A-580-868
AR: 2/01/2015-1/31/2016
Public Document
AD/CVDOpsII: AKM

DATE: September 5, 2017

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
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Large Residential Washers from the Republic of Korea

---

I. Summary

We analyzed the comments of the interested parties in the 2015-2016 administrative review of the antidumping duty order on large residential washers (LRWs) from the Republic of Korea (Korea). As a result of our analysis and based on our verification findings, we made changes to the preliminary margin calculations for LG Electronics, Inc. (LGE), the one producer/exporter subject to this administrative review. We recommend that you approve the positions described in the "Discussion of Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments and rebuttal comments from the interested parties:

Comment 1: Differential Pricing Methodology

Comment 2: Affiliation Based on Close Supplier Relationships

Comment 3: Adjusting the Cost of Certain Tub Subassemblies

Comment 4: Adjusting the Financial Expense Ratio

II. Background

On March 6, 2017, the Department of Commerce (the Department) published in the *Federal Register* the preliminary results of the 2015-2016 administrative review of the antidumping duty (AD) order on LRWs from Korea.[1] The period of review (POR) is February 1, 2015, through January 31, 2016.

On April 20, 2017, the Department postponed the final results by 180 days.[2] In April and June 2017, we conducted verification of the sales and cost of production (COP) data, respectively, reported by LGE, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). In June 2017, we received timely case and rebuttal briefs from Whirlpool Corporation (the petitioner) and LGE.[3] In July 2017, we received timely case and rebuttal briefs related to cost issues from the petitioner and LGE.[4] Based on our analysis of the comments received as well as our verification findings, we revised our calculation of the weighted-average dumping margin for LGE from that calculated in the *Preliminary Results*. However, as a result of the revisions made for these final results, the weighted-average dumping margin for LGE is unchanged from the *Preliminary Results*.

III. Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Korea. The term "large residential washers" denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs[5] designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets[6] designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;[7] (b) a base; and (c) a drive hub;[8] and (4) any combination of the foregoing subassemblies.

---

[1] *See Large Residential Washers from the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review; 2015–2016*, 82 FR 12536 (March 6, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum entitled, "Large Residential Washers from the Republic of Korea: Extension of Deadline for Final Results of 2015-2016 Antidumping Duty Administrative Review," dated April 20, 2017.

[3] *See* the petitioner's Case Brief, dated June 14, 2017 (Petitioner's Sales Case Brief); and LGE Rebuttal Brief, dated June 19, 2017 (LGE's Sales Rebuttal Brief).

[4] *See* the petitioner's Cost Case Brief, dated July 12, 2017 (Petitioner's Cost Case Brief); and LGE Cost Rebuttal Brief, dated July 20, 2017 (LGE's Cost Rebuttal Brief).

[5] A "tub" is the part of the washer designed to hold water.

[6] A "basket" (sometimes referred to as a "drum") is the part of the washer designed to hold clothing or other fabrics.

[7] A "side wrapper" is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[8] A "drive hub" is the hub at the center of the base that bears the load from the motor.

Excluded from the scope are stacked washer-dryers and commercial washers. The term "stacked washer-dryers" denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term "commercial washer" denotes an automatic clothes washing machine designed for the "pay per use" market meeting either of the following two definitions:

> (1) (a) it contains payment system electronics;[9] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[10] *or*
>
> (2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[11] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR § 429.12 and 10 CFR § 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this order are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

---

[9] "Payment system electronics" denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[10] A "security fastener" is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a "center pin reject" feature to prevent standard Allen wrenches or Torx drivers from working.

[11] "Normal operation" refers to the operating mode(s) available to end users (*i.e.*, not a mode designed for testing or repair by a technician).

IV. Margin Calculations

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

- We revised LGE's home market and U.S. sales based on our findings at verification.[12]
- We revised LGE's financial expense ratio to exclude interest income earned on trade receivables based on our findings at the cost verification.[13] *See* Comment 4.

V. Discussion of Issues

Comment 1: Differential Pricing Methodology

The Petitioner's Arguments

- In the *Preliminary Results*, the Department applied its differential pricing methodology to LGE. As a result, to calculate LGE's weighted-average dumping margin, the Department applied the average-to-average (A-to-A) price comparison method to all of LGE's U.S. sales.[14] The Department defined the regions in its analysis using the following four U.S. Census Bureau regions: "Northeast," "South," "Midwest," and "West."
- The petitioner argues that the Department should revise its differential pricing analysis for the final results to analyze whether LGE's U.S. prices differ significantly among regions using the U.S. Census Bureau's nine divisions (*i.e.*, New England," "Middle Atlantic," "South Atlantic," "East North Central," "East South Central," "West North Central," "West South Central," "Mountain," and "Pacific"), rather than the four regions used in the *Preliminary Results*.
- The petitioner contends that section 777A(d) of the Act does not define regions, and that there is nothing in the statute that mandates how the Department is to measure whether there is a pattern of prices that differ significantly.[15] The Department has expressed a preference to define region as more than one state, even though the Department has a

[12] *See* Memorandum, "Final Results Margin Calculation for LG Electronics Inc.," dated concurrently with this memorandum; *see also* Memorandum, "Verification of the Sales Response of LG Electronics Inc. in the 2015-2016 Antidumping Duty Administrative Review on Large Residential Washers from the Republic of Korea (Korea)," dated May 25, 2017; and Memorandum, "Verification of the Sales Response of LG Electronics, Inc. and LG Electronics USA Inc. in the 2015-2016 Antidumping Duty Administrative Review on Large Residential Washers from the Republic of Korea," dated June 6, 2017.
[13] *See* Memorandum, "Verification of the Cost Response of LG Electronics, Inc. in the Antidumping Duty Administrative Review of Large Residential Washers from Korea," dated June 29, 2017 (LGE Cost Verification Report); *See also* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – LG Electronics, Inc." (Final Cost of Production Calculation Memorandum) dated concurrently with this memorandum.
[14] *See* Petitioner's Sales Case Brief at 2.
[15] *Id*.

long-standing practice to normally define region as "the regions and/or divisions defined by the U.S. Census Bureau as the statutory region."[16]

- The petitioner claims that, "given the particular facts of the washers industry, however, where there are different types of distribution centers and different types of customers by region (*i.e.*, big box vs. "mom & pop" shops), this region-based averaging method generates average prices that are more similar to one another as between regions and otherwise masks substantial pricing variation."[17]

- According to the petitioner, applying the differential pricing methodology using the nine divisions reveals price discrimination that is being masked using the four U.S. Census Bureau regions.[18]

- The petitioner contends that revising the differential pricing analysis in this manner will reveal a pattern of significant price differences among regions that warrants the application of the average-to-transaction (A-to-T) method for LGE's U.S. sales in the final results.

LGE's Arguments

- LGE argues that the petitioner has not justified departing from the Department's normal practice of defining region for purposes of the differential pricing analysis using the U.S. Census Department's regions, other than it results in an outcome more favorable to the petitioner.

- LGE states that the petitioner relies on determinations using the Department's prior targeted dumping analysis (including the *Nails* test[19]), determinations which preceded the implementation of the Department's current differential pricing analysis.[20] LGE asserts that, since implementing its differential pricing analysis, the Department has used the

[16] *Id.* at 3 (quoting *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35248 (June 12, 2013), and accompanying Issues and Decision Memorandum (IDM) at Comment 5; *see also Purified Carboxymethylcellulose from Finland: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 11817 (February 20, 2013), and accompanying IDM at Comment 1; *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012), and accompanying IDM at Comment 1; *Lightweight Thermal Paper from Germany: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 27498, 27499-500 (May 13, 2008), unchanged in *Lightweight Thermal Paper from Germany: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 57326 (October 2, 2008)).

[17] *See* Petitioner's Sales Case Brief at 3.

[18] *Id.* at 3-5 and Exhibit 1, which includes a price analysis of LGE's U.S. sales data.

[19] The *Nails* test refers to the targeted dumping methodology introduced in *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008), and accompanying IDM. The Department's targeted dumping methodology was replaced by the Department's differential pricing methodology in *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350, 33352 (June 4, 2013) (*Xanthan Gum*).

[20] *See* LGE's Sales Rebuttal Brief at 6 (citing Petitioner's Sales Case Brief at page 5).

same four U.S. Census Department regions hundreds of times. According to LGE, the Department switched from the *Nails* test to its differential pricing analysis to introduce more predictability to its analysis. LGE notes that the fact that the Department occasionally used a different basis to define the statutory term "region" under the *Nails* test has no bearing on the differential pricing analysis and is results-oriented.

- LGE asserts that the petitioner's data analysis using U.S. Census Bureau divisions, rather than regions, is faulty because it is based on the average unit price of all LRWs within a division, rather than on CONNUM-specific LRW prices.

- Nevertheless, LGE argues that should the Department revise its differential pricing analysis to define "regions" using the U.S. Census divisions and, thus, determine that it is appropriate to utilize the A-to-T method for some of LGE's U.S. sales, the Department should not apply zeroing when aggregating those A-T comparison results. According to LGE, the World Trade Organization (WTO) Appellate Body has held that different comparison methodologies (*i.e.*, A-to-A method without zeroing, and A-to-T method with zeroing) may not be combined.[21] Further, LGE states that, while the Court of Appeals for the Federal Circuit (Federal Circuit) has affirmed the Department's use of zeroing, it has also affirmed that the Department has the discretion not to use zeroing. LGE argues that the Department should use this discretion to avoid making an unnecessary WTO-inconsistent determination. Furthermore, LGE observes that the Department overstates the frequency of the sales that can be considered part of the "pattern" in this review because the WTO Appellate Body confirmed that a "pattern" must be comprised of prices that are significantly lower than the other benchmark prices.[22]

Department's Position:

For the final results, the Department disagrees with the petitioner's argument that it should alter its definition of "region" for its differential pricing analysis from region to division, as defined by the U.S. Census Bureau. Accordingly, we continue to define the statutory term "regions" in our differential pricing analysis using the U.S. Census Bureau's four regions: "Northeast," "South," "Midwest," and "West."

The Department invited interested parties to "present arguments and justifications…. including arguments for modifying the group definitions used in this proceeding" with respect to the differential pricing methodology applied in the *Preliminary Results.*[23] However, for the final results, the petitioner instead argues for the first time in the Petitioner's Sales Case Brief to redefine the "regions" used in the Cohen's *d* test. To support this argument, the petitioner asserts that there is greater observable variation among the average net prices between the nine divisions

[21] *Id.* at 8-9 (citing *United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China*, WT/DS471/AB/R (May 11, 2017) (DS471) and *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/AB/R (September 7, 2016) (DS464)).
[22] *Id.* at 9 (citing DS464, at para. 5.36; DS471, at para. 5.21), 11.
[23] *See Preliminary Results* PDM at 6 n.18.

than net prices between the four regions, and that the variations are "meaningful."[24] The petitioner states that "{g}iven the particular facts of the washer industry, {} where there are different types of distribution centers and different types of customers by region (*i.e.*, big box vs. 'mom & pop' shops), this region-based averaging method generates average prices that are more similar to one another as between regions and otherwise masks substantial pricing variation."[25]

Beyond presenting its calculated results showing a wider range of average prices between Census "divisions" vis-à-vis Census "regions," the petitioner has failed to explain how the LRWs markets in individual "divisions" are distinguishable from the LRWs markets in individual "regions." The one explanation provided by the petitioner asserts a difference between big box stores and "mom & pop" shops. However, this is inherently a distinction which is considered when looking at price differences between different purchasers, and not regions. Further, beyond its assertion, the petitioner has provided no information to support its claim that big box stores dominate certain parts of regions and not others where "mom & pop" shops dominate the LRWs market. Specifically, the petitioner offered no information regarding how "big box" stores and "mom & pop shops" differ between each of the Census "divisions," and how such differences are not accounted for when using Census "regions" as part of the differential pricing analysis. Accordingly, the Department has not changed its definition of region for its differential pricing analysis for these final results.

The Department has relied on the four U.S. Census regions to define "region" in the differential pricing analysis since it was introduced in *Xanthan Gum*. Absent any basis or justification to depart from our well-established definition for "region," we find no reason to do so in these final results. In addition, as we continue to apply the A-to-A method to calculate LGE's weighted-average dumping margin, LGE's arguments regarding zeroing when using the A-to-T method, are moot.

With respect to LGE's contention that the petitioner's argument should be rejected because it is based on new factual information, we determined that the information at issue does not constitute new factual information. As we explained in response to LGE's allegation, the number of states that comprise the divisions established by the U.S. Census Bureau are widely understood and publicly available. Accordingly, the Department does not consider this type of information to be new factual information.[26]

Finally, with regard to LGE's argument that the "pattern" must be comprised of prices that are significantly lower than the other benchmark prices in light of DS464 and DS471, to date, the United States has not yet implemented the rulings and recommendations in DS464 or DS471. Consequently, the manner in which these reports might be implemented by the United States are "far from clear."[27] As the Federal Circuit has explained, "WTO decisions are 'not binding on the

[24] *See* Petitioner's Sales Case Brief at 3-4 and Exhibit 1.
[25] *Id*. at 3.
[26] *See* Memorandum, "LGE's Allegation of New Factual Information in Whirlpool's Case Brief," dated June 19, 2017.
[27] *See NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (Fed. Cir. 2007).

United States . . . .'"[28] Indeed, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act explicitly states that "WTO dispute settlement panels will not have any power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."[29] The Department further notes that the Federal Circuit has affirmed the Department's inclusion of both lower- and higher-priced sales in its analysis of whether there are prices that differ significantly under the Cohen's *d* test to be reasonable.[30]

Comment 2: Affiliation Based on a Close Supplier Relationship

The Petitioner's Arguments

- The petitioner argues that the Department should find LGE and its three largest input suppliers affiliated based on close supplier relationships under section 771(33)(G) of the Act (*i.e.*, "Any person who controls any other person"). According to the petitioner, LGE's involvement in both the production and sale of the inputs that these suppliers produce allows LGE to operationally exercise restraint or direction over these suppliers. The petitioner asserts that this operational control allows LGE to obtain an unfair competitive advantage over these suppliers which results in price concessions from the suppliers that in turn lowers the cost of the merchandise under consideration.

- The petitioner refers to 19 CFR 351.102(b)(3) and asserts that a close supplier relationship has the potential to impact the supplier's decisions concerning the production and pricing of imports, thereby effecting the cost of the subject merchandise or foreign like product. The petitioner points out that, in determining whether there is control, and thus affiliation, by a close supplier relationship, the Department has considered, among other factors: 1) the terms of the supply agreement; 2) the relative percentage that sales to the buyer represented of each suppliers' total sales; 3) the terms of any financing agreements with the suppliers; 4) the overall profitability of suppliers; and 5) the level of product specialization.[31]

- The petitioner further points out that the Department has also adopted a "totality of circumstances" approach in examining particular market situations within an economy and argues that the Department should similarly adopt a totality of circumstances approach with regard to close supplier relationships. In particular, given the special circumstances in Korea that permit *chaebol* to exert control over their suppliers' production and sales decisions, the Department rightfully examines all of the

[28] *See Corus Staal BV v. United States*, 395 F.3d 1343, 1348 (Fed. Cir. 2005) (quoting *Timken Co. v. United States*, 354 F.3d 1334, 1344 (Fed. Cir. 2004)).
[29] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. DOC. 103-316, Vol. 1 (1994), at 659, reprinted in 1994 U.S.C.C.A.N. 4040, 4042.
[30] *See Apex Frozen Foods Private Limited v. United States*, 862 F. 3d 1322, 1346-47 ("we cannot say that the methodology Commerce has chosen to implement Congress's statutory scheme is unreasonable").
[31] *See* Petitioner's Cost Case Brief at 4 (citing *Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005), and accompanying IDM at Comment 11).

circumstances surrounding transactions with input suppliers that account for a large volume of the respondent's inputs.[32]

- The petitioner asserts that the Department should follow the precedent set in *OCTG from Korea* and find affiliation based on a close supplier relationship where a Korean company was involved in both the input supplier's production and sales processes, and was considered operationally in a position to exercise restraint or direction over the supplier.[33]

- The petitioner contends that, at verification, the Department observed that LGE plays a substantial role in both production- and sales-related aspects of LGE's top three suppliers' operations and, accordingly, the Department should find that LGE exercises control within the meaning of section 771(33) of the Act. The petitioner asserts the following:

    - First, through LGE's computer system, which LGE and the suppliers share, LGE sets the suppliers' production schedule, and the suppliers are obligated to produce based on this schedule regardless of whether doing so returns a profit or it conflicts with production for other customers.[34]
    - Second, LGE technicians have daily access to the suppliers' production, in that LGE's dedicated quality assurance team visits several of LGE's suppliers daily to check on the quality of the subassemblies produced by the suppliers. These daily audits give LGE unfettered access to the suppliers' production operations which allows LGE to control what it pays for these inputs.[35]
    - Third, LGE provides its suppliers with fixed assets, and LGE's ownership of these assets allows LGE to control production, *i.e.*, LGE could stop production immediately because it owns the machinery.[36]
    - Fourth, because LGE imposes an invoicing scheme upon its suppliers, LGE has determined how the supplier will get paid, meaning that LGE controls the accounting methods that the suppliers use to record sales to LGE in their books and records. Moreover, the suppliers are not able to secure a higher price from LGE because LGE knows the cost of raw materials provided by LGE and the cost of producing the subassemblies.[37]
    - Fifth, there is no competitive bidding for inputs among suppliers within the system which means that LGE possesses all of the negotiating power with its suppliers by removing all competition among the input suppliers. The petitioner adds that these suppliers are effectively price takers in the input market for

[32] *See* Petitioner's Cost Case Brief at 4-5 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017), and accompanying IDM at Comment 3 (*OCTG from Korea 2017*)).
[33] *Id.* at 4, 9 (citing *Certain Oil Country Tubular Goods from the Republic of Korea*, *Final Determination of Sales at Less Than Fair Value*, 79 FR 41983 (July 18, 2014) and accompanying IDM at Comment 20 (*OCTG from Korea 2014*)).
[34] *Id.* at 6.
[35] *Id.*
[36] *Id.* at 7.
[37] *Id.* at 7-8.

washing machines because of the absence of transparency in the input market for washing machines.
    - Sixth, the suppliers are effectively price takers in the input market for washing machines because the record shows that the suppliers depend on LGE for a sizable portion of their sales.[38]

- The petitioner makes three additional key observations from the record that it argues support a finding that LGE's suppliers are reliant upon LGE:

    - First, the Department should find that the standardized contracts between LGE and these suppliers are in fact long-term contracts that automatically renew year by year, and that no changes have been made to the contracts in the last five years. In the petitioner's opinion, these contracts indicate that the suppliers have become reliant upon LGE.[39]
    - Second, the petitioner argues that when a seller depends on a buyer for fifty percent or more of its sales over a five-year period, the seller has become reliant upon the buyer. The petitioner claims that this conclusion is consistent with *Mitsubishi Heavy Industries*.[40] The petitioner observes that LGE accounted for greater than 50 percent of these suppliers' sales over the past five years.[41]
    - Third, the top three suppliers to LGE could not survive without LGE given that: 1) they receive raw materials from LGE; 2) they obtain fixed assets from LGE for use in production without having to carry the depreciable asset on their books and records; 3) they receive technical assistance from a specialized LGE team; and 4) their production schedule is set by LGE through a proprietary LGE computer system.[42]

- The petitioner argues that there are two distinct bases for finding LGE and its input suppliers affiliated, based either on the fact that as a Korean *chaebol* LGE has become substantially involved in the suppliers' product and selling activities, or alternatively because the suppliers have become reliant upon LGE to a degree that without LGE their operations would be unsustainable.[43]

- The petitioner argues that the Department should find that LGE and its top three suppliers are affiliated and, as facts otherwise available, should adjust the costs of the inputs received from these suppliers upward to account for the expected profit rate of an LGE affiliated company. According to the petitioner, for the adjustment, and because the cost verifiers did not collect information to test LGE's affiliated party purchases to determine if they were made at arm's length prices pursuant to section 773(f)(2) of the Act, the

[38] *Id.* at 8.
[39] *Id.* at 10.
[40] *See* Petitioner's Cost Case Brief at 10 (citing *Mitsubishi Heavy Industries v. United States*, 54 F. Supp. 2d 1183, 1191 (CIT 1999) (*Mitsubishi Heavy Industries*)).
[41] *Id.* at 10-11.
[42] *Id.* at 11.
[43] *Id.* at 12.

Department should compare the profit rates for these suppliers with the profit of LG Chem, an affiliated supplier to LGE, as facts available under section 776(a)(1) of the Act because such "necessary information is not available on the record."[44]

LGE's Arguments

- LGE asserts that the petitioner has identified no key facts to reverse the Department's finding in the *Preliminary Results*, as well as in the underlying less-than-fair-value (LTFV) investigation, that LGE and its top suppliers are not affiliated.[45] LGE argues that the evidentiary record in the current review is virtually identical to the evidentiary record before the Department in the *LTFV Final Determination*. LGE points out that the Department's decision from the *LTFV Final Determination* was later sustained by the U.S. Court of International Trade (CIT),[46] and that in the first[47] and second[48] administrative reviews of this proceeding, the Department found that there was no reason to consider LGE affiliated with any supplier in which there was not an equity interest.

- LGE argues that the Department determines control on a case by case basis, and although the "greater-than-50-percent-sales-dependence-for-five-years" test may have been a reasonable test in one case, the Department previously determined in the *LTFV Final Determination* to require consideration of a different set of factors, and the CIT has similarly approved this test. Further, LGE notes that the Department made its case-by-case determinations in the LRWs from Korea proceedings after the administrative and court proceedings in *Mitsubishi Heavy Industries*.[49] Thus, LGE states that, given this precedent, there is no reason for the Department to adopt a new approach when the basic facts are unchanged.

- LGE contends that the petitioner's argument misinterprets the Department's past precedent in *OCTG from Korea 2014*. LGE asserts that the factual circumstances present in *OCTG from Korea 2014* are not at all similar to the current review, and the petitioner wrongly simplifies the Department's determination in that case. According to LGE, in *OCTG from Korea 2014,* the Department's finding of affiliation hinged on the fact that the supplier played a significant role on both the production and sales side of the respondent's operations during the POI. LGE notes that, in that case, the Department relied on record evidence that the supplier was in a position to establish the primary input cost, and the respondent was dependent on the supplier for its sales operations. However, LGE points out that, in the present case, there is no evidence on the record that the

[44] *Id.*
[45] *See* LGE's Cost Rebuttal Brief at pages 2-4 (citing *Preliminary Results* PDM at 13; *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea,* 77 FR 75988 (December 26, 2012), and accompanying IDM at Comment 8 (*LTFV Final Determination*)).
[46] *Id.* at 3 (citing *Samsung Electronics Co. v. United States*, 70 F. Supp. 3d 1350, 1356-59 (CIT 2015) (*Samsung*)).
[47] *Id.* (citing *Large Residential Washers from the Republic of Korea, Final Results of Administrative Review*, 80 FR 55595 (September 16, 2015), and accompanying IDM).
[48] *Id.* (citing *Large Residential Washers from the Republic of Korea, Final Results of Administrative Review*, 81 FR 62715 (September 12, 2016), and accompanying IDM).
[49] *See* LGE's Cost Rebuttal Brief at 5 (citing *Mitsubishi Heavy Industries*, 54 F. Supp. 2d at 1190).

component parts suppliers were involved in any way in LGE's sales of the subject merchandise.[50]

- LGE contends that it does not control its suppliers' production when it communicates its production plan through its computer system, but rather the suppliers were rational commercial actors, who chose when and what to produce, when they signed a contractual agreement with LGE. LGE rebuts the petitioner's reading of the record evidence as follows:

    - The fact that the suppliers plan delivery of their inputs around LGE's production plan is simply a matter of the suppliers performing the duties that they agreed to in their commercial contracts, which reflects the interest of both parties to the contract.[51]
    - The petitioner's allegation that LGE somehow controls its suppliers' production operations because its technical team has "unfettered access to its suppliers' production operations" is not supported by the record. LGE's quality assurance team's periodic visits to the suppliers are about maintaining quality control.[52]
    - Contrary to the petitioner's argument, LGE cannot stop the suppliers' production whenever it wants to because LGE provides fixed assets to its suppliers. LGE asserts that the suppliers have leased the equipment from LGE in separate lease agreements, and there must be a valid reason for contract termination.[53]
    - LGE maintains that the petitioner's allegation that LGE plays an outsized role in its top three suppliers' sales is baseless. LGE explains that the system of paying its suppliers the costs for the completed sub-assemblies net the costs of the raw material parts provided by LGE is merely a simplified system that reduces the administrative burdens for both LGE and its suppliers. Further, LGE argues that the petitioner's claim that there is no competitive bidding process for inputs among suppliers and that LGE's suppliers are essentially price takers is not supported by the record. The single fact that LGE accounts for a large portion of its suppliers' sales itself is not enough to demonstrate that LGE exerts control over its suppliers, and this argument was specifically rejected by the Department in the *LTFV Final Determination*.[54]

- LGE argues that the Department considered the following factors in the *LTFV Final Determination* to determine whether there was affiliation: 1) the supply agreements between LGE and its suppliers were short-term one year agreements; 2) the agreements were renewable and could be revised by either party at the end of each year; 3) the agreements did not prohibit the suppliers from selling to other buyers; 4) the suppliers did not sell exclusively to LGE; 5) the top three suppliers were profitable; and 5) LGE did not assume risk in extending credit to its top suppliers because the agreements required

[50] *See* LGE's Cost Rebuttal Brief at 6-7.
[51] *Id.* at 7-8.
[52] *Id.* at 8-9.
[53] *Id.* at 9.
[54] *Id.* at 10-11.

the suppliers to post collateral on the loans in the form of bank certificates.[55] LGE argues that these same factors are in place for this review.

- LGE urges the Department to reject the petitioner's argument that where a Korean *chaebol* impacts production and sales decisions of a supplier, the Department finds that the parties are affiliated as close suppliers, because it is a complete oversimplification of *OCTG from Korea 2014*.[56]

- LGE claims that the petitioner's argument essentially asks the Department to apply adverse facts available (AFA) when there is no justification to do so. LGE argues that to apply AFA under section 776(a) and (b) of the Act, the Department must first find either that the necessary information is not available on the record due to the respondent's failure to cooperate, or that the respondent withheld information, failed to provide information within the applicable deadlines, submitted information that could not be verified, or otherwise impeded the investigation. LGE asserts that it has fully cooperated in this review, and there are no grounds for the Department to apply AFA. Further, LGE states that, even if the Department were to agree with the petitioner's contention, it must notify LGE of the deficiency in the information collected and provide it an opportunity to remedy the defective data pursuant to section 782(d) of the Act before it can lawfully resort to AFA.[57]

Department's Position:

We continue to find that LGE and its top three material input suppliers are not affiliated within the meaning of section 771(33)(G) of the Act based on alleged close supplier relationships. We evaluated this issue in the *LTFV Final Determination*[58] and again in the *Preliminary Result*s and found that nothing substantial has changed since the *LTFV Final Determination*, and the parties have not identified any record evidence that we did not already consider for the *Preliminary Results*. Additionally, nothing was revealed at the cost verification that causes us to change our finding of no affiliation.

In accordance with section 771(33) of the Act, affiliated persons may be: (A) members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, controlled by, or holding with power to vote, five percent or more of the voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. To determine affiliation between two companies, the Department must find that at least one of the criteria above is applicable. Section 771(33) of the Act further provides that "{f}or purposes of this paragraph, a person shall be

[55] *Id.* at 11-12.
[56] *Id.* at 12-13.
[57] *Id.* at 13-15.
[58] *See LTFV Final Determination*, and accompanying IDM at Comment 8.

considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

The Department's regulations at 19 CFR 351.102(b)(3) state that, in finding affiliation based on control, the Department will consider, among other factors: (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing, and (iv) close supplier relationships. Control between persons may exist in close supplier relationships in which either party becomes reliant on one another.[59] With respect to close supplier relationships, the Department has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.[60] Only if such reliance exists does the Department then determine whether one of the parties is in a position to exercise restraint or direction over the other.[61] The Department will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.[62]

In the *LTFV Final Determination*, we found that LGE was not affiliated with its top suppliers due to close supplier relationships because of the following factors: 1) the supply agreements between LGE and its suppliers were short-term one year agreements;[63] 2) the agreements were renewable and could be revised by either party at the end of each year;[64] 3) the agreements did not prohibit the suppliers from selling to other buyers;[65] 4) the suppliers did not sell exclusively to LGE;[66] 5) the suppliers were profitable;[67] and 6) LGE did not assume risk in extending credit to its top suppliers because the agreements required the suppliers to post collateral on the loans in the form of bank certificates.[68] The CIT sustained the Department's finding in the *LTFV Final Determination* that LGE was not affiliated with its top suppliers through close supplier relationships, based on these facts.[69]

All of the above factors continue to be present in the current review. The only factor that has "changed" since the investigation is that the same suppliers have been supplying LGE for the past several years. However, we do not find that this circumstance alone constitutes a basis for finding affiliation.

The regulations at 19 CFR 351.102(b)(3) provide guidance as to the relevance of the nature of the relationship between parties with respect to determining affiliation stating, "{t}he Secretary

---

[59] *See* SAA at 838.
[60] *See* SAA at 838; *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1299 (CIT 2005) (*TJID*); and *Samsung*, 70 F. Supp. 3d at 1357.
[61] *See*, *e.g.*, *Multilayered Wood Flooring from the People's Republic of China, Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying IDM at Comment 21; and *LTFV Final Determination*, and accompanying IDM at Comment 8.
[62] *See LTFV Final Determination*, and accompanying IDM at Comment 8.
[63] *Id.*
[64] *Id*.
[65] *Id*.
[66] *Id*.
[67] *Id.*
[68] *Id*.
[69] *See Samsung*, 70 F. Supp. 3d at 1356-59.

will consider the temporal aspect of a relationship in determining whether control exists" and "normally, temporary circumstances will not suffice as evidence of control." The fact that the terms of the supply agreements have not changed in five years does not negate the fact that these agreements could be renewed or terminated at either party's choice on an annual basis. This supports the conclusion that the contracts were temporal in nature, rather than fixed and permanent. The fact that the contracts were renewed each year since the *LTFV Final Determination* indicates that both parties were satisfied with the arrangement and wanted it continued, rather than demonstrating control by LGE. We stated the following in the cost verification report: "{p}er article 49 of the contract between the parties, the contract is valid for one year until the conclusion of the contract, and both parties have the right to seek revision of the contract, terminate, or renew the contract at the end of each year. If there is no declaration of intention of either party on the issue of revision or renewal of the contract until 1 month before expiration, it is considered that the contract is extended for one year."[70]

We disagree with the petitioner's contention that LGE controls its supplier's production through a shared computer system. As described in the cost verification report, LGE uses a proprietary computer system in conjunction with its suppliers in order to coordinate the efficient production of washing machines. Within the system, LGE puts forth its production plan based on anticipated demand for its products, and the suppliers plan delivery of their inputs around such plans.[71] We view this to be a common and expected system to manage the supply chain of input parts for the efficient production of a consumer product with numerous components (*i.e.*, washing machines). Further, we find no evidence on the record that the suppliers are obligated to produce based on this schedule regardless of whether doing so returns a profit, or whether it conflicts with the suppliers' production for other customers. In fact, the record shows that each of the suppliers in question do earn a profit and they do find time to produce for other customers.[72] Although there is no competitive bidding amongst suppliers within the computer system, pricing for the inputs is settled outside that system and is confirmed by electronic signature within the system.[73] Therefore, the suppliers are not simply "price takers" as the petitioner suggests, but rather commercial actors competing to earn LGE's business. On this point, we note that LGE can and does purchase the same types of inputs from different suppliers, indicating that the timing of purchases and pricing are market driven.[74]

Furthermore, there is no evidence on the record that LGE's technicians, who periodically visit the suppliers' production facilities, exercise restraint or direction over the suppliers. It is not unexpected that such quality control measures (*i.e.*, the periodic visits) would be taken in the production of consumer goods such as washing machines. Although this type of monitoring may increase production efficiency, it does not equate to LGE controlling what it pays for the inputs. With respect to machinery and equipment provided by LGE to its suppliers, we find this to be, in this case, a reasonable and common quality control practice and not a means of control by LGE

[70] *See* LGE Cost Verification Report at 21.
[71] *Id.* at 19.
[72] *See* LGE's December 19, 2016 Supplemental D Questionnaire Response at Exhibit SD3.10; *see also* LGE Cost Verification Report at Exhibit 10.
[73] *See* LGE Cost Verification Report at 19.
[74] *See* LGE's December 19, 2017 Supplemental Questionnaire Response at Exhibit SD 3.2.

over the suppliers. LGE cannot simply halt production and take its machinery back at any time it chooses, as LGE is bound by the terms of the contracts with the suppliers.[75] We note that the fixed assets provided by LGE to the supplier were examined at the cost verification and were found to represent a small portion of the total fixed assets owned by the supplier.[76] The petitioner's assertion that the suppliers could not survive without the equipment provided by LGE is speculative. The record shows that the suppliers have other customers besides LGE and machinery of their own included on their books.[77] In addition, although LGE accounted for a large portion of the suppliers' business over the past five years, we note that even in cases where one party sold all of its output to another, the CIT found that the Department reasonably concluded that there was no close supplier relationship because the company was not bound to sell merchandise only to the other company.[78] That is the case for LGE and the suppliers in question here because, again, the suppliers are free to sell to other customers.[79] In any event, the portion of which LGE accounted for the suppliers' business is merely one fact that, standing alone, does not support a finding of a close supplier relationship.[80]

We find that the circumstances in this case are substantially different from that in *OCTG from Korea 2014*. In that case, we found that the combination of the supplier's involvement with both the production and sales sides of the subject merchandise producer's operations created a unique situation where the supplier was operationally in a position to exercise restraint or direction over the respondent in a manner that effected the pricing, production, and sale of the subject merchandise.[81] In the instant case, the suppliers provide assembly services of inputs into the production of the merchandise under consideration, constituting a small minority of the cost of producing the merchandise under consideration, and the suppliers have no involvement whatsoever with the sales aspect of the merchandise under consideration.[82]

We disagree with the petitioner's assertion that the invoicing arrangement between LGE and its suppliers is akin to our determination in *OCTG from Korea 2014* with respect to sales. In this review, the suppliers sell inputs into the production of the subject merchandise, whereas in *OCTG from Korea 2014* the supplier was "involved in both the production and sales sides of the {the respondent's} operations involving subject merchandise."[83] Further, as described in the LGE Cost Verification Report, the method of billing between LGE and its suppliers served only to increase the administrative and cash management efficiency between the parties.[84] Contrary to the petitioner's assertion, LGE does not know the suppliers' full costs of producing the

[75] *See* LGE Cost Verification Report at Exhibit 1.
[76] *Id.* at Exhibit 10.
[77] *Id.* at Exhibit 15 and Exhibit 10; *see also* LGE's December 19, 2016 Supplemental D Questionnaire Response at Exhibit SD3.10.
[78] *See TIJID*, 366 F. Supp. 2d at 1299 ("Commerce reasonably concluded that Fay Candle was not bound to only sell the subject merchandise to TIJID").
[79] *See* LGE Cost Verification Report at 20.
[80] *See TIJID*, 366 F. Supp. 2d at 1299 ("This fact along does not support a finding of a 'close supplier relationship'").
[81] *See OCTG from Korea 2014*, and accompanying IDM at Comment 20.
[82] *See* LGE Cost Verification Report at 19-22.
[83] *See OCTG from Korea 2014*, and accompanying IDM at Comment 20.
[84] *See* LGE Cost Verification Report at 21.

subassemblies because LGE does not have access to the suppliers' books and records, including the suppliers' payroll records and overhead costs.[85]

The Department determines reliance and control, and consequently affiliation, on a case by case basis, and evaluates the issue based on the relevant factors present in each case.[86] The petitioner's reliance on *OCTG from Korea 2017* is not relevant because that case dealt with a particular market situation, whereas the issue in this review is whether there is reliance, control, and, consequently, affiliation between LGE and the suppliers in question.[87] We also find this case to be different than the situation in *Mitsubishi Heavy Industries* where the greater-than-fifty-percent-sales-dependence-for-five-years-test was a reasonable parameter for testing affiliation.[88] In that case, the subject merchandise took multiple years to produce, and the CIT found that it therefore followed that a long-term supplier would adjust its manufacturing operations to satisfy the specific demands of its purchaser.[89] However, here, LRWs have a relatively short processing time[90] and the suppliers have the option to terminate their services to LGE on an annual basis.[91] With respect to LGE's assertion that the Department has no legal grounds to apply AFA, we find this issue to be moot.[92] The issue before the Department is not whether to apply AFA, but rather whether there is affiliation between LGE and its top suppliers. Only if we were to find affiliation between LGE and these suppliers would we then look to the record for an appropriate basis for an adjustment. However, as our finding is that there is no affiliation based on alleged close supplier relationships, no such adjustment is necessary.

Comment 3: Adjusting the Cost of Certain Tub Assemblies

The Petitioner's Arguments

- The petitioner argues that, to avoid a distorted cost of production of a particular LRW, the cost of certain tub assembly inputs into the production of the LRW should be adjusted to reflect a market price. The Department should use its statutory authority under section 773(f)(1)(A) of the Act to adjust the costs of production of this model to correct distortions found at verification.[93] In particular, the petitioner alleges that the Department's cost verification report indicates that the costs of producing the product do not reasonably reflect the costs associated with the production and sale of the subject

[85] *Id.* at 20.
[86] *See Mitsubishi Heavy Industries*, 54 F. Supp. 2d at 1191.
[87] *See OCTG from Korea 2017*, and accompanying IDM at Comment 3.
[88] *See Mitsubishi Heavy Industries*, 54 F. Supp. 2d at 1191.
[89] *Id.*
[90] *See* LGE Cost Verification Report at 8.
[91] *Id.* at 21.
[92] We note that the Department did not collect information to test affiliated party purchases prior to verification because we had preliminarily determined that the parties were not affiliated, and verification is not a place to collect new information.
[93] *See* Petitioner's Cost Case Brief at 13-14 (citing, *e.g.*, *Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 69832 (November 24, 2014), and accompanying IDM at Comment 1)).

merchandise, because the tub assembly was acquired from a supplier at a discount to the market price so that the supplier could avoid a total loss.[94]

- The petitioner points out that the LRW at issue is included in a control number (CONNUM) that is significant with respect to matching to U.S. sales and for difference-in-merchandise purposes. The petitioner states that, because the tub assembly was used only in that model, the cost adjustment should be limited to that model.

- The petitioner adds that, when adjusting the reported costs for the tub assembly of the LRW at issue upward under section 773(f)(1)(A) of the Act to reflect the market price, the Department should account for the yield loss associated with the consumption of the tub assembly because the record information shows that the quantity of tub assemblies consumed in production was higher than the quantity of the finished LRWs produced.[95]

LGE's Arguments

- LGE asserts that the Department should reject the petitioner's proposal to adjust the tub assembly costs. LGE contends that, contrary to the petitioner's assertion, the Department's cost verification report did not state that the recorded costs of producing the model in question do not reasonably reflect the costs associated with the production and sale of the subject merchandise. Rather, LGE states that the report suggested that the discounted tub assemblies may have resulted in reported per unit costs that do not reflect the "cost differences related to differences in the physical characteristics of the different products produced."[96] To LGE, the Department's finding at verification does not mean the tub assemblies were purchased below market value.

- LGE argues that the discounted price brought the tub assemblies down to market value, and there is no legal justification to completely ignore the discount that LGE received for the tub assemblies. LGE contends that ignoring the actual discount received from the tub assembly supplier would result in overstating LGE's overall actual costs and would violate the statutory mandate that "cost shall . . . be calculated based on records of the exporter or producer."[97]

- LGE asserts that the Department's verification report correctly points out that LGE was about to discontinue this model, and therefore the only reason this product was produced was because LGE was able to obtain the tub assembly at a discount. That is, LGE's production of this model made commercial sense only because of the discounted tub assembly. LGE further argues that the cost of this particular model adequately reflects its commercial value only when it includes the discounted cost of the tub assembly, which is driven by the model's physical characteristics. LGE proffers that the discount received on the tub assembly was similar by nature to the "lower-of-cost-or market"

[94] *Id.* at 13-15. The identification of the washing machine at issue is proprietary information.
[95] *Id.* at 16-17.
[96] *See* LGE's Cost Rebuttal Brief at 16-17 (citing LGE Cost Verification Report at 2).
[97] *Id.* at 17-18 (citing section 773(f) of the Act).

adjustment to the value of this particular part, which the Department routinely includes in the reported costs.[98]

- LGE argues that such discounts on parts are not uncommon in any industry, and to the best of LGE's knowledge, the Department has not previously determined that such discounts result in cost differences not reflective of the differences in physical characteristics of the product. LGE claims that in various past cases the Department has adjusted respondents' costs to "mitigate the impact of the cost fluctuations which were unrelated to the reported products' physical characteristics."[99] LGE states that, in this instance, the discount on the tub assembly was necessary in order for the supplier to sell its product to LGE. LGE further asserts that this pricing is, in essence, the definition of market value. The issue, to LGE, is not whether there were cost fluctuations unrelated to the reported product's physical characteristics, but rather whether the discounted tub assembly price represented a legitimate arm's length transaction. Further, if the Department were to reallocate the discount for the tub assembly from one particular model to others, it would be inconsistent with the Department's normal treatment of discounts on input parts, and would create a precedent for such reallocations of sales discounts.[100]

- Finally, LGE argues that the petitioner's yield loss argument should be rejected. LGE points out that not all of the LRWs it produces end up in finished goods inventory, just as not all finished goods are necessarily sold. LGE explains that LRWs may be withdrawn from work-in-progress (WIP) inventory for various reasons, such as for product sample purposes or for research and development (R&D) purposes. LGE notes that because the WIP inventory ledger for the appropriate month for the LRW in question is not on the record, LGE cannot demonstrate a reconciliation between the tub assemblies consumed and the tub assemblies in the finished goods inventory. However, LGE maintains that a particular cost verification exhibit suggests that some tub assemblies were used for R&D purposes. LGE also contends that the Department verified yield loss and concluded that the company's reported costs properly accounted for yield loss.[101]

Department's Position:

The Department's normal practice, codified at section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records where those records are prepared in accordance with the home country generally accepted accounting principles (GAAP) and reasonably reflect

[98] *See* LGE's Cost Rebuttal Brief at 19 (citing, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea*, 64 FR 73196 (December 29, 1999), and accompanying IDM at Comment 8).
[99] *See* LGE's Cost Rebuttal Brief at 20 (quoting *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 62712 (September 12, 2016), and accompanying IDM at Comment A.1).
[100] *See* LGE's Cost Rebuttal Brief at 20-21.
[101] *Id.* at 21-23 (citing LGE Cost Verification Report at Exhibit 8).

the costs of producing the merchandise.[102] Normal GAAP accounting practices provide both respondents and the Department with a reasonably objective and predictable basis by which to compute costs for the merchandise under review. Although we acknowledge that we have authority under section 773(f)(1)(A) of the Act to depart from a respondent's normal books and records when calculating cost of production (COP) if the circumstances so warrant,[103] for the reasons discussed below, we decline to exercise that discretion here.

We examined the LRW at issue at the cost verification and found that its COP, as maintained in the normal accounting records, was lower than that of similar products because the tub assembly, a critical component of the LRW, was purchased at a discount. We noted this discount in our cost verification report, and stated that "the tub assembly used in producing this product was acquired at a discount to market price" and "{t}his supplier supplies LGE with many tub assemblies that are used to produce many different products. In attempting to derive product-specific costs that reflect cost differences related to differences in the physical characteristics of the different products produced, it may be more appropriate to spread this discount among all the tubs LGE purchased from the supplier."[104]

The discount on the purchase of the tub assemblies was reflected in the normal books and records of the respondent which are in accordance with Korean GAAP. The record shows that the reported costs for the product reflects LGE's actual cost of acquiring the tub assemblies from an unaffiliated supplier in an arm's length transaction, and therefore, we do not find the reported COP for the product that used the discounted tub assembly to be unreasonable.[105] Further, as the discount was related to the purchase of specific tub assemblies which can only be used to produce specific products, we find it appropriate to apply the discount only to those specific products that can use the tub assembly in question. We note that the total cost differences between the model in question and other models relate to the differences in the physical characteristics of the many different components and processing differences, of which the tub assemblies are but one element.[106] Since the reported costs for this product were based on the respondent's normal books and records and the reported costs are not unreasonable, we have used the reported actual costs for this product for these final results.

Finally, we did not add an additional cost for yield loss because there is no record evidence that the tub assemblies not included in finished goods inventory were worthless and written off.[107] Though the record is not conclusive as to how the additional tub assemblies were consumed, the

---

[102] *See, e.g., Silicomanganese from India, Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 67 FR 15531 (April 2, 2002) and accompanying IDM at Comment 13; *Ammonium Nitrate from Russia*, and accompanying IDM at Comment 1.

[103] *See, e.g., Ammonium Nitrate from Russia*, and accompanying IDM at Comment 1 (declining to adjust producers' natural gas costs of production); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 50406 (October 3, 2001), and accompanying IDM at Comment 12; *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8921 (February 23, 1998) and accompanying IDM at Comment 8.

[104] *See* LGE Cost Verification Report at 2.

[105] *Id.* at Exhibit 8.

[106] *See* LGE Cost Verification Report at Exhibits 8 and 11.

[107] *See Low Enriched Uranium from France, Final Results of Administrative Review*, 70 FR 54359 (September 14, 2005), and accompanying IDM at Comment 4.

record does not show that the additional tub assemblies were scrapped or otherwise damaged, resulting in yield loss. Moreover, the information obtained at verification indicated that the tub assemblies may have been consumed in products that were used for research and development testing.[108]

Comment 4: Adjusting the Financial Expense Ratio

The Petitioner's Arguments

- The petitioner argues that, based on the cost verification, LGE's financial expense ratio should be increased to exclude interest income earned on trade receivables from the calculation. The petitioner cites *Stainless Steel Sheet and Strip in Coils from Mexico* to support its claim that income from trade receivables is related to sales and that the Department's practice is to exclude this type of income from the calculation of the financial expense ratio.[109]

LGE did not comment on this issue.

Department's Position:

We agree with the petitioner that interest income earned on trade receivables should be excluded from the calculation of the financial expense ratio. This type of interest income is related to sales and the Department's practice is to exclude this type of income from the COP calculation.[110] Therefore, we revised the financial expense ratio to exclude interest income earned on trade receivables.[111]

[108] *Id.* at Exhibit 8 at 44.
[109] *See* Petitioner's Cost Case Brief at 17-18 (citing LGE Cost Verification Report at 26; *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 73444 (December 12, 2005), and accompanying IDM at Comment 7 (*Stainless Steel Sheet and Strip in Coils from Mexico*)).
[110] *See Stainless Steel Sheet and Strip in Coils from Mexico*, and accompanying IDM at Comment 7.
[111] *See* Final Cost of Production Calculation Memorandum.

VI. 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 results of this administrative review and the final weighted-average dumping margin in the *Federal Register*.

☒	☐
Agree	Disagree

9/5/2017

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