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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: Scot Fullerton
Director, Office VI
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Fine Denier Polyester Staple Fiber from the Republic of Korea:
Issues and Decision Memorandum for the Final Determination of
Sales at Less-Than-Fair-Value

I. SUMMARY

The Department of Commerce (Commerce) finds that fine denier polyester staple fiber (fine denier PSF) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Toray Chemical Korea Inc (TCK), the sole cooperating respondent in this investigation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

II. LIST OF ISSUES

- Comment 1: Whether to Apply Total AFA to TCK Based on Verification Corrections
 - Comment 1(a): Minor Corrections
 - Comment 1(b): Tolling Arrangement
 - Comment 1(c): Misreported Sales of Products Not Produced
 - Comment 1(d): Failure to Provide Correct Translations
- Comment 2: Whether to Apply AFA to Down Nara
- Comment 3: Whether Commerce’s Calculation of the “All-Others” Rate is Supported by its Practice and Is Consistent with the Statute and Court Precedent



- Comment 4: Whether the Totality of Circumstances Regarding Cost Reporting Warrants Application of Total or Partial AFA.
- Comment 5: Whether Commerce Should Adjust the Purchases of EG for Physical Inventory Adjustments and Certain Ancillary Costs.
- Comment 6: Whether Commerce Should Adjust TCK's Reported Unit Costs of Manufacture for the Subject Fine Denier PSF
 - Comment 6(a): Pattern of Understatement
 - Comment 6(b): Physical Characteristics
 - Comment 6(c): SAP® System
 - Comment 6(d): PET Chips
 - Comment 6(e): TPA Consumption
 - Comment 6(f): Affiliated PET Chips Purchases
- Comment 7: Whether Commerce Should Adjust the Affiliated Trading Company's SG&A Expense Rate Calculation
- Comment 8: Whether Commerce Should Adjust the Cost and Sales of Certain Product Codes
- Comment 9: Whether Commerce Should Deny the Offset to G&A Expenses
- Comment 10: Whether Commerce Should Adjust the Non-Operating Income Used to Offset the G&A and Financial Expenses
- Comment 11: Whether Commerce Should Continue to Apply the Affiliated Party Purchases Adjustment
- Comment 12: Whether Commerce Should Eliminate the Unreconciled Difference Adjustment to TCK's Reported Costs

III. BACKGROUND

On January 5, 2018, Commerce published the *Preliminary Determination* of sales at LTFV in the antidumping duty investigation of fine denier PSF from Korea.¹ Between January 15, 2018, and February 9, 2018, Commerce conducted sales and cost verifications at TCK, in accordance with section 782(i) of the Act. On February 5, 2018, DAK Americas LLC; Nan Ya Plastics Corporation, America; and Auriga Polymers Inc. (hereinafter the petitioners) requested a public hearing.² On February 6, 2018, TCK requested a hearing.³ On February 8, 2018, Consolidated Fibers, Inc. (Consolidated Fiber), a U.S. importer of subject merchandise also requested a public hearing.⁴ On March 16, 2018, Solianus Inc., (Solianus) a Korean exporter of fine denier PSF submitted its case brief addressing the all-others rate calculation.⁵ Additionally on March 16,

¹ See *Fine Denier Polyester Staple Fiber from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 Fed. Reg. 660 (January 5, 2018) (*Preliminary Determination*).

² See Petitioners' Letter, "Fine Denier Polyester Staple Fiber from Korea – Petitioners' Request for a Hearing," dated February 5, 2018.

³ See TCK's Letter, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea Hearing Request," dated February 6, 2018.

⁴ See Consolidated Fiber's Letter, "Fine Denier Polyester Staple Fiber from the Republic of Korea - Hearing Request," dated February 8, 2018.

⁵ See Solianus' Case Brief, "Fine Denier Polyester Staple Fiber from Korea - Case Brief," dated March 16, 2018.

2018, the petitioners submitted their case brief addressing sales issues.⁶ On March 30, 2018, the petitioners submitted a case brief addressing issues related to Down Nara Co., Ltd. (Down Nara).⁷ On March 22, 2018, TCK submitted its rebuttal brief addressing sales issues, and the petitioners submitted their rebuttal brief to Solianus' all-others rate calculation issue.⁸ The petitioners and TCK submitted case briefs addressing cost issues on March 30, 2018.⁹ The petitioners and TCK submitted rebuttal briefs addressing cost issues on April 4, 2018.¹⁰ Commerce held the requested hearing on May 2, 2018.¹¹

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded or combed,¹² measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

⁶ See Petitioners' Case Brief, "Petitioners' Case Brief on Toray Chemicals Korea," dated March 16, 2018.

⁷ See Petitioners' Case Brief, "Petitioners' Case Brief for Down Nara," dated March 30, 2018.

⁸ See Petitioners' Rebuttal Brief, "Petitioners' Rebuttal Brief for Solianus, Inc.," dated March 22, 2018 (regarding Solianus and the all-others rate) (Petitioners' Rebuttal Brief on Solianus); see TCK's Rebuttal Brief, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea's Rebuttal Brief," dated March 22, 2018.

⁹ See Petitioners' Cost Case Brief, "Petitioners' Case Brief for Cost Issues for Toray Chemicals Korea, Inc.," dated March 30, 2018; see also TCK's Cost Case Brief, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea's Case Brief on Cost Issues," dated March 30, 2018.

¹⁰ See Petitioners' Rebuttal Brief, "Petitioners' Rebuttal Brief for Cost Issues for Toray Chemicals Korea, Inc.," dated April 4, 2018; see also TCK's Rebuttal Brief, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea's Rebuttal Brief on Cost Issues," dated April 4, 2018.

¹¹ See Hearing Transcript.

¹² See Commerce inadvertently included the phrase "or pre-opened" in the scope in the *Preliminary Determination*; therefore, we have corrected that inadvertent error (*i.e.*, we have removed "or pre-opened" from the scope for this final determination).

V. DISCUSSION OF THE ISSUES

Comment 1: Whether to Apply Total AFA to TCK

Petitioners' Comments

- The extensive “minor corrections” presented at verification, the information regarding tolling which was withheld until verification, the misreported sales of products not produced, and failure to provide correct translations warrant application of total adverse facts available (AFA) to TCK.¹³
- TCK has significantly impeded the investigation by not providing complete and accurate responses to Commerce’s questionnaires as evidenced by at least 10 major revisions made at the start of the verification affecting large portions of each database.
- Despite multiple supplemental questionnaires, with one supplemental questionnaire response submitted as late as December 7, 2017, TCK’s responses remain incomplete and misreported; thus, Commerce was denied the opportunity to develop and analyze a complete record in this investigation.
- TCK has exhausted its opportunities to remedy its responses before verification, and the record clearly indicates that TCK did not act to the best of its ability in providing data to Commerce.
- If Commerce decides to use the available information on the record and calculate a dumping margin for TCK, it should at least apply partial AFA as discussed in more detail below.¹⁴

TCK's Comments

- TCK timely provided Commerce with all requested information and Commerce fully verified TCK’s data.¹⁵
- The minor corrections that were submitted at the outset of verification, consistent with Commerce’s verification procedures, do not involve systemic errors nor were they rejected by Commerce.
- There is nothing missing from the record, and there is nothing that went unverified.
- The record confirms that TCK acted to the best of its ability fully by responding to all of Commerce’s questionnaires.

¹³ See Petitioners’ March 16, 2018 Case Brief.

¹⁴ *Id.* at 24 and footnote 9.

¹⁵ *Id.*

Commerce's Position:

We disagree that the facts merit the application of either facts available or an adverse inference to TCK. Section 776(a) of the Act provides that Commerce shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information in the form and manner requested by Commerce; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified. None of the issues raised by the petitioners meet this threshold. Summaries of interested parties’ detailed comments regarding, and Commerce’s positions addressing, each of the petitioners’ bases for the application of AFA are below.

Comment 1(a): Minor Corrections

Petitioners’ Comments

- The numerous so-called “minor” corrections presented at verification include new information and unsupported changes, are not minor in nature but are substantial, should have been reported months ago, and demonstrate that TCK misreported sales and numerous expenses and submitted grossly deficient responses.¹⁶
- The so-called “minor” corrections presented at verification include: 1) using 365 days instead of 360 days to calculate credit expenses and updating the payment date for a significant number of HM sales;¹⁷ 2) reporting omitted bank charges for certain HM sales;¹⁸ 3) corrections of shipment date, date of sale, and destination code for certain HM sales;¹⁹ 4) correcting misallocated inland freight expenses for certain HM sales²⁰ (TCK did not support this correction);²¹ 5) deleting the loading charges reported for certain tolled merchandise (this affected a significant portion of HM sales);²² 6) deleting packing costs for two tolled products;²³ 7) correcting misallocated bank charges for a significant number of U.S. sales;²⁴ 8) revising brokerage and handling expenses (BHE) which were only partially reported for certain U.S. customers (TCK misrepresented its

¹⁶ See Memorandum, “Proprietary Information for the Final Determination of the Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from the Republic of Korea,” dated concurrently with this memorandum (BPI Notes Memorandum) at Note 1.

¹⁷ See Petitioners’ March 16, 2018 Case Brief at 9-10 and Memorandum, “Verification of the Sales Responses of Toray Chemical Korea Co., Ltd.,” dated March 7, 2018 (Sales Verification Report) at 1 and Attachment 1 of SVE-1 and the BPI Notes Memorandum at Note 2.

¹⁸ See Petitioners’ March 16, 2018 Case Brief at 11-12, the Sales Verification Report at 2 and Attachment 2 of SVE-1, and the BPI Notes Memorandum at Note 4.

¹⁹ See Petitioners’ March 16, 2018 Case Brief at 10-11, the Sales Verification Report at 2, and Attachment 3 of SVE-1.

²⁰ See BPI Notes Memorandum at Note 3.

²¹ See Petitioners’ March 16, 2018 Case Brief at 13-14 and Sales Verification Report at 2 and Attachment 4 of SVE-1.

²² See Petitioners’ March 16, 2018 Case Brief at 8 and Sales Verification Report at 2 and Attachment 5 of SVE-1 and BPI Notes Memorandum at Note 4.

²³ See Petitioners’ March 16, 2018 Case Brief at 8 and Sales Verification Report at 2 and Attachment 6 of SVE-1. In reporting packing costs for these two products, TCK must have assumed these were self-produced products. This indicates these products were recorded in inventory and thus also implies all tolled merchandise may have incurred unreported warehousing and loading charges, contrary to TCK’s reporting.

²⁴ See Petitioners’ March 16, 2018 Case Brief at 11-12, the Sales Verification Report at 2 and Attachment 7 of SVE-1, and the BPI Notes Memorandum at Note 5.

BHE for sales to these customers to engineer a *de minimize* preliminary dumping margin);²⁵ 9) correcting misreported domestic inland freight expenses for certain U.S. sales;²⁶ and 10) correcting duty drawback for certain U.S. sales²⁷ (TCK did not support this correction).²⁸

- In *CTL Plate from Italy*, Commerce found it inappropriate to accept corrections offered at verification due to the significance of the respondent's reporting errors, the degree to which they impacted the calculations, and because they constituted new factual information.²⁹
- Therefore, Commerce should base TCK's dumping margin on total facts available, with an adverse inference (AFA).³⁰
- If Commerce does not apply total AFA, it must: (1) apply partial AFA using the highest reported U.S. expenses and lowest reported HM expenses for sales affected by the "minor corrections" (use the highest reported expense for BROKEU, BANKCHARU, and DINLFTP1U; use zero for CREDITH and the lowest reported expense for BANKCHARH and INLFTCH); (2) apply AFA to TCK's sales of tolled merchandise in the home and U.S. markets (or at least to the sales identified in Attachment 6 of SVE-1); and (3) deny the duty drawback adjustment for the sales indicated in Attachment 10 of SVE-1.

TCK's Comments

- Use of AFA is unreasonable and not supported by the facts on the record or the statute. TCK fully cooperated and its data were fully verified, without discrepancy, including the minor corrections which Commerce accepted. The corrections either affected a small number of sales, only sales to certain customers, were very insignificant or, in some cases, were changes which caused TCK's dumping margin to increase.
- In *American Brake v. United States*, the Court of International Trade (CIT) found that Commerce properly accepted minor corrections at verification following the standard language in the verification agenda.³¹ In the same case, the CIT stressed that Commerce was correct to decline to apply AFA because the corrections were presented, accepted and verified.

²⁵ See Petitioners' March 16, 2018 Case Brief at 7 and Sales Verification Report at 2-3 and Attachment 8 of SVE-1 and BPI Notes Memorandum at Note 6.

²⁶ See Petitioners' March 16, 2018 Case Brief at 14-15 and Sales Verification Report at 3 and Attachment 9 of SVE-1 and BPI Notes Memorandum at Note 7.

²⁷ See BPI Notes Memorandum at Note 7.

²⁸ See Petitioners' March 16, 2018 Case Brief at 15 and Sales Verification Report at 3 and Attachment 10 of SVE-1.

²⁹ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, in Part, 82 FR 16,345 (April 4, 2017) (CTL Plate from Italy) at I&D Memorandum at Comment 2.

³⁰ See Petitioners' March 16, 2018 Case Brief at 1-2.

³¹ See *Coalition for Preservation of American Brake Drum & Rotor v. United States*, 44 F. Supp. 2d 229, 235-236 (CIT 1999).

- The factual scenario in *CTL Plate from Belgium*³² and *CTL Plate from Italy*,³³ cited by the petitioners, is exactly opposite the facts of this case. In both of these cases, the respondents attempted to provide Commerce with substantial revisions to their reported control numbers, which Commerce rejected.
- The petitioners' main claim is that the number of transactions affected by the minor corrections supports the application of AFA. However, the absolute percentage is misleading as a single minor correction (such as correcting the indirect selling expense ratio, allocated freight expenses, or an interest rate) can impact an entire database.
- Commerce successfully verified each minor correction. Some of the changes due to minor corrections either impact only a small number of sales, as with packing expenses, or, as with domestic brokerage and handling expenses and loading charges, the correction increases the dumping margin. Moreover, these loading charges are very insignificant such that this expense is of an order of magnitude equivalent to a rounding error. This expense has practically no impact on TCK's reported data or dumping margin.

Commerce's Position:

We agree with TCK. We do not find that it is appropriate to apply partial or total AFA to TCK. Section 776(a) of the Act states that Commerce will use facts available when an interested party withholds information, fails to provide such information, significantly impedes a proceeding, or provides information that cannot be verified. Furthermore, section 776(b) of the Act states that an adverse inference will be applied if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. TCK timely provided the sales information requested in Commerce's questionnaire and supplemental questionnaires, did not impede the proceeding, and the information provided was verified. Furthermore, TCK presented its minor corrections at the beginning of verification, as permitted in Commerce's verification agenda. We examined the minor corrections at verification, accepted all of them, and found no discrepancies with the information reported. The minor corrections accepted at verification do not demonstrate that TCK submitted deficient responses to the extent that its dumping margin should be based on total AFA.

As noted by the petitioners, the corrections in question involve revisions to the home market credit expense,³⁴ shipment date and destination codes,³⁵ bank charges,³⁶ inland freight,³⁷ and packing³⁸ and loading charges³⁹ for certain tolled products. The corrections also include

³² See Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part, 82 FR 16,378 (April 4, 2017) (*CTL Plate from Belgium*) at I&D Memorandum at Comment 9.

³³ See Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part, 82 FR 16,345 (April 4, 2017) (*CTL Plate from Italy*) at I&D Memorandum at Comment 2.

³⁴ See Sales Verification Report at SVE-1 attachment 1.

³⁵ *Id.* at SVE-1 attachment 3.

³⁶ *Id.* at SVE-1 attachment 2.

³⁷ *Id.* at SVE-1 attachment 4.

³⁸ *Id.* at SVE-1 attachment 6.

³⁹ *Id.* at SVE-1 attachment 5.

revisions to U.S. bank charges,⁴⁰ brokerage and handling expenses,⁴¹ domestic inland freight,⁴² and duty drawback.⁴³ Every minor correction accepted by Commerce was either very insignificant in terms of both the number of transactions affected and the amount of the correction (*i.e.*, revisions to the HM shipment date and destination codes,⁴⁴ HM bank charges,⁴⁵ HM inland freight,⁴⁶ domestic inland freight for U.S. sales,⁴⁷ and duty drawback⁴⁸), or insignificant in terms of the amount of the correction (replacing 360 days with 365 days in the credit expense calculation,⁴⁹ deleting loading charges for tolled products⁵⁰, correcting allocated U.S. bank charges,⁵¹ correcting domestic brokerage and handling charges for certain U.S. customers⁵²). In some cases, all the relevant information was already on the record in order to correct the error, such as is the case with changes to the payment date. None of the minor corrections accepted at verification were all-encompassing changes such as modifications to the date of sale methodology or reporting new sales or adjustments. Rather, the changes involved correcting minor clerical errors, correcting minor errors in existing calculations, or correcting minor omissions. While some of the corrections may have affected a large number of transactions, a minor correction to a calculation, such as correction of an indirect selling expense ratio, an interest rate percentage for credit and inventory carrying costs, or an allocated freight expense calculation, will impact all sales for which such an adjustment was reported. However, just because a large number of transactions are affected by a correction does not necessarily render a correction not “minor” or warrant AFA. As confirmed by the CIT in *Tatung Co. v. United States* it is a well-settled principle in Commerce’s verification practice: “The issue is not the value of the errors as a percentage of total U.S. sales, or the number of instances of errors. Rather the issue is the nature of the errors and their effect on the validity of the submission.”⁵³

The minor corrections at issue are corrections of errors, not extensive changes in reporting or methodology, and do not affect the validity of the submissions. Commerce verified and accepted all the minor corrections presented by TCK at verification. At verification, before accepting the minor corrections, Commerce analyzed the impact of each correction confirming that they were in fact minor, and verified and accepted all minor corrections only after each minor correction was tied to TCK’s accounting records.⁵⁴ Contrary to the petitioners’ argument, TCK provided support for its minor corrections. Although not all the source documentation that was used to test the minor corrections was included in the verification exhibits because it would have been too voluminous, all minor corrections were supported by source documentation.

⁴⁰ *Id.* at SVE-1 attachment 7.

⁴¹ *Id.* at SVE-1 attachment 8.

⁴² *Id.* at SVE-1 attachment 9.

⁴³ *Id.* at SVE-1 attachment 10.

⁴⁴ See BPI Notes Memorandum at Note 8.

⁴⁵ *Id.* at Note 9.

⁴⁶ *Id.* at Note 10.

⁴⁷ *Id.* at Note 11.

⁴⁸ *Id.* at Note 12.

⁴⁹ *Id.* at Note 13.

⁵⁰ *Id.* at Note 14.

⁵¹ *Id.* at Note 15.

⁵² *Id.* at Note 16.

⁵³ See *Tatung Co. V. United States*, 18 CIT 1137, 1141 (1994).

⁵⁴ See Sales Verification Report at 2-3.

Specifically, we disagree with the petitioners' contention that there was no supporting documentation for the bank charges. These charges were completely verified and Commerce tied these charges to TCK's accounting records. We also disagree with the petitioners' claim that the minor correction to domestic inland freight for a U.S. sale affected more than one sale. The sale in question was reported under one invoice number,⁵⁵ which covers only one sale in one single shipment, but consists of four-line items representing four sales observations. This minor correction was a simple data error and resulted in a very insignificant change to an adjustment which accounted for a very small percentage of the gross unit price.⁵⁶ Similarly, the minor corrections to the duty drawback calculations, which relate to an allocation error, were well documented and supported by TCK's accounting records provided at verification. Commerce was able to tie all the recalculated duty drawback per unit values to source documentation during the verification. The changes to the reported duty drawback adjustments affected only certain⁵⁷ sales transactions and are very insignificant;⁵⁸ thus, the correction was properly accepted at the sales verification as a minor correction.

Regarding deletion of the packing expenses reported for two tolled products, the petitioners contend that this error demonstrates that TCK must have assumed these were self-produced products. From this, the petitioners conclude that this error indicates these products were recorded in inventory and thus this error also implies all tolled merchandise may have incurred unreported warehousing and loading charges, contrary to TCK's reporting. We disagree with the petitioners' conclusions. The petitioners' claims are not supported by the record. We verified, using TCK's SAP system, that the two products which were erroneously reported as self-produced were in fact tolled products and therefore the packing expenses and loading charges were not incurred by TCK, but were incurred by the tolling company and included in the reported cost of tolled merchandise. The cost of manufacture (COM) statement included in Attachment 6 of SVE-1 shows that two products in question were recorded as tolled products.

As explained above, because all the minor corrections presented at the verification correct information already reported and are in fact minor, all ten minor corrections were correctly accepted at verification and do not represent new information. For the above reasons these minor corrections will not be rejected from the final determination and we find that resorting to total AFA or partial AFA is unreasonable and not supported by the facts on the record.

Comment 1(b): Tolling Arrangement

Petitioners' Comments

- TCK impeded this investigation by withholding until verification specific details of its outsourced operations and partners, details it claimed at verification were known by September 2016.⁵⁹

⁵⁵ See Sales Verification Report at SVE-1, Attachment 9.

⁵⁶ See BPI Notes Memorandum at Note 11.

⁵⁷ *Id.* at Note 17.

⁵⁸ *Id.*

⁵⁹ *Id.* at Note 18.

- The details provided in TCK's November 16, 2017 Supplemental Section D response reveal several issues and deficiencies with TCK's cost reporting that should have been a part of TCK's original response.
- Delayed revelation of these facts shows intentionally selective reporting.
- TCK failed to provide a good faith effort in its response to Commerce's questionnaires. In addition to not initially reporting its tolling information, at verification TCK provided contradictory information while further attempting to obscure details of its tolling arrangement.
- TCK's sales of tolled merchandise involve numerous deficiencies. In addition to the corrections involving tolled merchandise noted above, TCK failed to provide reliable information regarding its tollers, sales and cost of tolled merchandise.⁶⁰

TCK's Comments

- While the petitioners claim that TCK's questionnaire responses regarding tolling are incorrect, the facts obtained at verification clarify the reported tolling information and have been fully verified.
- TCK did not report its toller's costs of outsourcing but correctly reported the amount it was charged for outsourcing services as recorded in its books. TCK is not affiliated with its toller. The petitioners did not point to any law, regulation, or Commerce practice under which it may penalize TCK for correctly reporting the costs charged by an unaffiliated supplier to TCK for the provision of goods or services.

Commerce's Position:

We disagree with the petitioners' argument that TCK impeded the investigation by withholding information about its tolling company and did not act to the best of its ability. TCK provided the specific information regarding its outsourcing operations that was requested by Commerce. Contrary to the petitioners' argument, information regarding the tolling company and a copy of the current contract with the toller were submitted in the first sections A, B and C supplemental questionnaire response.⁶¹ While TCK provided other detailed information regarding its tollers in response to questions by Commerce's verifiers, the petitioners have not explained how Commerce's investigation of TCK was impeded by not having these details, which were not requested until verification. TCK's relationship with its tolling companies during the POI was verified by Commerce and no affiliation was found between TCK and the tolling companies.⁶²

⁶⁰ As stated on page 18 of the Petitioners' TCK's Case Brief dated March 16, 2018, "Petitioner will further address the specifics of TCK's failure to adequately report costs of its tolled sales in its case brief for TCK's cost reporting." However, the petitioners never provided any specifics regarding the reported costs of TCK's tolled products, therefore, this issue is not addressed in this memorandum.

⁶¹ See TCK's Response, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea Supplemental Sections A-C Questionnaire Response," dated November 6, 2017 at Supplemental Sections A-C Questionnaire Response BCSR at S-14 and Exhibit SB-9.

⁶² See Sales Verification Report at 27 and SVE-33.

Comment 1(c): Misreported Sales of Products Not Produced

Petitioner's Comments

- A review of TCK's home market sales database shows TCK sold products which are not among the products it reported producing itself or producing through outsourcing (*see* Exhibit SD-5 of TCK's November 16, 2017 supplemental section D questionnaire response (SQD)).
- This is either another significant reporting error or evidence of unreported producers of merchandise sold by TCK. In either case, this reflects TCK's continued lack of cooperation throughout the investigation.
- Commerce should apply total AFA for these sales.

TCK's Comments

- There is no "significant error" nor are there "unreported producers." The list of products produced and outsourced in Exhibit SD-5 of the SQD reflects production during the POI and reconciles to the total production quantity reported in TCK's Section D cost database. Each of the products in question was not produced during the POI but was sold from inventory at the beginning of the POI. Commerce verified the data and confirmed that the products were produced prior to the POI and sold during the POI.

Commerce's Position:

See Comment 8 below for Commerce's position.

Comment 1(d): Failure to Provide Correct Translations

Petitioners' Comments

- TCK improperly translated certain documents. These translation errors impact Commerce's margin calculations and demonstrate that TCK did not cooperate to the best of its ability.

TCK's Comments

- The translation errors cited by the petitioners are insignificant, were corrected, and do not provide evidence of a systemic failure on the part of TCK to cooperate to the best of its ability.

Commerce's Position:

We agree with TCK that the translation errors cited by the petitioners are insignificant. One of the two translation corrections was made to the name of one of the accounts in the chart of accounts, and the other was provided by Commerce's interpreter at verification and involved adding one word to the translation of the name of a document. The addition of this word only further supports the explanation of this document provided by TCK in its responses to Commerce's questionnaires. In both instances, these translation corrections are insignificant and do not provide evidence that TCK failed to cooperate to the best of its ability to provide Commerce with requested information.

Comment 2: Whether to Apply AFA to Down Nara

Petitioners' Comments

- Down Nara, Co., Ltd (Down Nara) was selected as a mandatory respondent but failed to respond to Commerce's questionnaire. Thus, its dumping margin should be based on total AFA.
- Commerce has adequate grounds to include certain additional information in its instructions to Customs and Border Protection (CBP).⁶³ Due to the proprietary nature of this comment, *see* the BPI Memorandum for further details.⁶⁴

Commerce's Position:

We agree with the petitioners that Down Nara failed to respond to Commerce's questionnaire and therefore its dumping margin should be based on total AFA.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.⁶⁵ The SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁶⁶ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁶⁷

Finally, under section 776(d) of the Act, Commerce may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.⁶⁸ When selecting facts available with an

⁶³ See Petitioners' March 30, 2018 Case Brief at 3-5.

⁶⁴ See Memorandum entitled, "Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from the Republic of Korea: Proprietary Discussion of Issues Contained in the Issues and Decision Memorandum" dated concurrently with the Issues and Decision Memorandum (BPI Memorandum).

⁶⁵ See also 19 CFR 351.308(c).

⁶⁶ See Statement of Administrative Action (SAA), H.R. Doc. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

⁶⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

⁶⁸ See section 776(d)(1)(B) and 776(d)(2) of the Act.

adverse inference, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁶⁹

Down Nara received Commerce’s questionnaire but did not respond to it or otherwise participate in the proceeding. As a consequence, for the final determination, we continue to find that the necessary information is not available on the record and that Down Nara withheld information requested by Commerce, failed to provide information by the specified deadlines, and significantly impeded the proceeding.⁷⁰ Moreover, because Down Nara failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available for the final dumping margin of Down Nara.

Next, we considered whether it is appropriate to use an adverse inference in applying the facts otherwise available based on Down Nara’s failure to act to the best of its ability to comply with a request for information. Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.⁷¹

Down Nara’s failure to respond to Commerce’s questionnaire or otherwise participate in the proceeding indicates that this company has not put forth its maximum effort to provide Commerce with full and complete answers to the inquiries made in this investigation. Accordingly, we conclude that Down Nara failed to cooperate to the best of its ability to comply with a request for information by Commerce, in accordance with section 776(b) of the Act and 19 CFR 351.308(a). Therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.⁷²

As noted above, section 776(b) of the Act states that when employing an adverse inference, Commerce may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁷³ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁷⁴ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁷⁵

⁶⁹ See section 776(d)(3)(B) of the Act.

⁷⁰ See sections 776(a)(2)(A), (B), and (C) of the Act.

⁷¹ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

⁷² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁷³ See also 19 CFR 351.308(c).

⁷⁴ See section 776(b)(1)(B) of the Act.

⁷⁵ See SAA at 870.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁷⁶ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁷⁷ Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁷⁸

In this investigation, we have selected the petition dumping margin of 45.23 percent as the AFA rate applicable to Down Nara. To corroborate the 45.23 percent AFA rate that we selected, we compared the 45.23 percent margin to the transaction-specific dumping margins that we calculated for TCK. We found that the dumping margin of 45.23 percent is not significantly higher than the highest transaction-specific dumping margin calculated for TCK, and therefore is relevant and has probative value.⁷⁹ Accordingly, we find that the rate of 45.23 percent is corroborated within the meaning of section 776(c) of the Act.

Finally, as discussed in the BPI Memorandum, we are further finding that, as adverse facts available, a Korean producer of the subject merchandise, Koreco Synthetic Fiber Co. (Koreco), is a successor-in-interest of Down Nara.

Comment 3: Whether Commerce’s Calculation of the “All-Others” Rate is Supported by its Practice and Is Consistent with the Statute and Court Precedent

Solianus’ Comments

- It is “unreasonable and contrary to the law” to include AFA in calculating the “all-others” rate when the only individually investigated respondent received a *de minimis* rate and non-selected exporters did not fail to cooperate.”⁸⁰
- Calculating the “all others” rate by averaging the non-cooperative companies’ AFA rate and TCK’s *de minimis* rate, drew a legally impermissible adverse inference against the “all others” rate exporters.⁸¹
- *Changzhou Hawd*, establishes a binding Court of Appeals for the Federal Circuit (CAFC) precedent that the burden of proof is on Commerce to establish how and why those companies not individually examined are unlike those individually examined. If this burden of proof is not met, then Commerce has no basis for assigning a rate to Solianus, a company not individually examined, that is different from the rate for TCK, a company

⁷⁶ See also 19 CFR 351.308(d).

⁷⁷ See SAA at 870.

⁷⁸ See section 776(c)(2) of the Act.

⁷⁹ See Memorandum, “Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea Inc.” (Analysis Memorandum), dated concurrently with this memorandum.

⁸⁰ See Solianus’ Case Brief at 2 citing *Changzhou Hawd Flooring Co. v. United States*, 848 F.3d 1006 (Fed. Cir. 2017) (*Changzhou Hawd*), *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle*), and *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370 (Fed. Cir. 2013) (*Bestpak*).

⁸¹ See Solianus’ Case Brief at 10.

that was individually examined. Commerce did not meet its burden of proof here.⁸²

- Because TCK is the one mandatory respondent that was individually examined, Commerce should have assigned TCK's rate to the all-others companies.⁸³ There is no evidence on the record establishing that the dumping rate for the all-others companies, particularly Solianus, is not represented by TCK's rate.⁸⁴
- If TCK's final rate is *de minimis*, Commerce must assign Solianus the same rate and exclude Solianus from any AD order that may be issued. When Commerce can find no basis in law or fact to assume that a non-investigated cooperating exporter is dumping, the legal consequence is exclusion from the *Order* of any such exporter.⁸⁵
- Commerce failed to establish, based upon substantial record evidence, that the "expected method" of calculating the all-others rate by basing it on the rate of the investigated company, TCK, was unreasonable in this case. Hence, Commerce should have used TCK's dumping margin as the "all-others" rate unless it was not "feasible" to do so.⁸⁶

Petitioners' Comments

- Solianus failed to request voluntary respondent status, never indicated it should be selected as a mandatory respondent, and did not file respondent selection comments. Thus, it cannot claim to have cooperated in the investigation,⁸⁷ or claim to be similar to TCK such that the "all others" rate should not apply to it.⁸⁸
- The Act, the Courts, and the SAA all indicate Commerce is to use the "expected method" for determining the "all others" rate (in this case averaging *de minimis* and AFA margins).⁸⁹
- Commerce "individually examined" not only TCK but also Huvis Corporation (Huvis) and Down Nara to which it applied total AFA. Solianus has no basis to claim that these AFA companies were somehow not "individually investigated."⁹⁰ According to section 735(c)(5)(B) of the Act, both Huvis and Down Nara are still considered "individually investigated" respondents despite their non-cooperation.
- Thus, Commerce acted consistent with the Act and its practice by basing its calculation of the "all others rate" on a simple average of the *de minimis* dumping margin calculated

⁸² See Solianus' Case Brief at 2 (citing *Changzhou Hawd*).

⁸³ *Id.* at 7.

⁸⁴ *Id.* at 8-9.

⁸⁵ *Id.* at 13 (citing *Fuyao Glass Indus. Group Co. v. United States*, 30 C.I.T. 165 (2006) and *Changchun Pilkington Safety Glass Co. v. United States*, 31 CIT 1212 (2007) and section 735(a)(4) of the Act).

⁸⁶ *Id.* at 7-9, 11 (citing *Changzhou Hawd*).

⁸⁷ See Petitioners' Rebuttal Brief on Solianus at 2-3 (citing Memorandum from Robert Bolling to James Maeder dated July 31, 2017, Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from the Republic of Korea: Respondent Selection (Respondent Selection Memorandum)).

⁸⁸ See Petitioners' Rebuttal Brief on Solianus at 2-3.

⁸⁹ *Id.* at 3-4 (citing section 735(c)(5) of the Act).

⁹⁰ *Id.* at 4, 6-7 (citing *Fine Denier Polyester Staple Fiber from the Republic of South Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 660 (January 5, 2018) (Preliminary Determination), wherein the Department calculated the "all others" rate by computing a simple average of TCK's *de minimis* dumping margin and Huvis' and Down Nara's corresponding AFA dumping margins). See also section 776 of the Act, wherein the petitioners note that the statute envisions that "individually investigated exporters or producers include those that receive total AFA under the Act.

for TCK and the AFA dumping margins assigned to Huvis and Down Nara.⁹¹

- Commerce must include AFA companies in calculating the “all others” rate. To do otherwise would induce mandatory respondents to not participate in a proceeding in favor of “much smaller exporters or those producers more likely to receive zero or *de minimis* margins.”⁹² This “gerrymandering” would subvert the statutory presumption that the largest exporters are selected and used in the “all others” rate because their dumping margins are most representative of the dumping margins of “all other” exporters.⁹³
- The court cases to which Solianus cites are not applicable to the current investigation and thus do not undermine Commerce’s preliminary determination.⁹⁴
- Commerce should reject the arguments made by Solianus, and continue to apply the statute to determine the “all others” rate in the final determination.

Commerce’s Position:

We disagree with both the legal and factual basis of Solianus’ argument. Solianus claimed that it is “unreasonable and contrary to the law” to include AFA in calculating the “all-others” rate when the only individually investigated respondent received a *de minimis* rate and non-selected exporters did not fail to cooperate.”⁹⁵ While TCK preliminarily received a *de minimis* rate, TCK was not the “only” company that was “individually examined” in this investigation. In addition to TCK, Commerce selected both Huvis and Down Nara for individual examination.⁹⁶ However, both of these companies failed to cooperate and were assigned a dumping margin equal to the highest dumping rate in the petition.

We disagree with the argument that it is contrary to law to include such a rate in calculating the “all-others” rate. While section 735(c)(5)(A) of the Act states that the estimated all-others rate shall be calculated by excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 {(facts available)}, section 735(c)(5)(B) of the Act provides that:

If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under section 776, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.

The SAA includes the following:

⁹¹ See Petitioners’ Rebuttal Brief on Solianus; *see also* Preliminary Determination.

⁹² *Id.* at 9 (also citing *Low Melt Polyester Staple Fiber from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Critical Circumstances, in Part, and Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 4906 (February 2, 2018)).

⁹³ See Petitioners’ Rebuttal Brief on Solianus at 8.

⁹⁴ *Id.* at 10-11 (citing *Changzhou Hawd, Albemarle, and Bestpak*).

⁹⁵ See Solianus’ Case Brief at 2.

⁹⁶ See Respondent Selection Memorandum.

Section 219(b) of the bill adds new section 735(c)(5)(B) which provides an exception to the general rule if the dumping margins for all the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis*. In such situations, Commerce may use any reasonable method to calculate the all others rate. The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.⁹⁷

Echoing the above provisions, the CIT has held the following:

... both “{Section} 1673d(c)(5)(B) and the SAA explicitly allow Commerce to factor both *de minimis* and AFA rates {of individually investigated exporters and producers} into the calculation methodology.” Accordingly, as a method “derived from the relevant statutory language,” it is not *per se* unreasonable for Commerce to use a simple average of *de minimis* and AFA rates to calculate the separate rate antidumping duty margin.⁹⁸

Because all the dumping margins for the individually examined respondents in this investigation are either *de minimis* or based on AFA, it is legally permissible to calculate the “all others” rate by averaging these *de minimis* and AFA dumping margins. The SAA and the CAFC have labeled this approach as the “expected method” for determining the all-others rate.

Nevertheless, the SAA does note that if the expected method “is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.”⁹⁹ A general assumption is that data from the largest volume exporters can be viewed as representative of all exporters.¹⁰⁰ Thus, Commerce will examine the largest volume exporters in its proceedings

⁹⁷ See the SAA at 873; see also *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 45124 (July 12, 2016) and accompanying PDM at 7-8, unchanged in *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 81 FR 80640 (November 16, 2016).

⁹⁸ See *Baroque Timber*, 971 F. Supp. 2d at 1341 (internal citations omitted). Although this cite references separate rates, the principle also applies to the all-others rate.

⁹⁹ See the SAA at 873; see also *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 45124 (July 12, 2016) and accompanying PDM at 7-8, unchanged in *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 81 FR 80640 (November 16, 2016).

¹⁰⁰ See *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (Albemarle).

under the assumption that the largest volume exporters are representative of the rest of the market.

In this case, Down Nara and Huvis were the two largest volume exporters during the POI, although they were not responsive to our requests for information. In such cases, the experience of non-responsive respondents is generally based upon the highest dumping margins in the petition. Consequently, the “all-others” rate was calculated by averaging the rates given to the companies we examined: the *de minimis* rate calculated for TCK and the AFA dumping margins assigned to the rest of the companies selected for individual examination. There is no basis for considering the “all others” rate unreasonable by solely comparing it to the *de minimis* dumping margin of one individually examined respondent when one must consider the experience of all the individually examined respondents in order to judge the reasonableness of the “all others” rate. Additionally, there is no information on the record that supports Solianus’ claim that it is like TCK but unlike Down Nara and Huvis and, contrary to Solianus’s claims, the CAFC has not found that Commerce has the burden of proof to establish that companies not individually investigated are unlike those individually investigated.

Solianus relies on certain CAFC opinions to support its position – specifically, *Changzhou Hawd* and *Albemarle*.¹⁰¹ In *Changzhou Hawd*, the CAFC rejected Commerce’s decision to calculate a separate rate by averaging the *de minimis* margins for three mandatory respondents with the China-wide rate because the China-wide rate was not a rate for an “individually examined” exporter.¹⁰² *Changzhou Hawd* is not applicable in this case because here Commerce has based the “all-others” rate on the dumping margins of the individually examined mandatory respondents, TCK, Huvis, and Down Nara.¹⁰³

In *Albemarle*, the CAFC determined that Commerce did not provide sufficient evidence for why it assigned dumping margins from prior segments of the proceeding to the separate rate respondents, noting that Commerce could have applied the current period *de minimis* rates of individually examined respondents to the separate rate respondents.¹⁰⁴ However, in this investigation, Commerce has not based the “all-others” rate on rates from a previous segment of the proceeding (there are no previous segments); rather Commerce has based the “all others” rate on the simple average of the dumping margins of the individually examined respondents.¹⁰⁵ Accordingly, our determination in this case is fully consistent with the CAFC’s holding in *Albemarle*.

Based on the foregoing, we have denied Solianus’ claim that it, and all other Korean exporters, should receive TCK’s final *de minimis* dumping margin and be excluded from any order issued in this proceeding. We have continued to calculate the “all others” rate by computing a simple average of the *de minimis* dumping margin calculated for TCK, and the two AFA dumping margins assigned to Huvis and Down Nara, as was done in the *Preliminary Determination*.

¹⁰¹ See Solianus’ Case Brief at 7-9.

¹⁰² See *Changzhou Hawd Flooring Co. v. United States*, 848 F.3d 1006 (Fed. Cir. 2017) (*Changzhou Hawd*).

¹⁰³ See Petitioners’ Rebuttal Brief on Solianus at 10 (citing *Changzhou Hawd*).

¹⁰⁴ See *Albemarle*.

¹⁰⁵ See Petitioners’ Case Brief at 10 (citing *Changzhou Hawd*).

Comment 4: Whether the Totality of Circumstances Warrants Application of Total or Partial AFA

The Petitioners' Comments

- The petitioners argue that the totality of the circumstances discussed below and in the petitioners' Sections A-D comments warrant resorting to total AFA for the final determination.¹⁰⁶ The petitioners add that TCK's actions warrant Commerce rejecting the company's reported sales and cost information.¹⁰⁷
- The petitioners allege that TCK has failed to provide Commerce with a complete and accurate response by reporting cost and production data that is incongruent with its sales reporting; manipulating and omitting other reporting to its benefit and without explanation; requiring numerous supplemental questionnaires; and, findings at verification that TCK's response remained incomplete and misreported.
- The petitioners argue that, as a result of TCK's actions, Commerce has been denied the opportunity to develop and analyze a complete record in this investigation.¹⁰⁸
- The petitioners note that the statute permits Commerce to use facts otherwise available if any one of the statute's criteria is met.¹⁰⁹
- The petitioners also note that, as the Federal Circuit has made clear: The focus of subsection (a) is respondent's failure to provide information. The mere failure of a respondent to furnish requested information - for any reason - requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination.¹¹⁰
- The petitioners allege that, as evidenced from the discussion below, the record is missing accurate information on TCK's raw material costs and unit costs; the data cannot be used to calculate an accurate dumping margin; TCK failed to provide requested data and documents in the form, manner and within the time required; TCK provided substantially new factual information at verification under the guise of "minor corrections;" and, the data used to calculate its margin in the *Preliminary Determination* was unreliable.¹¹¹
- The petitioners argue that TCK's supplemental cost questionnaire responses were submitted as late in the proceeding as November 16, 2017 and remained deficient, as found at verification. As such, Commerce should find that TCK has exhausted its opportunities to remedy its response before verification and reject each reporting item which was found to remain deficient at verification, applying total AFA to each such item.¹¹²
- The petitioners note that Commerce is required to consider the submitted information only if it was (1) submitted by the established deadlines, (2) "can be verified," (3) "is not so incomplete that it cannot" be used, (4) "can be used without undue difficulties," and (5) "if the interested party has demonstrated that it acted to the best of its ability" in

¹⁰⁶ See Petitioners' Cost Case Brief at 27.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 28 (citing to Section 776(a) of the Act).

¹¹⁰ *Id.* (citing to *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003) (*Nippon Steel*)).

¹¹¹ *Id.* at 28.

¹¹² *Id.* at 28-29 (citing to Section 776(d) of the Act).

submitting information as requested by Commerce.¹¹³

- The petitioners argue that a pattern of behavior that causes Commerce to have to seek information the respondent obviously should have supplied with its initial response is uncooperative behavior that is grounds for the application of AFA.¹¹⁴
- The petitioners also argue that TCK's failure to act to the best of its ability to provide complete and accurate information in the form and manner requested is also grounds for the application of an adverse inference.¹¹⁵
- The petitioners conclude that the standard for application of facts available is met and Commerce should apply, as total AFA, the higher of the highest rate in the petition or the highest single rate calculated for any party in the investigation.¹¹⁶ If Commerce decides to use the available information on the record to calculate a margin for TCK, it should at least apply the partial facts available with an adverse inference for the issues identified below.¹¹⁷ For the new instances of misreporting discovered at the cost verification and detailed below, Commerce should apply as partial AFA the most adverse facts available plug based on information available on the record.¹¹⁸

TCK's Comments

- TCK argues that the petitioners' proposed application of total AFA, or even partial AFA, is misguided and disregards the verified record, Commerce's practice, and settled law.¹¹⁹
- TCK asserts that, as discussed below, none of the factors in the statute apply because as TCK provided Commerce with all requested information; Commerce fully verified TCK's data; and, there is nothing missing from the record or nothing that went unverified.¹²⁰
- TCK alleges that the petitioners' complaints are based on speculation and broad generalizations as to what the petitioners think TCK's costs should be.¹²¹
- TCK notes that the statute's legislative history clarifies that Commerce may resort to facts available to fill gaps in the record, not to replace the record in a punitive manner contrary to a cooperative respondent's commercial reality.¹²²
- TCK asserts that the record confirms that it did act to the best of its ability from the

¹¹³ See Petitioners' Cost Case Brief at 29 (citing to Section 782(e) of the Act; *Tung Mung Dev. Co. v. United States*, 25 CIT 752,789 (2001) (stating that "the terms of § 1677m(d)... are not triggered unless the respondent has met all of the five enumerated criteria," of Section 782(e) of the Act); *Paperfabrik August Koehler S.E. v. United States*, 7 F. Supp. 3d 1304, 1314 (Ct. Intl. Trade 2014) (stating that "because the respondent did not satisfy all five conditions in § 1677m(e), the Department was not obligated to accept the information and the remedial provisions of § 1677m(d) were not triggered").

¹¹⁴ See Petitioners' Cost Case Brief at 29-30 (citing to Issues and Decision Memorandum for the *Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea: 2014-2015* (March 6, 2017) at 4, ref'd in 82 FR 13432 (March 13, 2017)).

¹¹⁵ See Petitioners' Cost Case Brief at 30 (citing to Section 776(b) of the Act; and *Nippon Steel*, 337 F.3d at 1382).

¹¹⁶ *Id.* at 30.

¹¹⁷ *Id.* at 31.

¹¹⁸ *Id.*

¹¹⁹ See TCK's Cost Rebuttal Brief at 3.

¹²⁰ *Id.* at 3 (citing to Section 776(a) of the Act).

¹²¹ *Id.* at 3.

¹²² See TCK's Cost Rebuttal Brief at 3 (citing to Section 776(b) of the Act and SAA, H.R. Doc. No. 103-316 at 656, 869 (1994), reprinted in 1994 U.S.C.C.A.N. 3773).

questionnaire response stage through Commerce's verifications.¹²³ TCK also asserts that Commerce thoroughly reviewed and accepted TCK's minor corrections and fully verified TCK's questionnaire responses without any issue.¹²⁴

- TCK alleges that the only purported issues the petitioners identify are based on incorrect assumptions, a careless reading of the official record, or speculation.¹²⁵ TCK concludes that the petitioners' call for total or partial AFA is wholly meritless.¹²⁶

Commerce's Position:

Commerce is required to consider a party's submitted information only if: 1) the information is submitted by the established deadline; 2) the information can be verified; 3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; 4) the interested party demonstrated that it acted to the best of its ability; and, 5) the information can be used without undue difficulties.¹²⁷ We believe that TCK met these requirements. For instance, the initial questionnaire response and the supplemental response of TCK were submitted by the established deadlines.¹²⁸ The question of meeting the established deadlines therefore only pertains to the minor corrections presented to Commerce verifiers on the first day of verification. As the Cost Verification Report states, the items in question were accepted by the Commerce verifiers as being minor.¹²⁹ As the Cost Verification Agenda states, "Minor errors are minor mistakes in addition, subtraction, or other arithmetic function, minor data entry mistakes, clerical errors resulting from inaccurate copying, duplication, or the like, and minor classification errors. Minor errors do not include items such as methodology changes."¹³⁰

The first minor correction presented by TCK related to the worksheet showing TCK's purchases of monoethylene glycol (EG) from its affiliated trading company.¹³¹ Specifically, TCK explained that in reporting its monthly purchases of EG on the arm's-length comparison worksheet, certain billing adjustments which occurred in subsequent months were inadvertently excluded.¹³² This minor correction did not affect the reported raw material costs, but related only to the reporting of affiliated and unaffiliated purchases in the arm's-length comparison worksheet used to perform the transactions disregarded analysis. Accordingly, Commerce considers this to be a minor correction, and not substantial factual new information under the

¹²³ See TCK's Cost Rebuttal Brief at 4 (citing to *Nippon Steel*, 337 F.3d at 1382 and *Shantou Red Garden Foodstuff Co., Ltd. v. United States*, 815 F. Supp. 2d 1311, 1319 (Ct. Int'l Trade 2012)).

¹²⁴ See TCK's Cost Rebuttal Brief at 4.

¹²⁵ *Id.* at 4.

¹²⁶ *Id.*

¹²⁷ See Section 782(e) of the Act.

¹²⁸ See Section D questionnaire response dated September 22, 2017 (Section D) and Supplemental Section D questionnaire response dated November 16, 2017 (Supplemental D).

¹²⁹ See Memorandum to the File "Verification of the Cost Response of Toray Chemical Korea Inc. in the Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from the Republic of Korea," (March 22, 2018) (Cost Verification Report) at 2-3.

¹³⁰ See the verification steps presented to Toray in a letter from Commerce dated January 23, 2018 (Cost Verification Agenda) at 3.

¹³¹ See Cost Verification Report at 2.

¹³² *Id.* and Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea Cost Verification Exhibits dated February 16, 2018, at Cost Verification Exhibit (CVE) 1.

guise of a “minor correction” as alleged by the petitioners. *See* Comments 5 and 11 for further discussion of this issue.

The second minor correction presented by TCK related to TCK’s affiliated trading company’s selling, general and administrative (SG&A) expense rate.¹³³ Toray International’s total cost for EG includes the price Toray International paid to unaffiliated suppliers plus an amount for Toray International’s SG&A expense to account for the input procurement services. TCK explained that in calculating Toray International’s SG&A ratio, TCK erroneously treated non-operating income as an expense.¹³⁴ This minor correction did not affect the reported raw material costs, but related only to the affiliated trading company’s total cost used for purposes of the transactions disregarded analysis. Accordingly, Commerce considers this to be a minor correction. *See* Comments 7 and 11 for further discussion of this issue.

The third item included with the minor corrections presented by TCK was a clarification related to TCK’s reported packing expenses.¹³⁵ In the *Preliminary Determination*, Commerce increased TCK’s reported per-unit total cost of manufacture (TOTCOM) to account for an unreconciled difference.¹³⁶ TCK explained that this unreconciled difference represents packing labor and overhead costs that were reclassified pursuant to Commerce’s instructions.¹³⁷ Although TCK incorporated these reclassifications in the cost database submitted with the Supplemental D, TCK did not submit a revised overall cost reconciliation showing the reclassified labor and overhead cost amounts as a deduction to the POI COM. We note that this clarification did not affect the reported costs, but related only to a revision to the overall cost reconciliation. Accordingly, Commerce considers this to be a minor correction. *See* Comment 12 for further discussion of this issue.

The CIT has previously upheld Commerce’s discretion to accept or reject minor corrections at verification.¹³⁸ Commerce’s practice is to not accept minor corrections if they are more than minor, represented new factual information, or were a new reporting methodology. The Cost Verification Report does not characterize these minor corrections as being any of these situations. Moreover, the petitioners’ allegations that costs were under reported and that TCK’s systems are inherently unreliable are not supported by record evidence, and do not establish that the corrections actually represented either new factual information, or a new reporting methodology. As discussed above, the first minor correction did not change the reported costs, did not bring into question the accuracy of the reported control number (CONNUM) specific costs, but rather addressed a minor error on the arm’s-length worksheet used to test certain transactions. The reported CONNUM-specific costs were not changed by the minor corrections, were verified, and were tied to the normal books and records of TCK. While there were certain findings listed within the Cost Verification Report, *see* Comments 7 and 11, they do not represent a “totality of the circumstances” that warrants application of total AFA. TCK’s

¹³³ *See* Cost Verification Report at 2-3.

¹³⁴ *Id.* at 2-3 and CVE 1.

¹³⁵ *Id.* at 3.

¹³⁶ *See* Memorandum to Neal M. Halper from Alma (Angie) Sepúlveda, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Toray Chemical Korea, Inc., dated December 18, 2017 (Preliminary Calculation Memorandum) at Adjustment 2.

¹³⁷ *See* Cost Verification Report at 3 and CVE 1.

¹³⁸ *See Maui Pineapple Co. v. United States*, 264 F. Supp. 2d 1244 (CIT 2003).

questionnaire response and supplemental response were substantially complete and as noted were filed within established deadlines. While not drawing conclusions, Commerce’s Cost Verification Report establishes that the verifiers were able to tie the reported information back to TCK’s books and records. Therefore, we disagree with the petitioners that total AFA is warranted in this instance.

Comment 5: Whether Commerce Should Adjust the Purchases of EG for Physical Inventory Adjustments and Certain Ancillary Costs

Background

The petitioners present two separate issues related to the first minor correction presented at the cost verification.¹³⁹ In the discussion that follows, we have identified these issues as “Physical Inventory Adjustment” (which addresses the business proprietary (BPI) item and associated costs discussed by the petitioners under Issue I) and “Ancillary Costs” (which addresses the ancillary costs discussed by the petitioners under Issue I and the BPI charges discussed by the petitioners under Issue V).¹⁴⁰ Because much of the information relating to these issues is business proprietary in nature, please refer to the petitioners’ and TCK’s case and rebuttal briefs.

Throughout the presentation of the petitioners’ arguments, they frequently reference the text included in the supporting documentation of the first minor correction.¹⁴¹ The petitioners present two arguments alleging that TCK manipulated its reporting methodology.¹⁴² Therefore, the petitioners assert that Commerce must assume that the unreported loss and underreported costs discussed below impact all inputs.¹⁴³

The Petitioners’ Comments

A. Physical Inventory Adjustments

- The petitioners assert that the minor correction exhibits, including the “additional details on the relevant ancillary costs that were finalized,” reveal that TCK has failed to report a significant percentage of its purchase volumes and costs for EG.¹⁴⁴ The petitioners allege that TCK failed to report the changes in volume and the associated costs in its questionnaire responses.¹⁴⁵
- The petitioners argue that TCK’s disclosure at verification warrants the use of total AFA in the final determination.¹⁴⁶
- The petitioners allege that TCK appears to have reported “expected costs” rather than actual costs, and “initially recorded volumes” rather than final actual volumes.¹⁴⁷

¹³⁹ See Petitioners’ Cost Case Brief at 3-8 (Issue I – TCK Has Failed to Report and Reconcile a Portion of its Costs for Monoethylene Glycol) and at 22-23 (Issue V – Unreported BPI Charges).

¹⁴⁰ *Id.* at 3-8 (Issue I) and at 22-23 (Issue V).

¹⁴¹ *Id.* at 3-5 (citing to Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea Cost Verification Minor Corrections (February 5, 2018) (Cost Verification Minor Corrections) and CVE 1).

¹⁴² See Petitioners’ Cost Case Brief at 6.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 4-5 (citing to Cost Verification Minor Corrections and CVE 1).

¹⁴⁵ See Petitioners’ Cost Case Brief at 4 and 5 (citing to Cost Verification Minor Corrections and CVE 1).

¹⁴⁶ *Id.* at 5.

¹⁴⁷ *Id.*

- The petitioners argue that while TCK claims it reported corrected costs in Attachment A, TCK corrects EG for only the one month discussed, yet the change in volume occurs throughout the POI.¹⁴⁸
- The petitioners assert that TCK’s revelation of one of these costs, and its methodology in recording or not recording these costs, is substantial new factual information presented at verification under the guise of minor corrections.¹⁴⁹ In addition, TCK’s description of its misreporting is confusing and incomplete.¹⁵⁰ The petitioners note that Commerce has a longstanding practice of denying methodological changes to reporting at verification and applying AFA to those areas of proposed change.¹⁵¹
- The petitioners allege that TCK failed to quantify and fully explain these costs, but waited until a point when the record is closed and Commerce can no longer ask questions about this major discrepancy.¹⁵²
- The petitioners argue that TCK’s failure to report these additional costs may have contributed to TCK’s *de minimis* margin in the *Preliminary Determination*.¹⁵³
- The petitioners believe that because TCK failed to provide any supporting documentation for these cost issues, Commerce is left with an incomplete, irreconcilable, and unverified record of costs related to the primary inputs.¹⁵⁴ The fact that these costs occur, and using TCK’s example “SAP® only records 90 percent of the actual cost upon receipt of the materials into inventory,” TCK has failed to report some amount of costs and some quantity of raw materials to Commerce.¹⁵⁵
- The petitioners conclude that since TCK has not reported these costs, Commerce must apply total AFA for the final determination.¹⁵⁶ Such egregious misreporting and attempts to conceal this information warrant the application of total AFA.¹⁵⁷ However, if Commerce decides that total AFA is not warranted, as partial AFA Commerce should increase the total quantity and value of the EG input.¹⁵⁸

B. Ancillary Costs

- The petitioners argue that TCK’s claims that the ancillary costs are finalized later also warrants the application of AFA because this methodology was not reported to Commerce as a cost recording methodology employed during the POI.¹⁵⁹ Commerce cannot rely upon TCK’s reporting for these costs as TCK itself is not able to resolve them and apply them to the appropriate purchase.¹⁶⁰
- The petitioners add that TCK does not have a consistent and reliable methodology for

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See Petitioners’ Cost Case Brief at 6.

¹⁵⁵ *Id.*

¹⁵⁶ See Petitioners’ Cost Case Brief at 7.

¹⁵⁷ *Id.* at 8.

¹⁵⁸ *Id.*

¹⁵⁹ See Petitioners’ Cost Case Brief at 6.

¹⁶⁰ *Id.* at 23.

recording its ancillary costs.¹⁶¹

- The petitioners argue that TCK's explanation of its methodology for accounting for these ancillary costs is entirely inadequate.¹⁶²
- The petitioners allege that even if these ancillary costs had been reported, it seems they have been misreported and allocated without any consistency.¹⁶³ Therefore, TCK's reporting for the last three months of the POI may be missing these costs and the first few months of reporting would have additional costs that do not apply to the POI.¹⁶⁴
- Further, the petitioners allege that two BPI expenses related to the change in volume also went unreported and do not appear in TCK's alleged corrections.¹⁶⁵
- The petitioners believe that TCK's verification revelation of unreported ancillary costs underscores the unreliability of the cost reporting methodology it selected.¹⁶⁶
- The petitioners argue that, in disclosing its minor correction related to affiliated purchases, TCK revealed several additional discrepancies in the supporting documentation provided.¹⁶⁷
- The petitioners assert that TCK admitted it has not reported other BPI charges and fees for purchases of input materials in January 2017, in addition to the other ancillary costs.¹⁶⁸
- The petitioners argue that this discrepancy further calls into question TCK's reporting for its BPI charges and fees associated with raw material input purchases.¹⁶⁹
- The petitioners argue that TCK's failure to report the cost recording methodology of its raw material purchases alone is grounds for the application of AFA.¹⁷⁰
- The petitioners conclude that Commerce does not have the ability to clarify or resolve these significant cost discrepancies and must apply total AFA to TCK's costs of raw material inputs as TCK's corresponding reporting is unreliable.¹⁷¹ However, if Commerce decides that total AFA is not warranted, as partial AFA Commerce should apply the highest recorded charge for the BPI charges and fees on all purchases of raw material for January 2017.¹⁷²

TCK's Comments

- TCK argues that the petitioners' depiction of TCK's reporting demonstrates their misunderstanding of TCK's record keeping system and the nature of the minor correction that TCK presented and Commerce accepted at verification.¹⁷³
- TCK also argues that the petitioners' allegation that TCK provided substantial new

¹⁶¹ *Id.* at 23 (citing to Cost Verification Minor Corrections and CVE 1).

¹⁶² *See* Petitioners' Cost Case Brief at 6.

¹⁶³ *Id.* at 6-7.

¹⁶⁴ *Id.* at 23.

¹⁶⁵ *Id.* at 7 (citing to Cost Verification Minor Corrections and CVE 1).

¹⁶⁶ *Id.* at 7.

¹⁶⁷ *See* Petitioners' Cost Case Brief at 22 (citing to Cost Verification Minor Corrections and CVE 1).

¹⁶⁸ *Id.* at 22.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *See* Petitioners' Cost Case Brief at 23.

¹⁷² *See* Petitioners' Cost Case Brief at 22-23.

¹⁷³ *See* TCK's Cost Rebuttal Brief at 5.

factual information in connection with its minor corrections, and attempted to introduce methodological changes is false.¹⁷⁴ As is the allegation that TCK reported “expected costs” rather than actual costs and “initially recorded volumes” rather than final actual volumes.¹⁷⁵

- TCK contends that, contrary to the petitioners’ charge, there is no methodological flaw in TCK’s reporting or how TCK’s SAP® system records material costs, nor did TCK attempt to change its reporting through its minor correction presentation.¹⁷⁶
- TCK explains that methodology goes to how TCK combined the costs recorded in its system to derive CONNUM weighted-average costs, or identified costs as variable versus fixed. Rather, what is at issue here is simply the mechanism by which SAP® records materials costs, in particular, ancillary (and insignificant) costs that are not finalized immediately.¹⁷⁷
- TCK asserts that an examination of the Cost Verification Report and the accompanying exhibits makes clear that the SAP® system and, TCK’s reported material costs, fully account for all ancillary costs associated with acquiring input materials, including any adjustments required to account for the change in volume.¹⁷⁸
- TCK adds that ancillary costs represent only a small fraction of the total acquisition costs and the vast majority of these costs are recognized in the same month or the month following delivery.¹⁷⁹
- TCK notes that, for example, CVE 13 provides multiple examples showing how the SAP® system records the initial amounts received, initial estimates for freight expenses, adjusting entries that reverse the initial estimated freight expenses and enters the actual amounts, and adjustments to account for the change in volume. Further, these materials demonstrate that the purchase amounts flow into and directly reconcile to the reported costs of materials.¹⁸⁰
- TCK contends that there is no basis to the petitioners’ assertion that three months of materials costs may be missing ancillary costs altogether.¹⁸¹
- TCK argues that the petitioners overstate the nature of the minor correction.¹⁸²
- TCK asserts that all applicable costs were captured in TCK’s cost reporting, but with respect to identifying the purchases for the limited purpose of the affiliated party inputs chart, TCK overlooked a small amount of ancillary costs that had been identified due to this potential time lag.¹⁸³
- TCK argues that the net effect of the error is not that TCK’s overall costs changed, or needed revision, but only pertained to the minor adjustments in the relative percentages

¹⁷⁴ *Id* at 5 (footnote 10).

¹⁷⁵ *Id.*

¹⁷⁶ *See* TCK’s Cost Rebuttal Brief at 6.

¹⁷⁷ *Id.*

¹⁷⁸ *See* TCK’s Cost Rebuttal Brief at 7 and at 23.

¹⁷⁹ *Id* at 23.

¹⁸⁰ *Id* at 7.

¹⁸¹ *Id* at 23.

¹⁸² *See* TCK’s Cost Rebuttal Brief at 7.

¹⁸³ *Id* and at 23.

of inputs sourced from affiliated parties and the comparison charts in the minor correction exhibit confirm this fact.¹⁸⁴

- TCK argues that this was truly a minor correction and the issue did not relate to the accuracy of the overall costs of input materials reflected in the reported CONNUM costs.¹⁸⁵
- TCK concludes that Commerce should disregard the petitioners' claim, because TCK's reported costs fully account for all material costs, and the minor correction at issue was truly minor.¹⁸⁶

Commerce's Position:

The petitioners argument for total AFA begins with a minor correction TCK presented, per the first step in Commerce's verification agenda, which explained that in reporting its affiliated purchases of EG, on the arm's-length comparison worksheet, certain billing adjustments occurring in subsequent months were inadvertently excluded.¹⁸⁷ The billing adjustments were excluded because in reporting the monthly affiliated EG purchases on the arm's-length comparison worksheet TCK relied on purchase data as of January 2017, the last month TCK received EG from Toray International, but the subsequent billing adjustments in question were finalized and recorded to TCK's normal books and records in February 2017.¹⁸⁸ The petitioners' argument however, fails because: 1) the POI weighted average CONNUM-specific per-unit costs were based on the costs from the SAP® system for the full year, which included the billing adjustments, not the individual months, 2) the cost database was reconciled to the normal books and records of TCK, and 3) the material consumption values used to build up the reported CONNUM-specific per-unit costs were tied to an inventory roll-forward that was reconciled to TCK's accounting records.¹⁸⁹ Therefore, the petitioners' argument for total or partial AFA is not supported by TCK's presentation of this minor correction.

Second, the petitioners' argument for total AFA relies on their allegation that TCK's description of how the SAP® system modules record initial purchases, and subsequent physical inventory adjustments, indicates that the SAP® system is inherently unreliable, and that costs reported from it cannot be relied upon. The petitioners assert that because the initial entry only captures part of the purchase, and uses a second entry later to adjust to actual, the system is unreliable. This allegation does not stem from a minor correction, but only from a narrative description by TCK of their SAP® system.¹⁹⁰ The allegation also ignores the fact that it is common for companies to make initial entries at the date of a transaction based on available information and to adjust the quantities and values at a later point as new information becomes available. All accounting systems, including SAP®, provide the ability to adjust entries. The Commerce verifiers tied the reported costs to TCK's financial, cost, and production records.¹⁹¹ For selected transactions, we tested and confirmed that TCK recorded the original estimated costs and

¹⁸⁴ *Id.*

¹⁸⁵ See TCK's Cost Rebuttal Brief at 23.

¹⁸⁶ *Id.* at 7.

¹⁸⁷ See Cost Verification Agenda at 3 and Cost Verification Report at 2.

¹⁸⁸ *Id.* at 2 and CVE 1.

¹⁸⁹ See Cost Verification Report at 8-11 and 13-15.

¹⁹⁰ See CVE 1.

¹⁹¹ See Cost Verification Report at 2, 13-16 and 18-19.

quantities, the subsequent corrected amounts, and all ancillary costs.¹⁹² Therefore, the petitioners' argument for total or partial AFA cannot be supported by the disclosure that TCK's SAP® system allows for initial amounts to be adjusted to actual.

We also find that the petitioners' assertion that TCK has failed to report a significant percentage of its purchase volumes and costs for EG to be without merit, as the 90 percent cited by the petitioners is from a hypothetical example only provided to explain the system, not to document actual transactions.¹⁹³ Testing performed during the cost verification, confirmed that the ancillary costs and physical inventory adjustments were captured in TCK's reported costs.¹⁹⁴ As noted by TCK, CVE 13 provides multiple examples showing how the SAP® system records the initial amounts received, initial estimates for freight expenses, adjusting entries that reverse the initial estimated freight expenses and enters the actual amounts, and adjustments to account for the change in volume. The reported amount on the worksheet as to the percentage EG represents of COM changed by less than a percent and the transfer price to the affiliated party changed by less than a percent.¹⁹⁵ Moreover, the reported consumption quantities and value used for cost reporting in the database did not change.¹⁹⁶ Finally, while the petitioners believe that TCK failed to provide any supporting documentation for EG purchases, the record shows that Commerce tested purchases of EG extensively at verification.¹⁹⁷

Comment 6: Whether Commerce Should Adjust TCK's Reported Unit Costs of Manufacture for the Subject Fine Denier PSF

Background

The petitioners included various related issues under the discussion of this combined comment.¹⁹⁸ Specifically, the petitioners begin with a general comparison of TCK's costs, providing various observations about the data set as a whole, and then focus on various specific aspects of TCK's reporting to make a case that TCK's reported unit costs are not reliable.¹⁹⁹ In the discussion that follows, we have identified the issues as: A) Pattern of Understatement; B) Physical Characteristics; C) SAP® System; D) PET Chips; E) TPA Consumption; and, F) Affiliated PET Chips Purchases. Because much of the information relating to these issues is business proprietary in nature, please refer to the petitioners' and TCK's case and rebuttal briefs.

Comment 6(a): Pattern of Understatement

The Petitioners' Comments

- The petitioners allege that evidence on the record demonstrates that TCK's reported unit

¹⁹² *Id.* at 13-16, 18-19, CVE 13 and CVE 14.

¹⁹³ *See* CVE 1.

¹⁹⁴ *See* Cost Verification Report at 13-16, 18-19, CVE 13 and CVE 14.

¹⁹⁵ *See* CVE 1.

¹⁹⁶ *See* Cost Verification Report at 2, 13-16, 18-19 and CVE 1.

¹⁹⁷ *Id.* at 13-16, 18-19, CVE 13 and CVE 14.

¹⁹⁸ *See* Petitioners' Cost Case Brief at 3-8 (Issue I – TCK Has Failed to Report and Reconcile a Portion of its Costs for Monoethylene Glycol) and at 22-23 (Issue V – Unreported Charges).

¹⁹⁹ *Id.* at 8-19.

TOTCOM for the subject fine denier PSF is not reliable.²⁰⁰

- The petitioners argue that an analysis of TCK's reported costs reveals a consistent pattern of understating the cost for the subject fine denier PSF sold in the United States (U.S.), which contributed to the *de minimis* margin in the *Preliminary Determination*.²⁰¹
- The petitioners allege that there is insufficient information on the record for Commerce to make adjustments specific to each of the affected CONNUMs, due to the absence of a meaningful product costing system that relates physical characteristics to particular input materials (e.g., qualified terephthalic acid (QTA), terephthalic acid (TPA), PET chips from TCK's affiliate Toray Advanced Materials Korea (TAK)).²⁰²
- The petitioners conclude that this issue (discussed in more detail in sections that follow) warrants the application of total AFA for the final determination.²⁰³ However, if Commerce decides that total AFA is not warranted, Commerce must make appropriate adjustments to mitigate the highly distortive impact of the understated costs submitted by TCK.²⁰⁴
- The petitioners believe that Commerce should apply the highest non-aberrational unit TOTCOM to all CONNUMs except those for which TCK reported a higher unit TOTCOM.²⁰⁵ Commerce should also adjust TCK's reported TOTCOMs to account for the underreporting of TPA consumption.²⁰⁶

TCK's Comments

- TCK explains that the petitioners begin with a general analysis, providing various observations about the data set as a whole, and then focus on various specific aspects of TCK's reporting in an effort to challenge TCK's reported unit costs. However, the petitioners' analysis fails on all levels.²⁰⁷
- TCK notes that the petitioners have had access to TCK's reported cost data since September of last year, some six months.²⁰⁸
- TCK also notes that while the petitioners submitted extensive comments on TCK's Section B and C Responses, the petitioners prior to their case briefs had nothing to say about any aspect of TCK's cost reporting.²⁰⁹
- TCK asserts that the petitioners' sole analysis with respect to TCK's cost reporting to date simply attempted to advance their claim that TCK's sales were made pursuant to long-term contracts.²¹⁰
- TCK contends that if the petitioners had such grave concerns that the data revealed trends that were "physically impossible," the petitioners would have raised such concerns long

²⁰⁰ See Petitioners' Cost Case Brief at 8.

²⁰¹ *Id.*

²⁰² See Petitioners' Cost Case Brief at 18.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ See Petitioners' Cost Case Brief at 18 and Attachment 2.

²⁰⁶ *Id.* at 18-19 (citing to Section D at Exhibit D-3, Supplemental D at Exhibit SD-7, and Attachment 3).

²⁰⁷ See TCK's Cost Rebuttal Brief at 7.

²⁰⁸ *Id.* at 8.

²⁰⁹ See TCK's Cost Rebuttal Brief at 8-9 (citing to Letters from Petitioners "Comments on Section B" (October 4, 2017) and "Comments on Section C" (October 5, 2017)).

²¹⁰ *Id.* at 9 (citing to Letter from Petitioners "Comments on Supplemental D" (November 29, 2017)).

ago.²¹¹

- TCK argues there is no basis to adjust its reported costs for the various deficiencies alleged by the petitioners.²¹²
- TCK also argues there is absolutely no cause for Commerce to apply total AFA.²¹³
- TCK maintains that it cooperated to the best of its ability from the questionnaire response stage through Commerce’s verifications.²¹⁴
- TCK notes that Commerce thoroughly reviewed and fully verified TCK’s reported costs without any issue.²¹⁵
- TCK argues that, as to partial AFA, as discussed at each point below, the petitioners’ arguments are unfounded and unsupported in the record.²¹⁶
- TCK adds that the petitioners’ arguments are based on a fundamental misrepresentation of TCK’s reporting methodology and reported costs.²¹⁷
- TCK concludes that Commerce must reject the petitioners’ request for total or partial AFA.²¹⁸

Commerce’s Position:

We disagree with the petitioners that there is a pattern of understatement of TCK’s reported costs. The petitioners ranked the CONNUMs from the cost file and alleged their analysis showed that the CONNUMs sold in the U.S. ranked at the low end of the CONNUM spectrum. We agree with TCK that contrary to what the petitioners allege, the ranking of the five U.S. CONNUMs’ costs is roughly in the middle of the range, and not predominantly at the “lower end.”²¹⁹ Further, we agree with TCK that a simple ranking does not take into account all other factors (*e.g.*, the physical characteristics of the products).

The petitioners’ argument is based on various related issues which they claim demonstrate that TCK’s reported unit costs consistently understate the cost for the subject fine denier PSF sold in the U.S. and are thus unreliable. We found no evidence, however, during the cost verification or on the record of this investigation, to support the petitioners’ allegations that TCK’s reported unit costs consistently understate the cost for the subject fine denier PSF sold in the U.S. and are thus not reliable. Therefore, we have concluded that total or partial AFA is not warranted in this instance.

Comment 6(b): Physical Characteristics

The Petitioners’ Comments

²¹¹ See TCK’s Cost Rebuttal Brief at 9.

²¹² *Id.* at 16.

²¹³ *Id.* at 17 (citing to Section 776(b) of the Act; SAA, H.R. Doc. No. 103-316 at 656, 869 (1994), reprinted in 1994 U.S.C.C.A.N. 3773; *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003); and, *Shantou Red Garden Foodstuff Co., Ltd. v. United States*, 815 F. Supp. 2d 1311, 1319 (Ct. Int’l Trade 2012)).

²¹⁴ See TCK’s Cost Rebuttal Brief at 18.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ See Petitioners’ Cost Case Brief at Attachment 2.

- The petitioners allege that CONNUMs with a significant amount of U.S. sales had lower per unit TOTCOMs than those with very few or no U.S. sales, despite the physical characteristics.²²⁰ The petitioners compare the TOTCOMs of four sets of CONNUMs with similar characteristics to support this allegation.²²¹
- The petitioners compare a set of CONNUMs with a difference in TOTCOM, but only differ in color.²²² The petitioners assert that black fibers are more expensive than colored fibers, and both black and colored fibers are generally more expensive, and able to command a price premium, over white fibers.²²³ The petitioners add that Gildan Yarns, an importer, argued at the International Trade Commission (ITC) that black fine denier fiber should be a separate like product because it was “approximately 30 percent more expensive than other fine denier PSF” due to the black pigment.²²⁴
- The petitioners compare another set of CONNUMs with a difference in TOTCOM, but only differ in denier range.²²⁵ The petitioners assert that there is virtually no cost difference for products with differing deniers (or thicknesses).²²⁶
- The petitioners also compare a set of CONNUMs with a difference in TOTCOM, but only differ in fiber loft and cross section²²⁷ and another set that only differs in finish type.²²⁸
- The petitioners also sorted the CONNUM-specific TOTCOMs TCK reported for the fine denier PSF and allege that the CONNUMs that included U.S. sales were all located at the low end of the total CONNUM spectrum.²²⁹
- The petitioners allege that the dramatic differences in reported unit costs are a result of TCK’s deliberate cost reporting system.²³⁰
- The petitioners conclude that this issue, in conjunction with the issues discussed at Comment 5 above, warrant the application of total AFA for the final determination.²³¹ If Commerce decides that total AFA is not warranted, as partial AFA Commerce should adjust TCK’s distortive TOTCOM amounts to offset the company’s understated unit costs for U.S. sales.²³²

TCK’s Comments

²²⁰ See Petitioners’ Cost Case Brief at 8. We assumed this is what the petitioners intended to say with “Specifically, the unit TOTCOM for CONNUMs within which TCK had a significant amount of U.S. sales that invariably lower the unit TOTCOM for CONNUMs within which TCK had very few or no U.S. sales, despite that the differences in physical characteristics.”

²²¹ See Petitioners’ Cost Case Brief at 8-10.

²²² *Id.* at 9.

²²³ *Id.* at 9 (citing to Petitioners’ Product Matching Comments (July 14, 2017) at 5).

²²⁴ *Id.* at 9 (citing to *Fine Denier Polyester Staple Fiber from China, India, Korea and Taiwan*, U.S. ITC Pub. 4709 (July 2017) (Preliminary), at 9 (submitted by letter dated October 25, 2017).

²²⁵ *Id.* at 9.

²²⁶ See Petitioners’ Cost Case Brief at 10.

²²⁷ *Id.* at 8.

²²⁸ *Id.* at 9.

²²⁹ *Id.* at 10 and Attachment 2.

²³⁰ See Petitioners’ Cost Case Brief at 11.

²³¹ *Id.*

²³² *Id.*

- TCK argues that the petitioners point to no record evidence to support their claim that the unit cost comparisons it has identified are “unexpected” or evidence of distortions in the reported costs.²³³
- TCK alleges that the petitioners merely point to unsupported generalized claims with respect to one comparison, and provide no support at all for the remaining comparisons.²³⁴
- TCK notes that in the difference in color product comparison, the petitioners simply point to a statement by an importer urging the ITC to treat black products as a separate like product in the companion ITC Preliminary Injury Investigation, but does not provide data, studies, or anything that would show how this claim is supported by facts.²³⁵
- TCK argues that this lone statement made by an importer, not a manufacturer, concerning prices in a separate proceeding cannot override the verified record concerning TCK’s costs.²³⁶ TCK notes that unsupported statements made by third parties in advocating a particular outcome, in a completely different proceeding, at a completely different agency, cannot stand as substantial evidence to support the petitioners’ claim.²³⁷
- TCK contends that the petitioners disregard that, since November 2017, the record has contained a detailed workup explaining the cost differences for the two CONNUMs that differed only in the color characteristic.²³⁸
- TCK notes that in their comments on the difference in fiber loft and cross section product comparison, the petitioners again cite no support for their position.²³⁹
- TCK notes that in their comments on the difference in denier product comparison, the petitioners contradict their own prior statement in their model match comments that “denier measurement plays an important role in the price and cost of the product.” Therefore, the petitioners’ claim that there are no real cost differences associated with differences in denier is simply disingenuous.²⁴⁰
- TCK argues that the petitioners’ complaint that the U.S. CONNUMs are at the “lower end” of the reported costs or that the TOTCOMs for non-U.S. CONNUMs ranged up to much higher unit costs is equally flawed, because the ranking of the five US CONNUMs’ costs is squarely in the middle of the range, and not predominantly at the “lower end.”²⁴¹
- TCK notes that the petitioners’ simply rank unit costs without taking into account production quantities, supply factors, all of the physical characteristics of the product, and other factors which impact the cost of production.²⁴²
- TCK asserts that the two CONNUMs that have lower TOTCOMs than the lowest U.S. CONNUM cost account for a larger percent of the total production of all CONNUMs in

²³³ See TCK’s Cost Rebuttal Brief at 9.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.* at 9 (citing to 19 U.S.C. § 1516a(b)(1)(B)(i); *Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1114, 1117, (CIT 1989), *aff’d*, 901 F.2d 1089 (Fed. Cir.1990) (“Speculation is not support for a finding....”).

²³⁸ *Id.* at 9-10 (citing to Supplemental D at Exhibit SD-35).

²³⁹ See TCK’s Cost Rebuttal Brief at 10.

²⁴⁰ *Id.* (citing to Petitioners’ Model Match Comments dated July 14, 2017 at 5).

²⁴¹ *Id.*

²⁴² *Id.*

the POI, while the CONNUM TOTCOMs that are higher than the highest U.S. CONNUM cost account for only a small portion.²⁴³

- TCK also asserts that the CONNUM with the highest TOTCOM accounted for only 0.12 percent of the total production, and this TOTCOM is higher than the next most costly CONNUM. A CONNUM of such small quantity says nothing as to the overall accuracy of TCK's cost reporting as a whole, which Commerce fully and successfully verified.²⁴⁴ TCK notes that the petitioners also considered the cost of this CONNUM aberrational and not indicative of TCK's overall costs.²⁴⁵
- TCK contends that simply ranking the unit costs as the petitioners have done does not support the petitioners' claim that Commerce must reject TCK's reported costs and apply total AFA.²⁴⁶
- TCK adds that Commerce is familiar with the concept that unit costs are not necessarily in lockstep with the product characteristics. Commerce thoroughly tested and verified the accuracy of TCK's reported costs, including one of the products included in the comparisons.²⁴⁷
- TCK concludes that Commerce must disregard the petitioners' baseless claims, because the petitioners simply want Commerce to ignore its extensive verification process and to insert the petitioners' speculation in place of the verified data.²⁴⁸

Commerce's Position:

The petitioners allege that CONNUMs with a significant amount of US sales had lower per unit TOTCOMs than those with very few or no U.S. sales, despite the physical characteristics. To support this allegation, the petitioners compare the TOTCOMs of four sets of CONNUMs with similar characteristics.²⁴⁹

For the first comparison, the petitioners assert that black fibers are more expensive than colored fibers, and both black and colored fibers are generally more expensive, and able to command a price premium, over white fibers. However, as noted by TCK, the petitioners do not provide data, studies, or other information that would demonstrate how this claim is supported by facts. In support, the petitioners point only to a statement by an importer urging the ITC to treat black products as a separate like product in the companion ITC Preliminary Injury Investigation. Further, the petitioners do not address the fact that in its Supplemental D, TCK provided details explaining the cost differences for these two CONNUMs.²⁵⁰ For the remaining comparisons, as noted by TCK, the petitioners again cite no support for their conclusions.

As noted, the petitioners also ranked the CONNUM-specific TOTCOMs from the cost file and allege that the CONNUMs that included U.S. sales were all located at the low end of the total CONNUM spectrum. TCK contends that simply ranking the unit costs as the petitioners have

²⁴³ *Id.*

²⁴⁴ *See* TCK's Cost Rebuttal Brief at 11.

²⁴⁵ *Id.* at 11 (footnotes 23 and 24 citing to Petitioners' Case Brief at 18).

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ We note that these comparisons were not provided by the petitioners until well after the verification.

²⁵⁰ *See* Supplemental D at Exhibit SD-35.

done does not support the petitioners' claim that Commerce must reject TCK's reported costs and apply total AFA, we agree. The Cost Verification Report documents that the verifiers obtained and reviewed the cost buildup worksheets for each selected CONNUM, and traced the values and quantities for each element in the calculation of the reported costs to source records from TCK's financial and cost accounting systems, in some instances including source documents from outside parties.²⁵¹

We disagree with the petitioners' allegation that the differences in the reported unit costs are a result of TCK's manipulation of its "deliberate" cost reporting system. Contrary to the petitioners' allegation, although there are instances of cost differences unrelated to the physical characteristics within the product costs, they occur because of the source of the input,²⁵² and not because of TCK's cost reporting system. See the discussion addressing this issue below.

Comment 6(c): SAP® System

The Petitioners' Comments

- The petitioners argue that TCK relied on a meaningless product costing system to calculate the CONNUM-specific costs reported to Commerce.²⁵³ Specifically, except for the first digit, TCK's product codes are consecutively numbered and do not contain information with respect to the physical characteristics of the product.²⁵⁴
- The petitioners allege that TCK's non-descriptive and meaningless product codes provided TCK the ability to assign CONNUMs and unit TOTCOMs for each CONNUM based on the material master report which TCK can control and manipulate.²⁵⁵
- The petitioners argue that TCK uses SAP® as their enterprise reporting program (ERP) system which implies that their ERP system is paperless; generates reports from the cost accounting system as needed; and, calculates actual costs at the end of each month.²⁵⁶
- The petitioners allege that TCK's monthly replacement of the "standard" costs, tracking and allocating production costs using a non-descriptive product coding system, as well as the "paperless" and "as-needed" cost recording system, individually and collectively, contribute to TCK's ability to distort unit TOTCOM for the CONNUMs under which it reported its US sales.²⁵⁷

TCK's Comments

- TCK explains that following Commerce's standard reporting requirements, TCK grouped all product codes by CONNUM to report the weight-averaged CONNUM costs, which include the costs of all product codes within each CONNUM.²⁵⁸
- TCK argues that the fact that TCK's product codes, as maintained in the company's

²⁵¹ See Cost Verification Report at 3 and 11-22.

²⁵² *Id.* at 13-15.

²⁵³ See Petitioners' Cost Case Brief at 11.

²⁵⁴ *Id.* at 11 (citing to Cost Verification Report at 5 and Section D at 5).

²⁵⁵ See Petitioners' Cost Case Brief at 12.

²⁵⁶ *Id.* (citing to Section D at 13-15).

²⁵⁷ *Id.*

²⁵⁸ *Id.*

normal books and records, do not satisfy the petitioners does not change the fact that TCK's reported CONNUM costs are correct and accurate.²⁵⁹

- TCK notes that beyond the first digit, its product codes are simply consecutively numbered, with no specific meaning associated with any of the following digits.²⁶⁰ However, this does not make TCK's product codes unusable or prone to manipulation.²⁶¹
- TCK explains that because the elements of its product code do not provide enough information alone to group products by CONNUM, TCK had to look to further details in its accounting system and production records to identify the physical characteristics of the product codes that comprised each CONNUM.²⁶²
- TCK adds that, regardless of what the petitioners claim, there is nothing unusual or nefarious about this, nor could TCK simply assign CONNUMs and report the resulting unit costs however it chose.²⁶³
- TCK asserts that Commerce subjected its CONNUM assignment to exacting testing and review not only in the cost verification but also the sales verification.²⁶⁴ Commerce reviewed TCK's assignment of the relevant product characteristics for every single fine denier product code included in the sample CONNUMs selected for detailed review, and also confirmed that product codes not included in the CONNUM costs were appropriately excluded.²⁶⁵
- TCK notes that Commerce verified its CONNUM build ups and CONNUM reporting without issue and alleges that the petitioners are seeking to create issues where none exist.²⁶⁶

Commerce's Position:

The petitioners alleged that TCK's monthly replacement of the "standard" costs, tracking and allocating production costs using a non-descriptive product coding system, as well as the "paperless" and "as-needed" cost recording system provided TCK the ability to assign CONNUMs and unit costs for each product based on the "material master" reports which TCK can control and manipulate.²⁶⁷ The petitioners assert that these items individually and collectively, contribute to TCK's ability to distort unit costs reported for US sales.

First, we found no evidence to support the petitioners' allegation that TCK methodically manipulated the costs reported to Commerce. While not drawing conclusions, Commerce's Cost

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 12-13.

²⁶⁶ See TCK's Cost Rebuttal Brief at 13.

²⁶⁷ See Cost Verification Report at 8 (the "material master" report, generated from the SAP® system, defines the specifications of individual products. The report shows the characteristics that differ from the basic standard (*i.e.*, regular, single composition, solid, round, semi-dull, white, non-silicone, 100 percent virgin raw materials). For example, the material master will specify whether a product's cross section is hollow instead of solid, the shape is penta-lobal instead of round, or the color is other than white.)

Verification Report establishes that the verifiers were able to tie the reported information back to TCK's books and records. The report documents that the verifiers obtained and reviewed the cost buildup worksheets for each selected CONNUM, and traced the values and quantities for each element in the calculation of the reported costs to source records from TCK's financial and cost accounting systems, in some instances including source documents from outside parties.²⁶⁸ The verification report also details how fine denier PSF costs were reconciled, along with merchandise not under consideration, back to the financial statements of the company.

Second, Commerce is directed to calculate costs "based upon the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country... and reasonably reflect the costs associated with the production and sale of the merchandise."²⁶⁹ Commerce cannot justify an AFA decision on the mere fact that a respondent uses as its accounting system an integrated electronic ERP such as SAP®.

TCK notes that the non-descriptive nature of its product codes does not render them unusable or prone to manipulation, and we agree. Although TCK's product codes are simply consecutively numbered after the first digit, the individual products are defined by each product code. As discussed in the Cost Verification Report, to assign its product codes to the CONNUMs, TCK analyzed the product characteristics of each product using the material master report, generated from the SAP® system, which defines the specifications of individual products.²⁷⁰ The fact that the SAP® system is "paperless" and reports can be created on an "as-needed" basis, is not in itself proof that TCK in fact manipulated the unit TOTCOMs. Commerce verifiers are aware of this potential and, therefore, trace the reported information to the audited financial statements and underlying internal and external supporting documentation.

TCK relied on its normal books and records to assign its product codes to each CONNUM and, as discussed in the Cost Verification Report, we reviewed TCK's production data and confirmed that the selected products had been appropriately classified or appropriately excluded in TCK's questionnaire response.²⁷¹ Therefore, we have determined that TCK's methodology for assigning the product codes to the CONNUMs is acceptable and not distortive.

Comment 6(d): PET Chips

The Petitioners' Comments

- The petitioners argue that TCK improperly began its cost buildup for CONNUM-specific costs using the semi-finished PET chips.²⁷²
- The petitioners allege that TCK's derived CONNUM-specific costs for the polymerization stage are not actual costs as recorded in TCK's normal SAP® system.²⁷³

²⁶⁸ See Cost Verification Report at 3 and 11-22.

²⁶⁹ See Section 773(f)(1)(A) of the Act.

²⁷⁰ See Cost Verification Report at 5.

²⁷¹ *Id* at 11-12.

²⁷² See Petitioners' Cost Case Brief at 12.

²⁷³ *Id* at 13.

TCK calculated these costs based on the “cost report” for the semi-finished PET chips, which was retrieved on an “as needed” basis when preparing the company’s cost response.²⁷⁴

- The petitioners state that according to TCK, to derive the materials cost on a CONNUM-specific basis for each of the constituent process elements, TCK has calculated the relevant constituent percentages of the costs incurred at the polymerization stages attributable to direct materials, labor and overhead, and has applied these percentages to the total cost for the polymer.²⁷⁵
- The petitioners argue that due to the tight verification schedule, Commerce verifiers could not examine voluminous “cost reports” to verify “the relevant constituent percentages” for “each of the constituent process elements.”²⁷⁶
- The petitioners allege that TCK appears to have manipulated its SAP® system and its records when preparing polymerization stage costs as reported in the cost database.²⁷⁷
- The petitioners argue that because PET chips are used for various applications, such as packaging, textiles, and films, there is a risk that costs assigned to the PET chips used to produce the subject fine denier PSF, as opposed to those PET chips for non-subject applications, also affects the accuracy of TCK’s reported costs.²⁷⁸
- The petitioners also argue that TCK’s incorrect starting point for cost buildups, combined with TCK’s non-descriptive and essentially meaningless product coding system is particularly distortive, as made manifest by the consistently low unit cost TCK calculated for the products classified within the CONNUMs affecting the U.S. sales, and the inversion of common-sense, industry-wide propositions, such as that black fiber always costs more than white fiber.²⁷⁹
- The petitioners conclude that this enabled TCK to withhold from the record information with respect to the products’ physical characteristics by which it maintains production costs in the normal course of business.²⁸⁰

TCK’s Comments

- TCK asserts that it appropriately accounted for all elements of the cost of production, including the cost of semi-finished PET chips.²⁸¹
- TCK argues that the petitioners’ argument is not based on record facts, but instead misrepresentations or misunderstandings of TCK’s reporting methodology.²⁸²
- TCK alleges that the very portions of the cost report that the petitioners cite make clear that the petitioners have no basis for their argument in the record.²⁸³
- TCK asserts that, as confirmed in the Cost Verification Report, TCK relied on the

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 14 (citing to Section D at 20).

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.* at 14-15 (citing to Supplemental D at 3).

²⁷⁹ *Id.* at 15.

²⁸⁰ *See* Petitioners’ Cost Case Brief at 15.

²⁸¹ *See* TCK’s Cost Rebuttal Brief at 13.

²⁸² *Id.*

²⁸³ *Id.*

finished product costs as calculated in its normal accounting records.²⁸⁴

- TCK explains that, in TCK's normal books and records, both self-produced and purchased PET chips are recognized and treated as a raw material input.²⁸⁵ As is common in every process based cost accounting system, the cost of the actual input materials (QTA, EG, TPA, etc.) along with the conversion costs incurred in manufacturing PET chips (labor and overhead) are simply combined into a single amount.²⁸⁶
- TCK also explains that to meet Commerce's reporting format and requirements, it simply utilized the semi-finished product cost report for purposes of calculating constituent ratios to segregate the value of the semi-finished product contained in each finished product into the constituent raw materials, labor, and overhead.²⁸⁷

Commerce's Position:

We disagree with the petitioners regarding TCK's reporting of its PET chips costs. As discussed in the Cost Verification Report, the raw material used by TCK in the production of merchandise under consideration (MUC) is PET chips, which TCK either purchases or produces in-house.²⁸⁸ TCK captures the total costs incurred during the polymerization stage as the material cost for the PSF production stage (*i.e.*, the cost of PET chips produced by TCK is recorded as semi-finished product). As such, the value of the polymer transferred to the PSF stage includes the cumulated value of all materials, labor and overhead. Company officials explained that TCK can identify the PET chips used in the production of specific PSF products. To derive the materials costs on a CONNUM-specific basis, TCK calculated the portion of total costs at the polymer stage attributable to materials costs and reported them under the polymerization production stage costs.²⁸⁹ TCK relied on its normal books and records to report the cost of the PET chips produced in-house and, as discussed in the Cost Verification Report, the reported costs reflect the actual materials cost from the SAP® system assigned to each specific product included in each CONNUM reported.²⁹⁰ Therefore, we have determined that TCK's methodology for reporting the cost of the PET chips produced in-house is acceptable and not distortive.

Comment 6(e): TPA Consumption

The Petitioners' Comments

- The petitioners note that TCK reported that PET chips are synthetic polymers made of TPA and EG.²⁹¹ However, record evidence shows that TCK also uses a third major input, QTA in the production of PET chips.²⁹²

²⁸⁴ See TCK's Cost Rebuttal Brief at 13-14 (citing to Cost Verification Report at 6 and 13).

²⁸⁵ *Id.* at 14 (citing to Cost Verification Report at 6 and 13).

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 14 (citing to Cost Verification Report at 6 and 7).

²⁸⁸ See Cost Verification Report at 13.

²⁸⁹ *Id.*

²⁹⁰ See Cost Verification Report at 15.

²⁹¹ See Petitioners' Cost Case Brief at 14 (citing to Supplemental D at 3).

²⁹² *Id.* at 14 and 16 (citing to Section D at Exhibit D-3).

- The petitioners allege that the selective reporting of TPA and QTA consumption in the production of individual PET chips will affect the accuracy of the CONNUM-specific fine denier PSF.²⁹³
- The petitioners also allege that the underreporting of TPA consumption will similarly affect the accuracy of the CONNUM-specific unit TOTCOM for the subject fine denier PSF.²⁹⁴
- The petitioners note that TCK provided a worksheet to show how it determined the cost for a PET chip (consisting of both purchased and self-produced PET chips).²⁹⁵ The product code, other than indicating it is for a semi-finished product, provides no meaningful information as to the physical characteristics of the PET chip or the finished fine denier PSF.²⁹⁶
- The petitioners add that Exhibit SD-7 also demonstrates that TCK underreported the consumption quantity of TPA in the production of the subject fine denier PSF because this exhibit and Exhibit D-3 show different TPA consumption amounts.²⁹⁷
- The petitioners assume that the underreporting of TPA consumption predominantly affects the CONNUMs under which TCK reported U.S. sales.²⁹⁸
- The petitioners assert that it is difficult to estimate the degree of the understatement of the unit TOTCOM, due to the absence of necessary information (*e.g.*, a meaningful product code system) on the record.²⁹⁹

TCK's Comments

- TCK argues that the petitioners make much of the difference in the total TPA consumption for production reported in TCK's Exhibit D-3 versus TCK's Exhibit SD-7, claiming that this is additional evidence that TCK underreported TPA costs.³⁰⁰
- TCK notes that the petitioners are pointing to a schedule provided at the bottom of exhibit SD-7 that was intended to recap total POI consumption of EG, QTA, and TPA for all products, not just fine denier PSF.³⁰¹ Specifically, the first schedule at the top of the exhibit identifies the quantities consumed of EG, QTA, and TPA for each of the PET chips used in producing fine denier PSF; provides subtotals for each related to PET chips produced for subject merchandise; provides a total for PET chips used in producing non-fine denier products; and, finally, a grand total.³⁰²
- TCK also notes that a review of the exhibit makes clear that the amount reported in the particular cell identified by the petitioners has an erroneous cell reference.³⁰³ The grand totals reported in the first schedule are identical to the totals reported in Exhibit D-3 and,

²⁹³ See Petitioners' Cost Case Brief at 14, 16 and Attachment 3 (shows the POI average unit values for TPA and QTA).

²⁹⁴ *Id.* at 16.

²⁹⁵ *Id.* at 16 (citing to Supplemental D at Exhibit SD-7).

²⁹⁶ *Id.* at 16 (citing to Supplemental D at Exhibit SD-7 and Cost Verification Report at 5).

²⁹⁷ See Petitioners' Cost Case Brief at 17 (citing to Supplemental D at Exhibit SD-7).

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ See TCK's Cost Rebuttal Brief at 14.

³⁰¹ *Id.*

³⁰² See TCK's Cost Rebuttal Brief at 14-15.

³⁰³ *Id.* at 14.

in the case of EG and QTA, the grand totals were carried correctly to the schedule at the bottom of the exhibit.³⁰⁴ However, for TPA, the amount reported in the bottom schedule corresponds to the line item “for others” immediately above the grand total in the first schedule.³⁰⁵

- TCK asserts that this clerical error is of no consequence, because the constituent percentages calculated for fine denier PSF and applied to the semi-finished inputs in reporting the CONNUM costs were derived solely from the PET chips used for fine denier PSF production, not from total production.³⁰⁶
- TCK maintains that Commerce repeatedly tested and confirmed that the finished product costs were those calculated in the company’s normal accounting records and that the segregation of the semi-finished PET chip inputs into EG, TPA, QTA, etc., was reasonable.³⁰⁷

Commerce’s Position:

We agree with the petitioners that the selective use of QTA and TPA and the use of self-produced and purchased PET chips, can create cost differences unrelated to the physical characteristics the products. Commerce verified, TCK’s reported costs were taken directly from their normal cost accounting systems which record the actual costs incurred to manufacture each fine denier PSF product. However, notwithstanding the fact that costs were reported in accordance with its normal books and records, because these inputs are interchangeable, we agree with the petitioners that we must use costs that only reflect differences in costs between products.

At the outset of this case, Commerce identified the physical characteristics that are the most significant in differentiating the costs between products (*i.e.*, fiber loft, specialty fiber, fiber type, cross section, shape, luster, color, denier range, and finish type). These are the physical characteristics that define unique products (*i.e.*, the CONNUMs, for sales comparison purposes). The level of detail within each physical characteristic (*e.g.*, the multiple different grades or sizes of a product) reflects the importance Commerce places on comparing the most similar products in a price-to-price comparison. A respondent’s reported costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test, constructed value (CV), and DIFMER adjustment accurately reflect the precise physical characteristics of the products whose sales prices are used in Commerce’s dumping calculations.³⁰⁸

In the instant case, the selective reporting of TPA and QTA consumption in the production of individual PET chips, in combination with the interchangeable use of self-produced and purchased PET chips, will affect the accuracy of the CONNUM-specific costs. To mitigate these distortive effects, for the final determination, we have revised TCK’s reported per-unit costs by weight-averaging direct material costs, except for those products where the direct material used

³⁰⁴ *Id.* at 15.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ See Sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act.

relates to the physical characteristics of the product.³⁰⁹ This ensures that the product-specific costs we use for the sales-below-cost test, CV, and the DIFMER adjustment accurately reflect the physical characteristics of the products whose sales prices are used in Commerce's dumping calculations.

Further, we agree with TCK that the petitioners' allegation of underreported TPA consumption costs was based on a misunderstanding of the record. As discussed in the Cost Verification Report, we obtained TCK's EG, QTA and TPA inventory movement schedules and traced consumption quantities and values to the SAP system and found no evidence of underreporting of the TPA input.³¹⁰

Comment 6(f): Affiliated PET Chips Purchases

Petitioners' Comments

- The petitioners also note that TCK reported that it purchased some PET chips from its affiliate TAK during the POI.³¹¹
- The petitioners allege that TCK asserts that its purchases of PET chips from TAK were at arm's-length transaction prices, but did not provide evidence to support this assertion.³¹²
- The petitioners argue that the non-arm's length prices for the PET chips also affected the accuracy of TCK's reported costs as well.³¹³
- The petitioners assert that the record lacks any information as to whether the affiliated purchase prices of PET chips were at arm's length.³¹⁴
- The petitioners argue that Commerce has no information at this late stage of the investigation to determine the distortion due to TCK's use of the PET chips purchased from TAK.³¹⁵

TCK's Comments

- TCK argues that the unit TOTCOMs for the reported CONNUMs are not distorted due to the consumption of PET chips purchased from an affiliate.³¹⁶
- TCK notes that, once again, the petitioners' math is designed to confuse the issue, while a basic review of TCK's submissions establishes that TCK's reporting was correct.³¹⁷
- TCK explains that the PET chip in question was an input that TCK both manufactured in-house and purchased from outside suppliers. Exhibit SD-7 makes clear that consumption of this PET chip accounted for only a tiny fraction of total PET chip costs for fine denier PSF products.³¹⁸

³⁰⁹ See TCK's Final Cost Calculation Memo at Adjustment 1.

³¹⁰ See Cost Verification Report at 13-15.

³¹¹ See Petitioners' Cost Case Brief at 15 (citing to Section D at 9).

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.* at 17.

³¹⁵ *Id.* at 17-18 (citing to Cost Verification Report at 5) and footnote 38.

³¹⁶ See TCK's Cost Rebuttal Brief at 15.

³¹⁷ *Id.* at 16.

³¹⁸ *Id.* at 16 (footnote 41).

- TCK maintains that the petitioners completely disregard the fact that TCK identified and reported the purchase of this input from an affiliated party supplier in its initial response and confirmed that the prices were at arm's length in the supplemental response.³¹⁹
- TCK argues that there can be no “distortions” in the reported costs due to the purchases of this input from an affiliated supplier, because these inputs accounted for only a small percentage of the total cost of manufacturing.³²⁰

Commerce's Position:

We disagree with the petitioners that the record lacks information to determine a possible distortion due to TCK's use of the PET chips purchased from TAK. TCK provided information related to its purchases of PET chips from TAK in both the Section D and Supplemental D questionnaire responses.³²¹ TCK asserts that the PET chips purchased from TAK only account for a small percentage of the COM of fine denier PSF and we agree. We have compared the market price to the transfer price in accordance with the transactions disregarded rule.³²² We found that the average market price exceeds the reported transfer price.³²³ Therefore, for the final determination, we have adjusted TCK's reported COM for the CONNUMs using these PET chips for the difference between the transfer price and the market price of PET chips purchased from TAK.³²⁴

Comment 7: Whether Commerce Should Adjust the Affiliated Trading Company's SG&A Expense Rate Calculation

The Petitioners' Comments

- The petitioners argue that Commerce should adjust the numerator of Toray International's SG&A expense rate calculation in accordance with the recommendations listed in the Cost Verification Report.³²⁵
- The petitioners argue that TCK's removal of packing expenses from the COM in the revised worksheet presented on the first day of the cost verification was not a minor correction. According to the petitioners, Commerce made multiple requests that TCK exclude packing costs from COM, but TCK chose not to cooperate. Consequently, Commerce should apply partial AFA.³²⁶
- If Commerce decides that partial AFA is not warranted, the petitioners request that the SG&A and profit rate calculations rely on the revised, lower denominator which exclude packing costs.³²⁷

³¹⁹ See Section D at Exhibit D-4 and Supplemental D at 11 and Exhibit SD-11.

³²⁰ See TCK's Cost Rebuttal Brief at 16 (citing to Supplemental D at 11 and Exhibit SD-11).

³²¹ *Id* at 16 (citing to Section D at Exhibit D-4 and Supplemental D at 11 and Exhibit SD-11).

³²² See Section 773(f)(2) of the Act and Cost Verification Report at 18.

³²³ See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Toray Chemical Korea Inc.,” dated May 23, 2018 (TCK's Final Cost Calculation Memo) at Adjustment 3.

³²⁴ See TCK's Final Cost Calculation Memo at Adjustment 3.

³²⁵ See Petitioners' Cost Case Brief at 19-20.

³²⁶ *Id* at 20-21.

³²⁷ *Id* at 21.

TCK's Comments

- With regard to the removal of packing expenses from the COM in the revised worksheet, TCK argues that the petitioners have confused TCK's own reporting with that of its affiliated supplier, Toray International. The minor correction is actually an adjustment to the informational worksheet that calculates what percentage the EG input represents of TCK's total COM and is not an adjustment to TCK's reported costs.³²⁸
- According to TCK, the record clearly demonstrates that the COMs submitted prior to the cost verification are exclusive of packing costs. Thus, there is no basis to apply partial AFA for a failure to remove packing costs from COM.³²⁹
- TCK contends that the revised Toray International SG&A expense rate proposed by Commerce should be adjusted to exclude the storage, domestic transportation, insurance, and consignment expenses that are already reflected in the cost of acquiring the raw materials.³³⁰

Commerce's Position:

We agree with the petitioners that the numerator to Toray International's SG&A expense rate calculation needs to be adjusted. As discussed in the Cost Verification Report, during the POI, TCK purchased EG from its affiliated trading company, Toray International.³³¹ Toray International's total cost for EG, includes the price Toray International paid to unaffiliated suppliers plus an amount for SG&A expense to account for the input procurement services. In calculating Toray International's SG&A rate, TCK included dividend income, interest expenses and foreign exchange related items in the numerator of the calculation. These income and expense items, however, are investment and financing related costs, not SG&A expenses. In addition, TCK excluded all or part of certain expense items because they claim that they were not related to the EG purchase transactions. However, these exclusions appear to be related to selling expenses of the company. TCK provided very little information on these items as TCK claimed that it did not have access to Toray International's detailed general ledger account information. We disagree with TCK that the revised rate proposed by Commerce should be adjusted to exclude the selling expense storage, domestic transportation, insurance, and consignment expenses. The SG&A expense rate is intended to include all SG&A expenses reported in Toray International's audited financial statements and, as such, should include storage, domestic transportation, insurance, and consignment expenses. Therefore, for the final determination, we have revised Toray International's SG&A expense rate to exclude the dividend income, interest expenses and foreign exchange related items and include all SG&A expense items.³³²

However, we disagree with the petitioners' arguments regarding TCK's removal of packing expenses and their assertion that TCK's first day corrections reduce the reported CONNUM costs for packing expenses. As noted by TCK, the petitioners have confused TCK's own reporting with that of its affiliate, Toray International. In its arm's length comparison worksheet,

³²⁸ See TCK's Cost Rebuttal Brief at 19.

³²⁹ *Id.*

³³⁰ *Id.* at 19-20.

³³¹ See Cost Verification Report at 2 and 19.

³³² See TCK's Final Cost Calculation Memo at Adjustment 2.

TCK provides the EG input used in the production of MUC, the total COM of MUC and the percentage the EG input represents of the COM of MUC.³³³ This percentage is used for purposes of the transactions disregarded analysis. Commerce's statement regarding TCK replacing the total COM of MUC to reflect the COM exclusive of packing costs referred to the calculation of this percentage.³³⁴ Commerce's statement did not refer to an adjustment to TCK's reported COM.³³⁵ See Comment 12 below for further discussion of this issue.

Comment 8: Whether Commerce Should Adjust the Cost and Sales of Certain Product Codes

Petitioners' Comments

- The petitioners argue that product codes reported in TCK's home market sales database do not appear in a chart, provided by TCK, that includes the product codes and quantity produced by TCK and its outsourcing partners during the POI.³³⁶
- The petitioners allege that TCK made sales of product codes that neither TCK nor its outsourcing partners produced during the POI.³³⁷
- The petitioners also allege that there is either a significant error in TCK's reporting or there are other unreported producers for which TCK sold subject merchandise.³³⁸
- Citing to the Cost Verification Report, the petitioners argue that the inventory movement schedules and the exhibits provided do not confirm that TCK was the producer of these product codes.³³⁹
- The petitioners add that because these product codes were sold but not produced by TCK during the POI, Commerce needs to know how TCK assigned costs to the sales of these product codes.³⁴⁰
- The petitioners assert that it is unclear whether TCK assigned costs from outside the POI to these product codes, costs from similar product codes produced during the POI, or used some other method.³⁴¹
- The petitioners allege that TCK's reporting of costs for these product codes is unreported and unsupported on the record of this investigation.³⁴²
- The petitioners conclude that if Commerce decides that total AFA is not warranted, as partial AFA Commerce should apply the highest cost and prices in the sales database to these home market product codes.³⁴³

TCK's Comments

³³³ See Cost Verification Report at 2 and CVE 1.

³³⁴ *Id.*

³³⁵ See Cost Verification Report at 2.

³³⁶ See Petitioners' Cost Case Brief at 21 (citing to Supplemental D at Exhibit D-5) and Petitioners' Sales Case Brief at 18-19.

³³⁷ See Petitioners' Cost Case Brief at 21 and Petitioners' Sales Case Brief at 19.

³³⁸ See Petitioners' Sales Case Brief at 19.

³³⁹ See Petitioners' Cost Case Brief at 21-22 (citing to Cost Verification Report at 13 and CVE 9).

³⁴⁰ *Id.* at 22.

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.* and Petitioners' Sales Case Brief at 19.

- TCK notes that Commerce’s questionnaire requires companies to report costs on a CONNUM basis, not on a product code basis.³⁴⁴ TCK explains that where multiple product codes may compose a particular CONNUM, the simple fact that one of those product codes was not produced during the POI poses no barrier to accurately reporting CONNUM-specific costs because the costs associated with those product codes within that CONNUM designation logically form the basis of cost reporting.³⁴⁵
- TCK asserts that its responses made clear that in the case of CONNUMs sold but not produced in the POI, TCK reported zero for production quantity and the unit cost of the most similar CONNUM as defined by Commerce’s product characteristics.³⁴⁶ TCK adds that it also provided an exhibit listing the one CONNUM for which it had reported a surrogate cost.³⁴⁷ TCK asserts that the unit cost of the most similar CONNUM was in fact the highest unit CONNUM reported on the cost database.³⁴⁸ Therefore, TCK notes that it would appear the petitioners’ request to use the “highest CONNUM” cost is already granted.³⁴⁹
- TCK argues that there is also no basis to the petitioners’ claim that there is an inconsistency between the reported CONNUMs on the sales file and those reported in the cost database.³⁵⁰ TCK asserts that Exhibit SD-5 pertains to POI production and reconciles to the total production quantity reported in the cost database.³⁵¹ TCK notes that the precise product mix sold during a period can differ from those produced.³⁵²
- TCK asserts that Commerce verified that the product codes reported in the sales file but not on Exhibit SD-5 were not produced but sold from inventory during the POI.³⁵³ TCK also asserts that the inventory movement schedules confirm that each of these products had a positive beginning inventory balance, and no production during the POI.³⁵⁴
- TCK concludes that there is no significant error or unreported producers as the petitioners speculate.³⁵⁵
- TCK concludes that the petitioners’ suggestions and requests make no sense on their face in several respects.³⁵⁶ TCK argues that there is no basis to apply total AFA to TCK in this investigation.³⁵⁷ TCK adds that, as to the petitioners’ alternative request, it is unclear what the petitioners intend for Commerce to do in response.³⁵⁸

³⁴⁴ See TCK’s Cost Rebuttal Brief at 21.

³⁴⁵ *Id.*

³⁴⁶ *Id.* (citing to Section D at 30).

³⁴⁷ *Id.*

³⁴⁸ See TCK’s Cost Rebuttal Brief at 21-22 (citing to Section D at Exhibit D-18).

³⁴⁹ See TCK’s Cost Rebuttal Brief at 22.

³⁵⁰ *Id.*

³⁵¹ *Id.* (citing to Supplemental D at Exhibit SD-5) and TCK’s Sales Rebuttal Brief at 21.

³⁵² *Id.* and TCK’s Sales Rebuttal Brief at 21.

³⁵³ See TCK’s Cost Rebuttal Brief at 22 (citing to Sales Verification Exhibit 34) and TCK’s Sales Rebuttal Brief at 21.

³⁵⁴ *Id.* at 22 and TCK’s Sales Rebuttal Brief at 21.

³⁵⁵ See TCK’s Sales Rebuttal Brief at 21.

³⁵⁶ *Id.* at 21 and 22.

³⁵⁷ See TCK’s Cost Rebuttal Brief at 21.

³⁵⁸ *Id.*

Commerce's Position:

We agree with the petitioners that certain product codes reported in TCK's home market sales database do not appear in the chart that includes the product codes produced by TCK and its outsourcing partners during the POI. We also agree with the petitioners that TCK made sales of product codes that neither TCK nor its outsourcing partners produced during the POI. As discussed in the Cost Verification Report, in the supplemental section D, TCK provided a list of all products produced during the POI showing the product codes and their production quantity, segregated by products produced by TCK and products outsourced.³⁵⁹ However, the sales files included certain product codes that were not included in the list.³⁶⁰ During the cost verification, we obtained inventory movement ledgers from the SAP® system for these products codes starting March 2016 (one month before the POI) through March 2017 (the last month of the POI).³⁶¹ We disagree with the petitioners that the inventory movement schedules, and the exhibits provided, confirm that TCK was not the producer of these product codes. The inventory movement ledgers obtained at the cost verification demonstrate that while these product codes were not produced during the POI, they had positive beginning balances which decreased during the POI, demonstrating that these product codes were sold from available inventory.³⁶²

We agree with the petitioners that because these product codes were sold but not produced by TCK during the POI, Commerce needs to know how TCK assigned costs to the sales of these product codes. However, we disagree with the petitioners that it is unclear how TCK assigned costs to these product codes. We also disagree with the petitioners that TCK's costs for these product codes are unreported and unsupported on the record of this investigation. Record evidence shows that for the product code that was itself a CONNUM, TCK reported zero for production quantity and the unit cost of the most similar CONNUM as defined by Commerce's product characteristics.³⁶³ In addition, for the remaining product codes, because they fell under CONNUMs that already had assigned costs, TCK used the weighted-average cost of those CONNUMs themselves as a surrogate. That is, the weighted-average cost of the other products within the CONNUM becomes the surrogate for the products within the CONNUM not produced during that period. We also disagree with the petitioners that there is either a significant error in TCK's reporting or there are other unreported producers for which TCK sold subject merchandise because these allegations are unsupported by record evidence. TCK has reported costs for all the CONNUMs produced during the POI and the verifiers tied the reported costs to TCK's financial, cost and production records.³⁶⁴

Finally, we disagree with the petitioners that regarding this issue total or partial AFA is warranted. In the beginning of an antidumping proceeding Commerce determines which physical characteristics of the merchandise under consideration are important for the dumping analysis and develops a CONNUM under which products with varying characteristics would fall. Products are then assigned to CONNUMs based on their own unique physical characteristics. Because Commerce has previously determined which characteristics are important for

³⁵⁹ See Cost Verification Report at 13.

³⁶⁰ *Id.*

³⁶¹ See Cost Verification Report at 13 and CVE 9.

³⁶² *Id.*

³⁶³ See Section D at 30 and Exhibit D-18.

³⁶⁴ See Cost Verification Report at 13-16.

distinguishing costs among products in the case, if a product falls within a particular CONNUM, then there is no need to go outside that CONNUM in order to find a surrogate cost.³⁶⁵ Therefore, for the product codes at issue which were sold but not produced during the POI and fell within CONNUMs for which a unique weighted-average per-unit cost has been determined, these CONNUM costs should be used as the proper surrogate for the dumping analysis.³⁶⁶ As can be seen from the discussion above, this was the methodology followed by TCK. As such, neither the costs nor the sales of these product codes need to be adjusted.

Comment 9: Whether Commerce Should Deny the Offset to G&A Expenses

The Petitioners' Comments

- The petitioners argue that the claimed offset is related to an expense that occurred prior to the POI and should be denied in accordance with Commerce's established practice of excluding non-period relevant expenses from its calculations.³⁶⁷

TCK's Comments

- According to TCK, the petitioners have misstated Commerce's practice. To calculate G&A expenses, Commerce has long relied on the amounts from the generally accepted accounting principles (GAAP)-based income statement that most closely corresponds with the POI. In doing so, Commerce evaluates whether the fiscal year activities in question relate to the general operations of the company. The fact that the related expense occurred prior to the POI is irrelevant to Commerce's determination. In this case, TCK's claimed offset is related to a donation and Commerce has repeatedly held that donations are a general activity that are attributable to all products of the company. Since the offset was recorded in the fiscal year income statement and is related to donations, TCK argues that there is no basis to exclude the amount.³⁶⁸

Commerce's Position:

We agree with the petitioners that Commerce should disallow the offset to TCK's G&A expenses. In calculating the G&A expense rate, TCK used the reversal of a BPI item to offset its G&A expenses.³⁶⁹ This BPI item related to a donation to a school that occurred outside of the POI.³⁷⁰ TCK asserts that the fact the related expense occurred in a prior period while the gain was incurred in the current period is irrelevant, we disagree. Commerce's established practice in calculating the G&A expense rate is to include only income items that relate to the current period.³⁷¹ We do so because we do not consider it appropriate for respondents to reduce current

³⁶⁵ 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) (*Sawblades from Korea*) and accompanying Issues and Decision Memorandum at Comment 23.

³⁶⁶ See *Sawblades from Korea* at Comment 23.

³⁶⁷ See Petitioners' Cost Case Brief at 24.

³⁶⁸ See TCK's Cost Rebuttal Brief at 24.

³⁶⁹ See Cost Verification Report at 21 and CVE 6.

³⁷⁰ *Id.*

³⁷¹ See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) (*BMRF from Mexico*) and accompanying Issues and Decision Memorandum at Comment 31. See also *Stainless*

period expenses by corrections of prior year overestimated expenses or costs associated with non-recurring provisions from prior years.³⁷² Therefore, for the final determination, we have revised TCK's G&A expense rate to exclude the claimed offset to the G&A expenses. Due to the business proprietary nature of the item, please refer to the BPI version of the Final Cost Calculation Memorandum for TCK for further discussion.³⁷³

Comment 10: Whether Commerce Should Adjust the Non-Operating Income Used to Offset the G&A and Financial Expenses

Petitioners' Comments

- The petitioners argue that the gain on foreign exchange translations should not be allowed as an offset to TCK's financial expense ratio since it is unrelated to production and instead represents an unrealized gain that is the result of restating obligations denominated in foreign currency. Citing *Fischer 2012*, the petitioners claim that because Commerce is prohibited from including amounts that are not actually incurred or realized by the respondent, the petitioners contend the gain should be excluded from the cost of producing MUC.³⁷⁴
- The petitioners also argue that, under *Fischer 2012*, Commerce is prohibited from including in SG&A amounts that are not actually incurred or realized by the respondent.³⁷⁵
- The petitioners argue that the gain on the sales of unused property and equipment should likewise be excluded because it is unrelated to the sales or production of MUC.³⁷⁶

TCK's Comments

- TCK contends that an adjustment is unnecessary since the gains on foreign currency translations have already been excluded from the calculation of the G&A expense ratio.³⁷⁷
- TCK argues that the gains on the disposal of unused property and equipment should be allowed since Commerce has long recognized such transactions are associated with the company's general operations and are appropriately included in the G&A expense ratio.³⁷⁸

Commerce's Position:

We disagree with the petitioners regarding the gain on foreign exchange translations. Foreign exchange translation gains or losses that are recognized on a company's audited income statement are real costs or gains to the company and they directly relate to the year in which they

Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (February 9, 2009) (*Mexico Coils*) and accompanying Issues and Decision Memorandum at Comment 7.

³⁷² See *BMRF from Mexico* at Comment 31. See also *Mexico Coils* at Comment 7.

³⁷³ See TCK's Final Cost Calculation Memo at Adjustment 4.

³⁷⁴ See Petitioners' Cost Case Brief at 24-25 (citing *Fischer S.A. Comercio, Industria and Agrucultura v. United States*, 2012 WL 1942109, Slip Op. 12-59 at 7 (Ct. Intl. Trade 2012)) (*Fischer 2012*).

³⁷⁵ See Petitioners' Cost Case Brief at 24-25 (citing *Fischer 2012*).

³⁷⁶ See Petitioners' Cost Case Brief at 24-26.

³⁷⁷ See TCK's Cost Rebuttal Brief at 24-25.

³⁷⁸ *Id* at 25.

are recorded. This position is consistent with the CIT's decision in *DRAMs from Korea*.³⁷⁹ In *DRAMs from Korea*, the Court disagreed with the respondent's contention that translation losses were hypothetical and in no way represented actual costs of production.³⁸⁰ Notwithstanding the contingent nature of translation losses, however, such losses are akin to an increased cost of borrowing funds that should be included in any reasonable measure of the cost climate faced by the company during the POI.³⁸¹ Regardless of whether the foreign exchange translation is a gain or a loss, it still results in more or less funds that the company will either receive or will need to pay back, and accordingly has a real impact on a company's cost of financing during the period.

The petitioners' reliance in *Fischer 2012* is misplaced. Although the Court in *Fischer 2012* ultimately directed Commerce to exclude the net unrealized foreign exchange losses that were reported on Fischer's income statement, this decision was reached based on a specific set of facts that do not apply in the instant case.³⁸² Specifically, the Court relied on the fact that "Fischer adopted the U.S. dollar as its functional currency and conducts all of its business in U.S. dollars" and would then translate its U.S. dollar financial statements to Brazilian reais financial statements in order to comply with Brazilian financial reporting laws.³⁸³ The Court concluded that by adopting the U.S. dollar as its functional currency, combined with the fact that all of its business is conducted in U.S. dollars, Fischer chose not to expose itself to foreign currency fluctuations.³⁸⁴ Therefore, the variations caused by currency translation to reais for reporting purposes are not "the actual amounts incurred and realized" pursuant to section 773(2)(A) of the Act.³⁸⁵ Despite following the Court's instructions to exclude the net exchange variance reported on Fischer's income statement, Commerce maintains that including all foreign exchange gains and losses reported on a company's income statement, while excluding any foreign exchange gains and losses recorded to stockholders' equity, is appropriate.³⁸⁶ Therefore, for the final determination, we have continued to include all foreign exchange translation gains and losses in the numerator of the financial expense rate calculation. In addition, because record evidence demonstrates that TCK did not include the gains or losses on foreign exchange translations in the numerator of its G&A expense rate calculation, no adjustment is warranted.³⁸⁷

We also disagree with the petitioners' argument regarding the gain on the sales of unused property and equipment. It is Commerce's established practice to include gains or losses incurred on the routine disposition of fixed assets in the G&A expense ratio calculation.³⁸⁸ Commerce follows this practice because it is expected that a producer will periodically replace

³⁷⁹ See *Micron Technology v. United States*, 893 F. Supp. 21, Slip Op. 95-107 (CIT 1995) (*DRAMs from Korea*) at 5.

³⁸⁰ See *DRAMs from Korea* at 5 ("Respondents first contend that translation losses are hypothetical losses only, which in no way represent actual costs of production; accordingly, respondents argue that Commerce erred by including translation losses in its COP calculations. The Court disagrees.").

³⁸¹ See *DRAMs from Korea* at 5.

³⁸² See *Fischer 2012*, 2012 WL 1942109 at 3.

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ See *Welded Line Pipe from Turkey* at Comment 15.

³⁸⁷ See Cost Verification Report at 20-22 and CVE 6.

³⁸⁸ See e.g. *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53409 (August 12, 2016) (*Hot-Rolled Steel from Japan*) and accompanying Issues and Decision Memorandum at Comment 13.

production equipment and, in doing so, will incur miscellaneous gains or losses. Replacing or disposing of production equipment is a normal and necessary part of doing business.³⁸⁹ Commerce includes such gains and losses from the routine disposal of assets in G&A expense, rather than as a manufacturing expense, because the equipment, having been removed from the production process prior to the sale or disposal, is not an element of production when the disposal or sale takes place. Rather, it is simply a miscellaneous asset awaiting disposal.³⁹⁰ The gains or losses on the routine disposal or sale of assets of this type relate to the general operations of the company as a whole because they result from activities that occurred to support on-going production operations. In short, it is a cost of doing business.³⁹¹ Commerce's approach for these types of gains and losses is to allocate them over the entire operations of the producer.³⁹² Therefore, for the final determination, we have continued to include gain on the sales of unused property and equipment in the numerator of the G&A expense rate calculation.

Comment 11: Whether Commerce Should Continue to Apply the Affiliated Party Purchases Adjustment

Petitioners' Comments

- Referencing the cost verification findings, the petitioners point out that the market price for EG differs significantly from the transfer price reported by TCK. Therefore, if Commerce does not resort to total AFA, the petitioners argue that Commerce should inflate the reported market price by a specifically named percentage, which they state is based on the cost verification findings, and, consistent with the *Preliminary Determination*, rely on the revised market price for EG in accordance with the major input rule.³⁹³
- On rebuttal, the petitioners dispute TCK's claim that the monthly average prices paid to Toray International were higher than the monthly average prices paid to unaffiliated parties. Based on the Cost Verification Report, TCK relied on understated purchase prices which did not include associated ancillary costs, thus, the petitioners conclude that TCK's affiliated EG purchase data is riddled with inconsistencies and is not reliable. As such, the petitioners urge Commerce to continue to employ the major input rule by using the market price plus any inflation or adjustments for unreported EG costs.³⁹⁴

TCK's Comments

- TCK argues that no adjustment is necessary since the EG transfer prices paid to its affiliate Toray International reflect arm's length values. According to TCK, the record demonstrates that Toray International's charges to TCK are based on its EG purchase prices, which are determined based on a formula referencing international EG spot prices, plus a fixed amount for procurement services.³⁹⁵

³⁸⁹ See *Hot-Rolled Steel from Japan* at Comment 13.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ See Petitioners' Cost Case Brief at 26-27.

³⁹⁴ See TCK's Cost Rebuttal Brief at 5-6.

³⁹⁵ See TCK's Cost Case Brief at 4-5.

- TCK contends that the comparisons must be made on a consistent basis. Thus, according to TCK, Commerce's comparison of TCK's transfer prices from Toray International during the first part of the POI to market prices for the entire POI is clearly inaccurate. However, TCK argues that a comparison of the monthly average affiliated and unaffiliated purchase prices demonstrates that the prices TCK paid to Toray International exceeded the prices paid to unaffiliated parties in every month there were unaffiliated EG purchases.³⁹⁶
- On rebuttal, TCK argues that the petitioners provide no basis for their proposed percentage increase to the EG market price, and, in fact, TCK was unable to replicate the exact increase proposed using the information on the record. Regardless, TCK maintains that the company's purchases of EG from Toray International were at market value, thus, an adjustment to the EG transfer prices to market prices is unwarranted.³⁹⁷

Commerce's Position:

During the POI, TCK purchased EG used to produce fine denier PSF from Toray International, an affiliated trading company.³⁹⁸ As discussed in the Cost Verification Report, we analyzed TCK's affiliated EG purchases in accordance with the transactions disregarded rule.³⁹⁹ We compared TCK's reported POI transfer price to the weight-averaged market price.⁴⁰⁰ Based on our analysis, we determined that the weight-averaged market price exceeded the transfer price.⁴⁰¹

TCK contends that Commerce's comparison of TCK's transfer prices from Toray International during the first part of the POI to market prices for the entire POI is clearly inaccurate. We disagree. The reported costs are a weighted-average of the costs TCK incurred during POI. Accordingly, the transactions disregarded analysis also needs to be based on the weighted-average of all the affiliated and unaffiliated purchases TCK made during POI.

We agree with the petitioners that, consistent with the *Preliminary Determination*, Commerce should adjust TCK's reported COM in accordance with the transactions disregarded rule.⁴⁰² However, the petitioners argue that Commerce should inflate the reported market price by a specifically named percentage which they state is based on the cost verification findings, we disagree. The petitioners do not demonstrate how they calculated this percentage or provide record evidence to support it. Therefore, for the final determination, we have continued to adjust TCK's reported COM for the difference between the transfer price and the weight-averaged market price.⁴⁰³

³⁹⁶ *Id.* at 5.

³⁹⁷ See TCK's Cost Rebuttal Brief at 25.

³⁹⁸ See Cost Verification Report at 4 and 18-19.

³⁹⁹ See Section 773(f)(2) of the Act and Cost Verification Report at 18.

⁴⁰⁰ See Cost Verification Report at 18-19.

⁴⁰¹ *Id.*

⁴⁰² We note that the petitioners make reference to the major input rule but because the affiliated supplier is not a producer, the major input rule does not apply.

⁴⁰³ See Final Cost Calculation Memo at Adjustment 2.

Comment 12: Whether Commerce Should Eliminate the Unreconciled Difference Adjustment to TCK's Reported Costs

The Petitioners' Comments

- The petitioners argue that Commerce should continue to adjust TCK's costs for the unreconciled difference since, on the first day of the cost verification, TCK revised the COM reported on a previously submitted worksheet to exclude packing costs. According to the petitioners, the removal of significant packing costs, when TCK had been instructed to do so on multiple occasions, is not a minor correction. Since TCK chose not to cooperate, the petitioners conclude that partial AFA is warranted to serve as a deterrent and to ensure that TCK does not derive a benefit for having failed to cooperate.⁴⁰⁴

TCK's Comments

- According to TCK, the unreconciled difference adjustment from the *Preliminary Determination* is unnecessary since the amount reflects packing-related labor and overhead costs that were moved from the cost to the sales databases at Commerce's request. TCK states that while the cost and sales databases were revised, the overall cost reconciliation was not updated for these reclassifications until the first day of the cost verification.⁴⁰⁵

Commerce's Position:

We agree with TCK that Commerce should not make an adjustment for an unreconciled cost amount. In the *Preliminary Determination*, Commerce increased TCK's reported per-unit TOTCOM to account for an unreconciled difference between TCK's POI COM for fine denier PSF products reflected in the company's normal books and records and TCK's reported extended TOTCOM in the "tckcp03_master" cost database.⁴⁰⁶ On the first day of verification, TCK officials explained that this unreconciled difference represented reclassified labor and overhead costs related to packing.⁴⁰⁷ TCK's product-specific costs calculated in the normal course of business include packing material costs. For reporting purposes, TCK deducted the packing material costs from the product-specific costs and reported the packing material costs in the sales files.⁴⁰⁸ Pursuant to Commerce's instructions, TCK revised its reported packing expenses to also include amounts for labor and overhead costs related to packing.⁴⁰⁹ Although TCK incorporated these revisions in the cost database (*i.e.*, a reduction to the reported costs) submitted November 16, 2017, TCK did not submit a revised overall cost reconciliation showing the reclassified labor and overhead cost amounts as a deduction to the POI COM.⁴¹⁰ On the first day of verification, Commerce obtained and reviewed the updated overall cost reconciliation which reflected the correct amount for packing costs that TCK excluded from the POI COM of fine denier PSF and

⁴⁰⁴ See Petitioners' Cost Rebuttal Brief at 2-4.

⁴⁰⁵ See TCK's Cost Case Brief at 3-4.

⁴⁰⁶ See Preliminary Cost Calculation Memo at Adjustment 2.

⁴⁰⁷ See Cost Verification Report at 3.

⁴⁰⁸ See Section D at 26 and Exhibit D-14; Section B at 34; and, Section C at 39 and Exhibit C-18.

⁴⁰⁹ See Sections B-C supplemental questionnaire response dated November 6, 2017 at Exhibit SC-17.

⁴¹⁰ See Supplemental D at "tckcp02_master" cost database.

reported in the sales files.⁴¹¹ After correcting for this error in the cost reconciliation, there is no unreconciled cost amount. Therefore, for the final determination, we have not adjusted TCK's reported costs for an unreconciled difference.

The petitioners' argument is based on a misunderstanding of the first minor correction. Contrary to what the petitioners argue, TCK did not remove packing costs from COM in the first minor correction. As previously discussed in Comment 7, in its affiliated purchases worksheet, TCK provides the EG input used in the production of MUC, the total COM of MUC and the percentage the EG input represents of the COM of MUC.⁴¹² This percentage is used for purposes of the transactions disregarded analysis. Commerce's statement regarding TCK replacing the total COM of MUC to reflect the COM exclusive of packing costs, referred to the calculation of this percentage.⁴¹³ Commerce's statement did not refer to an adjustment to TCK's reported COM. Neither the first minor correction nor the clarification included with the minor corrections affects the reported costs. Therefore, we disagree with the petitioners that partial AFA is warranted in this instance because TCK has neither derived a benefit from this minor correction, nor has TCK failed to cooperate.

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

☒

Agree

☐

Disagree

5/23/2018

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

⁴¹¹ See Cost Verification Report at 3, 7 and 11.

⁴¹² *Id.* at 2 and CVE 1.

⁴¹³ *Id.*