drawback adjustment in accordance with its recent practice.¹⁸⁵

Comment 8: LG Chem's CEP Offset

Petitioner's Case and Rebuttal Briefs

- The Department appropriately denied LG Chem's request for a CEP offset in the *Preliminary Determination* because LG Chem produces and sells a basic chemical product, which requires little marketing activity, and where the channels of distribution and selling activities are virtually identical in each market.¹⁸⁶ Thus, the Department should continue to deny LG Chem's claim.
- LG Chem fails to explain in its case brief its claim that there is "now a much more complete evidentiary record," and that the "*Preliminary Determination* is now not relevant."¹⁸⁷
- The Department examined LG Chem's documentation for the CEP offset at verification, and found no inconsistencies with the factual basis underlying the reported selling functions.¹⁸⁸ In addition, the Department confirmed that certain selling activities, such as those resulting in the payment of commissions, were at a low intensity in the United States and non-existent in Korea.¹⁸⁹

¹⁸⁰ *Id.*

¹⁸¹ See LG Chem's Sales Verification Report at Verification Exhibit VE-1, "Minor Corrections to the Response," at Attachment G.

¹⁸² See LG Chem's Sales Verification Report at Verification Exhibit VE-25.

¹⁸³ See LG Chem's Cost Verification Report at 17.

¹⁸⁴ *Id.*

¹⁸⁵ See Preliminary Decision Memorandum at 15.

¹⁸⁶ See Petitioner's Case Brief at 23 - 24.

¹⁸⁷ See Petitioner's Rebuttal Brief at 13, citing LG Chem's Case Brief at 7.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

- Since neither the Department nor LG Chem disputes the facts underlying LG Chem's reported selling functions, and since these facts formed the basis of the Department's decision to deny a CEP offset in the *Preliminary Determination*, the Department should continue to find no differences in the level of trade and deny LG Chem's request for a CEP offset in the final determination.¹⁹⁰

LG Chem's Case Brief

- The Department's failure to grant LG Chem a CEP offset in the *Preliminary Determination* was based on a misunderstanding of the information and data that LG Chem provided in its questionnaire responses concerning the different selling functions undertaken for home market sales and those U.S. sales made through LGCAI.¹⁹¹
- The Department now has a much more complete evidentiary record that demonstrates unequivocally that there is complete justification for applying a CEP offset.¹⁹²
- Specifically, the Department's verifications at LG Chem's headquarters in Korea and at LGCAI's headquarters in Atlanta, Georgia, explicitly address the differences in those selling functions that LG Chem in Korea undertakes for its home market customers and those selling functions that LG Chem in Korea undertakes for U.S. sales made through LGCAI.¹⁹³
- LG Chem argues that, based on these verified facts, the evidentiary record justifies application of the CEP offset.

Department's Position: We agree with the petitioner that LG Chem failed to support its claim for a CEP offset. We agree with the petitioner that LG Chem's selling practices and channels of distribution and selling activities are virtually identical in each market. As described in the *Preliminary Determination*, LG Chem has not demonstrated that its selling activities differ in that adjustments are appropriate under section 773(a)(7)(B) of the Act and 19 CFR 351.412(c)(2).¹⁹⁴ LG Chem makes all of its home market sales directly to affiliated and unaffiliated end users and retailers in the home market.¹⁹⁵ LG Chem makes EP sales directly to unaffiliated trading companies in the home market, or to unaffiliated retailers and end users in the United States.¹⁹⁶ LGCAI makes CEP sales of subject merchandise directly to unaffiliated end users and retailers in the United States. Record evidence does not demonstrate that LG Chem's sales channels or selling practices in either market are significantly different from one another, such that we can find the sales to be at different marketing stages, pursuant to 19 CFR 351.412(c)(2).¹⁹⁷ Rather, the information and argument that LG Chem presented at verification in support of its CEP-offset claims only demonstrate the relative number of customers, freight companies, and sales team members in the U.S. and home markets.¹⁹⁸ Moreover, that discussion did not address the relative volume of sales in each market.¹⁹⁹ As a result, we agree with the petitioner that LG Chem presented no "new factual information" at verification, and further, that

¹⁹⁰ *Id.*

¹⁹¹ See LG Chem's Case Brief at 7.

¹⁹² *Id.*

¹⁹³ *Id.*, at 7-10.

¹⁹⁴ See Preliminary Decision Memorandum at 18-20.

¹⁹⁵ See letter from LG Chem, "LG Chem's Submission of the Second Supplemental ABC Response: Diocetyl Terephthalate (DOTP) from the Republic of Korea," dated January 25, 2017 (LG Chem's 2nd SQR) at Exhibit SABC2-8.

¹⁹⁶ *Id.*, at Exhibit SABC2-7.

¹⁹⁷ See Preliminary Decision Memorandum at 20.

¹⁹⁸ See LG Chem's Sales Verification Report at 8.

¹⁹⁹ *Id.* See also LG Chem's Sales Verification Report at Verification Exhibit VE-32.

the information presented at verification did not indicate, that the “*Preliminary Determination* is now not relevant.” Because this information and argument did not support LG Chem’s claims that its sales were made at different levels of trade, or that it was entitled to a CEP offset, the Department has no reason to re-evaluate its analysis of LG Chem’s selling functions in the U.S. and/or home market. Therefore, we have made no changes to our margin calculations for a CEP offset for the final determination.

Comment 9: Reported Currency for LG Chem’s Bank Charges

LG Chem’s Case Brief

- The Department should revise its margin calculations to reflect the fact the LG Chem incurred bank charges for EP sales in Korean Won rather than U.S. dollars, as indicated in Exhibits SABC-23, “Bank Charges,” and SABC-24, “Updated Exhibit C-1,” of its first supplemental questionnaire response.²⁰⁰

Petitioner’s Rebuttal Brief

- The Department should continue to deny LG Chem’s ministerial error allegation that the Department improperly treated LG Chem’s bank charges as if they were incurred in U.S. dollars, rather than in Korean Won.²⁰¹
- LG Chem reported its sales using a number of currency and unit configurations, claiming that the only U.S. expenses incurred in Korean Won were inland freight, brokerage in the country of manufacture, and certain packing expenses.²⁰² LG Chem originally reported the currency for bank charges as U.S. dollars.²⁰³ Thus, given the conflicting record, the Department had no basis to convert the currency from what was initially reported.²⁰⁴
- The Department has considered an analogous situation in the past and determined that no error existed because the Department carried out its calculations consistently with the data provided by the respondent.²⁰⁵

Department’s Position: We find that we should not continue to treat LG Chem’s bank charges as if they were incurred in U.S. dollars. Although LG Chem originally reported its bank charges for EP sales in U.S. dollars, LG Chem’s 1st SQR indicated that they were incurred in Korean Won. However, because LG Chem’s presentation was not clear, we used the information as originally reported (in Korean Won) for the margin calculations in the *Preliminary*

²⁰⁰ See LG Chem’s Case Brief at 2-3, citing letter from LG Chem, “LG Chem’s Response to Supplemental ABC Questionnaire: Dioctyl Terephthalate (DOTP) from the Republic of Korea,” dated November 22, 2016 (LG Chem’s 1st SQR).

²⁰¹ See Petitioner’s Rebuttal Brief at 11.

²⁰² *Id.*

²⁰³ *Id.*, citing letter from LG Chem, “LG Chem’s Section C Response: Dioctyl Terephthalate (DOTP) from the Republic of Korea,” dated October 3, 2016, at Exhibit C-1, “Database Summary.”

²⁰⁴ *Id.*

²⁰⁵ *Id.*, citing *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014); and the relevant ministerial error memorandum, “Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Amended Final Determination of the Countervailing Duty Investigation: Allegations of Ministerial Errors,” dated February 10, 2015, at 8-10 (rejecting an allegation of a ministerial error regarding a comparison of a USD/kg purchase amount with a RMB/kg benchmark).

Determination. LG Chem raised this issue as ministerial error,²⁰⁶ but did not explain how the alleged error was a “significant ministerial error” as defined by 19 CFR 351.224(g).²⁰⁷ Thus, we did not consider LG Chem’s ministerial error allegation and invited LG Chem to resubmit its allegation in its case brief for consideration in this final determination.²⁰⁸

However, at verification, we confirmed that LG Chem incurred bank charges in Korean Won for EP sales, traced the bank charges to proof of payment and determined that LG Chem accurately recorded them in its Section C database.²⁰⁹ As a consequence, we revised the margin calculations for bank charges for the final determination.²¹⁰

Comment 10: LG Chem’s G&A Ratio

LG Chem’s Case Brief

- The Department should revise the G&A expense ratio used in the *Preliminary Determination* to exclude impairment losses from investment assets, since the Department confirmed at verification that the losses were related to investments, and it is the Department’s practice to exclude gains and losses associated with a company’s investment activities.²¹¹

Petitioner’s Rebuttal Brief

- The Department should continue to include in G&A expenses the impairment losses on investments that fall under the same LG Chem business segment as DOTP since the losses would pertain to the general activities and production of the merchandise under consideration.²¹²

Department’s Position: We agree with LG Chem and have adjusted LG Chem’s G&A expense ratio in the final determination to exclude the impairment losses from investment assets. In the *Preliminary Determination*, the Department revised LG Chem’s reported G&A expense ratio to include an amount for “losses on impairment of other assets.” At verification, LG Chem presented, as a minor correction, a revised translation of the amount that read “losses on impairment of investment assets.”²¹³ To confirm the accuracy of the revised translation, we examined the notes to LG Chem’s audited financial statements (English version) and found that the reported amount was comprised of impairment losses on investments in subsidiaries and in joint ventures.²¹⁴

²⁰⁶ See letter from LG Chem, “Request for Correction of Clerical Errors: Dioctyl Terephthalate (DOTP) from the Republic of Korea,” dated February 1, 2017.

²⁰⁷ See letter from the Department “Antidumping Duty Investigation of Dioctyl Terephthalate (“DOTP”) from the Republic of Korea: Allegation of a Clerical Error,” dated March 17, 2017.

²⁰⁸ *Id.*

²⁰⁹ See, e.g., LG Chem’s Sales Verification Report at 19, and at Exhibit VE-23, “US Pre-Selected Sale #1,” at 35-36. See also Exhibit VE-25, “US Pre-Selected Sale #3,” at 36-37; and Exhibit VE-29, “US Surprise Sale #2,” at 37-38. (Please note that LG Chem’s Sales Verification Report identifies the relevant transaction as Exhibit VE-28, “US Surprise Sale #1,” whereas, LG Chem inverted the Department’s designation of “US Surprise Sale #1” and “US Surprise Sale #2” when it filed its verifications on the record. Therefore, bank charges for the relevant transaction may be found in LG Chem’s verification exhibits at Exhibit VE-29, “US Surprise Sale #2,” at 37-38.)

²¹⁰ See LG Chem’s Final Analysis Memorandum at 2.

²¹¹ See LG Chem’s Case Brief at 4-6.

²¹² See Petitioner’s Rebuttal Brief at 12.

²¹³ See LG Chem’s Cost Verification Report at 2.

²¹⁴ *Id.*, at 24.

It is the Department's well-established and consistent practice to exclude gains and losses on investment activities from the reported costs.²¹⁵ Furthermore, we do not parse out investment activities, but simply exclude investment gains and losses because investment activities are not related to the general production operations of the company, but, rather, are a separate profit making activity.²¹⁶ Therefore, we disagree with the petitioner that because a subsidiary operates in the same business segment, the related investment gains and losses should be included as a cost of producing the merchandise under consideration. As articulated in prior cases, we seek to capture the cost of producing the foreign like product and subject merchandise, and to exclude the cost of investment activities.²¹⁷ Therefore, for the final determination, we have excluded the amount identified as losses on impairment of investment assets from LG Chem's G&A expense ratio calculation.

Comment 11: LG Chem's Raw Material and Variable Overhead Costs

Petitioner's Case Brief

- The Department should adjust LG Chem's raw material and variable overhead costs since, based on the cost verification report, the reported raw material costs do not reconcile to LG Chem's cost accounting records and the reported electricity costs are lower than the electricity costs for non-subject products.²¹⁸ Consequently, the Department should rely on the only raw material figure that was verified, *i.e.*, the cost from the cost of manufacturing (COM) statement, and increase the variable overhead costs by a ratio of the non-subject to subject electricity costs.
- LG Chem's claim that it can produce subject and non-subject plasticizers on the same production lines lacks credibility and further supports that LG Chem's allocation of costs between subject and non-subject plasticizers is suspect.²¹⁹

LG Chem's Rebuttal Brief

- The Department verified the fully loaded actual raw material cost (*i.e.*, the planned costs and all associated variances); therefore, no adjustment to the reported raw material costs is necessary for the final determination.²²⁰
- The higher per-unit electricity cost for non-subject merchandise is reasonable because the product requires a two-step reaction process, whereas DOTP requires only one.²²¹
- It is illogical to compare per-unit electricity costs with total production quantities.
- The per-unit electricity cost of DOTP should not be adjusted to the per-unit cost of non-subject merchandise. Rather, if an adjustment is warranted, the total electricity cost should

²¹⁵ See *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524 (February 12, 2007) (*Raspberries Chile Final*), and accompanying IDM at Comment 6 stating that "we exclude investment related gains, losses or expense from the calculation of COP and CV"; and, *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) (*CORE Korea Final*), and accompanying IDM at Comment 14.

²¹⁶ See *Raspberries Chile Final* IDM at Comment 6, where the Department declines to consider other arguments for excluding or including investment losses and instead states that "the losses should be excluded on the basis that they are investment related" and, *CORE Korea Final* IDM at Comment 14, where the Department states that investment activities are not related to production, but are a separate profit making activity.

²¹⁷ *Id.*

²¹⁸ See Petitioner's Case Brief at 29-31.

²¹⁹ *Id.*

²²⁰ See LG Chem's Rebuttal Brief at 8-9.

²²¹ See LG Chem's Rebuttal Brief at 9-11.

be allocated over total subject and non-subject production, which, when calculated, demonstrates that the difference between the average electricity per-unit cost and the reported DOTP electricity per-unit cost is trivial.

Department's Position: We disagree with the petitioner and have not adjusted LG Chem's raw material and variable overhead costs for the final determination. The petitioner references certain LG Chem statements and selective information regarding raw material costs and variable overhead from the cost verification report to question the validity of LG Chem's cost reporting and surmises that the Department must adjust LG Chem's reported raw material and variable overhead costs.²²² As outlined in detail below, we find that the record evidence fails to support the petitioner's conclusions.

First, regarding raw material costs, the petitioner posits that the reported costs do not reconcile to the POI monthly COM statements in LG Chem's cost accounting system and, therefore, must be adjusted. The petitioner correctly asserts that the total reported raw material cost does not match the total raw material cost from the POI monthly COM statements. However, the cost verification report explains that "the raw material costs {on the COM statements} reflect actual consumption quantities valued at the planned per-unit costs."²²³ Thus, the raw material costs on the COM statements do not reflect actual costs because "throughout a month LG {Chem} issues raw materials to production {that is, to the COM statements} at a planned per-unit cost."²²⁴ At the end of the month, when the actual per-unit costs for the raw materials are determined, LG Chem reports the difference between the raw materials issued, based on the planned and actual per-unit costs, directly in the inventory records of the produced goods.²²⁵ Consequently, it would have been inaccurate for LG Chem to report only the planned raw material costs that are recorded in the monthly COM statements. Rather, the planned costs in the COM statements had to be adjusted for the month-end variance between the planned and actual raw material costs. In our verification test work, we confirmed that LG Chem reported the total actual costs (planned costs plus variances) of the raw materials consumed in the production of DOTP.²²⁶ Thus, we disagree that an adjustment to LG Chem's reported raw material costs is warranted in the final determination.

Second, for variable overhead, the petitioner's argument rests on the Department's comparison of the April 2015 electricity costs for DOTP and for a non-subject plasticizer. The petitioner correctly notes that this non-subject product was allocated a higher electricity cost on a kilowatt hour/metric ton (KwH/MT) basis than DOTP and that the non-subject production quantities were much lower than the DOTP production quantities.²²⁷ The petitioner then concludes that, because the non-subject plasticizer was assigned a higher per-unit electricity cost despite having much lower production quantities than DOTP, the DOTP variable overhead costs are significantly understated and must be adjusted.²²⁸ The petitioner, however, incorrectly asserts that a lower production quantity necessarily correlates to a lower electricity cost on a per ton basis. Rather, electricity costs are related to the quantity of electricity that is consumed to produce a ton of product since electricity is a variable expense. On a per-unit basis, variable expenses typically

²²² See Petitioner's Case Brief at 29-30.

²²³ See LG Chem's Cost Verification Report at 16.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*, at 16-20.

²²⁷ See Petitioner's Case Brief at 30.

²²⁸ *Id.*

do not fluctuate, but are incurred as each additional unit is produced. Assume it takes two hours to produce one MT of widgets and 100 Kwh are consumed an hour to run the machinery for a total of 200 Kwh of electricity consumption. To produce one more MT of widgets it would take another 200 Kwh. Each MT of widgets would then get 200 Kwh of electricity costs. Hence, while lower production quantities would lead to lower total electricity costs (one MT of widgets = 200 Kwh, two MT of widgets = 400 Kwh), lower production quantities would not necessarily lead to lower electricity costs on a per-unit basis (200 Kwh per MT of widgets). Thus, we do not find that the petitioner's observations provide evidence of an improper cost allocation, nor have we found any other record evidence to support the petitioner's claims that variable overhead costs are understated.

Specifically, we note that LG Chem "relied on its normal books and records without adjustment" for reporting conversion costs (*i.e.*, direct labor, variable overhead, and fixed overhead).²²⁹ At verification, we reviewed and tested LG Chem's normal methodology for assigning plant-wide direct labor, utility, and depreciation expenses to direct cost centers and the monthly accumulated direct cost centers costs to products.²³⁰ In doing so, we noted that "production workers and fixed assets at the plants are assigned to cost centers based on specific identification, while utilities are allocated to cost centers based on metered usage. The total costs accumulated in each direct cost center are then allocated to the products produced in the cost center based on the product-specific standard activity codes. Every conversion cost account is in turn linked to one of the four activity codes, *i.e.*, labor hours, machine hours, fuel usage, or electricity usage. The total costs accumulated under each activity code are then allocated to products based on their relative monthly product-specific activity code standards."²³¹ Thus, we find that LG Chem allocated conversion costs to each plasticizer produced based on its product-specific labor hours, machine hours, fuel usage, and electricity usage.

Moreover, in testing the conversion cost allocations from LG Chem's normal books, we also compared the costs allocated to DOTP and to other non-subject plasticizers and discussed any significant variations with LG Chem officials.²³² Regarding the electricity cost variation noted by the petitioner, LG Chem "explained that additional resources are consumed in the production of the non-subject product since it requires a two-step reaction process . . . whereas DOTP has one reaction step."²³³ Thus, we find that LG Chem relied on its normal books for reporting variable overhead costs and that those records provide for a reasonable and rational allocation of costs between subject and non-subject plasticizers. Consequently, we determine that an adjustment to LG Chem's reported variable overhead costs is not warranted in the final determination.

Finally, the petitioner contends that LG Chem's statement that both subject and non-subject plasticizers can be produced on any of its plasticizer production lines lacks credibility and "infects the entire cost reporting basis."²³⁴ In support, the petitioner states that DOTP is subject to a wholly different regulatory framework and contains different chemical formulas that render it commercially different from non-subject plasticizers. However, the petitioner fails to further

²²⁹ See LG Chem's Cost Verification Report at 21.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*, at 21-22.

²³³ *Id.*

²³⁴ See Petitioner's Case Brief at 31.

explain why varying regulations and chemical formulas (raw material inputs) would render the production equipment used for DOTP production unusable for non-subject plasticizer production. In fact, contrary to the petitioner's assumptions, the cost verification report states that LG Chem did produce both subject and non-subject products on the same production line during the POI.²³⁵ Furthermore, contrary to the petitioner's assertion, we find that because DOTP, as a non-phthalate plasticizer, "is not subject to the same regulatory restrictions as ortho-phthalates" could suggest that the non-subject merchandise would incur more expense due to the additional oversight required to ensure compliance with its unique regulatory burden.

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 of the investigation and the final weighted-average dumping margins in the *Federal Register*.



Agree

Disagree

6/19/2017

X

Gary Taverman

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

²³⁵ See e.g., LG Chem's Cost Verification Report at 7, where the Department notes that each LG Chem plasticizer production line represents a unique cost center, and at 21, where the Department notes that GL500B, a non-subject product, was produced at the same cost center as DOTP.