



A-580-896
Investigation
Public Document
E&C/Office VII: SC

September 17, 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 Affirmative Final
Determination in the Less-Than-Fair-Value Investigation of
Polyethylene Terephthalate Resin from the Republic of Korea;
and, Final Affirmative Determination of Critical Circumstances, in
Part

I. SUMMARY

The Department of Commerce (Commerce) determines that polyethylene terephthalate resin (PET resin) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2016, through June 30, 2017.

We analyzed the comments of the interested parties. As a result of this analysis, and based on the minor corrections presented at the cost and sales verifications, we made certain changes to SK Chemicals Co., Ltd.'s (SK Chemicals') margin calculation program with respect to its total cost of manufacturing (TOTCOM), which also affected inventory costs; U.S. inland freight costs from the port to the warehouse; home market and U.S. packing costs; and, partial refunds of U.S. duties. 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 investigation on which we received comments from parties.

- Comment 1: Whether Commerce Should Make an Adjustment for Partial Refunds of U.S. Duties
- Comment 2: Allocating Company-Wide Research and Development (R&D) Expenses to Separate Divisions
- Comment 3: Including Financial Income Gains on Derivatives and Long-Term Interest Income in Interest Expenses (INTEX)
- Comment 4: Reported Affiliated Input Prices

II. BACKGROUND

On May 4, 2018, Commerce published the *Preliminary Determination* of sales at less than fair value of PET resin from Korea.¹ Between May 16, 2018, and July 10, 2018, we conducted cost and sales verifications of the mandatory respondent, SK Chemicals and its wholly-owned U.S. affiliate SK Chemicals America, Inc. (SKCA), in accordance with section 782(i) of the Act.² At our request, SK Chemicals submitted revised cost and sales databases to reflect the minor corrections submitted and accepted during these verifications.³

The petitioners⁴ and SK Chemicals submitted case briefs on August 17, 2018.⁵ On August 22, 2018, the petitioners and SK Chemicals submitted rebuttal briefs.⁶ No party submitted a request for a public hearing.

¹ See *Polyethylene Terephthalate Resin 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 19694 (May 4, 2018) (*Preliminary Determination*).

² See Memorandum, “Verification of the Cost Response of SK Chemicals Co., Ltd. in the Antidumping Duty Investigation of Polyethylene Terephthalate Resin from the Republic of South Korea, dated August 10, 2018 (SK Chemicals’ Cost Verification Report); Memorandum, “Verification of the Questionnaire Responses of SK Chemicals Co., Ltd. in the Antidumping Duty Less Than Fair Value Investigation of Polyethylene Terephthalate Resin from the Republic of Korea,” dated August 10, 2018 (SK Chemicals’ Sales Verification Report); Memorandum, “Verification of the Questionnaire Responses of SK Chemicals America, Inc. in the Antidumping Duty Less Than Fair Value Investigation of Polyethylene Terephthalate Resin from the Republic of Korea,” dated August 3, 2018 (SKCA CEP Verification Report).

³ See SK Chemicals’ submission “Antidumping Investigation of Polyethylene Terephthalate Resin from the Republic of Korea: SK Chemicals’ Third Supplemental Section D Response,” dated August 1, 2018; *also* “Polyethylene Terephthalate Resin from the Republic of Korea, Revised Sales Databases for SK Chemicals,” dated August 8, 2018.

⁴ The petitioners in this investigation are DAK Americas LLC, Indorama Ventures USA, Inc., M&G Polymers USA, and Nan Ya Plastics Corporation. See, e.g., Petitioners’ Letter, “Polyethylene Terephthalate (“PET”) Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petition for the Imposition of Antidumping Duties,” dated September 26, 2017 (Petition).

⁵ See Petitioners’ submission, “Polyethylene Terephthalate Resin from South Korea; Petitioners’ Case Brief” dated August 17, 2018 (Petitioners’ Case Brief); *also* SK Chemicals’ submission, “Polyethylene Terephthalate Resin from the Republic of Korea, Case Brief of SK Chemicals,” dated August 17, 2018 (SK Chemicals’ Case Brief).

⁶ See Petitioners’ submission, “Polyethylene Terephthalate Resin from South Korea; Petitioners’ Rebuttal Brief” dated August 22, 2018 (Petitioners’ Rebuttal Brief); *see also* SK Chemicals’ submission, “Polyethylene Terephthalate Resin from the Republic of Korea, Rebuttal Brief of SK Chemicals” dated August 22, 2018 (SK Chemicals’ Rebuttal Brief).

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is PET resin from Korea. Commerce did not receive any scope comments subsequent to the *Preliminary Determination* and, therefore, the scope has not been updated since the *Preliminary Determination*. For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

IV. FINAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

In the *Preliminary Determination*, in accordance with section 733(e)(1) of the Act and 19 CFR 351.206, Commerce found that critical circumstances existed for Lotte Chemical Corp. (Lotte Chemical), TK Chemical Corp. (TK Chemical), and “all other” producers or exporters not individually examined and found that critical circumstances did not exist for SK Chemicals.⁷ Commerce received no comments concerning the preliminary critical circumstances determination. For this final determination, Commerce continues to find that, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, critical circumstances exist for Lotte Chemical and TK Chemical.⁸ Moreover, for this final determination, we determine that critical circumstances exist for SK Chemicals but do not exist for “all other” producers or exporters not individually examined.⁹ As explained in the preliminary critical circumstances determination, there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of PET resin exported from Korea, pursuant to section 735(a)(3)(A)(i) of the Act. As explained below, pursuant to sections 776(a)(1) and (2) of the Act, we continue to apply AFA to Lotte Chemical and TK Chemical in this final determination and determine that there has been a massive surge in imports of subject merchandise to the United States from both producers/exporters. Moreover, Commerce has determined that there has been a massive surge in imports of subject merchandise from SK Chemicals to the United States, based on the shipment data provided by SK Chemicals over the course of this investigation.¹⁰ We, therefore, determine, on the basis of AFA and relevant shipment data that, pursuant to section 735(a)(3)(B) of the Act, there have been massive imports of the subject merchandise over a relatively short period of shipments by Lotte Chemical, TK Chemical, and SK Chemicals.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review and analysis of the comments from parties and minor corrections presented at verifications, we made certain changes to the margin calculations for both respondents. For the final determination, as discussed in Comment 1, we adjusted the amount of U.S. duties paid to account for the partial refunds of U.S. duties received during the POI. We also revised SK Chemicals’ TOTCOM, which required us to adjust the reported home market and U.S. inventory costs, which is discussed in Comment 4, below. In addition, we revised U.S. inland

⁷ See *Antidumping Duty Investigations on Polyethylene Terephthalate Resin from Indonesia, the Republic of Korea, and Taiwan; Preliminary Determination of Critical Circumstances*, 83 FR 17791, 17793 (April 24, 2018) (*Preliminary Critical Circumstances Determination*).

⁸ See Memorandum, “Antidumping Duty Investigation of Polyethylene Terephthalate Resin from the Republic of Korea: Calculations for the Final Determination of Critical Circumstances,” dated concurrently with this notice.

⁹ *Id.*

¹⁰ *Id.*

freight costs from the port to the warehouse, and home market and U.S. packing costs as a result of the minor corrections presented at verification.

VI. DISCUSSION OF THE METHODOLOGY

A. Application of Adverse Facts Available (AFA)

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.¹¹

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹² Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.¹³

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁴ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value,¹⁵ although Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.¹⁶ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although,

¹¹ See sections 776(b)-(d) of the Act.

¹² See section 776(b)(1)(B) of the Act.

¹³ See also 19 CFR 351.308(c).

¹⁴ See SAA at 870.

¹⁵ *Id.*

¹⁶ See section 776(c)(2) of the Act.

Finally, under section 776(d) of the Act, Commerce may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.¹⁷ When selecting facts available with an adverse inference, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.¹⁸

Lotte Chemical and TK Chemical did not respond to Commerce’s AD questionnaire or otherwise participate in the proceeding. As a result, we continue to find that necessary information is not available on the record and that these two companies withheld information requested by Commerce, failed to provide information by the specified deadlines, and significantly impeded the proceeding.¹⁹ Moreover, because Lotte Chemical and TK Chemical failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are continuing to rely upon facts otherwise available for the final dumping margins of both Lotte Chemical and TK Chemical.

In the *Preliminary Determination*, we found that it was appropriate to use an adverse inference in applying the facts otherwise available based on a failure of Lotte Chemical and TK Chemical to act to the best of their abilities because these companies have not put forth their maximum effort to provide Commerce with full and complete answers to the inquiries made in this investigation. Accordingly, we continue to find for these final results that Lotte Chemical and TK Chemical failed to cooperate to the best of their ability to comply with a request for information by Commerce, in accordance with section 776(b) of the Act and 19 CFR 351.308(a). Therefore, we continue to apply the Petition dumping margin of 101.41 percent as the AFA rate applicable to Lotte Chemical and TK Chemical.²⁰

B. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.²¹ Secondary information is defined as “information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.”²² Thus, because the 101.41 percent AFA rate applied to Lotte Chemical and TK Chemical is derived from the Petition and, consequently, is based upon secondary information, Commerce must corroborate it to the extent practicable.

¹⁷ See section 776(d)(1)(B) and 776(d)(2) of the Act.

¹⁸ See section 776(d)(3)(B) of the Act.

¹⁹ See sections 776(a)(2)(A), (B), and (C) of the Act.

²⁰ See Antidumping Duty Investigation Initiation Checklist: Polyethylene Terephthalate (PET) Resin from the Republic of Korea (Initiation Checklist).

²¹ See also 19 CFR 351.308(d).

²² See SAA at 870; see also 19 CFR 351.308(c)(1).

The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.²³ The SAA and Commerce’s regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.²⁴ To corroborate secondary information, Commerce will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.²⁵

We determine that the Petition dumping margin of 101.41 percent is reliable because, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.²⁶ During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations used in the Petition to derive estimated dumping margins. Specifically, we examined information (to the extent that such information was reasonably available) from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborated elements of the EP and NV calculations used in the Petition to derive estimated dumping margins.

As discussed in detail in the Initiation Checklist, we considered the EP and NV calculations in the Petition to be reliable. Because we obtained no other information that would make us question the validity of the information supporting the U.S. price or NV calculations provided in the Petition, we consider the EP and NV calculations from the Petition, and thus the dumping margins in the Petition, to be reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.²⁷

To corroborate the 101.41 percent AFA rate that we selected, we compared the 101.41 percent margin to the transaction-specific dumping margins that we calculated for SK Chemicals. We found that the dumping margin of 101.41 percent is within the range of the transaction-specific dumping margins calculated for SK Chemicals and, therefore, is relevant and has probative value.²⁸ Accordingly, we find that the rate of 101.41 percent is corroborated within the meaning of section 776(c) of the Act.

²³ See SAA at 870; see also 19 CFR 351.308(d).

²⁴ See SAA at 870; see also 19 CFR 351.308(d).

²⁵ See *Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 82 FR 55574 (Nov. 22, 2017) and accompanying Preliminary Decision Memorandum at “Corroboration of the AFA Rate.”

²⁶ See Initiation Checklist.

²⁷ See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

²⁸ See Memorandum to the File, “Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from the Republic of Korea: SK Chemicals Preliminary Determination Analysis,” (SK Chemicals Preliminary Analysis Memorandum), dated concurrently with this memorandum.

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Make an Adjustment for Partial Refunds of U.S. Duties.

SK Chemicals' Case Brief

- Commerce should adjust the CEP price to account for U.S. duty refunds received in the POI.
- SK Chemicals states that these refunds of U.S. customs duties are allowed under 19 U.S.C. §1313(p) when similar merchandise is exported by a third-party exporter, as long as the exportation occurs within 180 days of importation and the exported products share the same eight-digit HTS code as the imported product.
- In *Orange Juice from Brazil*,²⁹ Commerce found this refund to be a legitimate offset to U.S. customs duties paid, because the antidumping statute's reference to U.S. duties refers to net, not gross, import duty amounts. Specifically, Commerce found that it was appropriate to consider the "net duty experience" rather than the "gross amount of duties paid," in allowing this refund to offset U.S. customs duties paid without linking it to specific U.S. sales.
- This adjustment should be made in order to accurately account for SKCA's overall duty liability. SKCA uses third-party brokers to match its qualified imports with qualified exports under this program, and to process the documentation required to claim U.S. duty drawback. The total amount of the refund is divided between the importer, exporter, and broker. Accordingly, SKCA reported its portion of the actual duty refunded on a transaction-specific basis for subject merchandise imported during the POI.

The petitioners did not submit rebuttal comments on this issue.

Commerce's Position: Section 313 of the Act, entitled "Drawback and refunds," provides a means by which a U.S. importer may be entitled to recover a portion of previously paid Customs duties on imported merchandise that is subsequently exported or destroyed. In essence, the statute operates under limited circumstances to give a qualifying party a refund on Customs duties.³⁰ Section 313(b) of the Act provides generally for drawbacks within the context of substitution,³¹ while section 313(p) of the Act provides specific treatment for the substitution of finished petroleum derivatives when further requirements have been met.³²

²⁹ See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*Orange Juice from Brazil*).

³⁰ See *Cal. Indus. Prods. v. United States*, 436 F.3d 1341, 1343 (Fed. Cir. 2006) (explaining the history of this provision of the Act and its application).

³¹ See *International Light Metals v. United States*, 194 F.3d 1355 (Fed. Cir. 1999) (explaining that Section 313(b) of the Act "permits manufacturing substitution drawback if imported and domestic merchandise are "of the same kind and quality.").

³² See sections 313(p)(3)(A)-(G) (enumerating the eligibility requirements for a party to avail itself of the substitution of finished petroleum products provision).

We agree with SK Chemicals that, pursuant to 313(p) of the Act, the partial refund of U.S. duties received by SKCA on subject merchandise during the POI should be used to offset the amount of import duties paid during the POI. However, we emphasize that it is not SK Chemicals that participates directly in the provision but, rather, it participates indirectly through an unaffiliated customs broker such that SK Chemicals receives revenue. Nevertheless, we find the revenue sufficiently related to its payment of U.S. duties as to allow for it as an offset. Section 772(c)(2)(A) of the Act governs import duties and requires that Commerce reduce U.S. price by all movement costs which are “included in” the starting price. SKCA received revenue using its unaffiliated customs broker to match its qualified imports to qualified third-party exports under this program. Under this arrangement, SKCA received a repayment of one third of the amount of the import duty it paid on its imports of subject merchandise. We verified the revenue received during the POI, as well as documentation tying the claim number to specific U.S. imports of subject merchandise by entry number.

Comment 2: Allocating Company-Wide R&D Expenses to Separate Divisions

SK Chemicals’ Case Brief

Respondent Argues

- Commerce should only include in G&A expenses the 40 percent of R&D expenses attributable to PET resin.
- They have demonstrated that R&D expenses relate specifically to individual products and are not general in nature.
- That they record R&D expenses in two separate cost centers, Green Chemicals and Life Sciences, and because the two separate cost centers are identifiable as producing either PET resin or other merchandise, respectively, Commerce should include only the Green Chemicals R&D expenses in SK Chemicals’ G&A expenses.
- Alternatively, Commerce could adjust reported cost of manufacturing (COM) by adding the Green Chemicals R&D amount removed from the G&A calculation to the total cost of the Green Chemical segment.

Petitioners Argue

- SK Chemicals has not demonstrated why Commerce should allow it to deviate from normal books and records by allowing R&D expenses to be separated into two categories, and, therefore, Commerce should continue to include all of SK Chemicals’ R&D expenses in the calculation of the G&A expense ratio.
- Commerce should continue to include company-wide R&D expenses in the respondent’s G&A expenses because these expenses have been reported as company-wide (*i.e.*, not product-specific) in the respondent’s normal books and records under Korean generally accepted accounting principles (GAAP).
- If Commerce allows SK Chemicals to use a product-specific R&D allocation, Commerce should move product-specific R&D expenses to fixed manufacturing overhead.

Commerce's Position:

We agree with the petitioners. SK Chemicals failed to demonstrate why we should allow it to depart from its normal books and records.³³ In SK Chemicals' normal books and records, *i.e.*, accounting per its audited financial statements, kept in accordance with Korean GAAP, the R&D expenses from the two internal divisions are presented as a single combined company-wide R&D expense. That is, SK Chemicals reports in its fiscal year 2016 audited financial statements, within "Selling and General Administrative Expenses," a company-wide R&D expense. SK Chemicals suggests that, because its R&D expenses are assigned through two separate cost centers, it has adhered to its normal books and records by separating R&D expenses by internal division.³⁴

However, consistent with the statutory language of "normally" relying on "the records of the exporter or producer ... if such records are kept in accordance with the generally accepted accounting principles of the exporting country," our position is that the "public-presentation" in the audited financial statements is the basis for defining what constitutes a respondent's normal books and records.³⁵ Thus, consistent with the Act, we find that the presentation of an expense per a respondent's audited financial statements is a more reasonable and identifiable means of establishing adherence to normal books and records. For example, SK Chemical does not assign any of the R&D expenses in question to the products in finished goods inventory listed on the balance sheet or to product within cost of sales on the income statement.³⁶ Therefore, departure from the financial statement accounting must be justified and supported by record evidence. We observed that SK Chemicals incurred R&D expenses at its two internal divisions (*i.e.*, Green Chemicals and Life Sciences) and combined the R&D expenses from both accounts into one reported amount on the financial statements under SG&A. Therefore, SK Chemicals' normal books and records treat the R&D costs in question as a company-wide general expense, and not a product-specific expense, as claimed by SK Chemicals.

SK Chemicals has not placed on the record sufficient evidence to establish that its normal Korean GAAP financial statement treatment of R&D is unreasonable. SK Chemicals has not argued at any point during this proceeding that its books and records are not in accordance with Korean GAAP.³⁷ In addition, absent from SK Chemicals' audited financial statements is any mention by the auditors that SK Chemicals' company-wide R&D expenses are incurred for the

³³ See Petitioners' Rebuttal Brief at pages 2-4.

³⁴ See SK Chemicals' Case Brief at page 2.

³⁵ See Section 773(f)(1)(A) of the Act.

³⁶ See Section A Response dated December 28, 2017, at Appendix A-7-A.

³⁷ Korea has adopted International Financial Reporting Standards (IFRS). Under IFRS rules, research spending is treated as an expense each year, similar to U.S. GAAP. Under IFRS, certain development costs can be capitalized if the company can prove that the asset in development will become commercially viable (meaning the technology or product in development is likely to make it through the approval process and generate revenue). The benefit of the IFRS approach is that at least some research and development costs can be capitalized (*i.e.*, turned into an asset on the company's balance sheet) instead of being incurred as an expense on the statement of Profit and Loss (P&L). The trade off, however, is that IFRS requires judgement and subjectivity, which creates a risk that managers will be overly optimistic about how commercially viable a new technology is, which can cause inconsistencies in different companies' financial statements. In this case, the issue revolves around R&D costs that were expensed in the year incurred which shows that they were incurred on projects that are not yet likely to generate revenues.

benefit of a specific product, internal divisional, or any sub-category. None of the R&D costs in question were capitalized and none were allocated to product costs in inventory.³⁸ In this case, record evidence supports that SK Chemicals' financial statements are in accordance with Korean GAAP and, according to these financial statements, the company's R&D expenses are reported as company-wide; hence, reporting R&D expenses separately, on a product-specific basis or to a sub-category would not be appropriate. The record merely shows that SK Chemicals has separate R&D cost centers for the two internal divisions. It does not establish whether the R&D relates to specific revenue producing products or to new product development, indicating there is uncertainty as to whether the potential new products will ever come to fruition which would qualify the R&D to be capitalized to product costs. Thus, we find that neither of SK Chemicals' two internal divisions' R&D cost centers capture product-specific or product category level R&D expenses, as each of these two cost centers only capture an aggregate assignment of R&D expenses in total.³⁹

Although certain R&D may be incurred at or assigned to a non-subject merchandise-producing division or assigned to a particular cost center, we do not find that the R&D is, therefore, solely attributable to those products or that an R&D project's research is of the type assignable only to a limited category of products. SK Chemicals' own GAAP presentation indicates that R&D expenses were allocable to the company as a whole, as none of the R&D expense was allocated to specific products or to the specific category of "life sciences" products, which might be expected if the R&D could reasonably be expected to result in a finished good that will generate revenue.

Further, SK Chemicals has not established that the R&D for its Life Sciences division was related to products that were actually produced, sold, or even expected to generate revenue in the near term, which might, therefore, justify the capitalization of such R&D expense, for it to be subsequently included in product-specific cost of sales.

There is insufficient record evidence demonstrating that SK Chemicals' chosen alternative method of splitting the R&D costs only to the point of each internal division results in a more reasonably reported R&D expense. While SK Chemicals limits its allocation of R&D expenses to the entire group of products at Green Chemicals and Life Science, it did not implement its proposed reallocation method further, which would be necessary in demonstrating why a departure from its normal books and records (*i.e.*, GAAP) is warranted. SK Chemicals incurs R&D expenses at the Green Chemicals division, which produces many products, both the PET resin at issue and chemical products not at issue in this case, but no attempt was made to distinguish R&D at a level more specific than the cost center. Thus, SK Chemicals' alternative methodology fails to show how it accords with GAAP, specifically by not linking product-specific R&D costs to corresponding product-specific revenue recognition. Additionally, no attempt was made to separate the projects assigned to either Green Chemicals or Life Sciences between product-specific R&D and company-wide R&D (*e.g.*, new product development R&D). Instead, without providing support, the assumption made by SK Chemicals is that the entire amount of Life Sciences R&D is product specific or attributable to only a sub-set of products, with none of it being related to the company as a whole as is reflected in the audited financial

³⁸ *Id.*

³⁹ See SK Chemicals' Cost Verification Report at page 3.

statements. This broad assumption is not supported by evidence on the record. Finally, as stated above, SK Chemicals did not provide evidence that the R&D projects were at a point or of a nature where the amounts could be capitalized to specific products or categories under Korean GAAP.

Section 773(f)(1)(A) of the Act states that costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporter. Thus, unless a company's normal books and records kept in accordance with home country GAAP result in a distortion of the costs, we will rely on the assurances of the company's independent accountants and auditors as the basis for calculating costs.⁴⁰ Indeed, if a respondent wants us to deviate from its normal books and records, it is incumbent on the respondent to provide sufficient evidence to support such treatment. In the instant case, SK Chemicals has not met the burden of demonstrating its normal books and records, kept in accordance with Korean GAAP, are unreasonable in their treatment of R&D expense.

For the final determination, Commerce has continued to treat the R&D expenses as company-wide expenses within G&A as was done at the *Preliminary Determination*.⁴¹

Comment 3: Including Financial Income Gains on Derivatives and Long-Term Interest Income in Interest Expenses (INTEX)

Petitioners argue:

- Commerce should not allow SK Chemicals to take an offset to its financial expense for financial income on gains on valuation of derivatives and from gains on disposal of derivatives, as they do not relate to SK Chemicals' operations (*i.e.*, they are attributable to investing activities).
- Commerce should exclude long-term interest income as an offset to interest expenses.

Respondent argues:

- Commerce should not exclude financial gains on valuation of derivatives or disposal of derivatives from its interest expenses, because they both are related to its operations and they both are stated on SK Chemicals' consolidated financial statements as being related to hedging activities, not as investment activities, as the petitioners suggest.
- The petitioners are incorrect in their interpretation of SK Chemicals' fiscal year 2016 financial statements and these statements do not suggest a portion of derivative income was generated from investing activities.
- The amount of interest income excluded from its INTEX was all from short-term financing activities as was verified by Commerce.

⁴⁰ See Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 68 FR 6878 (February 11, 2003) (*Fresh Atlantic Salmon from Chile*) and accompanying Issues and Decision Memorandum at Comment 13.

⁴¹ See Memorandum Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – SK Chemicals Co., Ltd. (Preliminary Cost Calculation Memo).

Commerce's Position:

We disagree with the petitioners that certain financial gains on valuation of derivatives, and gains on disposal of derivatives, should be excluded from SK Chemicals' financial expense calculation. The petitioners' argument that a portion of these derivative gains is from investing activities is not supported by record evidence.

Footnote 3 of SK Chemicals' consolidated financial statements reports the gains and losses on valuation of derivatives and gains and losses on disposal of derivatives as related to financing activities. The audited consolidated financial statements disclose that members of the consolidated group "use derivative financial instruments, such as forward currency contracts, interest rate swaps and forward commodity contracts to hedge against foreign currency risks, interest rate risks and commodity price risks, respectively."⁴² Thus, the consolidated group uses derivative instruments for cash management purposes, which we typically includes in our net interest expense computation. Because money is fungible, these instruments are used to offset each other to protect the group companies from shifting currency valuations.⁴³ Both the gains and losses from these derivative instruments were included by SK Chemicals in its reported financing expense calculation. Accordingly, for the final determination, we have included both the gains and losses from these derivative instruments in SK Chemicals' interest expense calculation.

Finally, we disagree with the petitioners that SK Chemicals has improperly reduced its interest expenses for interest income earned on long-term activities. We traced the amount reported by SK Chemicals as an offset to its interest expenses to SK Chemicals' source documents at the cost verification and verified that the values reported as interest income offsets were derived from short-term interest-bearing accounts.⁴⁴ Therefore, we are allowing SK Chemicals' claimed offset to its interest expenses.

Comment 4: Reported Affiliated Input Prices

Petitioners argue:

- Commerce should adjust the respondent's cost of manufacturing upward to reflect purchases of inputs from affiliated suppliers that did not reflect arm's-length market values.

Respondent argues:

- Since Commerce now considers polyethylene terephthalate glycol resin (PETG) resin out-of-scope, based on the lesser amount of the input in question used to produce BR

⁴² See Section A Response dated December 28, 2017, at Appendix A-7-B, Footnote 3.

³¹ See *Certain Tapered Roller Bearings From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29092 (June 22, 2018), and accompanying Issues and Decision Memorandum at Comment 7 (including losses on derivative transactions described in the financial statements as used "to hedge against foreign exchange risks arising from the company's operations" because "the losses in question are attributable to Bearing Art's overall cash management strategy pertaining to its operations, rather than to the company's separate profit-making investment activity").

⁴⁴ See Cost Verification Report at page at page 25. See also CVE-14.

resin (still in-scope), Commerce should no longer consider this input as a major input, but a minor input, and, therefore, if an adjustment to COM is made, it should be based on the transactions disregarded rule (comparison to market price) and only include the actual consumption of the input used to produce in-scope BR resin.

Commerce's Position:

We agree with the petitioners that SK Chemicals purchased inputs from affiliates at prices that were below unaffiliated market prices paid for the same inputs during the POI.⁴⁵ We agree with SK Chemicals that we should take into consideration the scope-change occurring during the investigation and, more specifically, base the adjustment on the consumption of the input used to produce the merchandise at issue in this case. We note that, at the beginning of the investigation, Commerce included PETG and BR Resin as in-scope merchandise. However, during the investigation, Commerce determined that PETG resin is not in-scope merchandise. For the final determination, we are adjusting SK Chemicals' COM for affiliated input purchases, in accordance with the transactions disregarded rule at section 773(f)(3) of the Act.⁴⁶ We note that, due to the proprietary nature of the inputs at issue, more specific discussions have been included in Commerce's Final Cost Calculation Memorandum.

VIII. RECOMMENDATION

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

☒

Agree

☐

Disagree

9/17/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

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

⁴⁵ See Memorandum Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – SK Chemicals Co., Ltd. (Final Cost Calculation Memorandum), dated concurrently with this memorandum.

⁴⁶ *Id.*