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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination and Affirmative Determination of Critical
Circumstances, in Part, in the Less-Than-Fair-Value Investigation
of Emulsion Styrene-Butadiene Rubber from the Republic of
Korea

I. SUMMARY

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of emulsion styrene-butadiene rubber (ESB rubber) from the Republic of Korea (Korea). Based on our analysis and findings at verification, we made changes to the margin calculation for LG Chem, Ltd. (LG Chem), a mandatory respondent 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: CEP Offset
- Comment 2: Cost Adjustments Based on Transactions Disregarded Rule
- Comment 3: Cost Adjustments Based on Verification Findings
- Comment 4: Sales Expense Adjustments Based on Verification Findings
- Comment 5: Duty Drawback Adjustment

II. BACKGROUND

On February 24, 2017, the U.S. Department of Commerce (Department) published the *Preliminary Determination* of sales of ESB rubber from Korea at LTFV.¹ The period of investigation (POI) is July 1, 2015, through June 30, 2016. Between April and June 2017, we conducted verification of the sales and cost of production (COP) data reported by LG Chem and its U.S. affiliate, LG Chem America Inc. (LGC America), pursuant to section 782(i) of the Tariff Act of 1930, as amended (Act).²

We invited parties to comment on the *Preliminary Determination*. In June 2017, the petitioners³ and LG Chem filed case and rebuttal briefs in this investigation.⁴ Based on our analysis of the comments received, as well as our verification findings, we revised the weighted-average dumping margins for LG Chem from that calculated in the *Preliminary Determination*.

III. SCOPE COMMENTS

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*. No interested parties submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination.

IV. SCOPE OF THE INVESTIGATION

For purposes of this investigation, the product covered is cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigation includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigation covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as “Clear”

¹ See *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less than Fair Value, Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 11536 (February 24, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Verification of the Cost Response of LG Chem, Ltd. in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from the Republic of South Korea,” dated April 13, 2017 (LG Chem Cost Verification Report); Memorandum, “Verification of U.S. Sales of LG Chem America, Inc., in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from the Republic of Korea,” dated May 3, 2017; Memorandum, “Verification of LG Chem, Ltd., in the Antidumping Duty Investigation of Emulsion-Styrene Butadiene Rubber from the Republic of Korea,” dated June 14, 2017 (LG Chem I legit ication Report).

³ Lion Elastomers LLC and East West Copolymers (collectively, the petitioners).

⁴ See LG Chem’s Case Brief, “LG Chem’s Antidumping Case Brief,” dated June 21, 2017 (LG Chem Case Brief); Petitioners’ Case Brief, “Case Brief of Lion Elastomers LLC and East West Copolymers,” dated June 21, 2017 (Petitioners’ Case Brief); See LG Chem’s Rebuttal Case Brief, “Rebuttal Brief of LG Chem,” dated June 26, 2017 (LG Chem’s Rebuttal Brief); Petitioner’s Rebuttal Brief, “Rebuttal Brief of Lion Elastomers LLC and East West Copolymers,” dated June 26, 2017 (Petitioners’ Rebuttal Brief).

or “White Rubber.” The 1700 grades are oil-extended and thus darker in color, and are often called “Brown Rubber.”

Specifically excluded from the scope of this investigation are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to this investigation are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003-55-8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

V. MARGIN CALCULATIONS

We calculated export price (EP), constructed export price (CEP) and normal value (NV) using the same methodology as stated in the *Preliminary Determination*,⁵ except as follows:⁶

1. We revised LG Chem’s submitted costs to reflect the market price of electricity.⁷
2. We revised LG Chem’s submitted general and administrative (G&A) expense ratio to exclude losses from investments that were previously erroneously captured in the G&A expense ratio.⁸
3. We revised LG Chem’s margin calculations to adjust for errors identified at verification in LG Chem’s calculation of its indirect selling expenses.⁹

VI. DISCUSSION OF THE ISSUES

Comment 1: CEP Offset

The petitioners’ Comments:

- The Department’s decision to grant LG Chem a CEP offset in its preliminary determination is not supported by the Act, case precedent, or the record in this investigation and should, therefore, not be granted in the final determination.¹⁰

⁵ See *Preliminary Determination*, and accompanying PDM at 7-12.

⁶ See Memorandum regarding: Final Determination Calculation for LG Chem, Ltd., in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from the Republic of Korea, dated July 10, 2017 (LG Chem Final Analysis Memorandum); Memorandum regarding: Cost of production and Constructed Value Calculation Adjustments for the Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – LG Chem, Ltd., dated concurrently with this memorandum (LG Chem Final Cost Calculation Memo).

⁷ For further discussion, see Comment 2.

⁸ For further discussion, see Comment 2.

⁹ For further discussion, see Comment 3.

¹⁰ See Petitioners’ Case Brief at 1.

- A CEP offset is available only when there are substantial differences in selling activities between the levels of trade in the two markets.¹¹
- Under similar facts in the Department's determination in the *DOTP from Korea Prelim*, the Department denied LG Chem a CEP offset.¹² The decision involved the same company and apparently, the same sales and distribution patterns.¹³
- As in the *DOTP from Korea Prelim*, the selling functions LG Chem performed for its home market customers are similar to those performed for its U.S. customers at a similar level of intensity.¹⁴ In addition, the record reflects that both LG Chem and LGC America perform selling functions in the U.S. market.
- Without more qualitative or quantitative information, LG Chem has failed to meet its burden of proof to show that it is entitled to a CEP offset.¹⁵
- As explained by the Court of International Trade in *Ad Hoc Shrimp*, the burden of establishing the propriety of granting a CEP offset falls squarely on the respondent.¹⁶

LG Chem's Comments:

- None of the factors that the Department analyzed when making its decision for the *Preliminary Determination* have changed such that the Department should not grant LG Chem a CEP offset.¹⁷
- In fact, the Department addressed and verified the sales process and differences in selling functions previously placed on the record that LG Chem undertakes for its home market customers and those selling functions that LG Chem undertakes for sales made through its U.S. affiliate, LGC America.¹⁸
- The evidentiary record in this case has as much factual information justifying granting a CEP offset as past Department cases, such as *Citric Acid and Certain Citrate Salts from Canada*.¹⁹
- Although the sales process and selling functions may be similar to *DOTP from Korea Prelim*, they are not identical.²⁰ Different personnel at LG Chem are involved in the sale of each product.

¹¹ *Id.*

¹² *Id.* at 2 (citing *Diethyl 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), and accompanying Preliminary Determination Memorandum at page 20) (*DOTP from Korea Prelim*).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* (citing *Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354, 1374 (CIT 2009) (*Ad Hoc Shrimp*)).

¹⁷ See LG Chem's Rebuttal Brief at 2.

¹⁸ *Id.* (citing LG Chem Sales Verification Report).

¹⁹ *Id.* at 3 (citing *Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Administrative Review; 2011-2012*, 78 FR 34338 (June 7, 2013), and accompanying Issues and Decision Memorandum at 8).

²⁰ *Id.* at 4.

- Furthermore, the channels of distribution are not the same. Specifically, LGC America holds inventory at warehouses located in the U.S. and handles the logistics of the warehouse cost and the freight from the warehouse to the final customer. This key fact is not the case for sales of DOTP.²¹

Department's Position: The Department continues to find that a CEP offset is warranted for LG Chem's CEP sales of ESB rubber under investigation during the POI.

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. As we previously noted,²² the Department will grant a CEP offset under section 773(a)(7)(B) of the Act, if it determines that the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible). Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²³ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁴ Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.²⁵

In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),²⁶ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.²⁷ When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, as explained above, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the

²¹ *Id.*

²² See PDM at 9; see *e.g.*, *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*)

²³ See 19 CFR 351.412(c)(2).

²⁴ *Id.*; see also *OJ from Brazil* at Comment 7. Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support.

²⁵ See 19 CFR 351.412(c)(2).

²⁶ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

²⁷ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

As explained in the *Preliminary Determination*, in this investigation, we obtained information from LG Chem regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.²⁸ Based on the selling activities performed for each channel of distribution, the Department found that there is a single LOT for CEP sales in the U.S. market.²⁹ The Department further found that there are substantial differences in selling activities between the levels of trade in the home market and U.S. market, thus warranting a CEP offset.³⁰ Specifically, for CEP sales, LG Chem reported that LGC America performs significant selling activities in the U.S. market for its CEP sales that LG Chem handles in the home market.³¹ For example, LGC America performed strategic/economic planning, sales forecasting, marketing, packing inventory maintenance, order input/processing, sales services, and freight and delivery at a similar level in the U.S. market that LG Chem performs in the home market. Consequently, we preliminarily determined that “the selling functions performed for the U.S. and home market customers differ significantly.”³²

We disagree with the petitioners that this determination is not in accordance with the Act, case precedent, or the record in this investigation. As the Department explained in the *Preliminary Determination*, as in prior cases, the role LG Chem’s U.S. affiliate, LGC America, played in the sales process for ESB rubber is relevant to its decision concerning LOT.³³ Specifically, as LG Chem points out in its rebuttal brief, LGC America engaged in significant selling activities in the United States that LG Chem handles in the home market, *i.e.*, warehousing, inland freight, and inland insurance.³⁴ The Department’s reasoning, as explained in the *Preliminary Determination*, is that if the U.S. affiliate performs significant selling activities in the U.S. market that are handled by the foreign producer in the comparison market, then the home market LOT is

²⁸ See PDM at 9 (citing Letter to the Secretary of Commerce from LG Chem, re: LG Chem’s Section A Response, dated October 6, 2016 at 11-23 and Exhibits A-12, A-13, and A-14 (LG Chem’s SAQR); Letter to the Secretary of Commerce from LG Chem, re: LG Chem’s Supplemental Section A Response, dated November 17, 2016 (LG Chem’s Supp. SAQR) at 26-28).

²⁹ *Id.*

³⁰ *Id.*

³¹ See, e.g., LG Chem’s SAQR at 11-23 and Exhibits A-12, A-13, and A-14; LG Chem’s Supp. SAQR at 26-28, citing Memorandum regarding: Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from Korea, dated February 16, 2017 at 10 (LG Chem Preliminary Analysis Memo at 5).

³² See PDM at 10.

³³ *Id.* (citing *Certain Corrosion-Resistant Steel Flat Products from Italy*, 81 FR 69 (January 4, 2016) and accompanying Preliminary Decision Memorandum at 16-17 (unchanged in *Certain Corrosion-Resistant Steel Flat Products from Italy; Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016)); *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024, 45029 (August 6, 2006) (finding that in the home market the respondent made sales “further down the chain of distribution by providing certain downstream selling functions that are normally performed by the affiliated resellers in the U.S. market”) (unchanged in *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 74897 (December 13, 2006)).

³⁴ See LG Chem’s Rebuttal Brief at 4.

necessarily more advanced than the CEP LOT, which excludes the activities performed by the U.S. affiliate from the price, pursuant to section 772(d) of the Act.³⁵

For the same reason, the Department must necessarily distinguish its final determination in this investigation to grant LG Chem a CEP offset from its determination in the *DOTP from Korea Prelim* where it did not grant LG Chem a CEP offset. Contrary to the petitioners' contention that the factual records of both investigations are "apparently the same,"³⁶ for sales of ESB rubber, LGC America held inventory at warehouses located in the U.S. and handled the logistics of the warehouse cost and the freight from the warehouse to the final customer.³⁷

Finally, the petitioners argue that the record lacks the qualitative and quantitative information to satisfy LG Chem's burden of proof necessary to establish its eligibility for a CEP offset.³⁸ Specifically, the petitioners contend that LG Chem's selling function chart and description of the selling functions performed by LG Chem and LGC America, respectively, does not meet its burden of proof.³⁹ However, as LG Chem notes in its rebuttal brief, the Department regularly relies on a comparison of the selling functions a party performs in comparison to its U.S. affiliate, a respondent's description of its selling activities, and invoices and sales documentation confirming those descriptions in making determinations regarding LOT.⁴⁰ The petitioners state that LG Chem only provided its selling functions chart and a brief description of the selling functions performed, but the record does not support that contention.⁴¹ Here, the evidence includes LG Chem's selling function chart, LG Chem's description of its selling functions in its supplemental questionnaire responses, and the extensive sales documentation related to those additional expenses it incurred that were provided to the Department in LG Chem's questionnaire responses as well as during verification. This record evidence established the key factual information on which this determination rests, that LGC America performed selling functions in the U.S. for CEP sales that LG Chem normally performs in the home market, thereby signaling that LG Chem performs more selling functions in the home market than it does in the U.S. market.⁴²

³⁵ See PDM at 10 (citing *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009), and accompanying Issues and Decision Memorandum at Comment 8).

³⁶ See Petitioners' Case Brief at 2.

³⁷ See LG Chem's Rebuttal Brief at 4; *see also, e.g.*, Letter to the Secretary from LG Chem, re: LG Chem's Section C Response, dated November 2, 2016 at 9 (Section C Questionnaire Response).

³⁸ See Petitioners' Case Brief at 3.

³⁹ *Id.*

⁴⁰ See LG Chem's Rebuttal Brief at 2; See LG Chem's Rebuttal Brief at 2 (citing *Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 34338 (June 7, 2013) and *Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 64914 (October 30, 2013)(relying on the respondent's description of its selling functions)); *see also* *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) and accompanying Issues and Decision Memorandum at Comment 8 (relying on invoices and sales documentation confirming the limited selling activities of the respondent in the U.S. market compared to the home market).

⁴¹ See Petitioners' Case Brief at 3.

⁴² *See, e.g.*, LG Chem's SAQR at at 11-23 and Exhibits A-12, A-13, and A-14; LG Chem's Supp. SAQR at 26-28; LG Chem's Sales Verification Report.

Furthermore, the petitioners' reliance on *Ad Hoc Shrimp* is misplaced. The company in *Ad Hoc Shrimp*, Thai I-Mei, "did not meet its burden of presenting sufficient evidence to support its request for a CEP offset because it proffered *no evidence* on the record to support its claim" that substantial differences in selling functions existed between the home market and U.S. LOTs.⁴³ The Department's final determination in that case found that Thai I-Mei had additionally mischaracterized the evidence with respect to its own selling functions, considering its sales response was directly contrary to the assertions it made in its case briefs.⁴⁴ As enumerated above and as mentioned by LG Chem, the Department found no such mischaracterization here, but rather verified the differences in selling functions in the home market and U.S. LOTs by examining LG Chem's sales process and selling functions.⁴⁵

Therefore, the Department's determination to grant LG Chem a CEP offset in this investigation is supported by the Act, case precedent, and substantial evidence on the record because LG Chem has sufficiently demonstrated that its home market sales were made at a more advanced level of trade than its CEP sales and we are unable to quantify a level of trade adjustment.

Comment 2: Cost Adjustments Based on Transactions Disregarded Rule

The petitioners' Comments:

- During the cost verification, the Department determined that LG Chem purchased electricity from both an affiliated and unaffiliated supplier and that the POI average transfer price was lower than the market price.⁴⁶
- The Department's longstanding practice is to value inputs at the higher of the transfer price or the market price.⁴⁷ The Department reiterated its established practice in recent investigations.⁴⁸
- The Department should increase LG Chem's affiliated transfer prices to reflect the market price of electricity.⁴⁹

LG Chem's Comments:

- The Department should not adjust LG Chem's electricity costs because the electricity costs for the affiliated supplier were at market prices and even if the Department were to make the adjustment, it is trivial and unnecessary.⁵⁰
- This adjustment can be ignored by the Department without any effect on the overall cost of manufacturing or the final margin.⁵¹

⁴³ See *Ad Hoc Shrimp*, 616 F. Supp. 2d. at 1374 (emphasis added).

⁴⁴ *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 13.

⁴⁵ See LG Chem's Sales Verification Report at 6.

⁴⁶ See Petitioners' Case Brief at 4 (citing LG Chem Cost Verification Report).

⁴⁷ *Id.*

⁴⁸ *Id.* (citing *Certain Cold-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less than Fair Value*, 81 Fed. Reg. 49946 (July 29, 2016) and Issues and Decision Memorandum at Comment 10).

⁴⁹ *Id.*

⁵⁰ See LG Chem's Rebuttal Brief at 4-5 (citing LG Chem Cost Verification Report).

⁵¹ *Id.* at 5.

Department's Position: The Department agrees with the petitioners that the Department should increase LG Chem's affiliated transfer prices to reflect the market price of electricity in accordance with section 773(f)(2) of the Act,⁵² and our practice.⁵³ Section 773(f)(2) of the Act addresses how the Department will treat affiliated party transactions in its calculation of the cost of manufacture. Specifically, a transaction directly or indirectly between affiliated person may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of the merchandise under consideration in the market under consideration.

At verification, we noted that the transfer price, (*i.e.*, the price paid to LG Chem's affiliated electricity supplier), was lower than the market price (*i.e.*, the amount LG Chem paid its unaffiliated suppliers).⁵⁴ As such, the Department found that the element of value (*i.e.*, the electricity input) was not valued at a Korean market price. Therefore, it is within the Department's discretion to disregard the transaction and adjust LG Chem's cost of manufacture.⁵⁵ Here, LG Chem argues that the difference is trivial and unnecessary, putting forth that the difference in the cost of manufacturing resulting from this change is a small net difference on the cost of manufacturing, itself.⁵⁶ However, the Department defines an insignificant adjustment, pursuant to 19 CFR 351.413, as "any individual adjustment having an *ad valorem* effect of less than 0.33 percent { . . . } of the { . . . } normal value."⁵⁷ LG Chem does not argue that the change is an insignificant adjustment with respect to normal value.⁵⁸ Thus, pursuant to section 773(f)(2) of the Act and in accordance with our practice,⁵⁹ we increased LG Chem's cost of manufacture to reflect the market or arm's length value of this input.

⁵² Section 773(f)(2) of the Act (*i.e.*, the "transactions disregarded rule") ("A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.")

⁵³ See *e.g.* *Steel Concrete Reinforcing Bar from Mexico; 2014-2015: Final Results of Antidumping Duty Administrative Review*, 82 FR 27233 (June 14, 2017) and accompanying Issues and Decision Memorandum at Comment 4.

⁵⁴ See LG Chem Cost Verification Report at 2 and 19.

⁵⁵ See Section 773(f)(2) of the Act.

⁵⁶ See LG Chem's Rebuttal Brief at 5.

⁵⁷ 19 CFR 351.413.

⁵⁸ See LG Chem's Rebuttal Brief at 5.

⁵⁹ See *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 10.

Comment 3: Cost Adjustments to LG Chem's G&A Ratio

The petitioners' Comments:

- The petitioners did not comment on this issue.

LG Chem's Comments:

- The Department erroneously included 256,671 million Korean Won in impairment losses from investment assets in LG Chem's G&A expense ratio calculation and should exclude them for its final determination.⁶⁰
- The Department confirmed at verification that this amount consisted of an impairment loss on a subsidiary and a joint venture.⁶¹
- In *DOTP from Korea* where LG Chem was also a mandatory respondent and the same set of financial statements were used to calculate LG Chem's G&A expense ratio, the Department excluded this amount.⁶²
- The Department's long standing practice is to exclude losses from investments from the G&A expense ratio.⁶³

Department's Position: The Department agrees with LG Chem that the impairment losses from its investment assets should be excluded from its G&A expense ratio in the final determination. 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."⁶⁴ At verification, LG Chem presented as a minor correction a revised translation of the amount that read "losses on impairment of investment assets."⁶⁵ To confirm the revised translation, we examined the notes to LG Chem's audited financial statements (English version) and found that the amount was comprised of impairment losses on investments in subsidiaries and in joint ventures.⁶⁶

It is the Department's well-established and consistent practice to exclude gains and losses on investment activities from the reported costs.⁶⁷ Furthermore, we do not parse out investment activities, but simply exclude investment gains and losses because investment activities are not

⁶⁰ See LG Chem's Case Brief at 2 (citing Memorandum regarding: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—LG Chem, Ltd., dated February 16, 2017 at Attachment 1).

⁶¹ *Id.* at 2 (citing LG Chem Cost Verification Report at 22).

⁶² *Id.* (citing *DOTP from Korea*, , and accompanying Issues and Decision Memorandum at Comment 7 (

⁶³ *Id.* at 3-4 (citing *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004), and accompanying Issues and Decision Memorandum at Comment 8).

⁶⁴ Memorandum regarding: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – LG Chem, Ltd., dated February 16, 2017 at 1.

⁶⁵ See LG Chem Cost Verification Report at 3.

⁶⁶ *Id.* at 22.

⁶⁷ 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.

related to the general production operations of the company, but rather are a separate profit making activity.⁶⁸ Therefore, even where a subsidiary operates in the same business segment, the related investment gains and losses are not included as a cost of producing the subject merchandise. As articulated in prior cases, in calculating cost of manufacture, we seek to capture the cost of producing the foreign like product and subject merchandise, and seek to exclude the cost of investment activities.⁶⁹ 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 4: Sales Expense Adjustments Based on Verification Findings

The petitioners' Comments:

- During verification, the Department noted that LG Chem misclassified certain indirect selling expenses.⁷⁰ As explained in the LG Chem Sales Verification Report, LG Chem admitted that this was a mistake and that the expenses were improperly categorized as common instead of export.⁷¹
- The Department should correct LG Chem's calculation of its indirect selling expenses by reclassifying these indirect selling expenses as export selling expenses.⁷²

LG Chem's Case & Rebuttal Briefs:

- LG Chem did not comment on this issue.

Department Position: The Department agrees with the petitioners that the Department should correct LG Chem's calculation of its indirect selling expenses based on the error discovered during verification.⁷³ Here, the record contains the information necessary to correctly classify LG Chem's indirect selling expenses.⁷⁴ Accordingly, we adjusted LG Chem's data to correct its calculation of its indirect selling expenses.⁷⁵

Comment 5: Duty Drawback Adjustment

The petitioners' Comments:

- The Department did not determine LG Chem's eligibility for a drawback adjustment at verification, but rather noted no discrepancies with the information on the record.⁷⁶

⁶⁸ See *Raspberries Chile Final IDM* at Comment 6 (declining to consider other arguments for excluding or including investment losses and instead stating that "the losses should be excluded on the basis that they are investment related"); see also *CORE Korea Final IDM* at Comment 14 (finding that investment activities are not related to production, but are a separate profit making activity).

⁶⁹ *Id.*

⁷⁰ See Petitioners' Case Brief at 5 (citing LG Chem Sales Verification Report).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See LG Chem Sales Verification Report at Exhibit 9.

⁷⁵ See LG Chem Final Analysis Memorandum at 3-4.

⁷⁶ See Petitioners' Rebuttal Brief at 1.

- Under similar facts in *DOTP from Korea*, the Department found that LG Chem was not entitled to a duty drawback adjustment.⁷⁷
- As such, the Department should not grant LG Chem a duty drawback adjustment under the facts of this case.⁷⁸
- If the Department grants LG Chem a duty drawback adjustment, it should follow the calculation methodology used most recently in *Reinforcing Bar from Turkey*.⁷⁹

LG Chem's Comments:

- The Department did not make a duty drawback adjustment for LG Chem for the *Preliminary Determination* of this investigation because the record lacked the information necessary to analyze LG Chem's eligibility for such an adjustment, but requested additional information to consider for the final determination.⁸⁰
- LG Chem provided this additional information requested by the Department confirming that both aspects of the Department's "two-pronged" test for duty drawback were met.⁸¹
- LG Chem demonstrated that the import duty and its rebate or exemption were directly linked to, and dependent upon, one another; and, that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.⁸²
- As confirmed by the sales verification, the Department has a full evidentiary record that demonstrates complete justification for applying the duty drawback adjustment.⁸³
- LG Chem agrees with the petitioners that if the Department grants LG Chem a duty drawback adjustment, it should follow the calculation methodology used in *Reinforcing Bar from Turkey*.⁸⁴
- The Federal Circuit's decision in *Saha Thai* which upheld the Department's decision to increase the respondent's cost of production (and therefore normal value), as well as the respondent's export price, by the import duty exemption amounts to reach a duty drawback neutral margin is not applicable here.⁸⁵
- *Saha Thai* is not applicable to the facts of this case because unlike the respondent in *Saha Thai*, LG Chem's reported costs included import duties.⁸⁶ As such, the Department need only apply an increase to LG Chem's U.S. price to achieve a duty drawback neutral margin in the final determination.⁸⁷

⁷⁷ *Id.* at 2.

⁷⁸ *Id.* (*DOTP from Korea*).

⁷⁹ See Petitioners' Case Brief at 5-6 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less than Fair Value*, 82 FR 23192 (May 22, 2017), and accompanying IDM at Comment 1; see also Petitioners' Rebuttal Brief at 2-3).

⁸⁰ See LG Chem's Case Brief at 5 (citing LG Chem Preliminary Analysis Memo).

⁸¹ *Id.* (citing Letter to the Secretary from LG Chem, re: LG Chem's Duty Drawback Supplemental Questionnaire Response, dated March 2, 2017 (DDB Supplemental)).

⁸² *Id.* at 6.

⁸³ *Id.* at 5-7 (citing LG Chem Sales Verification Report and LG Chem Cost Verification Report) (noting that duty drawback was not addressed at the cost verification)).

⁸⁴ See LG Chem's Rebuttal Brief at 5-6 (citing Petitioner's Case Brief at 5-6).

⁸⁵ *Id.* at 6 (citing *Saha Thai Steel Pipe (Public Co., v. United States*, 635 F.3d 1335, 1341-44 (Fed. Cir. 2011) (*Saha Thai*)).

⁸⁶ *Id.*

⁸⁷ *Id.*

Department Position: The Department determines that it is inappropriate to calculate a duty drawback adjustment for LG Chem for this final determination because the record lacks sufficient information to determine LG Chem’s eligibility to calculate a duty drawback adjustment or to calculate the claimed adjustment.

Section 772(c)(1)(B) of the Act states that the price used to established EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation which haven rebated, or which have not been collected,” by reason of the exportation of the subject merchandise to the United States.” In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to U.S. price.⁸⁸ The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); the second prong is that the company must demonstrate that there were sufficient imports of the imported raw materials to account for the duty drawback or exemption granted for the export of the manufactured product.⁸⁹

In its Section C Questionnaire response, LG Chem did not initially report the amount of duty drawback it received upon export of the subject merchandise to the United States during the POI despite the Department’s request that it do so and provide an explanation of how it calculated duty drawback.⁹⁰ Pursuant to the Department’s supplemental request, LG Chem reported duty drawback in its Supplemental Section C Questionnaire Response.⁹¹ However, LG Chem did not provide an explanation of how it calculated duty drawback.⁹² Pursuant to another supplemental request, LG Chem provided a sample calculation of EP duty drawback and CEP duty drawback in its Supplemental B/C Questionnaire Response.⁹³ Nonetheless, this calculation was still insufficient to analyze LG Chem’s eligibility for such an adjustment because the record lacked the necessary information regarding the program for which LG Chem is claiming its duty drawback adjustment.⁹⁴ As such, the Department did not grant LG Chem a duty drawback

⁸⁸ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006); see also, *Saha Thai*, 635 F.3d at 1340-41.

⁸⁹ *Id.*; *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

⁹⁰ See Section C Questionnaire Response at 35.

⁹¹ See Letter to the Secretary from LG Chem, re: LG Chem’s Supplemental Section C Response, dated December 15, 2016 at 37 (Supplemental Section C Questionnaire Response).

⁹² *Id.*

⁹³ See Letter to the Secretary from LG Chem, re: LG Chem’s 2nd Supplemental B/C Questionnaire Response, dated January 17, 2017 at 10, Exhibit SBC2-1, and Exhibit SBC2-10 (Supplemental B/C Questionnaire Response).

⁹⁴ See LG Chem Preliminary Analysis Memo at 10.

adjustment at the *Preliminary Determination*, but requested additional information regarding the program and LG Chem's calculation to consider for the final determination.⁹⁵

LG Chem's Duty Drawback Submission and subsequent verification exhibits⁹⁶ provide the following documentation with respect to demonstrating that import duty and its rebate or exemption are directly linked to, and dependent upon, one another (*i.e.*, the first-prong):

- Korean regulations regarding the issuance of duty drawback;⁹⁷
- 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;⁹⁸
- Worksheets tying to the duty drawback applications demonstrating that the amount of imported material was sufficient to account for the amount of claimed duty drawback adjustment;⁹⁹
- Worksheets demonstrating for each U.S. sales trace how LG Chem applied the drawback amount recorded on the duty drawback application to the amount recorded on the Section C database;¹⁰⁰
- Proof of payment for the duty drawback granted by the Korean government for each applicable duty drawback application;¹⁰¹
- A summary by export declaration number reporting the total duties paid and duty drawback received for each applicable input by import declaration number.¹⁰²

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.¹⁰³ 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.¹⁰⁴ Although LG Chem submitted information that identified certain import declarations,¹⁰⁵ we find this information insufficient to demonstrate that LG Chem paid the duties for which it is claiming drawback.¹⁰⁶ Under a nearly identical fact pattern in *DOTP from Korea*, the Department determined that LG Chem did not

⁹⁵ See generally DDB Supplemental.

⁹⁶ See generally LG Chem Sales Verification Report at Exhibits 21-28 (surprise and pre-selected U.S. sales traces).

⁹⁷ DDB Supplemental at Exhibit Duty-4.

⁹⁸ *Id.* at Exhibit Duty-2.

⁹⁹ *Id.* at Exhibit Duty-5.

¹⁰⁰ See generally LG Chem Sales Verification Report at Exhibits 21-28.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ 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 IDM at Comment 4.

¹⁰⁴ See generally DDB Supplemental and LG Chem Sales Verification Report at Exhibits 21-28.

¹⁰⁵ *Id.*

¹⁰⁶ See *DOTP from Korea* IDM at Comment 7.

establish a link between the import duty paid and the rebate payment such that the Department could conclude the import duty paid and rebate payment were directly linked and dependent upon one another required by our two-prong test.¹⁰⁷

Here, the link between the import duty paid and the rebate payment is of particular importance because the Korean regulations regarding the issuance of duty drawback allow for domestically produced raw materials to be “deemed raw materials for exports.”¹⁰⁸ As a consequence, here, as in *DOTP from Korea*, we find it inappropriate to grant LG Chem a duty drawback adjustment for this final determination.¹⁰⁹

In addition, even if the Department could determine whether LG Chem’s import duties were directly linked to the rebate payments, LG Chem did not submit sufficient information to determine an adjustment is warranted. Specifically, LG Chem did not provide documentation of total duties paid on direct and indirect imports of raw materials embedded in its raw material costs.¹¹⁰ While LG Chem provided worksheets outlining the total refund requested for U.S. exports during the POI, such worksheets do not account for the total POI duties paid on direct and indirect imports of raw materials.¹¹¹ 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.¹¹² As such, the Department need not address whether the calculation methodologies in *Reinforcing Bar from Turkey* and *Saha Thai* are applicable here.

¹⁰⁷ *Id.*

¹⁰⁸ DDB Supplemental at Exhibit Duty-4, Article 3.

¹⁰⁹ *DOTP from Korea* IDM at 25.

¹¹⁰ See, e.g., Letter to the Secretary from LG Chem, re: LG Chem’s Section D Response, dated November 1, 2016 at 22; Exhibit D-16.1 and Exhibit D-16.2.

¹¹¹ *Id.*

¹¹² See *DOTP from Korea* IDM at Comment 7.

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



Agree

Disagree

7/10/2017

X



Signed by: GARY TAVERMAN

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