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Investigation  
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**DATE:** June 18, 2018

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

**FROM:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary for  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of Low  
Melt Polyester Staple Fiber from the Republic of Korea

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## **I. Summary**

The Department of Commerce (Commerce) finds that low melt polyester staple fiber (low melt 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.

After analyzing the comments submitted by interested parties, and based on our findings at verification, we have made changes to the *Preliminary Determination*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

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<sup>1</sup> See *Low Melt Polyester Staple Fiber from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 4906 (February 2, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



**Huvis Corporation (Huvis)**

Comment 1: Major Input Rule

Comment 2: U.S. Bank Charges

Comment 3: Duty Drawback Adjustment for Huvis

Comment 4: Critical Circumstances

Comment 5: Corrections Found at Verification

**Toray Chemical Korea, Inc. (TCK)**

Comment 6: Denier Range Reporting

Comment 7: U.S. Destination Reporting

Comment 8: TCK's Unpaid Sales

Comment 9: Duty Drawback Adjustment for TCK

Comment 10: General and Administrative (G&A) Expense Rate for TCK

Comment 11: Financial Expense Rate

Comment 12: TCK's Affiliated Party Inputs

Comment 13: Selling, General and Administrative (SG&A) Expense Rate for Toray  
International

**II. Background**

On February 2, 2018, Commerce published the *Preliminary Determination* of sales of low melt PSF from Korea at LTFV. We invited parties to comment on the *Preliminary Determination*. On April 23, 2018, Nan Ya Plastics Corporation, America (the petitioner), Huvis, and TCK

submitted case briefs.<sup>2</sup> On April 30, 2018, the petitioner, Huvis, and TCK submitted rebuttal briefs.<sup>3</sup>

From February to March 2018, we conducted verification of the sales and cost of production (COP) data reported by the respondents, Huvis and TCK, in accordance with section 782(i) the Tariff Act of 1930, as amended (the Act). Subsequently, in April 2018, we requested, and Huvis and TCK submitted, revised sales databases.

Based on our analysis of the comments received, as well as our verification findings, we have made changes from our *Preliminary Determination*.

### **III. Critical Circumstances**

In the *Preliminary Determination*, Commerce found that critical circumstances existed for TCK and for all-other producers/exporters of low melt PSF from Korea, but not for Huvis, based on trade data submitted through December 2017.<sup>4</sup> The petitioner raised the issue of critical circumstances for this final determination with respect to Huvis and Huvis provided rebuttal comments. For further discussion of the issue raised in the case and rebuttal briefs, *see* Comment 4, below. Because critical circumstances were alleged in this case and because we made a preliminary determination, pursuant to section 735(a)(3) of the Act, and 19 CFR 351.210(c), we hereby make a final determination on the issue of critical circumstances.

Section 733(e)(1) of the Act provides that Commerce will, upon receipt of a timely allegation of critical circumstances, determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

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<sup>2</sup> See Petitioner's Case Brief, "Low Melt Polyester Staple Fiber from The Republic of Korea: Petitioner's Case Brief For Huvis Corporation," dated April 23, 2018 (Petitioner Huvis Case Brief); Petitioner's Case Brief, "Low Melt Polyester Staple Fiber from The Republic of Korea: Petitioner's Case Brief On Toray Chemicals Korea, Inc.," dated April 23, 2018 (Petitioner TCK Case Brief); Huvis' Case Brief, "Low Melt Polyester Staple Fiber from the Republic of Korea: Case Brief," dated April 23, 2018 (Huvis Case Brief); and TCK's Case Brief, "Low Melt Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea's Case Brief," dated April 23, 2018 (TCK Case Brief).

<sup>3</sup> See Petitioner's Rebuttal Brief, "Low Melt Polyester Staple Fiber from Korea: Petitioner's Rebuttal Brief For Huvis Corporation," dated April 30, 2018 (Petitioner Huvis Rebuttal Brief); Petitioner's Rebuttal Brief, "Low Melt Polyester Staple Fiber from Korea: Petitioner's Rebuttal Brief For Toray Chemicals Korea, Inc.," dated April 30, 2018 (Petitioner TCK Rebuttal Brief); Huvis' Rebuttal Brief, "Low Melt Polyester Staple Fiber from the Republic of Korea: Rebuttal Brief," dated April 30, 2018 (Huvis Rebuttal Brief); and TCK's Rebuttal Brief, "Low Melt Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea's Rebuttal Brief," dated April 30, 2018 (TCK Rebuttal Brief).

<sup>4</sup> See *Preliminary Determination*, 83 FR at 4907, and accompanying PDM, at 16 to 21.

In order to determine whether there is a history of dumping pursuant to section 735(a)(3)(A)(i) of the Act, Commerce generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.<sup>5</sup> In this regard, we note the existence of an AD order on PSF from Korea in the United States<sup>6, 7</sup> and in Turkey. Accordingly, Commerce finds that there is a history of injurious dumping of low melt PSF from Korea, pursuant to section 735(a)(3)(A)(i) of the Act.<sup>8</sup>

Accordingly, because the statutory criteria of section 735(a)(3)(A)(ii) of the Act have been satisfied, we examine whether imports were massive over a relatively short period, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h). In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.<sup>9</sup>

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<sup>5</sup> See, e.g., *Certain Oil Country Tubular Goods from the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010); *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504, 68505-68506 (November 5, 2015), unchanged in *Certain Corrosion-Resistance Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35313, 35314 (June 2, 2016); and *Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250, 4252 (January 27, 2015), unchanged in *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893, 34896 (June 18, 2015).

<sup>6</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000) (PSF Order).

<sup>7</sup> See *Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of Expedited Sunset Review of the Antidumping Duty Orders*, 81 FR 92783 (December 20, 2016) (PSF Continuation Order).

<sup>8</sup> Commerce has previously found that orders with “substantially similar” scopes indicate a history of dumping. See, e.g., *Citric Acid and Certain Citrate Salts from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Critical Circumstances Determination, in Part, and Postponement of Final Determination and Extension of Provisional Measures*, 83 FR 784 (January 8, 2018) and accompanying Preliminary Decision Memorandum, at 11, unchanged in *Citric Acid and Certain Citrate Salts from Thailand: Affirmative Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part*, 83 FR 25998 (June 5, 2018), and accompanying Issues and Decision Memorandum (IDM), at 6.

<sup>9</sup> See 19 CFR 351.206(h)(2).

On November 20, 2017, Commerce requested monthly shipment data from Huvis and TCK covering December 2016 through January 2018.<sup>10</sup> As such, respondents reported all relevant shipment data available at the time, and necessarily updated their reported data with more recent monthly totals as they became available.<sup>11</sup>

For the *Preliminary Determination*, Commerce compared the total volume of shipments for January 2017 through June 2017 (the base period), to shipment data for July 2017 through December 2017 (the comparison period).<sup>12</sup> For “all others,” Commerce used Global Trade Atlas (GTA) data for February 2017 through November 2017, and subtracted exports reported by Huvis and TCK from the monthly GTA data.<sup>13</sup>

Pursuant to our request for parties to report shipment data from December 2016 through January 2018, our analysis now considers the seven-month comparison period of July 2017 through January 2018.<sup>14</sup> Based on the updated information submitted by Huvis and TCK (*i.e.*, for the comparison period of July 2017 through January 2018 and the base period of December 2016 through June 2017),<sup>15</sup> we find massive imports for TCK (*i.e.*, an increase greater than or equal to 15 percent between the base and comparison periods), but do not find massive imports for Huvis. Therefore, we find that critical circumstances exist for TCK, but not for Huvis.<sup>16</sup>

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<sup>10</sup> See Letters re: Less-than-Fair-Value Investigation on Low Melt Polyester Staple Fiber from the Republic of Korea: Request for Monthly Quantity and Value Shipment Data, dated November 20, 2017.

<sup>11</sup> See Huvis’ Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Huvis’ Monthly Quantity and Value Shipment Data, dated November 27, 2017; Huvis’ Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Huvis’ Updated Monthly Quantity and Value Shipment Data, dated December 15, 2017; Huvis’ Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Huvis’ Updated Monthly Quantity and Value Shipment Data, dated January 12, 2018; Huvis’ Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Huvis’ Updated Monthly Quantity and Value Shipment Data, dated February 15, 2018 (Huvis January Sales Letter); TCK’s Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Response to Request for Monthly Shipment Quantity and Value Data, Inclusive of December 2016 Through October 2017, dated November 28, 2017; TCK’s Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Response to Request for Monthly Shipment Quantity and Value Data, Inclusive of December 2016 Through November 2017, dated December 8, 2017; TCK’s Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Response to Request for Monthly Shipment Quantity and Value Data, Inclusive of December 2016 Through December 2017; and TCK’s Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Response to Request for Monthly Shipment Quantity and Value Data, Inclusive of December 2016 Through January 2018, dated February 15, 2018 (TCK January Sales Letter).

<sup>12</sup> See Memorandum, “Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea: Critical Circumstances Analysis,” dated January 26, 2018, at Attachment.

<sup>13</sup> *Id.*

<sup>14</sup> We note that our request for data stated, “through the last day of the month of publication of the preliminary determination in this investigation.” The *Preliminary Determination* was January 26, 2018, and subsequently published in the *Federal Register* on February 2, 2018. In this case, we consider January 2018 shipment data to be the last month of shipment data required by the respondents.

<sup>15</sup> See Huvis January Sales Letter and TCK January Sales Letter.

<sup>16</sup> See Memorandum, “Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea: Final Critical Circumstances Analysis,” dated concurrently with this memorandum (Final Critical Circumstances Analysis Memo).

With respect to the non-individually investigated companies receiving the all-others rate, Commerce compared data for the base period of December 2016 through June 2017 to the comparison period of July 2017 through January 2018 to determine whether or not imports of subject merchandise were massive. Specifically, we relied on U.S. import data, as reported by Global Trade Atlas,<sup>17</sup> adjusted to remove shipments reported by Huvis and TCK.<sup>18</sup> Based on this comparison, we do not find massive imports for all non-individually examined companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).<sup>19</sup> Accordingly, we find that critical circumstances do not exist for all-other exporters and producers of low melt PSF from Korea.

#### **IV. Scope of the Investigation**

We modified the scope language preliminarily to eliminate the overlap in product coverage with a pre-existing PSF Korea AD order.<sup>20</sup> Commerce subsequently completed a changed circumstances review to eliminate that overlap,<sup>21</sup> so we are removing our preliminary modification and using the scope language as it appeared in the *Initiation Notice*.<sup>22</sup> See the revised scope in Appendix I of the accompanying *Federal Register* notice.

#### **V. Margin Calculations**

We calculated export price, normal value, and COP for Huvis and TCK using the same methodology as stated in the *Preliminary Determination*,<sup>23</sup> except as follows:<sup>24</sup>

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<sup>17</sup> The petitioners based their “surge” calculation on a mixture of ITC data and SIMA data. Commerce conducted its own query of GTA data, using the same series of HTSUS subheading as that used for respondent selection, for the base and comparison periods and confirmed that, to the extent monthly data is available from all three sources, the GTA data, ITC data, and SIMA data are nearly identical.

<sup>18</sup> See, e.g., *Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances*, 77 FR 73430, 73432 (December 10, 2012), unchanged in *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973, 75974 (December 26, 2012); see also *Certain Oil Country Tubular Goods from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47212 (September 15, 2009), unchanged in *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination*, 74 FR 64045, 64047 (December 7, 2009).

<sup>19</sup> See Final Critical Circumstances Analysis Memo.

<sup>20</sup> See Preliminary Determination, and accompanying PDM at 4.

<sup>21</sup> See *Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of Changed Circumstances Reviews, and Revocation of Antidumping Duty Orders, in Part*, 83 FR 23253 (May 18, 2018).

<sup>22</sup> See *Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 34277 (July 24, 2017) (*Initiation Notice*).

<sup>23</sup> See Memorandum, “Preliminary Determination Calculations for Huvis Corporation,” dated January 26, 2018; and Memorandum, “Preliminary Determination Calculations for Toray Chemical Korea Inc.,” dated January 26, 2018.

<sup>24</sup> See Memorandum, “Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea: Final Determination Calculations for Huvis Corporation,” dated June 18, 2018 (Huvis Final Sales Calculation Memorandum), and Memorandum, “Cost of Production and Constructed Value Calculation Adjustments

1. We requested revised sales listings from Huvis and TCK based on corrections noted in the verifications reports<sup>25</sup> and used these revised sales listings for the final margin calculations.
2. We recalculated Huvis' U.S. bank charges using facts available. *See* Comment 2 below for further discussion.
3. We updated Huvis' G&A and financial expense ratios from the preliminary determination to incorporate the minor corrections presented on the first day of the cost verification.
4. We updated Huvis' major input adjustment from the preliminary determination to incorporate the findings from the cost verification.
5. We revised Huvis' duty cost field (DUTY1) to account for domestically-sourced raw material inputs that would not have incurred duties.
6. We did not adjust TCK's reported U.S. prices for the uncollected portion from TCK's insurance company. *See* Comment 8 below for further discussion.
7. We increased TCK's reported per-unit total cost of manufacturing (TOTCOM) for ethylene glycol purchased from affiliates.
8. We increased the reported per-unit TOTCOM of certain control numbers for PET chips purchased from affiliates.
9. We revised TCK's G&A expense rate to exclude the claimed offset to G&A expenses.

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for the Final Determination – HUVIS Corporation,” dated June 18, 2018 (Huvis Final Cost Calculation Memorandum); Memorandum, “Antidumping Duty Investigation of Low melt PSF from Korea: Final Determination Margin Calculations for Toray Chemicals Korea Inc.,” dated June 18, 2018, and Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Toray Chemical Korea Inc.,” dated June 18, 2018; *see also* Memorandum, “Verification of the Sales Response of Huvis Corporation in the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea,” dated April 9, 2018 (Huvis Sales Verification Report); Memorandum, “Verification of the Cost Response of Huvis Corporation in the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea,” dated April 12, 2018 (Huvis Cost Verification Report); Memorandum, “Verification of the Sales Response of Toray Chemical Korea Inc. in the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea,” dated April 9, 2018 (TCK Sales Verification Report); and Memorandum, “Verification of the Cost Response of Toray Chemical Korea, Inc. in the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea,” dated April 6, 2018 (TCK Cost Verification Report).

<sup>25</sup> *See* Memorandum, “Request for Revised Home Market and U.S. Sales Listings for Huvis Corporation in the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea,” dated April 16, 2018; and Memorandum, “Request for Revised Home Market and U.S. Sales Listings for Toray Chemical Korea Inc. (TCK) in the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea,” dated April 10, 2018.

## **VI. Discussion of the Issues**

### **Huvis**

#### **Comment 1: Major Input Rule**

##### *Petitioner's Arguments*

- The petitioner argues that Commerce should apply partial adverse facts available (AFA) to Huvis for failing to respond fully and accurately to the statutory requirements of the major input rule. Specifically, the petitioner contends that Huvis withheld the market prices requested by Commerce until the third supplemental section D questionnaire response, and, when finally submitted, the market price data was incomplete because there was no accompanying discussion of delivery terms, rebates, discounts, *etc.*, and no supporting documentation.
- The petitioner argues that Huvis submitted new factual information at verification, such as its affiliated supplier's cost of goods sold details and monthly sales transaction lists, which Commerce normally requires in advance and refuses to accept at verification.
- The petitioner also claims that Huvis did not provide any documentation at verification that supports its affiliated supplier's individual sales transactions or demonstrates that the market price is on the same basis as the transfer price paid by Huvis (*i.e.*, identical sales terms, freight inclusive or exclusive, discounts/rebates applied, identical product grades, home market customers only, *etc.*).
- The petitioner contends that a review of the individual transaction data submitted by Huvis that make up the reported market price demonstrates that the affiliated supplier's average sales price to unaffiliated parties was not a true market price or was cherry-picked for reporting to Commerce.
- Based on these arguments, the petitioner concludes that Huvis failed to cooperate to the best of its ability and partial AFA is warranted. As partial AFA, the petitioner recommends that Commerce reject the market price used in the *Preliminary Determination* and instead rely on a market price submitted by TCK, the other Korean respondent in this case, since it represents a true market price where the sales terms, destination market, and end use are known.

##### *Huvis' Arguments*

- Huvis argues that partial AFA is not warranted since the company has “put forth its maximum effort” throughout this investigation and has provided all information requested by Commerce in a timely manner.



- Huvis counters that it did not withhold the major input data from Commerce. Rather, Huvis submitted the requested major input chart with its original section D response, which included the affiliated transfer prices and the affiliated supplier's COP. However, because Huvis did not purchase the input in question from unaffiliated parties, the company was unable to provide a market price based on its own records or on public sources. According to Huvis, Commerce did not request the affiliated supplier's unaffiliated sales data as an alternate market price until the second supplemental section D questionnaire, at which time, Huvis fully cooperated by persuading its affiliated supplier to provide the confidential information to Commerce.
- Huvis also disputes that the affiliated supplier's submitted market price data were incomplete and should have included information on delivery terms, rebates, discounts, etc. Huvis points out that Commerce requested only the "total POI sales quantity and value, and average unit price for sales by your affiliated supplier to unaffiliated customers," all of which were provided.
- Huvis maintains that its affiliated supplier did not submit new factual information at verification. Rather, the affiliated supplier only presented documentation that supports the completeness and accuracy of the COP and market price already on the record.
- Huvis disagrees that Commerce's verification procedures failed to confirm that the affiliated supplier's market price is on the same basis as the Huvis' purchase price. Instead, Huvis argues that the petitioner's claims are unsubstantiated by the Huvis Cost Verification Report.
- Huvis surmises that the observed price differences among its affiliated supplier's unaffiliated customers are the result of arm's length negotiations which consider such factors as the timing of sales, volumes purchased, length of relationship with the customer, prevailing supply and demand, etc. Further, Huvis proffers that the law of averages dictates that individual prices will be higher or lower than the average. Nevertheless, Huvis argues that the record demonstrates that its affiliated supplier's average market prices on a monthly basis are consistent with the POI average market price.
- Huvis disagrees that TCK's data constitute a preferable market price because Commerce has a well-established practice of treating prices negotiated between unaffiliated customers as arm's length transactions.<sup>26</sup> Moreover, Commerce does not use the business proprietary information (BPI) submitted by another respondent where doing so would

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<sup>26</sup> See Huvis Rebuttal Brief at 13-14, citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) and accompanying IDM, at comment 11.

reveal the former's proprietary data.<sup>27</sup> Therefore, Huvis contends that the petitioner's proposal to use TCK's market price should be rejected.

- According to Huvis, the differences between the verified transfer and market prices for the input in question are so immaterial they serve to demonstrate that the affiliated transactions were at arm's length. Consequently, Huvis concludes that no major input adjustment, or at most, a minimal adjustment, is warranted for the final determination.

### Commerce's Position

In the *Preliminary Determination*, we increased Huvis' affiliated transfer price for the major input in question to reflect market value, in accordance with section 773(f)(3) of the Act. Because Huvis did not purchase the input from unaffiliated parties, we relied on the affiliated supplier's POI average sales price to unaffiliated customers as the market value of the input. For the final determination, we continue to find that comparing the average POI sales price paid by Huvis to the affiliated supplier (*i.e.*, the transfer price) to the same affiliated supplier's average POI sales price to unaffiliated customers (*i.e.*, the market price) provides the best information on the record that is consistent with both the statute and Commerce's practice.

Section 773(f)(2) of the Act states that "{a} transaction directly or indirectly between affiliated persons may be disregarded, if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated." Thus, the statute directs Commerce to test the arm's-length nature of affiliated transactions to determine whether they reflect a market value. Because this section of the statute does not specify a particular method for determining market value, Commerce has constructed a hierarchy for establishing market value in the application of sections 773(f)(2) and (3) of the Act. Commerce's express preference for market value is a respondent's own purchases of the input from unaffiliated suppliers. When no such purchases are available, Commerce looks to the affiliated supplier's sales of the input to unaffiliated parties, and, lacking that, to any reasonable source for market value.<sup>28</sup>

In the instant case, Huvis disclosed in its initial section D response that it did not purchase the input from unaffiliated suppliers during the POI. As a result, we subsequently requested and

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<sup>27</sup> See Huvis Rebuttal Brief at 12, citing *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081, 47090 (August 4, 2004) and *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 71 FR 45017, 45021 (August 8, 2006).

<sup>28</sup> See, *e.g.*, *Certain Hot-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53424 (August 12, 2016) and accompanying IDM at Comment 7; *Notice of Final Determination of Sales at Less Than Fair Value and Negative*

obtained the affiliated supplier's sales to unaffiliated customers for use as the market value. The petitioner contends that partial AFA is warranted because Huvis initially failed to submit market prices – despite Commerce's instructions to do so – and later submitted such information, but without the level of detail requested by Commerce.

We reviewed the original section D questionnaire, and find that Commerce requested the total volume and value of the input purchased from each unaffiliated supplier and the average unit market value per unaffiliated supplier. As an addendum to these requests, we elaborated “Note: If there are no such purchases but your affiliated supplier sells the identical input to unaffiliated customers in the market under consideration, in a separate schedule provide the average price paid for the input by the unaffiliated purchasers.” Huvis made no mention of obtaining its affiliated supplier's sales to unaffiliated parties in its initial section D questionnaire response. However, Huvis did submit the affiliated supplier's COP for the input and noted that it was unable to obtain a market value. Our first supplemental section D questionnaire issued on October 31, 2017, did not include an additional request for the market value data for the major input, however, on December 20, 2017, we issued a second supplemental section D questionnaire which explicitly requested that Huvis “provide the total POI sales quantity and value, and average unit price for sales by your affiliate{d} supplier to unaffiliated customers.” In response, Huvis' affiliated supplier submitted a separate letter to Commerce which reported the requested information in the manner requested, *i.e.*, total volume and value, and average unit price of sales to unaffiliated customers. In doing so, Huvis' affiliated supplier noted that “Huvis does not have access to the Company's proprietary sales or accounting records, and the Company does not wish to share with Huvis the highly confidential information regarding its {input} sales volume and prices to unaffiliated customers. However, the Company has agreed to submit the requested information through Huvis' undersigned legal counsel.” Commerce then relied on this information for purposes of the major input analysis in the *Preliminary Determination* and also reviewed the affiliated supplier's supporting documentation during the cost verification.

Based on the above elaborated facts, we find that in this instance the application of facts available is not warranted. Under section 776(a)(2) of the Act, Commerce may resort to facts available where a respondent (1) withholds requested information; (2) fails to provide such information by the deadlines established, or in the form or manner requested; (3) significantly impedes a proceeding; or, (4) provides information that cannot be verified. Furthermore, where an interested party has not acted to the best of its ability, section 776(b) of the Act directs Commerce to use adverse inferences in applying facts available. In the instant case, Huvis did in fact submit the requested market data within the deadline established and in the exact manner requested. Although Huvis did not report the alternative market value in its initial section D response, the statute instructs that where a submission does not comply with its request Commerce “shall, to the extent practicable, provide that person with an opportunity to remedy”

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*Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) and accompanying IDM at Comment 17; and, *Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813 (March 24, 2004) and accompanying IDM at Comment 7.

the deficiency. Accordingly, we issued a second request for the information and Huvis fully complied. Furthermore, we find no merit in the contention that the market value data submitted lacked the detail requested by Commerce. Rather, Huvis supplied each element requested by Commerce, *i.e.*, “the total POI sales quantity and value, and average unit price for sales by your affiliate{d} supplier to unaffiliated customers.”

We also disagree that Huvis failed to support the reported market value data at verification. Of particular concern to the petitioner was whether the affiliated supplier’s individual transactions were verified, whether the transactions are on the same basis as the transfer prices paid by Huvis, (*e.g.*, freight inclusive or exclusive, *etc.*), and whether the transactions represent domestic customers only or also include third country sales. As stated in our verification report, “{o}n March 29, 2018, we met with {the affiliated party} officials to examine the source documents that support the cost of production and unaffiliated sales data that they reported to Commerce.” In doing so, we traced the affiliated supplier’s reported POI total quantity and value from the submission to a list of the POI monthly quantities and values. We then selected July and August 2016 for detail test work. For these months, we obtained lists of the quantity and value of sales by customer and then traced the totals for selected customers to supporting documentation. This documentation included the 1) tax invoices which identified the customer, total sales quantities, and total sales values, and 2) the sales subledger which listed each individual transaction included in the totals on the tax invoices. Based on our discussions with the affiliated supplier and on our review of the supporting documentation, we did not find or note in our cost verification report that the per-unit transfer and market prices were on an inconsistent basis. We also confirmed with the affiliated supplier that their reported unaffiliated sales included only domestic customers and we found no evidence to the contrary during our review of individual transactions (*i.e.*, none of the transactions reviewed were found to be sales to foreign customers). Thus, based on the information that the companies made available to us at verification, we cannot conclude that either Huvis or its affiliated supplier were non-cooperative or that they failed to support the market value reported to Commerce.

The petitioner also suggests that new factual information may have been provided at verification. We disagree. The market value relied on for purposes of the major input analysis in the *Preliminary Determination* was submitted by Huvis as requested and in a timely manner. The documents obtained and examined at verification support the market value reported to Commerce and do not constitute new factual information, nor do they comprise supporting information that was previously requested by Commerce, but withheld by respondent. Rather, the documents include the monthly cost of sales details, tax invoices, and sales subledgers that were presented to Commerce for purposes of complying with the steps in the cost verification agenda issued to the respondent in advance of the cost verification.

Thus, we do not find that the statutory requirements for the application of facts available are met in this instance or that Huvis failed to cooperate to the best of its ability. Rather, Huvis provided the requested information within the deadlines established and in the manner requested.

We also disagree that the market value submitted by Huvis’ affiliated supplier should be discarded since it is not a “true market price” or was “cherry-picked.” We fail to find any

evidence to support these assertions. Rather, at verification, we confirmed that the market value data submitted by Huvis' affiliated supplier represented the affiliated supplier's POI total quantity and value of sales to unaffiliated domestic customers and was not limited to a selected portion of the affiliated party's POI unaffiliated domestic sales. Further, while BPI in nature, we find that the petitioner's suggested market value, *i.e.*, TCK's unaffiliated purchases of the input at question, actually supports the use of the market value data submitted by Huvis' supplier.<sup>29</sup>

While we agree with Huvis that Commerce generally does not use the BPI information submitted by another respondent where doing so would reveal the former's proprietary data, this point is moot since we find no reason to discard the market data submitted by Huvis' affiliated supplier and rely on alternative market data. In performing our major input analysis for the final determination, we continue to find that the market price submitted for the major input is higher than either the transfer price or the affiliated supplier's COP for the input. Therefore, for the final determination, we have adjusted the reported transfer price to reflect the POI average market price, as calculated in the Huvis cost verification report.

## **Comment 2: U.S. Bank Charges**

### *Petitioner's Arguments*

- The petitioner argues that Commerce discovered at verification that Huvis inaccurately reported its bank charges on U.S. sales by not allocating the charges among all transactions to which they applied. The petitioner states that the initial questionnaire instructed Huvis to report the unit cost of sales-specific bank charges.
- The petitioner states that Huvis only applied bank charges to certain U.S. sales; however, the petitioner argues that Commerce should apply bank charges to all reported U.S. sales because it is unclear which sales had unreported bank charges and which correctly had no bank charges.
- The petitioner argues that this error produces inaccurate results and margins because: 1) the verification report noted that this error was not limited to the selected transaction; 2) it affects the net price calculation of each transaction; and 3) it affects the Cohen's *d* test. Therefore, the petitioner argues that Commerce should apply AFA by using the highest reported bank charge on the record for all U.S. transactions.<sup>30</sup>

### *Huvis' Arguments*

- Huvis argues that it did not omit any U.S. bank charges and that Commerce's verification report does not state that Huvis omitted any bank charges. Huvis argues that the contention here is the allocation methodology for the bank charges.

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<sup>29</sup> See Huvis Final Cost Calculation Memo for our BPI discussion of this point.

<sup>30</sup> See Petitioner Huvis Rebuttal Brief, at 13-14, citing *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 16378 (April 4, 2017) (*CTL Plate from Belgium*), and accompanying IDM, at 58-59.

- According to Huvis, it reported its POI U.S. bank charges consistent with how it records these charges in its normal accounting system. In instances when a customer pays for multiple invoices in a single payment, Huvis applies the entire bank charge amount to the last payment voucher number in the group. Thus, Huvis explains that for reporting purposes, it allocated the entire bank charge over the quantity corresponding to the last invoice rather than allocating the charge over the quantities associated with all the covered payments.
- Huvis argues that U.S. bank charges were a small fraction of the total sales value, and, therefore, there is no way that they could have significantly distorted Commerce's analysis as the petitioner contends.
- Huvis argues that by applying the petitioner's proposed AFA methodology, U.S. bank charges would be nearly 4,000 percent higher than their true value. Huvis contends that such a punitive adjustment is unjustifiable when Huvis reported in a method consistent with its accounting records.
- Huvis argues that if Commerce does wish to allocate U.S. bank charges differently, it could apply to the gross unit price the ratio of the total POI U.S. bank charge value divided by total POI U.S. sales value to all sales. Alternatively, Huvis proposes dividing the total POI U.S. bank charge value by the total POI U.S. quantity to apply bank charges on a weight basis.

### Commerce's Position

We agree with the petitioner that Huvis did not allocate its U.S. bank charges on a transaction-specific basis; however, we disagree that the use of facts available is warranted in this instance. Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) 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.

At verification, we found that the total U.S. bank charge expenses for selected transactions were reported on the record. Therefore, it is not a question of missing information but rather of the allocation of the expenses that were reported. Huvis stated at verification that it reported its U.S. bank charges in the same manner it records them in its accounting system (*i.e.*, the entire expense is assigned to the last voucher number when a single payment covers multiple invoices).<sup>31</sup> However, because our calculations use individual transactions, allocating the entire expense to a single transaction while reporting no expense on other transactions can affect the calculation.

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<sup>31</sup> See Huvis Sales Verification Report, at 12-13.

Since we verified that the bank charge totals are correct for selected transactions, we do not find that Huvis: 1) withheld requested information; 2) failed to provide information within the established deadlines; 3) significantly impeded the proceeding; or 4) provided information which could not be verified. While we disagree with the methodology that Huvis used to report its bank charges, Huvis reported the correct total U.S. bank charge expenses and did not withhold information or fail to cooperate. Therefore, because Huvis did not fail to act to the best of its ability per section 776(b) of the Act, the application of facts available is unwarranted in this case.

The petitioner cites *CTL Plate from Belgium* for its argument that the application of AFA is warranted when “inaccuracies affect a substantial portion of...home market and U.S. sales listings, such that these sales listings no longer form a reliable basis on which to calculate a dumping margin.”<sup>32</sup> However, in *CTL Plate from Belgium* the errors in question related to misreported control numbers, much more serious and pervasive errors that called into question all data reported for those control numbers. These errors were on a much larger order of magnitude and in a much more consequential field than the bank charges in question here. Indeed, the *CTL from Belgium* decision cited by the petitioner states that “this systemic error {of misreported control numbers} renders the entire dumping calculation inaccurate, because the control number is fundamental to the Department’s calculation, as it controls the allocation of costs and determines the product matches between the U.S and home markets.”<sup>33</sup> Although reporting all information correctly is important, the misallocation of bank charges cannot be equated with misreported control numbers. Accordingly, we disagree with the petitioner that facts available is warranted in this case.

However, we agree with the petitioner that the bank charges should be reallocated in order to state them on a transaction-specific basis. Commerce regularly instructs respondents to report their data on a transaction-specific basis because of the “preference for transaction-specific reporting.”<sup>34</sup> Therefore, we reallocated the total U.S. bank charges in order to apply them on a transaction-specific basis to the reported U.S. sales by using the ratio of Huvis’ total POI U.S. bank charges to Huvis’ total POI U.S. subject sales value. Notwithstanding, Commerce also is advising parties that, in any future segments, parties should be prepared to report bank charges on a transaction-specific basis.

### **Comment 3: Calculation of Duty Drawback Adjustment for Huvis**

#### *Petitioner’s Arguments*

- The petitioner argues that Commerce should continue to disallow a duty drawback adjustment from one input, as it did in the *Preliminary Determination*. The petitioner maintains that Huvis overstated its reported duty drawback benefit given that it stated that it imports some but not all of the input in question.

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<sup>32</sup> See *CTL Plate from Belgium*, at 58-59.

<sup>33</sup> *Id.* at 59.

<sup>34</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27346 (citing 19 CFR 351.401(g)(1)).

- The petitioner contends that Commerce's cost verification report states that the duty drawback amount for the input in question was found to be overstated. Therefore, the petitioner argues that Commerce should continue to disallow a duty drawback adjustment for this input.
- The petitioner further argues that Huvis failed to meet Commerce's duty drawback two prong test, namely that 1) there is a direct link between the duties imposed and those rebated or exempted, and 2) that the respondent demonstrates it had sufficient imports of imported material to account for the duty drawback or exemption granted for the export of the manufactured product.<sup>35</sup>
- The petitioner disagrees with Huvis' contention that it fulfilled the two prong test, that a linkage exists between duties paid and duty drawback received, and that Commerce's verification reports support the accuracy and completeness of the submitted information.
- The petitioner argues that Commerce's cost verification report does not find Huvis' duty drawback reporting is complete and accurate, but rather that it overstates the duty cost in the field DUTY1. The petitioner further argues that absent a link between the sales and cost report, Commerce cannot confirm that the import duty reconciles to the refund amount, which is the first prong.
- The petitioner asserts that Huvis failed to show the link between inputs and duty refunds for several inputs. According to the petitioner, Commerce correctly made no adjustment to Huvis' U.S. prices for drawback amounts claimed on these inputs in the *Preliminary Determination*. The petitioner argues that Huvis failed to reconcile these drawback claims to its reported costs, and, therefore, no additional duty drawback adjustments should be granted.
- The petitioner argues that the cost verification report demonstrates that the duty drawback refunds for three inputs are not reconciled to the cost database, and that Huvis failed to demonstrate that it properly included import duties relating to these additional inputs.
- The petitioner argues that Commerce should not accept Huvis' claims that it accounts for import duties for inputs purchased from domestic suppliers, whether or not Huvis is the importer of record. The petitioner argues that Huvis failed to correctly report duties on the input in question and failed to reconcile the duty refunds received for other inputs to its costs accounting system.
- The petitioner argues that Huvis' proposal to allow a partial duty drawback for the percentage of the input in question which is imported is baseless because the burden of

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<sup>35</sup> See Petitioner Huvis Rebuttal Brief, at 2, citing *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F. 3d 1335, 1340-41 (Federal Circuit 2001) (*Saha Thai*) and Certain Lined Paper Products from India: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2015-2016, (April 9, 2018).



proof rests with Huvis to demonstrate that it correctly reported the duty refund. The petitioner further claims that although Huvis stated that it received duty drawback refunds for certain inputs even if they were imported by another company, there is no information on the record showing the true percentage of the input in question for which import duties were refunded.

### *Huvis' Arguments*

- Huvis states that it has provided supporting documentation showing the link between import duties paid and the duty drawback received. Further, Huvis states that it linked the exported merchandise to imports of raw materials under Korean customs rules. Huvis explains that the duty drawback amounts reported in its COP database are estimated per-unit amounts of import duties for two inputs used in the production of low melt PSF, whereas the duty drawback amounts it reported in the U.S. sales listing reflect the actual duty drawback received.
- Huvis argues that Commerce agreed that it was entitled to a duty drawback in the *Preliminary Determination* because it fulfilled both prongs of Commerce's test.<sup>36</sup> While Huvis acknowledges that Commerce denied part of the duty drawback reported because it was unclear what portion related to imports of the input in question, it argues that Commerce verified the accuracy and completeness of the submitted information.
- Therefore, Huvis argues that Commerce should revise the duty drawback for the final determination by either: 1) using the per-unit duty drawback information contained in the U.S. sales file, or 2) including the import duty amounts reported for both inputs in the COP database. Huvis further argues that the sales file duty drawback amounts are more appropriate because Huvis demonstrated that the duty drawback received did not exceed the import duties paid. Additionally, Huvis argues that Commerce verified that the amount paid exceeded the amount received for six of the twelve months of the POI.
- Huvis argues that the estimated import duty amounts in the COP database, which are average duties that Huvis paid, are less accurate than sales-specific duty drawback amounts in the U.S. sales listing. If, however, Commerce continues to cap the duty drawback adjustment using the amounts reported in the cost of production database, Huvis argues that Commerce should include the estimated import duties paid for both inputs.
- Further, Huvis argues that its normal accounting system does not track import duty at the finished product level; therefore, Huvis developed a reasonable methodology to estimate the per-unit amount of import duties and provided a detailed calculation of the per-unit amounts as requested by Commerce in a supplemental questionnaire. Huvis argues that if

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<sup>36</sup> The prongs are 1) the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); and 2) the company must demonstrate that there were sufficient imports of materials to account for the duty drawback or exemption granted for the export of the manufactured product.

Commerce is concerned about this methodology, it should multiply the reported duty amount for the input in question by the percentage of that input which was imported during the POI, which is noted in the Huvis Cost Verification Report.

### Commerce's Position

In the *Preliminary Determination*, we accepted Huvis' claimed U.S. duty drawback adjustment because it provided information to satisfy the criteria of the two-prong test.<sup>37</sup> For the final determination, we continue to grant Huvis a duty drawback adjustment.

Consistent with Commerce's practice, we applied our two-prong test to determine whether a duty drawback adjustment is appropriate. Specifically, to satisfy section 772(c)(1)(B) of the Act, which states that EP shall be increased by "the amount of any import duties imposed by the country of exportation... which have not been collected, by reason of the exportation of the subject merchandise to the United States," and to confirm Huvis' entitlement to a duty drawback adjustment, we employed a two-prong test to ensure that 1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise), and 2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.

Based on our analysis, we find that Huvis met the requirements of Commerce's two-prong test for a duty drawback adjustment. We find that Huvis proved that the relevant import duties and rebates were directly linked to, and dependent upon, one another. Second, Huvis demonstrated that there were sufficient imports of raw materials to account for the duty drawback received on the exports of the manufactured product. At verification, we confirmed Huvis' eligibility.<sup>38</sup>

While the petitioner argues that the explanations and documentation provided by Huvis do not demonstrate Huvis' eligibility based on either a link between imports and exports or sufficient quantities of exports *vis-à-vis* drawback received, we disagree. At verification, we obtained and examined the duty drawback applications and all supporting documents that Huvis submitted to the Korean government. We traced the raw materials consumed using the documents Huvis filed

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<sup>37</sup> See *Preliminary Determination* at 9-10.

<sup>38</sup> We note the duty drawback claims by Huvis and TCK were also found to meet both prongs in *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 FR 660 (January 5, 2018) (*Fine Denier PSF from Korea Prelim*) and accompanying IDM, at 15-16 (unchanged in *Fine Denier Polyester Staple Fiber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24743 (May 30, 2018) (*Fine Denier PSF from Korea Final*) and accompanying IDM) (where TCK was a respondent) and *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2008-2009 Antidumping Duty Administrative Review*, 75 FR 33783, 33784 (June 15, 2010) (*PSF from Korea Prelim*) (unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2008 – 2009 Antidumping Duty Administrative Review*, 75 FR 64252 (October 19, 2010) (*PSF from Korea Final*)) (where Huvis was a respondent).

with the Korean Government, which showed that: 1) there were sufficient imports of raw materials to account for the duty drawback received; and 2) the refund of import duties was directly linked to the exports of subject merchandise, through to the exported product.<sup>39</sup>

However, we disagree with Huvis that we should use the duty drawback expenses reported in the U.S. sales listing (*i.e.*, in the field DTYDRAWU) instead of the import duty costs reported by Huvis (*i.e.*, reported in the DUTY1 and DUTY2 fields of the COP database). Consistent with our current practice, we based the duty drawback adjustment on the duties imposed on inputs.<sup>40</sup> As we stated in the *Preliminary Determination*:

{W}e have preliminarily granted duty drawback adjustments to both Huvis and TCK consistent with our practice. Under this methodology, Commerce will make an upward adjustment to U.S. price based on the amount of the **duty imposed on the input** and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period **based on the cost of inputs** during the POI. This ensures that the amount added to both sides of the dumping calculations is equal, *i.e.*, duty neutral, meeting the purpose of the adjustment as affirmed in *Saha Thai*.<sup>41</sup>

Thus, consistent with our practice, we continue to make an upward adjustment to U.S. price for duty drawback based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.<sup>42</sup> Specifically, we have adjusted the U.S. price for duty drawback, but limited the adjustment to the actual duty costs included in the CONNUM-specific costs reported in the cost database.

Huvis reported its estimated per-unit duty costs under informational cost fields DUTY1 and DUTY2, however, at the *Preliminary Determination*, we did not use DUTY1 in the duty drawback calculation since Huvis' calculation of cost field DUTY1 failed to account for the percentage of purchases that were domestically sourced.<sup>43</sup> Because Huvis does not separately

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<sup>39</sup> See Huvis Sales Verification Report, at 17-18.

<sup>40</sup> See, *e.g.*, *Carbon and Alloy Steel Wire Rod from Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13249 (March 28, 2018) (*Steel Wire Rod from Turkey*), and accompanying IDM at Comment 1; and *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017) (*Steel Concrete Reinforcing Bar from Turkey*), and accompanying IDM at Comment 1.

<sup>41</sup> See Preliminary Decision Memorandum at 10 (emphasis added), which explains that the CAFC stated in the *Saha Thai* litigation that "it is clear that Commerce only added imputed import duty costs to COP in an amount appropriate to offset Saha's actual import duty exemption under the bonded warehouse program. This did not result in double counting because Commerce merely added the cost of import duties that Saha would have paid on the inputs in category C if Saha had sold the subject merchandise in Thailand rather than exporting it to the United States. Commerce thus calculated an appropriate average COP." See *Saha Thai*, 635 F. 3d. at 1344.

<sup>42</sup> See *Steel Wire Rod from Turkey*, and accompanying IDM at Comment 1.

<sup>43</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Huvis Corporation," dated January 26, 2018, at 2.

track duties in its normal books and records, but rather includes duties in its inventoried raw material purchase prices, Huvis derived a methodology for estimating the duty costs that were included under the direct material field in the cost database.<sup>44</sup> In so doing, Huvis limited its duty cost calculations to two directly imported raw materials.<sup>45</sup> While Huvis' section D submissions also identified what portion of the POI purchase quantities and values of these two raw materials were imported versus domestically sourced during the POI, Huvis' calculations of the per-unit duty costs failed to consider this information. Instead, Huvis' duty estimates treated both inputs as one hundred percent imported. At the cost verification, we examined Huvis' duty calculation methodology and also confirmed the imported quantities and values for the two raw materials finding that only one of the two inputs was completely sourced from foreign suppliers.<sup>46</sup>

Based on the foregoing, we find that Huvis meets the requirements of Commerce's two prong test for a duty drawback adjustment, and, while we find that DUTY1 was miscalculated, Huvis' submissions provide the information necessary to remedy the calculation. Furthermore, this information was confirmed at Commerce's cost verification. Therefore, for the final determination, we adjusted field DUTY1 to exclude the duties mistakenly estimated on the domestically-sourced raw materials. Consistent with the *Preliminary Determination*, we have accepted DUTY2 as reported.

Finally, we point out the three additional inputs referenced by the petitioner were not included in the DUTY1 and DUTY2 fields.<sup>47</sup> Moreover, Huvis only included estimated duties for directly imported raw materials, *i.e.*, where Huvis is the importer of record, in DUTY1 and DUTY2.<sup>48</sup> Thus, based on Commerce's methodology of limiting the duty drawback adjustment to the actual duty costs reported in the cost database, Huvis will not receive an adjustment to U.S. sales for duties that may have been incurred on the additional inputs.

#### **Comment 4: Critical Circumstances**

##### *Petitioner's Arguments*

- The petitioner argues that while Commerce did not find critical circumstances for Huvis at the *Preliminary Determination*, it should review this decision for the final determination based on updated information as to knowledge of dumping and shipment quantities.

##### *Huvis' Arguments*

- Huvis contends that the petitioner's argument for re-examining the negative preliminary determination of critical circumstances for Huvis neglects to mention Commerce's finding that Huvis' shipments did not exceed the 15 percent threshold for finding critical

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<sup>44</sup> See Huvis Cost Verification Report, at 21.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 20-21.

<sup>48</sup> *Id.*

circumstances. Huvis argues that these facts have not changed, and, therefore, Commerce should continue to find negative critical circumstances for Huvis for the final determination.

- Huvis argues that even if Commerce uses seven-month periods, instead of the six-month periods used for the *Preliminary Determination*, Huvis' shipments still do not exceed the 15 percent threshold. Huvis contends that the petitioner has presented no factual basis for Commerce to reach a different outcome, and thus, Commerce should continue to find that critical circumstances do not exist for Huvis.

#### Commerce's Position

We analyzed the shipment data submitted by Huvis for the periods December 2016 through June 2017 and July 2017 through January 2018. As discussed above in "Critical Circumstances," Huvis' volume data indicate that there was no massive increase in shipments of subject merchandise to the United States by Huvis during the seven-month period following the filing of the petition.<sup>49</sup> Accordingly, we continue to find that critical circumstances do not exist for Huvis.

#### **Comment 5: Corrections Found at Verification**

##### *Petitioner's Arguments*

- The petitioner argues that Commerce should make corrections that were found during verification, specifically corrections to domestic brokerage expenses in field DBROK1U and cost adjustments to G&A and financial expense ratio (INTEX).

#### Commerce's Position

Commerce instructed Huvis to make changes noted in the sales verification report, including the updated expenses in field DBROK1U, and to submit after verification revised sales listings that reflect those changes.<sup>50</sup> On April 19, 2018, Huvis submitted its revised sales listings and we have used these sales listings in our final calculations. As for the cost corrections, we agree and have adjusted the G&A and financial expense ratios for the final determination.

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<sup>49</sup> See Final Critical Circumstances Analysis Memo.

<sup>50</sup> See Memorandum, "Request for Revised Home Market and U.S. Sales Listings for Huvis Corporation in the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea," dated April 16, 2018.

## **TCK**

### **Comment 6: Denier Range Reporting**

#### *Petitioner's Arguments*

- The petitioner argues that TCK misreported the denier range product characteristics for certain of TCK's home market sales. Specifically, the petitioner states that TCK's reported actual denier for certain home market sales does correspond with the denier range code reported for those same sales.<sup>51</sup> Therefore, the petitioner argues that, for the final determination, Commerce should revise the denier range product characteristic of the control number for these sales to assign the denier range code that reflects the actual denier reported.

#### *TCK's Arguments*

- TCK argues that it correctly reported the denier range product characteristic for the product identified by the petitioner, and therefore no modification to TCK's control number for this product is necessary.
- Specifically, TCK asserts that Commerce examined the product characteristics of the product in question at the cost verification and documents contained in the cost verification exhibit 10 demonstrate that the denier range code was in fact reported correctly.<sup>52</sup>

#### *Commerce's Position*

Based on the information examined at the cost verification and contained on the record of this investigation, we find that the denier range product characteristic for the product in question was reported accurately.<sup>53</sup> Thus, we find a modification to TCK's denier range product characteristic unnecessary. As such, we have not revised any of TCK's home market control numbers for the final determination.

### **Comment 7: U.S. Destination Reporting**

#### *Petitioner's Arguments*

- The petitioner argues that TCK erroneously reported the destinations for certain U.S. sales, thus precluding a complete differential pricing analysis. Specifically, the petitioner

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<sup>51</sup> TCK reported the actual denier in a separate field as requested by Commerce. The actual denier does not form part of the control number.

<sup>52</sup> See TCK Case Brief, at 3 and 4. TCK notes that while the actual denier of this product was misreported, it is not part of the control number or used in the margin calculations and therefore no revision is necessary.

<sup>53</sup> See TCK Cost Verification Report at Exhibit 10, page 3.

asserts that TCK: 1) omitted a U.S. destination for its U.S. sales made to an unaffiliated Korean trading company when TCK could have attained this information; and 2) reported the U.S. destination incorrectly for a U.S. sale (*i.e.*, SEQU 63) based on the zip code and state of the U.S. port of entry rather than on the customer's zip code and state shown on the commercial invoice.<sup>54</sup>

- The petitioner argues that the omitted and erroneous destination information precludes a complete differential pricing analysis. Therefore, the petitioner argues that Commerce should apply facts available with adverse inferences for the final determination by using the “alternative” average-to-transaction methodology.

#### *TCK's Arguments*

- TCK argues that the petitioner's proposal to use the alternative average-to-transaction methodology for TCK's calculations is moot because Commerce already found a pattern of prices which differ significantly by region, customer, or time period based on the reported destination zip codes in the *Preliminary Determination*, and thus it already considered the “alternative” average-to-transaction methodology in its analysis. Therefore, TCK argues that any revisions or errors in the destination coding cannot impact that result.
- Nonetheless, TCK maintains that its destination coding is accurate and reasonable. TCK argues that it explained in its original questionnaire response that it identified its sales made to Korean trading companies as U.S. sales based on the export declaration for these sales which identifies the country of destination. TCK argues that Commerce did not request alternative reporting to identify the U.S. destination of these sales and there is no basis for Commerce to resort to any adverse inference.
- TCK further argues that the final destination of the sales in question is irrelevant to TCK's pricing and TCK would have no reason to price these sales “differentially” based on the destination to which its Korean trading company customer may ship the product.
- TCK argues that, with respect to the sale for which it reported the U.S. destination based U.S. port of entry zip code and state, it believes this destination information is reasonable and that no adjustment is necessary. However, TCK states that should Commerce decide to adjust this destination code, all of the necessary information is on the record to do so, and thus there is no basis for Commerce to disregard the destination data for this sale nor apply any adverse adjustment.

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<sup>54</sup> See Petitioner TCK Case Brief, at 13.

### Commerce's Position

We continue to accept TCK's destination reporting for the final determination. Commerce's questionnaire instructs respondents to report destination zip (*i.e.*, DESTU) and destination state (*i.e.*, STATEU), respectively, as follows:

Report the five-digit U.S. postal "ZIP" code of the customer's place of delivery.

Report the state in which the customer's place of delivery is located.

With respect to TCK's sales to Korean trading companies, TCK informed Commerce in its original response that, for these sales, "because the export declaration only indicates the country of destination, TCK reported "00000" as the zip code and "KR" in state field.<sup>55</sup> Therefore, TCK reported the delivery location consistent with the delivery terms for these sales and on the delivery information available to TCK for these sales. Further, given that the sales in question were made on an FOB Korea basis and TCK's customer was not located in the United States, we did not ask TCK to obtain TCK's customer's ultimate U.S. destination because that would not accurately reflect TCK's pricing patterns among U.S. regions. Consequently, we did not request further information or changes to the delivery reporting for these sales.

We disagree with the petitioner that TCK's U.S. destination reporting warrants the application of facts available with adverse inferences. We note that TCK did not withhold information requested by Commerce. Moreover, we find the petitioner's proposal to use the alternative average-to-transaction methodology moot because our differential pricing analysis for TCK already considers the average-to-transaction methodology. Specifically, as noted in the *Preliminary Determination*, based on TCK's reported destination information, the Cohen's *d* test stage of the differential pricing analysis determined that TCK's U.S. prices demonstrate the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods:

For TCK, based on the results of the differential pricing analysis, Commerce preliminarily finds that 79.07 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.<sup>56</sup>

Therefore, because the percentage of TCK's sales passing the Cohen's *d* test was greater than the 66 percent threshold, we test whether using an alternative comparison method (*e.g.*, the average-to-transaction methodology) yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average methodology only. In the *Preliminary Determination*, we stated:

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<sup>55</sup> See TCK's September 28, Section C response, at page C-29.

<sup>56</sup> See Preliminary Decision Memorandum at 8.



Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for TCK.<sup>57</sup>

We continue to find that TCK's U.S. prices demonstrate the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods for the final determination and that there is no meaningful difference between the weighted-average dumping margin using the average-to-average method and the weighted-average dumping margin calculated using the average-to-transaction method.

Regarding TCK's reporting of the customer's delivery location for SEQU 63, the petitioner argues that this U.S. destination was reported incorrectly based on the verification report. We disagree that TCK misreported the destination for this sale. Specifically, we stated:

because the reported port zip code and state do not correspond to the customer's delivery location, it may be more appropriate to use the customer's billing zip code and state.<sup>58</sup>

For this sale, TCK reported the destination of this sale consistent with the terms of sale for it. Therefore, we find this reporting reasonable. Furthermore, as discussed above, our differential pricing analysis for TCK already considers the average-to-transaction methodology based on the reported destinations. Consequently, we have not changed the reported destination for this sale for the final determination.

## **Comment 8: TCK's Unpaid Sales**

### *TCK's Arguments*

- TCK reported that for certain of its U.S. sales during the POI, TCK was not paid by the customer but instead TCK's insurance policy paid a certain percentage of the invoice value of the sales. We instructed TCK to report the unpaid portion of these sales as

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<sup>57</sup> *Id.*

<sup>58</sup> See TCK Sales Verification Report at page 13.

billing adjustments, and TCK complied with this request. For the *Preliminary Determination*, we applied these reported billing adjustments to calculate net U.S. price.

- TCK argues that Commerce inappropriately applied billing adjustments to these sales and should use the full price TCK charged to the customer in determining the final dumping margin for TCK for the final determination.
- TCK argues that the portion of the invoice amount that was not covered by TCK's insurance company does not reflect an adjustment to the price invoiced to the customer or a reduction in the amount the customer owed to TCK. TCK argues that the "adjustment" amount is merely the difference between the invoice price and the amount TCK was able to recover from TCK's insurance company pursuant to its insurance policy.
- TCK argues that if these transactions had not been covered by an insurance policy, Commerce would have treated them as unpaid sales with an unextended credit period and would have not applied any adjustments to the prices. As support for this assertion TCK cites *SSSSC from Korea*, maintaining that in that case, Commerce included in the margin calculations sales to a bankrupt customer for which payment was not received because the material terms of sale were final at the time of sale and there was "nothing atypical about the terms of the sales at the time they were made."<sup>59</sup> TCK further argues that the fact that TCK was able to recover funds through its insurance company does not change the fact that these sales are unpaid sales. As such, TCK maintains that the unpaid portions of the sales are not properly classified as billing adjustments.
- TCK further argues that, at the time of sale, which is when Commerce typically looks to the established price, TCK and its customer anticipated the price as invoiced without adjustment. TCK maintains that the unpaid amount: 1) only came into play after the sale was made; and 2) was not a result of negotiation between TCK and the customer. Thus, TCK argues that Commerce should not treat the unrecovered amount from the insurance settlement as a billing adjustment, consistent with 351.401(c), because it did not form part of the established terms of sale and it occurred after the sale was made.
- Alternatively, TCK argues that if Commerce continues to include the unpaid balance of these sales in the final margin calculation for TCK, it should treat it as an indirect selling expense because: 1) TCK treats unpaid balances as bad debt in its accounting system in accordance with Korean accounting standards; and 2) this treatment would be consistent with Commerce's treatment of non-payment by customers in *SSSSC from Korea Amended Final* where Commerce did not adjust U.S. price to account for non-payment

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<sup>59</sup> See TCK Case Brief, at 3-4, citing to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664 (June 8, 1999) (*SSSSC from Korea*) at Comment 1.

by customers where the exporter could not have taken non-payment into account when setting the price.<sup>60</sup>

- Finally, TCK argues that the record clearly demonstrates that TCK had no intention to forego payment, whether in whole or in part, for the sales in question.<sup>61</sup> Thus, TCK argues that Commerce should use the full price TCK charged to the customer in determining the final dumping margin for TCK.

#### *Petitioner's Arguments*

- The petitioner argues that Commerce should continue to adjust TCK's U.S. prices to account for the unpaid portions of the sales for the final determination. Specifically, the petitioner argues that Commerce should calculate the dumping margin for TCK using the net price paid to TCK by the U.S. purchaser, as required by 19 CFR 351.401(c).<sup>62</sup>
- The petitioner disagrees with TCK that the billing adjustments in question should not be applied because the adjustment came into play after the time of sale. The petitioner asserts that Commerce's questionnaire defines a billing adjustment as 1) an amount reflected in the gross unit price; 2) can be a decrease or increase in price; and 3) can be a post-invoicing price adjustment.<sup>63</sup> Further, the petitioner argues that billing adjustments (price adjustments, short-ship quantity adjustments, etc.) are typically issued after the time of sale and do not require preexisting agreements before the time of sale.<sup>64</sup>
- The petitioner argues that because the unpaid balance of the sales in question is reflected in the gross unit price is a decrease to the price and is a post-invoice adjustment, it specifically ties to the sales. Thus, the petitioner argues that Commerce should continue to treat it as a billing adjustment and deduct it from the gross unit price to calculate the net U.S. price.
- The petitioner further argues that Commerce should reject TCK's alternative argument to treat the unpaid balance as bad debt in the indirect selling expenses because: 1) this unpaid balance is not bad debt but instead ties to specific sales; 2) Commerce normally accounts for a company's bad debt based on the historical experience of the company,<sup>65</sup>

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<sup>60</sup> See TCK Case Brief, at 5, citing to *Notice of Amendment of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 66 FR 45279, 45282 (August 28, 2001) (*SSSSC Korea Amended Final*).

<sup>61</sup> As support for this assertion, TCK points to its notification to the insurance company of the overdue payment by the customer and the only subsequent sale to this same customer after its failure to pay in which TCK demanded payment up front. See TCK Case Brief, at 5.

<sup>62</sup> See Petitioner TCK Rebuttal Brief, at 3.

<sup>63</sup> *Id.* at 4.

<sup>64</sup> *Id.* at 5, citing to *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 6259 (February 10, 2004) and accompanying IDM at Comment 1 (*SSSSC Mexico 2004 Final*).

<sup>65</sup> *Id.*, citing to *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty*

and the amount for the bad debt expense must be reasonably anticipated based on the company's historical experience.<sup>66</sup> The petitioner argues that, in this case, TCK did not rely on its bad debt allowance when its customer refused to pay for the merchandise, but instead used an insurance policy to pay for a portion of the invoice. Thus, the petitioner argues that Commerce should not treat the unpaid amount of TCK's sales as bad debt in the indirect selling expenses but instead as a billing adjustment to the gross unit price.

### Commerce's Position

We agree with TCK. Although we adjusted the reported U.S. prices for the *Preliminary Determination* for certain of TCK's U.S. sales to account for the unrecovered portion of the invoice amounts, we have reconsidered our determination and find that the full sales price charged to the customer should be included in the margin analysis.

TCK reported the sales in question based on the material terms of sale (*e.g.*, price) established with the customer at the time of sale. TCK argues that TCK and its customer anticipated the price as invoiced without adjustment. Because there is no evidence on the record that the price adjustment was anticipated, we agree that the sales price, as sold, reflects the terms of sale, consistent with 351.401(c). Further, the fact that TCK maintained a provision for bad debt account in its normal accounting system as well as a credit insurance plan, that TCK alerted its insurance company when the customer payment was overdue, and that for TCK's only subsequent sale to this same customer, TCK required payment up front, do not demonstrate that TCK intended to forgo payments for the sales in question.<sup>67</sup>

While the insurance settlement was able to recover a portion of the sales price owed to TCK, as established at the time of sale, we disagree with the petitioner that the unrecovered portion of the sales from the insurance settlement constitute a billing adjustment. Specifically, Commerce's regulations at 19 CFR 351.401(c) state:

In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary normally will use a price that is net of price adjustments, as defined in § 351.102(b), that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The Secretary will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment.

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*Administrative Review*: 2014-2015, 82 FR 18105 (April 17, 2017) and accompanying IDM at Comment 28 (*OCTG from Korea Final*) citing *SSSSC Korea Amended Final* at 45282.

<sup>66</sup> *Id.*, citing within *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 70 FR 3677 (January 26, 2005) and accompanying IDM at Comment 6 (*SSSSC from Mexico 2005 Final*).

<sup>67</sup> See TCK's November 22, 2017, Supplemental Sections B-C response, at Exhibit SC-3.

Further, Commerce's regulations at 19 CFR 351.102(b) define price adjustments as:

a change in the price charged for subject merchandise or the foreign like product, such as a discount, rebate, or other adjustment, including under certain circumstances, a change that is made after the time of sale, that is reflected in the purchaser's net outlay.

We agree with the petitioner that billing adjustments can occur after the time of sale (*e.g.*, to correct invoicing errors) and do not require preexisting agreements before the time of sale. However, in this case, unlike in *SSSSC Mexico 2004 Final*, there was no post-sale negotiation between TCK and the customer to change the prices established at the time of sale nor an invoicing error that required a billing adjustment. Instead, TCK's customer defaulted in payment altogether for the sales at issue. Consequently, we have not adjusted the prices of these sales to adjust for the portion of payment not recovered by the credit insurance.

We agree with the petitioner that Commerce usually treats bad debt based on the historical experience of the company and if the company reasonably anticipated having bad debt from customers.<sup>68</sup> In this case, TCK had both an account for the provision of bad debts and credit insurance to cover non-payment by customers. These facts indicate that TCK historically has dealt with bad debts and anticipated instances of customer non-payment. TCK, therefore, utilized its existing bad debt account and recorded the bad debts accordingly in its accounting system.<sup>69</sup> Because TCK already reported these bad debts in its sales listing as part of the indirect selling expense based on TCK's provision for bad debt, we find that no further adjustment to the reported amounts is necessary.

## **Comment 9: Duty Drawback Adjustment for TCK**

### *Petitioner's Arguments*

- TCK claimed an adjustment for U.S. duty drawback. In the *Preliminary Determination*, we accepted its claim. The petitioner argues that TCK did not establish either component of the two-prong test and therefore Commerce should deny the duty drawback adjustment to U.S. price for TCK for the final determination.

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<sup>68</sup> We note that consistent with *OCTG from Korea Final* and *SSSSC from Mexico 2005 Final*, cited by the petitioner, our treatment of bad debt is company specific based on how the company normally treats bad debt. For example, in *OCTG from Korea Final* we found that "the record contains no information to suggest that ...{these} sales represent the usual experience of {the respondent}, or were reasonably foreseeable," while in *SSSSC from Mexico 2005 Final* we found that "we find an adjustment for bad debt is warranted based on {the respondent's} historical experience...{w}e have included this amount in the numerator of the U.S. indirect selling expense (ISE) calculation."

<sup>69</sup> See November 23 Supp A-C at exhibit SC-3.

- The petitioner contends that, while Commerce’s verification report states that TCK provided documentation submitted to the Korean government and “demonstrated that the application provides direct links from the raw materials used through the final exported product,” sample documentation contained in verification exhibit 14 does not appear to demonstrate this.<sup>70</sup>
- The petitioner argues that merely receiving payments is not enough to justify a drawback adjustment, and the explanations and documentation provided do not demonstrate TCK’s eligibility based on either a link between imports and exports or sufficient quantities of exports vis-à-vis drawback received. As such, the petitioner maintains that Commerce should not grant a duty drawback for TCK.
- The petitioner notes that if Commerce continues to accept TCK’s duty drawback claim for the final determination, it should correct an apparent calculation error because it used the field “DUTY” rather than the field “DUTYDRWU” in its *Preliminary Determination* calculations.

#### *TCK’s Arguments*

- TCK states that Commerce agreed that it was entitled to a duty drawback in the *Preliminary Determination* because it fulfilled both prongs of Commerce’s test. TCK argues that Commerce should continue to allow TCK’s duty drawback claim, because nothing has changed since the *Preliminary Determination* except that Commerce successfully verified TCK’s reported duty drawback information and confirmed that TCK met the requirements for a duty drawback adjustment.<sup>71</sup>
- TCK maintains that it provided supporting documentation showing: 1) TCK exported finished products for each export; 2) TCK paid import duties on inputs used in the production; and 3) the quantities of the inputs consumed or exported in the finished goods do not exceed the quantities of inputs imported. TCK argues that in order to qualify for duty drawback under the Korean export-specific duty drawback program and application process, a company necessarily satisfies both prongs of Commerce’s test.
- TCK explains that, as noted in the verification report, Commerce confirmed the direct link from the raw materials used through the final product, examined the imported raw material amounts remaining after each export is made, and verified that the import duties TCK pays are always equal to or greater than the duty drawback it received for each of the selected sales. TCK states that the documentation Commerce examined at verification followed a similar flow as the documentation TCK previously submitted in supplemental questionnaires, of which Commerce based its *Preliminary Determination* decision that TCK satisfied the two prongs.

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<sup>70</sup> See Petitioner TCK Case Brief, at 5.

<sup>71</sup> TCK notes that Commerce also confirmed that TCK qualified for a duty drawback adjustment in the preliminary determination of the companion Fine Denier Polyester Staple Fiber from Korea case.

- TCK argues that the petitioner’s assertion that the drawback amount of SEQU 2 lacks a clear link to POI imports and production ignores the detailed worksheets and documentation contained in verification exhibit 14 demonstrating that the duty drawback amount related to this sale. Specifically, TCK maintains that it provided a worksheet showing all of the duty drawback amounts for the relevant product codes included in the duty drawback application for the sale in question and tied these details to the duty drawback application and the total duty amounts paid for the imports, showing that there is a direct link between the duties paid and the amount rebated. TCK states that this link is further confirmed by the “Statement of Required Amount.” TCK further states that it provided relevant import declarations and a statement showing the drawdown of the imported raw materials, establishing that TCK had sufficient imports to account for the exports.
- TCK argues that, contrary to the petitioner’s claims, Commerce did in fact verify that TCK successfully demonstrated the direct links from the raw materials used through the final exported products. Therefore, TCK argues that both its questionnaire responses and verification materials confirm that both prongs of Commerce’s test are satisfied under the Korean drawback application process.
- Finally, TCK argues that the petitioner’s allegation that the *Preliminary Determination* contained a calculation error by using the “DUTY” field rather than the “DUTYDRAWU” field is incorrect and no modification is necessary. TCK maintains that Commerce expressly stated it would add the “import duty costs” (*i.e.*, reported in the “DUTY” field of the cost database) to the U.S. price.

### Commerce’s Position

In the *Preliminary Determination*, we accepted TCK’s claimed duty drawback adjustment because it provided information to satisfy the criteria of the two-prong test.<sup>72</sup> For the final determination, we continue to grant TCK a duty drawback adjustment.

Consistent with Commerce’s practice, we applied our two-prong test to determine whether a duty drawback adjustment is appropriate. Specifically, to satisfy section 772(c)(1)(B) of the Act, which states that EP shall be increased by “the amount of any import duties imposed by the country of exportation... which have not been collected, by reason of the exportation of the subject merchandise to the United States,” and to confirm TCK’s entitlement to a duty drawback adjustment, we employed a two-prong test to ensure that 1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise), and 2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.

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<sup>72</sup> See *Preliminary Determination* at 9-10.

Based on our analysis, we find that TCK met the requirements of Commerce’s two-prong test for a duty drawback adjustment. We find that TCK proved that the relevant import duties and rebates were directly linked to, and dependent upon, one another. Second, TCK demonstrated that there were sufficient imports of raw materials to account for the duty drawback received on the exports of the manufactured product. At verification, we confirmed TCK’s eligibility.<sup>73</sup>

While the petitioner argues that the explanations and documentation provided by TCK do not demonstrate TCK’s eligibility based on either a link between imports and exports or sufficient quantities of exports *vis-à-vis* drawback received, we disagree. At verification, we obtained and examined the duty drawback applications and all supporting documents that TCK submitted to the Korean government for each of the selected sales, including SEQU 2 noted by the petitioner. We traced the raw materials used for each of these sales using the documents TCK filed with the Korean Government for each duty drawback application through to the exported product which showed that: 1) there were sufficient imports of raw materials to account for the duty drawback received; and 2) the refund of import duties was directly linked to the exports of subject merchandise.<sup>74</sup>

Finally, we disagree with the petitioner that the duty drawback adjustment made to U.S. price in the *Preliminary Determination* was in error because we added the import duty costs reported by TCK (*i.e.*, reported in the DUTY field of the COP database) instead of adding the duty drawback expenses reported in the U.S. sales listing (*i.e.*, in the field DTYDRAWU). Consistent with our current practice, we based the duty drawback adjustment on the duties imposed on inputs.<sup>75</sup> As we stated in the *Preliminary Determination*:

{W}e have preliminarily granted duty drawback adjustments to both Huvis and TCK consistent with our practice. Under this methodology, Commerce will make an upward adjustment to U.S. price based on the amount of the **duty imposed on the input** and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period **based on the cost of inputs** during the POI. This ensures that the amount added to both sides of the dumping calculations is equal, *i.e.*, duty neutral, meeting the purpose of the adjustment as affirmed in *Saha Thai*.<sup>76</sup>

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<sup>73</sup> We note the duty drawback claims by Huvis and TCK were also found to meet both prongs in *Fine Denier PSF from Korea Prelim* and accompanying IDM, at 15-16 (unchanged in *Fine Denier PSF from Korea Final* and accompanying IDM) (where TCK was a respondent) and *PSF from Korea Prelim* (unchanged in *PSF from Korea Final*) (where Huvis was a respondent).

<sup>74</sup> See TCK Sales Verification Report at 18.

<sup>75</sup> See *Steel Concrete Reinforcing Bar from Turkey* and accompanying IDM at Comment 1.

<sup>76</sup> See Preliminary Decision Memorandum at 10 (emphasis added), which explains that the CAFC stated in the *Saha Thai* litigation that “it is clear that Commerce only added imputed import duty costs to COP in an amount appropriate to offset Saha’s actual import duty exemption under the bonded warehouse program. This did not result in double counting because Commerce merely added the cost of import duties that Saha would have paid on the inputs in category C if Saha had sold the subject merchandise in Thailand rather than exporting it to the United States. Commerce thus calculated an appropriate average COP.” See *Saha Thai*, 635 F. 3d. at 1344.



Thus, consistent with our practice, we continue to make an upward adjustment to U.S. price for duty drawback based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.

#### **Comment 10: G&A Expense Rate for TCK**

##### *Petitioner's Arguments*

- The petitioner argues that Commerce should add to TCK's G&A expenses an amount of parental G&A expense for the parent's contributions to TCK. The petitioner asserts that TCK's G&A expense allocation schedule does not include any items specifically identified as research and development (R&D).<sup>77</sup> Therefore, the petitioner alleges, it is reasonable to consider that Toray Industries, Inc.'s (Toray Industries) consolidated R&D expenses represent additional G&A expenses partially attributable to TCK.<sup>78</sup>
- The petitioner argues that, alternatively, Commerce should at least quantify the parent G&A expense contribution based on the unconsolidated SG&A expense of Toray International, Inc. (Toray International) divided by the parent's consolidated cost of sales.<sup>79</sup>

##### *TCK's Arguments*

- TCK notes the petitioner's argument was already rejected by Commerce in the *Preliminary Determination*.<sup>80</sup>
- TCK argues that the petitioner provides no record evidence to support their allegation that Toray Industries performs R&D for TCK.
- TCK asserts that, in its responses, it identified all affiliated parties providing goods and services to TCK and also stated that it performs its own R&D.<sup>81</sup> Further, TCK asserts that Commerce directed TCK to include company-wide R&D expenses in its reported G&A expense rate and TCK complied.<sup>82</sup>

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<sup>77</sup> See Petitioner TCK Case Brief, at 6 (citing to TCK's Supplemental Section D questionnaire response dated November 20, 2017 (TCK Supplemental D) at Exhibit SD-38).

<sup>78</sup> See Petitioner TCK Case Brief, at 6 (citing to TCK Supplemental D at Exhibit SD-39).

<sup>79</sup> See Petitioner TCK Case Brief, at 6 (citing to TCK Supplemental D at Exhibit SD-5b).

<sup>80</sup> See TCK Rebuttal Brief, at 14 (citing, *generally*, Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Toray Chemical Korea, Inc.," dated January 26, 2017 (TCK Preliminary Calculation Memorandum)).

<sup>81</sup> See TCK Rebuttal Brief, at 14 (citing to TCK's Section D questionnaire response dated September 28, 2017 (TCK Section D) at 6 and Exhibit D-4).

<sup>82</sup> See TCK Rebuttal Brief, at 14 (citing to TCK Supplemental D at 29).

- TCK contends that the petitioner’s argument is faulty and results in double counting, because TCK’s own R&D expenses are included in the consolidated R&D expenses that the petitioner suggests should be allocated to TCK.<sup>83</sup>
- TCK argues that Commerce should ignore the petitioner’s unsubstantiated claims and continue to exclude Toray Industries’ R&D from TCK’s G&A expenses.

### Commerce’s Position

We disagree with the petitioner that Commerce should add parent G&A expense contributions to TCK under the assumption that Toray Industries’ consolidated R&D expenses represent additional G&A expenses for TCK. Contrary to the petitioner’s assertion, TCK’s reported G&A expenses include R&D expenses.<sup>84</sup> During the POI, TCK performed R&D in house and recorded its R&D costs in its books and records.<sup>85</sup> In its Section D response, TCK calculated its R&D expenses as a separate ratio, added to the G&A expense rate, which only included the amount of R&D expenses related to TCK’s PSF Division as a percentage of the PSF Division’s cost of goods sold (COGS).<sup>86</sup> In its Supplemental Section D response, as requested by Commerce, TCK included the company-wide amount of R&D expenses in the calculation of its G&A expenses.<sup>87</sup> There is no record evidence supporting the petitioner’s assertion that there were additional R&D activities and costs that were incurred for the benefit of TCK that were excluded from the reported expenses. Therefore, for the final determination, we have not adjusted TCK’s G&A expense rate calculation to add parent G&A expense contributions.

## **Comment 11: Financial Expense Rate**

### *Petitioner’s Arguments*

- The petitioner argues that Commerce should add Toray Industries’ “other expenses, net” to either interest or G&A expenses.<sup>88</sup>
- The petitioner argues that Commerce should exclude the interest income offset from TCK’s financial expense rate calculation, because TCK was not able to demonstrate that the income was derived from short-term sources.<sup>89</sup>

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<sup>83</sup> See TCK Rebuttal Brief, at 14 (citing to TCK Supplemental D at Exhibit SD-39, Note 14).

<sup>84</sup> See TCK Cost Verification Exhibit 6.

<sup>85</sup> See TCK Section D at 6 and 22.

<sup>86</sup> *Id.* at 22-23 and Exhibit D-13.

<sup>87</sup> See TCK Supplemental D at 28 and Exhibit SD-38.

<sup>88</sup> See Petitioner TCK Case Brief, at 6 (citing to TCK Supplemental D at Exhibit SD-38). We note that the petitioner probably intended to cite to Exhibit SD-39.

<sup>89</sup> See Petitioner TCK Case Brief, at 6 (citing to TCK Cost Verification Report at 20-21).

### *TCK's Arguments*

- TCK notes the petitioner's argument was also already rejected by Commerce in the *Preliminary Determination*.<sup>90</sup>
- TCK asserts that its financial expense rate calculation follows Commerce's Section D questionnaire instructions. Specifically, TCK asserts that its calculation is based on the highest level of consolidation and includes interest expenses, short-term interest income offset and net foreign exchange gains and losses.<sup>91</sup> As such, TCK contends that there is no basis to include Toray Industries' "other expenses, net" in the calculation of the financial expense rate.
- TCK argues there is also no justification to include Toray Industries' "other expenses, net" in the G&A expenses, as there is no evidence that these are related to TCK's operations.
- TCK asserts it has included all of the "other expenses, net" incurred in Korea in its reported G&A expenses. TCK argues that including these expenses at the consolidated level will result in double counting and in the inclusion of expenses, such as investment-related amounts, that Commerce does not consider appropriate to be included in the G&A expenses.
- TCK contends that, in reference to the short-term interest income, the petitioner's characterization of the TCK Cost Verification Report is misleading.<sup>92</sup>
- TCK clarifies that both the Section D and the Supplemental D questionnaire responses stated the basis for its short-term income figure, which Commerce accepted in the *Preliminary Determination*.<sup>93</sup>
- TCK asserts that Commerce did not note any discrepancies, nor did it flag TCK's short-term interest calculation in the TCK Cost Verification Report.

### *Commerce's Position*

We disagree with the petitioner's argument that Commerce should add Toray Industries' "other expenses, net" to either TCK's interest expenses or its G&A expenses. As discussed in the TCK Cost Verification Report, we reviewed the calculations of TCK's G&A and financial expense rates and traced all the elements of the calculations (*e.g.*, COGS, interest expense, gain/loss on

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<sup>90</sup> See TCK Rebuttal Brief, at 14 (citing, *generally*, to TCK Preliminary Calculation Memorandum).

<sup>91</sup> See TCK Rebuttal Brief, at 15 (citing to TCK Section D at 24 and TCK Supplemental D at Exhibit SD-40).

<sup>92</sup> See TCK Rebuttal Brief, at 15 (citing to TCK Cost Verification Report at 20-21).

<sup>93</sup> See TCK Rebuttal Brief, at 16 (citing to TCK Section D at Exhibit D-41 and TCK Supplemental D at 31 and Exhibit SD-40).

foreign currency transactions, G&A expenses, non-operating income and expenses, etc.) to TCK's and Toray Industries' FY 2016-17 audited financial statements.<sup>94</sup> TCK properly included the unconsolidated "other expenses" category in its reported G&A expenses and all the consolidated financing related costs in its reported financial expenses. Therefore, for the final determination, we have found no basis to include Toray Industries consolidated "other expenses, net" in either TCK's reported G&A expenses, or in its reported financial expenses.

Further, the petitioner argues that Commerce should exclude the interest income offset from TCK's financial expense rate calculation, because TCK was not able to demonstrate that the income was derived from short-term sources. We disagree. Toray Industries' FY 2016-2017 audited consolidated financial statements show that the interest income TCK claimed as an offset to its financial expenses was derived from short-term sources.<sup>95</sup> Therefore, for the final determination, we have continued to allow the interest income offset to TCK's reported financial expenses.

## **Comment 12: TCK's Affiliated Party Inputs**

### *TCK's Arguments*

- 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.<sup>96</sup>
- 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.<sup>97</sup>

### *Petitioner's Arguments*

- Based on the cost verification findings, and consistent with the *Preliminary Determination*, the petitioner urges Commerce to adjust TCK's transfer price of EG to reflect the unaffiliated market prices in accordance with the transactions disregarded rule.<sup>98</sup>

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<sup>94</sup> See TCK Cost Verification Report at 18-21 and Cost Verification Exhibits 6 and 7.

<sup>95</sup> See TCK Cost Verification Report at 20-21 and Cost Verification Exhibit 7.

<sup>96</sup> See TCK Case Brief, at 6 (citing to TCK Section D at 7 and TCK Cost Verification Report at 14).

<sup>97</sup> See TCK Case Brief, at 6-7 (citing to TCK Cost Verification Exhibit 14).

<sup>98</sup> See Petitioner TCK Rebuttal Brief, at 6-8 (citing to TCK Cost Verification Report at 17-18; TCK Preliminary

- The petitioner argues that because Commerce’s determination is based on the POI, it should reject TCK’s argument that the transactions disregarded comparison should be based on monthly affiliated and unaffiliated purchase prices.<sup>99</sup>

### Commerce’s Position

We agree with the petitioner that, consistent with the *Preliminary Determination*, Commerce should adjust TCK’s reported cost of manufacturing (COM) in accordance with the transactions disregarded rule. During the POI, TCK purchased EG used to produce low melt PSF from Toray International, an affiliated trading company.<sup>100</sup> As discussed in the TCK Cost Verification Report, we analyzed TCK’s affiliated EG purchases in accordance with the transactions disregarded rule.<sup>101</sup> We compared TCK’s reported POI transfer price to the weight-averaged market price.<sup>102</sup> Based on our analysis, we determined that the weighted-average market price exceeded the transfer price.<sup>103</sup>

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 the 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 note that a comparison of just the first month of the POI, as suggested by TCK, would not be accurate due to the timing differences associated with EG purchases.<sup>104</sup> Therefore, for the final determination, we have continued to adjust TCK’s reported COM for the difference between the POI transfer price and the weight-averaged market price.<sup>105</sup>

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Calculation Memorandum at Adjustment 1; *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary Results of Changed Circumstances Review and Intent to Reinstate Sahaviriya Steel Industries Public Company Limited in the Antidumping Duty Order*, 73 FR 79809 (December 30, 2008); and, *Emulsion Styrene-Butadiene Rubber from Poland: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 33061 (July 19, 2017) and accompanying IDM at Comment 1).

<sup>99</sup> See Petitioner TCK Rebuttal Brief, at 7 (citing to *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review*, 72 FR 12758 (March 19, 2007) and accompanying IDM at Comment 2; and, *Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part*, 69 FR 6255 (February 10, 2004) and accompanying IDM at Comment 32).

<sup>100</sup> See TCK Cost Verification Report at 3 and 16-18.

<sup>101</sup> See 19 U.S.C. § 1677b(f)(2) and TCK Cost Verification Report at 17.

<sup>102</sup> See TCK Cost Verification Report at 17.

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

<sup>104</sup> *Id.* at Cost Verification Exhibit 1.

<sup>105</sup> See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Toray Chemical Korea, Inc.,” dated June 18, 2018 (TCK Final Cost Calculation Memo at Adjustment 1).

### **Comment 13: Selling, General and Administrative (SG&A) Expense Rate for Toray International**

#### *TCK's Arguments*

- TCK contends that the revised Toray International SG&A expense rate proposed by Commerce in the TCK Cost Verification Report 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.

#### *Petitioner's Arguments*

- The petitioner argues that Commerce should adjust the numerator of Toray International's SG&A expense rate calculation in accordance with the recommendations listed in the TCK Cost Verification Report.<sup>106</sup>
- The petitioner asserts that TCK's removal of certain expense items based on account names, but not on GL information, renders the omitted expenses unverified. Therefore, as partial facts available, Commerce should include the full value of these expenses in Toray International's SG&A rate.<sup>107</sup>
- The petitioner argues that Commerce should also reject TCK's alternative request to omit certain movement and direct selling expenses from the SG&A rate.

#### Commerce's Position

We agree with the petitioner that the numerator to Toray International's SG&A expense rate calculation requires adjustment. As discussed in the TCK Cost Verification Report, during the POI, TCK purchased EG from its affiliated trading company, Toray International.<sup>108</sup> Toray International's total cost for EG includes the price Toray International paid to unaffiliated suppliers plus an amount for SG&A expenses 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.<sup>109</sup> 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.

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<sup>106</sup> See Petitioner TCK Rebuttal Brief, at 9-10 (citing to TCK Cost Verification Report at 17-18).

<sup>107</sup> See Petitioner TCK Rebuttal Brief, at 10-11 (citing to Sections 776(a)(1), 776(a)(2)(A)-(D) and 782(d) of the Act).

<sup>108</sup> See TCK Cost Verification Report at 3 and 17-18.

<sup>109</sup> See TCK Cost Verification Report at Cost Verification Exhibit 14.

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.<sup>110</sup>

## **VII. Recommendation**

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, then we will publish the final determination in the investigation and the final, estimated weight-average dumping margins in the *Federal Register*.

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

6/18/2018

X



Signed by: GARY TAVERMAN

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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

<sup>110</sup> See TCK Final Cost Calculation Memo at Adjustment 1.