



A-580-889  
Administrative Review  
POR: 08/01/2018-07/31/2019  
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December 16, 2020

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of the  
2018-2019 Antidumping Duty Administrative Review: Dioctyl  
Terephthalate from the Republic of Korea

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order<sup>1</sup> on dioctyl terephthalate (DOTP) from the Republic of Korea (Korea), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is August 1, 2018 through July 31, 2019. This review covers three mandatory respondents: Aekyung Petrochemical Co., Ltd. (AKP), Hanwha Chemical Corporation (Hanwha Chemical), and LG Chem, Ltd. (LG Chem). We preliminarily determine that AKP and LG Chem did not make sales at less than normal value during the POR, and that Hanwha Chemical, who did not participate in this review, is subject to facts available with adverse inferences.

## II. BACKGROUND

On August 2, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.<sup>2</sup> Commerce received timely requests to conduct an administrative review from Eastman Chemical Company (the petitioner), AKP, and Hanwha

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<sup>1</sup> See *Dioctyl Terephthalate from the Republic of Korea: Antidumping Duty Order*, 82 FR 39409 (August 18, 2017) (*Order*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 37834 (August 2, 2019).



Chemical.<sup>3</sup> On October 7, 2019, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review covering AKP, Hanwha Chemical, and LG Chem.<sup>4</sup>

On November 20, 2019, we issued the initial AD questionnaire to AKP, Hanwha Chemical, and LG Chem.<sup>5</sup> AKP and LG Chem provided timely responses to the relevant sections of the initial AD questionnaire.<sup>6</sup> Hanwha informed Commerce that it would not be participating in the review on January 3, 2020.<sup>7</sup> Between June 24, 2020 and July 29, 2020, we issued supplemental questionnaires to AKP and LG Chem.<sup>8</sup> Both companies provided timely responses, as requested.<sup>9</sup>

On April 21, 2020, in accordance with section 751(a)(3)(A) of the Act, Commerce extended the preliminary results deadline by 118 days.<sup>10</sup> On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>11</sup> On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.<sup>12</sup> The deadline for the preliminary results is now December 16, 2020.

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<sup>3</sup> See Petitioner's Letter, "Diocetyl Terephthalate (DOTP) from Korea: Administrative Review Request," dated August 27, 2019; Hanwha Chemical's Letter, "Diocetyl Terephthalate (DOTP) from the Republic of Korea: Request for Administrative Review," dated August 30, 2019; and AKP's Letter, "Antidumping Order on Diocetyl Terephthalate from Korea – Request for Administrative Review," dated September 3, 2019.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53411 (October 7, 2019) (*Initiation Notice*).

<sup>5</sup> See Commerce's Letters, Initial AD Questionnaire, dated November 20, 2019.

<sup>6</sup> See AKP's Letters, "Antidumping Investigation of Diocetyl Terephthalate from Korea – Response to Section A of the Department's November 20 Questionnaire," dated December 18, 2019 (AKP's AQR); "Antidumping Investigation of Diocetyl Terephthalate from Korea – Response to Sections B and C of the Department's November 20 Questionnaire," dated January 3, 2020; and "Antidumping Investigation of Diocetyl Terephthalate from Korea – Response to Section D of the Department's November 20 Questionnaire," dated January 3, 2020 (AKP's DQR); and LG Chem's Letters, "LG Chem's Section A Response: Diocetyl Terephthalate (DOTP) from Korea," dated December 18, 2019 (LG Chem's AQR); "LG Chem's Section B Response: Diocetyl Terephthalate (DOTP) from Korea," dated January 10, 2020 (LG Chem's BQR); "LG Chem's Section C Response: Diocetyl Terephthalate (DOTP) from the Republic of Korea," dated January 10, 2020 (LG Chem's CQR); and "LG Chem's Section D Response: Diocetyl Terephthalate (DOTP) from Korea," dated January 10, 2020 (LG Chem's DQR).

<sup>7</sup> See Memorandum, "Notification from Hanwha Chemical Corp. Regarding Decision to Not Participate in the 2018-2019 Administrative Review of Diocetyl Terephthalate from the Republic of Korea," dated January 6, 2020 (Hanwha Chemical's Withdrawal Notification).

<sup>8</sup> See Commerce's Letters, "Diocetyl Terephthalate from the Republic of Korea: Second Antidumping Duty Administrative Review: First Supplemental Questionnaire for the Sections A, B, C and D Questionnaire Responses of Aekyung Petrochemical Co., Ltd.," dated June 24, 2020; and "Diocetyl Terephthalate from the Republic of Korea: Antidumping Duty Administrative Review: First Supplemental Questionnaire for the Sections A, B, C and D Questionnaire Responses of LG Chem Ltd.," dated July 29, 2020.

<sup>9</sup> See AKP's Letter, "Administrative Review of the Antidumping Order on Diocetyl Terephthalate from Korea for the 2018-19 Review Period – Response to Sections A, B, C, and D of the Department's June 24 Supplemental Questionnaire," dated July 20, 2020 (AKP's 1st SQR); and LG Chem's Letter, "LG Chem's Supplemental Questionnaire Response: Diocetyl Terephthalate (DOTP) from Korea," dated August 17, 2020 (LG Chem's 1st SQR).

<sup>10</sup> See Memorandum, "Diocetyl Terephthalate from the Republic of Korea: Extension of Deadline for Preliminary Results of the 2018-2019 Antidumping Duty Administrative Review," dated April 21, 2020.

<sup>11</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

<sup>12</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

### III. SCOPE OF THE ORDER

The merchandise covered by this order is dioctyl terephthalate (DOTP), regardless of form. DOTP that has been blended with other products is included within this scope when such blends include constituent parts that have not been chemically reacted with each other to produce a different product. For such blends, only the DOTP component of the mixture is covered by the scope of this order.

DOTP that is otherwise subject to this order is not excluded when commingled with DOTP from sources not subject to this order. Commingled refers to the mixing of subject and non-subject DOTP. Only the subject component of such commingled products is covered by the scope of the order.

DOTP has the general chemical formulation  $C_6H_4(C_8H_{17}COO)_2$  and a chemical name of “bis (2-ethylhexyl) terephthalate” and has a Chemical Abstract Service (CAS) registry number of 6422-86-2. Regardless of the label, all DOTP is covered by this order.

Subject merchandise is currently classified under subheading 2917.39.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheadings 2917.39.7000 or 3812.20.1000 of the HTSUS. While the CAS registry number and HTSUS classification are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

### IV. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCES

In accordance with sections 776(a) and (b) of the Act, we determine that the use of facts available with adverse inferences (AFA) is appropriate for these preliminary results with respect to Hanwha.

#### *A. Application of Facts Available*

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the

information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Finally, where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

As noted above, Hanwha Chemical informed Commerce that it would not be participating in the administrative review on January 3, 2020.<sup>13</sup> Therefore, Hanwha Chemical withheld information requested by Commerce, failed to provide the requested information in the form and manner requested, and thus, significantly impeded the proceeding. As a result, the use of facts available under sections 776(a)(2)(A), 776(a)(2)(B), and 776(a)(2)(C) of the Act is warranted. As Hanwha Chemical did not provide the requested information, we also find that necessary information is not available on the record pursuant to section 776(a)(1) of the Act.

#### *B. Use of Adverse Inference*

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>14</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>15</sup> It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>16</sup>

We preliminarily find that Hanwha Chemical has failed to cooperate by not acting to the best of its ability in declining to participate in the review. Therefore, in accordance with section 776(b)

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<sup>13</sup> See Hanwha Chemical’s Withdrawal Notification.

<sup>14</sup> See Statement of Administrative Action, H.R. Rep. No. 103-316, vol. 1 (1994) (SAA) at 870; and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>15</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (Preamble).

<sup>16</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum (IDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

of the Act, we preliminarily determine to use an adverse inference when selecting from among the facts otherwise available.<sup>17</sup>

### C. *Selection and Corroboration of the Adverse Facts Available Rate*

Section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.<sup>18</sup> In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>19</sup>

When using facts otherwise available, section 776(c)(1) of the Act provides that, except as provided under section 776(c)(2) of the Act, where Commerce relies on secondary information (such as a rate from 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. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>20</sup> The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.<sup>21</sup> To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>22</sup> Under section 776(c)(2) of the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

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<sup>17</sup> See, e.g., *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 55559 (October 17, 2019), and accompanying Preliminary Decision Memorandum, unchanged in *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 21827 (April 20, 2020); and *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

<sup>18</sup> See 19 CFR 351.308(c).

<sup>19</sup> See SAA at 870.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*; and 19 CFR 351.308(d).

<sup>22</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.<sup>23</sup> The Act also makes clear that when selecting an AFA margin, 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.<sup>24</sup>

When assigning adverse rates in a review, Commerce’s practice is to select as AFA the higher of: (a) the highest dumping margin alleged in the petition; or (b) the highest calculated rate for any respondent from any segment of the proceeding.<sup>25</sup> Further, under section 776(c)(2) of the Act, Commerce is not required to corroborate a dumping margin applied in another segment of the proceeding.<sup>26</sup>

In relying on AFA, we are preliminarily assigning Hanwha Chemical a dumping margin of 22.97 percent, which is Hanwha Chemical’s calculated rate from the prior 2017-2018 administrative review and the highest calculated rate for any respondent in any segment of this proceeding.<sup>27</sup> Because this rate was a calculated rate applied to Hanwha Chemical in a prior segment of the proceeding, there is no need to corroborate it under section 776(c)(2) of the Act. Further, this rate is at a level which does not permit Hanwha Chemical to benefit from its lack of cooperation in this review.

## V. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Act and 19 CFR 351.213.

### A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether AKP and LG Chem made sales of subject merchandise from Korea to the United States

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<sup>23</sup> See section 776(d)(1)-(2) of the Act.

<sup>24</sup> See sections 776(d)(3)(A) and (B) of the Act.

<sup>25</sup> See *Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73420 (December 12, 2012), unchanged in *Diamond Sawblades and Parts Thereof from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 36524 (June 18, 2013); see also *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012); *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Determination of Sales at Less than Fair Value*, 65 FR 5554, 5567 (February 4, 2000); *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Final Determination of Sales at Less than Fair Value*, 64 FR 14865, 14866 (March 29, 1999); and *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Determination of Sales at Less than Fair Value*, 64 FR 30664, 30687 (June 8, 1999).

<sup>26</sup> See section 776(c)(2) of the Act.

<sup>27</sup> We were not able to corroborate the Petition margins using information on the record of this review. See Memorandum, “Antidumping Duty Investigation of Dioctyl Terephthalate from the Republic of Korea: Corroboration of the Margin Based on Adverse Facts Available for the Preliminary Determination,” dated concurrently with this memorandum.

at less than NV, Commerce compared the applicable export price (EP) or constructed export price (CEP) to the NV as described in the “Export Price and Constructed Export Price” and “Normal Value” sections of this memorandum.

### *B. Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In an LTFV investigation, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of an administrative review, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in a LTFV investigation.<sup>28</sup>

In numerous LTFV investigations, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act in an LTFV investigation.<sup>29</sup> Commerce finds that the differential pricing analysis used in certain investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated

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<sup>28</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; and *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014); and *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

<sup>29</sup> See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test under the “mixed method.” If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting

from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this segment of the proceeding.

### *C. Results of the Differential Pricing Analysis*

#### *1. AKP*

For AKP, based on the results of the differential pricing analysis, we preliminarily find that 59.08 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>30</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine 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 those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for AKP.

#### *2. LG Chem*

For LG Chem, based on the results of the differential pricing analysis, Commerce preliminarily finds that 100 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>31</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine 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 these preliminary results, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for LG Chem.<sup>32</sup>

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<sup>30</sup> See Memorandum, "Analysis for the Preliminary Results of the 2018-2019 Administrative Review of Dioctyl Terephthalate from the Republic of Korea: Aekyung Petrochemical Co., Ltd.," dated concurrently with this memorandum (AKP's Preliminary Analysis Memorandum) at Attachment 4, page 76.

<sup>31</sup> See Memorandum, "Analysis for the Preliminary Results of the 2018-2019 Administrative Review of Dioctyl Terephthalate from the Republic of Korea: LG Chem Ltd. and LG Chem America, Inc.," dated concurrently with this memorandum (LG Chem's Preliminary Analysis Memorandum) at Attachment 4, page 54.

<sup>32</sup> *Id.* at 67 and 71.

#### *D. Date of Sale*

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.

##### *1. AKP*

For its home market sales, AKP reported the date of sale (SALEDATH) based on its shipping invoice,<sup>33</sup> which is the first written documentation confirming the quantity shipped.<sup>34</sup> Further, AKP explained that the tax invoice is the first written documentation confirming the sales price to the customer.<sup>35</sup> AKP stated that during the POR, all of its shipment dates preceded the tax invoice dates in the home market; therefore, it reported the date of shipment as the date of sale.<sup>36</sup> Therefore, we preliminarily determine to accept AKP's reported date of sale (SALEDATH).

For its U.S. sales, AKP explained that it reported the earlier of the date of shipment or the date of the internal billing document as the date of sale.<sup>37</sup> AKP further stated that this is the date on which terms of sale were fixed.<sup>38</sup> Therefore, we preliminarily determine to use AKP's reported date of sale as the date of sale for AKP's U.S. sales.

##### *2. LG Chem*

In the home market, LG Chem reported the date of sale based on its internal billing document, which is consistent with the date of invoice for most home market sales.<sup>39</sup> LG Chem explained that the internal billing document contains the correct value and shipment date for each transaction, which are combined in the tax invoice.<sup>40</sup> However, LG Chem reported that it determines the per-unit price for certain transactions after the date of shipment.<sup>41</sup> In those instances, LG Chem creates the initial invoice (INVOICEH) specifying a tentative per-unit price; then, it reverses and rebooks the original transaction when it finalizes the actual per-unit price.<sup>42</sup>

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<sup>33</sup> See AKP's AQR at 21; and AKP's BQR at 10.

<sup>34</sup> See AKP's AQR at 21.

<sup>35</sup> *Id.*

<sup>36</sup> See AKP's AQR at 22.

<sup>37</sup> See AKP's CQR at 47.

<sup>38</sup> *Id.*

<sup>39</sup> See LG Chem's BQR at 18-19.

<sup>40</sup> *Id.* at 19.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

LG Chem then issues the tax invoice, including the total value of the transaction, at the end of the month when it sets the actual price.<sup>43</sup>

LG Chem explained further that because it issues the billing document upon shipment, the date of the sales invoice (*e.g.*, the date of the billing document) is the same as the date of the shipment.<sup>44</sup> However, in those instances where LG Chem determines the unit price of a transaction at a date after the date of the shipment, there may be differences between the sales invoice date and the date of shipment.<sup>45</sup> Therefore, LG Chem reported the sales invoice date (SALINDTH) as the date of sale.<sup>46</sup> Our examination of LG Chem's home market sales data reveals that the date of shipment does not always match the date of the internal billing documents for the instant POR.<sup>47</sup> Therefore, for home market sales, we have preliminarily determined to use the earlier of the date of sale or date of shipment as LG Chem's date of sale for the purposes of this preliminary results of review, in accordance with our practice.<sup>48</sup>

For U.S. sales, LG Chem used the date recorded on the commercial invoice to report the date of sale for EP sales,<sup>49</sup> and the date of the commercial invoice issued upon delivery to the U.S. customer to report the date of sale for CEP sales.<sup>50</sup> Our examination of LG Chem's U.S. sales data reveals that the date of shipment does not always match the date of the commercial invoice recorded for the date of sale during the instant POR.<sup>51</sup> Therefore, for U.S. sales, we have preliminarily determined to use the earlier of the date of invoice or the date of shipment as LG Chem's date of sale for the purposes of this preliminary results of review, in accordance with our practice.<sup>52</sup>

#### *E. Product Comparisons*

In accordance with section 771(16) of the Act, we considered all products produced in Korea and sold by AKP or LG Chem during the POR that fit the description in the "Scope of Order"

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

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

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

<sup>47</sup> See LG Chem's Section B database.

<sup>48</sup> See LG Chem's Preliminary Analysis Memorandum.

<sup>49</sup> See LG Chem's CQR at 14.

<sup>50</sup> *Id.*

<sup>51</sup> See LG Chem's Section C database.

<sup>52</sup> See LG Chem's Preliminary Analysis Memorandum; and *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 60627 (October 7, 2015), and accompanying Preliminary Decision Memorandum at 9, unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016); *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003), and accompanying IDM at Comment 3. In that case, we stated "{I}t is {Commerce} practice to use the date of shipment as the date of sale where date of shipment precedes invoice date." See *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, 67 FR 62134, 62136 (October 3, 2002); and *Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090, 20093 (April 24, 2002); *Stainless Steel Bar from Japan: Final Results of Antidumping Administrative Review*, 65 FR 13717, 13718 (March 14, 2000); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy*, 64 FR 30750, 30765 (June 8, 1999).

section of this memorandum to be foreign like products. We compared U.S. sale prices to normal values based on sale prices of the foreign like product made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade as the product sold in the U.S. market, we compared U.S. sale prices to normal values based on home market sale prices of the most similar foreign like product made in the ordinary course of trade.

To identify the identical or most similar product sold in the home market, we matched subject merchandise and foreign like product based on the physical characteristics reported by AKP and LG Chem, in the following order of importance: color, acid value before heating, and specific gravity.

*F. U.S. Price*

1. Export Price

Section 772(a) of the Act defines EP as “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. AKP reported making EP sales during the POR, and LG Chem reported making both EP and CEP sales.<sup>53</sup> In accordance with section 772(a) of the Act, we calculated EP for all of AKP’s U.S. sales, and certain of LG Chem’s U.S. sales, where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record.

a. AKP

We calculated EP for AKP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses, *i.e.*, inland freight from the plant to warehouse, warehouse expense, inland freight from warehouse to the port of exportation, domestic brokerage and handling, U.S. brokerage and handling, U.S. inland freight, inspection fees, international freight, marine insurance, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.<sup>54</sup>

b. LG Chem

We calculated EP for LG Chem based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses, *i.e.*, inland freight from plant/warehouse to port of exportation, domestic brokerage and handling, and marine insurance, in accordance with section 772(c)(2)(A) of the Act.<sup>55</sup>

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<sup>53</sup> See AKP’s CQR at 43; and LG Chem’s CQR at 14.

<sup>54</sup> See AKP’s Preliminary Analysis Memorandum.

<sup>55</sup> See LG Chem’s Preliminary Analysis Memorandum.

## 2. Constructed Export Price

Pursuant to section 772(b) of the Act, the CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,” as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for certain of LG Chem’s sales because U.S. sales were made on its behalf by its U.S. affiliate in the United States (*i.e.*, LG Chem America, Inc. (LGCAI)) to unaffiliated purchasers in the United States.

### a. LG Chem

We calculated LG Chem’s CEP based on delivered prices to unaffiliated purchasers in the United States. We made additions to the starting price for packing in accordance with section 772(c)(1)(A) of the Act. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These adjustments included, where applicable, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, and U.S. inland freight from the warehouse to the unaffiliated customer.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted, where applicable, those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, commissions and credit expenses) and indirect selling expenses (*i.e.*, indirect selling expenses and inventory carrying costs). In accordance with section 772(d) of the Act, we calculated LG Chem’s credit expenses and inventory carrying costs based on its short-term interest rate. In addition, we deducted an amount for CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

## 3. Duty Drawback

AKP and LG Chem requested a duty drawback adjustment.<sup>56</sup> Section 772(c)(1)(B) of the Act states that EP and CEP 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.” In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to EP or CEP.<sup>57</sup> The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient

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<sup>56</sup> See AKP’s CQR at 69-70; and LG Chem’s CQR at 33-35.

<sup>57</sup> See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F. 3d 1335, 1340-41 (Fed. Cir. 2011).

imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.<sup>58</sup>

In this administrative review, AKP and LG Chem provided timely responses and supporting documentation regarding their duty drawback claims, including the regulation governing duty drawback in Korea, and a detailed list of the duty drawback refunds that it received for their U.S. sales during the POR.<sup>59</sup> AKP and LG Chem identified the raw materials on which they paid an import duty and provided worksheets: (1) detailing how they calculated the duty drawback on a transaction-specific basis; (2) linking the raw materials to production of merchandise under consideration; and, (3) demonstrating that they imported sufficient volumes of raw materials to account for the duty drawback received on U.S. sales.<sup>60</sup> Based on these supporting documents, we preliminarily determine that AKP's and LG Chem's duty drawback claims meet the two-pronged test. Because AKP and LG Chem have satisfied the criteria described above for Korea's duty drawback program,<sup>61</sup> we preliminarily determine to make a duty drawback adjustment to U.S. price for each company, pursuant to section 772(c)(1)(B) of the Act.<sup>62</sup>

However, Commerce limits that duty drawback offset to the amount of import duties that are embedded in the COP.<sup>63</sup> However, because we failed to request the cost information necessary to adjust the duty drawback adjustment, we have granted the reported adjustment in full for these preliminary results, but will issue a supplemental questionnaire requesting the additional information after the preliminary results.

#### *G. Normal Value*

##### 1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A)

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<sup>58</sup> *Id.*; and *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying IDM at Comment 2.

<sup>59</sup> See AKP's CQR at 69-70 and Appendix C-16; AKP's 1st SQR at Appendices SC-8 and SD-3; and LG Chem's CQR at 33-35 and Exhibit C-27.

<sup>60</sup> *Id.*

<sup>61</sup> See AKP's CQR at 69-70 and Appendix C-16; and AKP's 1st SQR at Appendices SC-8 and SD-3; and LG Chem's CQR at 33-35 and Exhibit C-27.

<sup>62</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016), and accompanying IDM at Comment 6.

<sup>63</sup> See, e.g., *Polyethylene Terephthalate Sheet from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 44276 (July 22, 2020), and accompanying IDM at Comment 1; and *Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016), unchanged in *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016), and accompanying IDM at Comment 1.

and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared AKP's and LG Chem's volume of home-market sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. We found that each respondent's individual aggregate sales volume of foreign like product in the home market was greater than five percent of the respective company's sales of subject merchandise to the United States. Therefore, in accordance with section 773(a)(1)(C) of the Act, Korea constitutes a viable home market for AKP and LG Chem. Accordingly, we used Korea as the comparison market for purposes of the analysis in this review. Consistent with our practice, we included each respondent's reported sales to affiliated parties in our viability analysis.<sup>64</sup>

## 2. Affiliated-Party Transactions and Arm's – Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices. Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, Commerce “may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length.”

During the POR, AKP and LG Chem made sales of DOTP in Korea to affiliated parties, as defined in section 771(33) of the Act.<sup>65</sup> Consequently, we tested these sales to ensure that AKP and LG Chem made such sales at arm's-length prices in accordance with 19 CFR 351.403(c). To test whether AKP and LG Chem made sales to affiliated parties at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all applicable billing adjustments, discounts, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with Commerce's practice, where the price to an affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we consider these sales to be outside the ordinary course of trade.<sup>66</sup> For AKP and LG Chem, we preliminarily find certain home market sales to be outside the ordinary course of trade based on the results of the arm's-length test.

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<sup>64</sup> See *Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and accompanying IDM at Comment 2 (use of affiliated party sales in viability determination).

<sup>65</sup> See AKP's BQR at 7 and Appendix B-2; and LG Chem's BQR at 3.

<sup>66</sup> See section 771(15) of the Act; and 19 CFR 351.102(b)(35).

### 3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, we will calculate NV based on sales of foreign like products at the same LOT as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>67</sup> Substantial differences in selling activities are necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>68</sup> To determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether comparison market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. When we are unable to match U.S. sale prices to normal values based on sale prices of foreign like product in the comparison market at the same LOT, we may compare the U.S. sale prices to normal values based on sale prices at a different LOT in the comparison market. When this occurs and the difference in LOT is demonstrated to affect price comparability based on a pattern of consistent price differences between sales at different LOTs in the comparison market, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In this review, we obtained information from AKP and LG Chem regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.<sup>69</sup>

#### a. AKP

In the home market, AKP stated that it made sales directly to unaffiliated customers, either through direct shipments from AKP's production factory (Channel 1) or from inventory (Channel 2).<sup>70</sup> AKP reported that it performed the following selling functions for home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; marketing (which includes advertising, sales promotion, market research, and sales/marketing support); procurement/sourcing services; packing; inventory maintenance; order input/processing; direct sales personnel; technical assistance; warranty/after-sale services and guarantees; and freight and delivery.<sup>71</sup>

Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) performance of sales related administrative activities. Based on these selling function categories, we find that AKP performed the same selling

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<sup>67</sup> See 19 CFR 351.412(c)(2).

<sup>68</sup> *Id.*; and Notice of Final Determination of Sales at Less Than Fair Value Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997).

<sup>69</sup> See LG Chem's AQR at 24-25; and AKP's AQR at 15-20.

<sup>70</sup> See AKP's AQR at 17-18 and Appendix A-3.

<sup>71</sup> *Id.* at Appendix A-4.

functions at the same level of intensity for both of its home market channels of distribution, and thus, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, AKP stated that it made sales through two channels of distribution: (1) direct exports to unaffiliated U.S. customers (Channel 1); and (2) “local export” sales through unaffiliated Korean trading companies (Channel 2).<sup>72</sup> AKP reported that it performed the following selling functions for U.S. market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; marketing (which includes advertising, sales promotion, market research, sales marketing support); procurement/sourcing services; packing; inventory maintenance; order/input processing; direct sales personnel; technical assistance; warranty/after-sales services and guarantees; and freight and delivery.<sup>73</sup> Based on the aforementioned selling function categories, we find that AKP performed the same selling functions at the same level of intensity for both of its U.S. market channels of distribution, and thus, we determine that all U.S. market sales are at the same LOT.

We compared the selling functions in the home market LOT to the selling functions in the U.S. LOT and found that the selling functions AKP performed for the home market customers are similar to the ones performed for U.S. customers at a similar level of intensity. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that AKP’s sales to the home market during the POR were made at the same LOT as AKP’s EP sales to the U.S. market. Consequently, we matched all EPs to normal values based on home market sale prices without respect to LOT, and no LOT adjustment was warranted.

b. LG Chem

LG Chem reported that it made sales through three channels of distribution in the home market: (1) sales through an outsourced warehouse to unaffiliated end users (Channel 1); (2) sales to an affiliated customer by linked pipeline (Channel 2); and (3) sales from the factory direct to affiliated or unaffiliated end users or retailers (Channel 3).<sup>74</sup> LG Chem explained that it performed the following selling functions for all home market customers: sales forecasting, strategic/economic planning, marketing market research, inventory maintenance, and order input/processing.<sup>75</sup> It also provided freight and delivery arrangements for all channels of distribution but Channel 2.<sup>76</sup>

As described above, and consistent with our practice, we analyzed LG Chem’s selling activities under five categories. Based on these selling function categories, we find that LG Chem performed the same selling functions at a similar level of intensity for all of its home market channels of distribution. Therefore, despite minor differences in selling functions between Channel 2 and other channels, we determine that all home market sales are at the same LOT.

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<sup>72</sup> See AKP’s AQR at 18.

<sup>73</sup> *Id.* at Appendix-4.

<sup>74</sup> *Id.* at 25; see also LG Chem’s BQR at 17-18, and Exhibit B-10; and LG Chem’s 1st SQR at 25-26.

<sup>75</sup> See LG Chem’s AQR at Exhibit A-12, “Selling Function by Category.”

<sup>76</sup> *Id.*

LG Chem reported that it had three channels of distribution in the U.S. market: (1) delivered CEP sales through LGCAI (Channel 1); (2) EP sales made through a trading company in Korea (Channel 2); and, (3) EP sales made directly to a U.S. customer (Channel 3).<sup>77</sup> LG Chem reports that it performed the following sales functions for CEP sales: sales forecasting, strategic/economic planning, market research, inventory maintenance, freight and delivery arrangements, and order input processing.<sup>78</sup> Based on the aforementioned selling function categories, we find that LG Chem performed the same selling functions at a similar level of intensity for all of its U.S. market channels of distribution. Therefore, in spite of minor differences in selling functions in all three channels, we determine that all U.S. sales are at the same LOT.

We compared the selling functions in the home market LOT to the selling functions in the U.S. LOT and found that the selling functions LG Chem performed for its home market customers are similar to those performed for its U.S. customers at a similar level of intensity. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that LG Chem's sales to the home market during the POR were made at the same LOT as LG Chem's EP and CEP sales to the U.S. market. Consequently, we matched all CEPs and EPs to normal values based on home market sale prices without regard to LOT, and no LOT adjustment was warranted.

#### 4. Cost of Production Analysis

Pursuant to section 773(b)(2)(A)(ii) of the Act Commerce requested constructed value (CV) and COP information from all respondent companies in this AD review.<sup>79</sup>

#### 5. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and financial expenses.

We examined AKP's and LG Chem's cost data. Based on our review of the submitted quarterly cost data, we determined that the change in costs was not significant and accordingly, our quarterly cost methodology is not warranted.<sup>80</sup> Therefore, we have applied our standard methodology of using period-wide average costs based on AKP's and LG Chem's reported data.<sup>81</sup>

##### a. AKP

We relied on AKP's submitted COP data with making no adjustments.

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<sup>77</sup> *Id.* at 13-14 and Exhibit A-12.

<sup>78</sup> *Id.* at Exhibit A-12.

<sup>79</sup> *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015).

<sup>80</sup> *See* AKP's DQR at Appendix D-4; and LG Chem's DQR at Exhibit D-3.

<sup>81</sup> *See* AKP's Preliminary Analysis Memorandum; and LG Chem's Preliminary Analysis Memorandum.

b. LG Chem

We relied on LG Chem's submitted COP data, including LG Chem's reported company-wide G&A expenses.<sup>82</sup>

6. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, actual direct and indirect selling expenses, and packing expenses.

7. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Where we find that more than 20 percent of a company's home market sales for a given product were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.<sup>83</sup> For AKP and LG Chem, we preliminarily find certain home market sales to be outside the ordinary course of trade based on the results of the sales-below-costs test.

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<sup>82</sup> See LG Chem's DQR at 27 and Exhibit D-11; and LG Chem's 1st SQR at Exhibit SD-13.1.

<sup>83</sup> See AKP's Preliminary Analysis Memorandum; and LG Chem's Preliminary Analysis Memorandum.

8. Calculation of NV Based on Comparison Market Prices

a. AKP

We calculated NV based on delivered or *ex-works* prices to unaffiliated and affiliated customers made in the ordinary course of trade.<sup>84</sup> We made adjustments from the starting price for billing adjustments and discounts, where appropriate, in accordance with section 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses, including inland freight from plant to distribution warehouse, warehousing, and inland freight from plant or warehouse to customer under section 773(a)(6)(B)(ii) of the Act.<sup>85</sup> We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses, bank charges, and other direct selling expenses), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.<sup>86</sup> Where commissions were granted in the home market but not in the U.S. market, we made an upward adjustment to NV for the lesser of: (1) the amount of commission paid in the home market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred for sales to the U.S. market.<sup>87</sup>

When comparing U.S. sale prices with normal values based on home market sale prices of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.<sup>88</sup> We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>89</sup>

b. LG Chem

We calculated NV based on delivered or *ex-works* prices made in the ordinary course of trade to unaffiliated and affiliated customers.<sup>90</sup> We made a deduction from the starting price for movement expenses, including inland freight from the plant to the distribution warehouse, warehousing expenses and inland freight from the plant or distribution warehouse to the unaffiliated customer in the home market under section 773(a)(6)(B)(ii) of the Act.<sup>91</sup> We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.<sup>92</sup> Finally, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: (1) the amount of commission paid in the U.S. market; or (2)

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<sup>84</sup> See AKP's Preliminary Analysis Memorandum.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> See 19 CFR 351.410(e).

<sup>88</sup> See AKP's Preliminary Analysis Memorandum.

<sup>89</sup> See 19 CFR 351.411(b).

<sup>90</sup> See LG Chem's Preliminary Analysis Memorandum.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

the amount of indirect selling expenses (including inventory carrying costs) incurred in the comparison market.<sup>93</sup>

When comparing U.S. sale prices with normal values based on home market sale prices of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.<sup>94</sup> We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>95</sup>

## 9. Calculation of NV Based on Constructed Value

In accordance with section 773(e) of the Act, where applicable, we have calculated constructed value based on the sum of each respondent's material and fabrication costs, general and administrative, and financial expenses, as detailed above in the Calculation of COP section. We also included selling expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market. In accordance with section 773(a)(6)(C) of the Act and 19 CFR 351.410, in order to calculate normal value we have made adjustments to the constructed value for differences in circumstances of sale as described above for the Calculation of Normal Value Based on Comparison Market Prices. Finally, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: (1) the amount of commission paid in the U.S. market; or (2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the comparison market.<sup>96</sup>

## VI. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

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<sup>93</sup> See 19 CFR 351.410(e). See, e.g., *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary No Shipment Determination*, 77 FR 13275 (March 6, 2012) unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 40848 (July 11, 2012).

<sup>94</sup> See AKP's Preliminary Analysis Memorandum.

<sup>95</sup> See 19 CFR 351.411(b).

<sup>96</sup> See 19 CFR 351.410(e). See, e.g., *Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary No Shipment Determination*, 77 FR 13275 (March 6, 2012) unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 40848 (July 11, 2012).

## VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



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Agree



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Disagree

X 

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance