



A-580-889

Administrative Review

POR: 08/01/2019-07/31/2020

**Public Document**

E&C/OIII: PB/LRL

May 3, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting 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  
2019-2020 Antidumping Duty Administrative Review and  
Preliminary Determination of No Shipments: 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) and 19 CFR 351.213. The period of review (POR) is August 1, 2019, through July 31, 2020. This review covers two mandatory respondents: Aekyung Petrochemical Co., Ltd. (AKP), and, LG Chem, Ltd. (LG Chem). We preliminarily determine that AKP made no shipments during the POR, and that LG Chem, which did not participate in this review, is subject to facts available with adverse inferences.

## II. BACKGROUND

On August 4, 2020, 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).<sup>3</sup> On October 6, 2020, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review covering AKP and LG Chem.<sup>4</sup>

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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*, 85 FR 47167 (August 4, 2020).

<sup>3</sup> See Petitioner's Letter, "Dioctyl Terephthalate (DOTP) from Korea: Administrative Review Request," dated August 27, 2020.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 63081 (October 6, 2020).



On November 5, 2020, AKP informed Commerce that it had no exports, sales or entries of DOTP into the United States during the POR.<sup>5</sup> On January 4, 2021, Commerce issued a no-shipment inquiry to U.S. Customs and Border Protection (CBP).<sup>6</sup> On January 5, 2021, CBP responded that it found no shipments during the POR for AKP.<sup>7</sup>

On December 4, 2020, we issued the initial AD questionnaire to LG Chem.<sup>8</sup> LG Chem provided a timely response to the section A questionnaire on December 28, 2020.<sup>9</sup> On January 22, 2021, LG Chem informed Commerce that it would no longer participate in this administrative review.<sup>10</sup>

On February 3, 2021, we released the results of our query of CBP data regarding imports of subject merchandise during the POR.<sup>11</sup>

The current deadline for the preliminary results is May 3, 2021.

### **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

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<sup>5</sup> See AKP’s Letter, “Administrative Review of the Antidumping Order on Dicotyl Terephthalate from Korea for the 2019-20 Review Period – No Shipments Letter,” dated November 5, 2020.

<sup>6</sup> See Memorandum, “Dioctyl Terephthalate from the Republic of Korea (A-580-889),” dated January 5, 2021 (Results of No Shipment Inquiry), citing to message number 1004404, dated January 4, 2021, barcode 4106890-01.

<sup>7</sup> *Id.*

<sup>8</sup> See Commerce’s Letter, “Dioctyl Terephthalate from the Republic of Korea: Third Antidumping Duty Administrative Review: Initial AD Questionnaire,” dated December 4, 2020.

<sup>9</sup> See LG Chem’s Letter, “LG Chem’s Section A Response: Dioctyl Terephthalate (DOTP) from Korea,” dated December 28, 2020.

<sup>10</sup> See LG Chem’s Letter, “LG Chem’s Decision To Stop Participating in AD Review: Dioctyl Terephthalate (DOTP) from Korea,” dated January 22, 2021 (LG Chem’s Withdrawal Notification).

<sup>11</sup> See Memorandum, “Administrative Review of the Antidumping Duty Order on Dicotyl Terephthalate from the Republic of Korea: Release of U.S. Customs and Border Protection Import Data,” dated February 3, 2021.

HTSUS classification are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### **IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS**

AKP filed a certification reporting that it had no exports, sales or entries of DOTP into the United States during the POR.<sup>12</sup> Commerce issued a no-shipment inquiry to CBP asking for any entry activity regarding AKP.<sup>13</sup> CBP responded that it found no shipments during the POR for AKP.<sup>14</sup> Based on AKP's certification, and our analysis of CBP information currently on the record that does not contradict AKP's claim, we preliminarily determine that AKP had no shipments of subject merchandise to the United States during the POR.<sup>15</sup>

Also, consistent with our practice, we will not rescind the review with respect to AKP but, rather, will complete the review and issue instructions to CBP based on the final results of this review.<sup>16</sup>

#### **V. 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 LG Chem.

##### *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

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<sup>12</sup> See AKP's No Shipment Letter.

<sup>13</sup> See Results of No Shipment Inquiry.

<sup>14</sup> *Id.*

<sup>15</sup> See AKP's No Shipment Letter.

<sup>16</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

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, LG Chem informed Commerce that it would not be participating in the administrative review on January 22, 2021.<sup>17</sup> Therefore, LG Chem 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 LG Chem 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>18</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>19</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>20</sup>

We preliminarily find that LG Chem 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) of the Act,

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<sup>17</sup> See LG Chem’s Withdrawal Notification.

<sup>18</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>19</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>20</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 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).

we preliminarily determine to use an adverse inference when selecting from among the facts otherwise available.<sup>21</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>22</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>23</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>24</sup> The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.<sup>25</sup> To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>26</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>21</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); *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>22</sup> See 19 CFR 351.308(c).

<sup>23</sup> See SAA at 870.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; see also 19 CFR 351.308(d).

<sup>26</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>27</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>28</sup>

When assigning adverse rates in a review, Commerce’s practice, consistent with section 776(d)(2) of the Act, 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>29</sup>

Thus, for purposes of this review, we preliminarily are applying the highest dumping margin alleged in the petition, 47.86 percent, to establish the weighted-average dumping margin for LG Chem based on AFA. Consistent with section 776(d)(2) of the Act, this rate is the higher of: (a) the highest dumping margin alleged in the petition; or (b) the highest calculated rate for any respondent from a completed segment of the proceeding.<sup>30</sup> Because this AFA rate is derived from the petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable, pursuant to section 776(c) of the Act.

There are no other cooperative mandatory respondents with shipments to the United States in this review, and thus, there is no information on the record of this review to corroborate the highest dumping margin alleged in the petition. Thus, for purposes of corroboration, we examined evidence supporting the calculations of the highest dumping margin alleged in the petition. As is Commerce’s practice, during the LTFV investigation pre-initiation analysis, we examined: (1) the information used as the basis for export price and normal value in the petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided in the petition.<sup>31</sup> We determine that the highest margin of 47.86 percent is reliable, where, to the extent appropriate information was available, we reviewed the adequacy

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<sup>27</sup> See section 776(d)(1)-(2) of the Act.

<sup>28</sup> See sections 776(d)(3)(A) and (B) of the Act.

<sup>29</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>30</sup> In the prior review, we assigned to another respondent an AFA rate of 22.97 percent as the AFA rate, which was the highest calculated rate in any segment of the proceeding because we were unable to corroborate the highest dumping margin alleged in the petition using information on the record of the prior review.

<sup>31</sup> See *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 (November 6, 1996).

and accuracy of the information in the petition as reflected in the Initiation Checklist from the investigation.<sup>32</sup> In addition, we obtained no other information that would cause us to question the validity of the information supporting the relevance or reliability of the petition rate. Accordingly, we consider the margin of 47.86 percent to be reliable and relevant for purposes of assigning an AFA rate to LG Chem in this administrative review.

## VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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Agree

\_\_\_\_\_  
Disagree

X   
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Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

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<sup>32</sup> See *Diocetyl Terephthalate from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 49628 (July 28, 2016); see also Checklist, “AD Investigation Initiation Checklist: Diocetyl Terephthalate from the Republic of Korea,” dated July 20, 2016.