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Investigation  
POI: 10/1/2019– 9/30/2020  
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September 24, 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:** Issues and Decision Memorandum for the Final Affirmative  
Determination of Sales at Less Than Fair Value in the  
Antidumping Duty Investigation of Thermal Paper from the  
Republic of Korea

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## I. SUMMARY

The Department of Commerce (Commerce) finds that thermal paper from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). Further, Commerce finds that critical circumstances exist for the sole mandatory respondent Hansol Paper Company (Hansol Paper), and for all other producers and exporters in Korea. The period of investigation (POI) is October 1, 2019, through September 30, 2020.

After analyzing the comments submitted by interested parties, we have made one change to the *Preliminary Determination*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a list of the issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether Critical Circumstances Exist
- Comment 2: Whether Commerce Should Revise its Cost Adjustment Accounting for Affiliated Party Purchases
- Comment 3: Whether to Grant a Constructed Export Price (CEP) Offset

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<sup>1</sup> See *Thermal Paper from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 86 FR 26007 (May 12, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



## II. BACKGROUND

On May 12, 2021, Commerce published in the *Federal Register* the *Preliminary Determination* of this investigation.<sup>2</sup> In that notice, Commerce invited interested parties to comment on the *Preliminary Determination*. On June 17, 2021, Commerce issued a questionnaire in-lieu of on-site verification<sup>3</sup> to Hansol Paper, to which Hansol Paper timely responded.<sup>4</sup> On May 14 and June 15, 2021, Hansol Paper filed monthly critical circumstances shipment quantity and value data.<sup>5</sup> On July 13, 2021, Hansol Paper timely filed a case brief.<sup>6</sup> On July 20, 2021, Appvion Operations, Inc., and Domtar Corporation (collectively, the petitioners) timely filed a rebuttal brief.<sup>7</sup> All requests for a public hearing were withdrawn.<sup>8</sup>

## III. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Based our review of the record and comments received from interested parties, we incorporated additional market price data in our analysis of, and adjustment to, the transfer prices that Hansol Paper paid to an affiliated party for minor inputs.

## IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are thermal paper from Korea. For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

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<sup>2</sup> *Id.*

<sup>3</sup> *See* In-Lieu of On-Site Verification Questionnaire, dated June 15, 2021; *see also* Reissuance of Item 12d of the In-Lieu of On-Site Verification Questionnaire, dated June 17, 2021.

<sup>4</sup> *See* Hansol Paper's Letter, "Thermal Paper Products from the Republic of Korea: Verification Questionnaire Response," dated June 23, 2021; *see also* Hansol Paper's Letter, "Thermal Paper Products from the Republic of Korea: Verification Questionnaire Response - Question 12(d)," dated June 25, 2021.

<sup>5</sup> *See* Hansol Paper's Letters, "Thermal Paper Products from the Republic of Korea: Response to Request for Monthly Shipment Quantity and Value Data," dated May 14, 2021; "Thermal Paper Products from the Republic of Korea: Response to Request for Monthly Shipment Quantity and Value Data," dated June 15, 2021; and "Thermal Paper Products from the Republic of Korea: Resubmission of Redacted Monthly Shipment Quantity and Value Data," dated September 13, 2021.

<sup>6</sup> *See* Hansol Paper's Letter, "Thermal Paper Products from the Republic of Korea: Case Brief," dated July 13, 2021 (Hansol Paper's Case Brief).

<sup>7</sup> *See* Petitioners' Letter, "Thermal Paper from Korea: Petitioners' Rebuttal Brief," dated July 20, 2021 (Petitioner's Rebuttal Brief).

<sup>8</sup> *See* Hansol Paper's Letters, "Thermal Paper Products from the Republic of Korea: Hearing Request of Hansol Paper," dated June 11, 2021; and "Thermal Paper Products from the Republic of Korea: Withdrawal of Request for Hearing," dated July 23, 2021; *see also* Petitioners Letters, "Thermal Paper from Korea: Petitioners' Request for a Hearing," dated June 11, 2021; and "Thermal Paper from Korea: Withdrawal of Hearing Request," dated July 23, 2021.

## V. DISCUSSION OF THE ISSUES

### Comment 1: Whether Critical Circumstances Exist

#### *Hansol Paper's Case Brief*

- Commerce should not apply its standard critical circumstances analysis to Hansol Paper's shipments because of the extraordinary conditions caused by the COVID-19 pandemic.<sup>9</sup>
- Because of the pandemic, shipping patterns were altered by forces unrelated to the submission of the antidumping duty (AD) petition, and substantial government restrictions were placed on the movement of people and goods.<sup>10</sup>
- Due to the impact of the pandemic at the start of the base period (*i.e.*, April 2020-September 2020),<sup>11</sup> Hansol Paper's sales quantities/shipments fell significantly and did not recover fully until August 2020.<sup>12</sup> The low shipment quantity in the base period is distortive and should not be used in a critical circumstances analysis.
- Instead, Commerce should compare the average annual quantity of subject merchandise that Hansol Paper shipped to the United States over the three years before the onset of COVID-19, to the quantity of its shipments in 2020. Whether Commerce uses calendar years or other non-calendar year periods (*e.g.*, periods starting in February, March, or April (February and April match the first month of base periods that have, or could be, used by Commerce, while March matches the month when the effects of the COVID-19 pandemic began (March 2020)), such comparisons demonstrate that imports were not "massive."<sup>13</sup>
- Alternatively, Commerce could calculate an appropriate base period shipment volume by multiplying Hansol Paper's average rate of growth in U.S. shipments from 2017-2019 by the volume of its shipments of subject merchandise to the United States from February 2019-September 2019 (which is one year before the base period that Commerce may use in its final determination (February 2020 – September 2020)). The result is an estimate of the base period shipment volume that would have occurred if not for the pandemic. This analysis shows that Hansol Paper's U.S. shipments decreased from the base period to the comparison period.<sup>14</sup>
- There is precedent for Commerce to adjust its traditional critical circumstances analysis. In *CTVs from China*,<sup>15</sup> Commerce moved certain shipments from the comparison period

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<sup>9</sup> See Hansol Paper's Case Brief at 1-2 and 7-8.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.* at 9 (citing Hansol Paper's Letter, "Thermal Paper Products from the Republic of Korea: Factual Information to Rebut Petitioners' Critical Circumstances Allegation," dated February 22, 2021 (Hansol Paper's Critical Circumstances Rebuttal) at Exhibit 2

<sup>12</sup> *Id.* at 9-11 (citing Hansol Paper's Letter, "Thermal Paper Products from the Republic of Korea: Second Supplemental Section C Questionnaire Response," dated April 28, 2021.

<sup>13</sup> *Id.* at 13 and Attachment I (citing Hansol Paper's Letter, "Thermal Paper Products from the Republic of Korea: Factual Information to Rebut Petitioners' Critical Circumstances Allegation," dated April 20, 2021 (Hansol Paper's Pre-Prelim Comments) at 10 and Exhibit A.

<sup>14</sup> *Id.* at 13-14 and Attachment 2 (citing Hansol Paper's Pre-Prelim Comments at 12-13 and Exhibit D).

<sup>15</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) (*CTVs from China*), and accompanying IDM at Comment 3.

to the base period because the shipments were delayed due to the outbreak of severe acute respiratory syndrome (SARS).<sup>16</sup>

- Here, Commerce must entirely discard its traditional analysis of whether there were massive imports given the once-in-a-century nature of the COVID-19 global pandemic.<sup>17</sup>
- Evidence on the record demonstrates that due to the outbreak of the COVID-19 pandemic, Hansol Paper's business experienced an extreme shock, which caused a loss of sales, and consequently, shipments.<sup>18</sup> The standard base period used by Commerce coincided with the outbreak of the pandemic. Given these extraordinary circumstances, Commerce's traditional critical circumstances analysis is inapposite.
- For these reasons, Commerce should not find critical circumstances and should not impose retroactive AD deposits on imports of Hansol Paper's subject merchandise.

#### *Petitioner's Rebuttal Case Brief*

- Commerce should not consider the general market effects of COVID-19 in its critical circumstances analysis.<sup>19</sup>
- Commerce does not account for factors beyond those listed in 19 CFR 351.206(h)(1) (*i.e.*, import volumes, seasonal trends, and market share) in its critical circumstances analysis.<sup>20</sup>
- Hansol Paper has not argued that any of the factors enumerated in 19 CFR 351.206(h)(1) affected its shipments of subject merchandise to the United States during the analysis period.<sup>21</sup>
- Commerce has not discarded its traditional critical circumstances analysis in other proceedings that it conducted during the COVID-19 pandemic.<sup>22</sup>
- Commerce should reject the alternative calculation methodologies suggested by Hansol Paper. Comparing annual shipment volumes is inappropriate because it conflicts with the regulatory requirement to analyze imports over a relatively short period of time.<sup>23</sup> Moreover, Commerce modifies the normal base and comparison periods only when an importer or exporter had reason to believe there was an impending AD investigation.<sup>24</sup> Furthermore, there is no precedent for, nor do the statute or regulations require, Commerce to determine how much of the increase in import volume is due to normal growth and how much is due to a surge because of a petition.<sup>25</sup> It makes no sense to account for historical growth because past growth does not equate to continued growth.

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<sup>16</sup> See Hansol Paper's Case Brief at 5-6.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Id.* at 2 and 9-10 (citing Hansol Paper's Letter, "Thermal Paper Products from the Republic of Korea: Factual Information to Rebut Petitioners' Critical Circumstances Allegation," dated February 22, 2021 (Hansol Paper's Critical Circumstances Rebuttal) at Exhibit 2).

<sup>19</sup> See Petitioner's Rebuttal Brief at 4.

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

<sup>21</sup> *Id.* at 4 and footnote 18.

<sup>22</sup> *Id.* at 4 (citing *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part*, 86 FR 14077 (March 12, 2021) (*Certain Vertical Shaft Engines*), and accompanying IDM at Comment 1).

<sup>23</sup> *Id.* at 4-5.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.*

- Hansol Paper’s alternative methodologies distort the analysis in order to show an increase in the volume of its shipments of subject merchandise to the United States of less than 15 percent.<sup>26</sup> However, Hansol Paper’s shipments increased from the base period (six months preceding the filing of the petition) to the comparison period (six months after the filing of the petition) by more than the 15 percent threshold for finding massive imports.<sup>27</sup>
- In *CTVs from China*, Commerce made a specific, rather than a blanket, adjustment to its critical circumstances methodology because the respondent presented evidence that a shipment had been delayed.<sup>28</sup> Hansol Paper provided no such evidence.<sup>29</sup>

### Commerce’s Position:

We disagree with Hansol Paper and continue to find that critical circumstances exist with respect to Hansol Paper and “all other” companies in Korea. Consistent with Commerce’s practice,<sup>30</sup> we used the most recent shipment data available prior to the month in which we issued our *Preliminary Determination* in our massive imports analysis of Hansol Paper (March 2020 through September 2020 (*i.e.*, the base period) and October 2020 through April 2021 (*i.e.*, the comparison period)).<sup>31</sup> However, we did not update our massive imports analysis from the *Preliminary Determination* for “all other” companies in Korea because doing so would require that we subtract the volume of Hansol Paper’s shipments of subject merchandise to the United States in March 2021, which we based on adverse facts available, from the import data related to all companies in Korea, which we believe may distort our analysis.<sup>32</sup> See Final Critical Circumstances Calculation Memorandum for further details.<sup>33</sup>

While Hansol Paper contends that Commerce erred by not considering the effects of the COVID-19 pandemic in its critical circumstances analysis, Commerce’s practice is to consider the factors outlined in 19 CFR 351.206(h)(1) (*i.e.*, import volumes, seasonal trends, and market share) when conducting its critical circumstances analysis.<sup>34</sup> Hansol Paper’s argument is not based on any of these factors. Although Commerce may have considered certain comparison period shipments as base period shipments in *CTVs from China* because they had been delayed due to an outbreak of

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<sup>26</sup> *Id.*

<sup>27</sup> See Petitioner’s Rebuttal Brief at 2; see also Memorandum, “Critical Circumstances Calculations for the Preliminary Determination in the Antidumping Duty Investigation of Thermal Paper from the Republic of Korea,” dated May 10, 2021 (Preliminary Critical Circumstances Calculation Memorandum) at Attachment I.

<sup>28</sup> *Id.* at 2-3 (citing Preliminary Critical Circumstances Calculation Memorandum at 3-4).

<sup>29</sup> *Id.* at 3.

<sup>30</sup> See *Mattresses from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, in Part, 84 FR 56761 (October 23, 2019), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>31</sup> See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination*, in Part, 80 FR 34888 (June 18, 2019), and accompanying IDM at Comment 22.

<sup>32</sup> See Preliminary Critical Circumstances Calculation Memorandum at 1-3.

<sup>33</sup> See Memorandum, “Critical Circumstances Calculations for the Final Determination in the Less-Than-Fair-Value Investigation of Thermal Paper from the Republic of Korea,” dated concurrently with this memorandum (Final Critical Circumstances Calculation Memorandum).

<sup>34</sup> See *Certain Vertical Shaft Engines* IDM at Comment 1.

SARS,<sup>35</sup> Commerce did not engage in a wholesale revision of its critical circumstances analysis in that case. Rather, Commerce adjusted the shipment data of a single respondent which placed information on the record demonstrating that the timing of its shipments had been affected by SARS.<sup>36</sup> Hansol Paper did not demonstrate that any of its comparison period shipments were delayed due to COVID-19 such that they should be considered base period shipments. In fact, in its case brief, Hansol Paper expressly stated that it did not experience specific instances of delayed shipments as found in *CTVs from China*.<sup>37</sup>

Even without specific delayed shipments, Hansol Paper argued that Commerce must consider the severe economic disruption to its business that was caused by the COVID-19 pandemic and must account for this in its critical circumstances analysis.<sup>38</sup> As noted above, there is no regulatory basis for taking this approach. Moreover, even if it were appropriate to account for the effect of the COVID-19 pandemic on U.S. imports, it is not clear how Hansol Paper's proposed annual shipment volume analysis<sup>39</sup> accomplishes this because in its analysis, Hansol Paper compared the volume of its shipments of subject merchandise to the United States during periods primarily before the onset of the COVID-19 pandemic (*i.e.*, calendar years 2017, 2018, and 2019 (or 12 month periods starting in those calendar years)), to the volume of its shipments of subject merchandise to the United States during periods primarily after the onset of the pandemic (*i.e.*, calendar year 2020 or 12 month periods starting in calendar year 2020 ).

Besides this inequitable comparison, we do not find Hansol Paper's alternative critical circumstances analyses appropriate for a number of other reasons. In making a critical circumstances determination, section 735(a)(3)(B) of the Act provides that Commerce must make a finding regarding whether there have been massive imports of the subject merchandise over a relatively short period. 19 CFR 351.206(i) indicates that a relatively short period is a comparison period of at least three months. In its annual shipment volume analysis, Hansol Paper used a comparison period of 12 months (we used a seven-month comparison period) and calculated an average annual volume of shipments for the base period using shipment data over the prior three years.<sup>40</sup> While Commerce is not precluded from considering longer comparison and base periods in its massive imports analysis, Hansol Paper used import data over a four-year period in its annual shipment volume analysis, while the relatively short period described in Commerce's regulations is of a much shorter duration. Shipment volumes over multiple annual periods may be considered in a seasonality analysis, but Hansol Paper never argued that there are seasonal trends that needed to be considered when determining whether its imports of subject merchandise into the United States have been massive over a relatively short period.

Additionally, Hansol Paper's adjusted growth analysis is not appropriate because it is based on speculation as to what the volume of its shipments of subject merchandise to the United States during the base period would have been if not for the COVID-19 pandemic and if recent

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<sup>35</sup> See *CTVs from China* IDM at Comment 3

<sup>36</sup> See Preliminary Critical Circumstances Calculation Memorandum at 3-4 (citing *CTVs from China* IDM at Comment 3).

<sup>37</sup> See Hansol Paper's Critical Circumstances Rebuttal at Exhibit 2; see also Hansol Paper's Case Brief at 9 and 11.

<sup>38</sup> See Hansol Paper's Case Brief at 9-11.

<sup>39</sup> *Id.* at 13 and Attachment I.

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

historical growth rates continued.<sup>41</sup> Hence, the volume of Hansol Paper's shipments of subject merchandise to the United States during base period under its adjusted growth analysis is not an "actual" figure and would not result in an accurate critical circumstances determination. Moreover, the premise underlying Hansol Paper's adjusted growth analysis is that Commerce must adjust actual import volumes to account for the effects of the COVID-19 pandemic. However, as noted above, Commerce typically does not consider factors beyond those outlined in 19 CFR 351.206(h)(1) when conducting its critical circumstances analysis.

In sum, as explained in the *Preliminary Determination*, we found that there is a history of injurious dumping of the subject merchandise pursuant to section 733(e)(1)(A)(i) of the Act (no parties challenged this finding). Also, we found that there were massive imports of subject merchandise from Hansol Paper and the "all other" companies, in Korea, respectively, over a relatively short period, pursuant to section 773(e)(1)(B) of the Act and 19 CFR 351.206(h) (*i.e.*, imports increased by at least 15 percent from the base period to the comparison period). We found massive imports over a relatively short period by comparing the base period of March 2020 through September 2020 to the comparison period of October 2020 through April 2021 for Hansol Paper, and the base period of May 2020 through September 2020 to the comparison period of October 2020 through February 2021 for "all other" companies in Korea. Therefore, we have continued to find that there are critical circumstances with respect to Hansol Paper and the "all other" companies in Korea.

## **Comment 2: Whether Commerce Should Revise its Cost Adjustment Accounting for Affiliated Party Purchases**

*Hansol Paper:*

- In the *Preliminary Determination*, Commerce applied section 773(f)(2) of the Act and adjusted Hansol Paper's transfer prices for minor inputs obtained from an affiliated party to their market values.<sup>42</sup>
- However, certain information requested by Commerce to clarify the market value of one input was not received in time to consider the market value in its analysis for the *Preliminary Determination*.<sup>43</sup> Commerce should modify its calculation to incorporate this data for the final determination.<sup>44</sup>
- Commerce should also modify its methodology for calculating the adjustment. In the *Preliminary Determination*, Commerce did not have market prices for all of the minor inputs obtained from the affiliated party. Therefore, Commerce extrapolated the results for the inputs with available market prices to those without market prices.<sup>45</sup> Commerce should revise this methodology and only adjust TOTCOM for the percentages that the inputs with available market prices contributed to TOTCOM.<sup>46</sup>

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<sup>41</sup> *Id.* at 13-14 and Attachment 2.

<sup>42</sup> *Id.* at 15.

<sup>43</sup> *Id.* at 15-16.

<sup>44</sup> *Id.* at 16.

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

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

- If Commerce determines to continue to extrapolate the results from these calculations to the remaining inputs, Commerce should take both market prices into account in its calculation.<sup>47</sup>

No other parties commented on this issue.

### **Commerce's Position:**

We agree with Hansol Paper, in part. During the POI, Hansol Paper obtained various minor thermal paper inputs from its affiliated party, Hansol Chemical, Co., Ltd. (Hansol Chemical).<sup>48</sup> In accordance with section 773(f)(2) of the Act, we analyzed Hansol Paper's transactions with its affiliate to determine whether they reflected arm's-length values. However, we excluded the input in question from our analysis because supplemental information clarifying the market value of the input was not obtained in time to incorporate the market value in our preliminary calculations. The market value of the input in question should be included in our transactions disregarded analysis and cost adjustment calculation for the final determination. Therefore, we updated our analysis and cost adjustment calculation to include this information for the final determination.

However, we disagree with Hansol Paper's proposal to adjust TOTCOM only for those minor inputs with reported market values. While Hansol Paper purchased various inputs from its affiliate Hansol Chemical, Hansol Paper only provided market prices for a limited number of those inputs. Therefore, in the *Preliminary Determination*, where a market price for an input was available, we compared the transfer price of the input to its market value.<sup>49</sup> For inputs for which market values were not provided, we extrapolated the results from our analysis of the inputs with reported market values. Because the affiliated party transactions under consideration are of a similar nature, *i.e.*, all are purchases of minor thermal paper inputs from the same affiliated supplier, *i.e.*, Hansol Chemical, we find it is reasonable to rely on the pricing behavior of Hansol Chemical with respect to the inputs with reported market prices to extrapolate market prices for the inputs without reported market prices. In fact, we have relied on this methodology in other cases where market prices for certain inputs supplied by the same affiliated supplier were not available.<sup>50</sup> Therefore, we have continued to extrapolate the results of our analysis of inputs with reported market values to the remaining inputs supplied by Hansol Chemical.

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<sup>47</sup> *Id.*

<sup>48</sup> See Hansol Paper's Letter, "Thermal Paper Products from the Republic of Korea: Initial Sections B-D Questionnaire Response," dated January 21, 2021 at Exhibit D-5

<sup>49</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Hansol Paper Co., Ltd.," dated May 5, 2021.

<sup>50</sup> See, *e.g.*, *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Administrative Review: 2016-2017*, 84 FR 16646 (April 22, 2019), and accompanying IDM at Comment 6.



### Comment 3: Whether to Grant a Constructed Export Price (CEP) Offset

#### *Hansol Paper:*

- Commerce inappropriately denied Hansol Paper a CEP offset because it determined that Hansol Paper failed to provide a quantitative analysis showing how selling expenses at different claimed levels of trade (LOTs) impacted price comparability.<sup>51</sup>
- However, Hansol Paper provided quantitative analyses based on its indirect selling expenses by market, sales revenue per salesperson per market, and the cost of salespersons per market.<sup>52</sup>
- In response to Commerce's supplemental question about this quantitative analysis,<sup>53</sup> Hansol Paper explained that its home market indirect selling expense ratio was higher than the indirect selling expense ratio for CEP sales in the U.S. market, which is precisely the information that Commerce found to satisfy the quantitative analysis requirement in *CORE from Korea*.<sup>54</sup>
- Beyond its quantitative analysis, Hansol Paper also submitted a selling functions table, supported by a narrative, showing that the selling activities in the home market LOT were performed at a greater magnitude and intensity than the CEP LOT.<sup>55</sup>
- In previous cases, Commerce granted CEP offsets based on selling intensities like those reported by Hansol Paper.<sup>56</sup> In those cases, Commerce reasoned that if the U.S. affiliate performed selling activities in the U.S. market that are handled by the foreign producer in the comparison market, then the comparison market LOT is necessarily more advanced than the CEP LOT, which excludes the activities performed by the U.S. affiliate.<sup>57</sup>
- Commerce did not provide any specific guidance in its AD Questionnaire as to what type of quantitative analysis is appropriate.<sup>58</sup> Commerce should grant Hansol Paper a CEP offset because it provided the necessary evidence on the record to demonstrate that its home market sales were made at a more advanced LOT than its CEP sales.

#### *Petitioner's Rebuttal Case Brief*

- The cases that Hansol Paper cited to support its position are not applicable because they either pre-date Commerce's current LOT practice (requiring a quantitative analysis),<sup>59</sup> or in the case of *CORE from Korea*,<sup>60</sup> the indirect selling expense ratio for home market

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<sup>51</sup> See Hansol Paper's Case Brief at 16-17.

<sup>52</sup> *Id.* at 17 and 21.

<sup>53</sup> *Id.* at 22-23

<sup>54</sup> *Id.* at 23 (citing *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2017-2018, 85 FR 15114 (March 17, 2020) (*CORE from Korea*), and accompanying IDM at Comment 4).

<sup>55</sup> *Id.* at 21.

<sup>56</sup> *Id.* at 18-20.

<sup>57</sup> *Id.* at 20-21.

<sup>58</sup> *Id.* at 21.

<sup>59</sup> See Petitioner's Rebuttal Brief at 8.

<sup>60</sup> *Id.* (citing Hansol Paper's Case Brief at 23 (citing *CORE from Korea* IDM at Comment 4)).

sales was more than two times that of U.S. sales, which is not the case with respect to Hansol Paper's INDIRSH and DINDIRSU ratios.<sup>61</sup>

- Hansol Paper also claimed that its salespersons' salaries per sales revenue generated were greater for the home market than for the U.S. market. However, the figures in Hansol Paper's analysis are not the actual salaries and bonuses included in the INDIRSH and DINDIRSU ratios.<sup>62</sup>
- Even if Hansol Paper's salesperson salary analysis is correct, the claimed difference in salaries is not comparable to the difference in *CORE from Korea*, where the wages for the home market were seventy times that of the U.S. market.<sup>63</sup> Thus, the relevant analysis does not support Hansol Paper's position that the home market is at a more advanced LOT than the U.S. market.
- Finally, Hansol Paper did not quantitatively show how the claimed differences in the intensities of selling activities affected price comparability.<sup>64</sup> Thus, Hansol Paper has not met the evidentiary burden necessary to receive a CEP offset, based on Commerce's current LOT practice.

### Commerce's Position:

We disagree with Hansol Paper's position that it provided the necessary quantitative evidence demonstrating that its home market sales were at a more advanced LOT than its U.S. sales during the POI. Thus, Commerce has continued to deny Hansol Paper's request for a CEP offset pursuant to section 773(a)(7)(B) of the Act.

In the antidumping duty (AD) questionnaire, Commerce requested that Hansol Paper:

Provide a quantitative analysis showing how the expenses assigned to POI/POR sales made at different claimed levels of trade impact price comparability....  
Explain how the quantitative analysis ... support{s} the claimed levels of intensity for the selling activities reported in the selling functions chart.<sup>65</sup>

In response to this request, Hansol Paper reported the value of home and U.S. market sales generated per salesperson in Korea during the POI.<sup>66</sup> According to Hansol Paper, there was a much lower value of home market sales generated per salesperson in Korea than the value of U.S. sales generated per salesperson in Korea because significantly more selling activities were required to generate sales in the home market (thus it claimed that it sold foreign like products in the home market at a more advanced LOT than its CEP sales of subject merchandise to the United States).

In a supplemental questionnaire, Commerce explained that "Hansol Paper's response (which was to report sales revenue per salesperson for both the U.S. and home market) is not a quantitative

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<sup>61</sup> *Id.* at 8-9

<sup>62</sup> *Id.* at 9 and footnote 38.

<sup>63</sup> *Id.* at 9-10 (citing *CORE from Korea* IDM at Comment 4).

<sup>64</sup> *Id.* at 10.

<sup>65</sup> Commerce Letter, Initial AD Questionnaire, November 25, 2021 (AD Questionnaire) at A-7-A-8.

<sup>66</sup> See Hansol Paper's Letter, "Thermal Paper Products from the Republic of Korea: Initial Section A Questionnaire Response," dated December 30, 2020 (Hansol Paper AQR) at A-16 and Exhibit A-9(b)(ii).

analysis of expenses that demonstrates how expenses for sales varied by each claimed level of trade and how the expenses assigned to POI sales made at different claimed levels of trade impact price comparability.”<sup>67</sup> Thus, Commerce requested that Hansol Paper “... provide a quantitative analysis showing how the expenses assigned to POI sales made at different claimed levels of trade impact price comparability.”<sup>68</sup>

In response to this request, Hansol Paper reported that it incurred a higher indirect selling expense ratio for home market POI sales than for U.S. POI sales (based on a comparison of the ratios used to report amounts in the INDIRSH and DINDRSU fields in the home and U.S. sales databases, respectively) and that this affects prices because these higher expenses must be covered by the sales prices.<sup>69</sup> In addition, following up on its AD questionnaire response, Hansol Paper explained that the ratio of sales revenue generated to salespersons’ salaries demonstrates that it incurred higher salesperson salaries in the home market per Korean Won of home market sales than per Korean Won of U.S. sales.<sup>70</sup> Hansol Paper claimed that this demonstrates that it expended more effort during the POI in Korea to make home market sales than it expended in Korea to sell to the United States (thus, its home market sales were at a more advanced LOT than its U.S. CEP sales).<sup>71</sup>

We find that the analyses described above do not demonstrate “how the expenses assigned to POI/POR sales made at different claimed levels of trade impact price comparability” or “support the claimed levels of intensity of activities appearing on the selling functions chart,” which Commerce directly asked Hansol Paper to show in the AD Questionnaire<sup>72</sup> and in a supplemental questionnaire.<sup>73</sup>

Hansol Paper’s salesperson analysis<sup>74</sup> does not directly show how selling expenses at different claimed LOTs impacted price comparability. While Hansol Paper claims that its salesperson analysis shows that it required more effort to sell in the home market than to sell to Hansol America, Inc. in the United States, it did not provide actual selling expenses to support its claim, other than approximates of certain salespersons’ salaries (with no supporting documentation).<sup>75</sup> Hansol Paper reported that it engaged in a number of other selling activities in the home market and that its home market selling activities for U.S. CEP sales included “providing freight and delivery services and providing indirect administrative support for input processing.”<sup>76</sup> However, Hansol Paper did not provide a quantitative analysis of those expenses.

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<sup>67</sup> See Commerce’s Letter, “Antidumping Duty Investigation of Thermal Paper from the Republic of Korea: Sections A-C Supplemental Questionnaire,” dated April 21, 2021 (Commerce Supp ACQ).

<sup>68</sup> *Id.*

<sup>69</sup> See Hansol Paper’s Letter, “Thermal Paper Products from the Republic of Korea: Supplemental Sections A-C Questionnaire Response,” dated April 27, 2021 (Hansol Paper Supp ACQR) at 5; *see also* Hansol Paper’s Letter, “Thermal Paper Products from the Republic of Korea: Supplemental Sections A-B Questionnaire Response,” dated March 26, 2021 (Hansol Paper Supp ABQR) at Exhibit S-9.

<sup>70</sup> See Hansol Paper’s Supp ACQR at 5-6 (citing Hansol Paper AQR at Exhibit A-9(b)(ii)).

<sup>71</sup> *Id.*

<sup>72</sup> AD Questionnaire at A-7-A-8.

<sup>73</sup> See Commerce Supp ACQ.

<sup>74</sup> See Hansol Paper AQR at Exhibit A-9(b)(ii)

<sup>75</sup> See Hansol Paper Supp ACQR at 5-6.

<sup>76</sup> See Hansol Paper AQR at A-17.

Additionally, other than claiming that the greater efforts required to sell in the home market resulted in higher costs, which had to be covered by sales prices, Hansol Paper did not provide a quantitative analysis showing how selling expenses at different claimed LOTs impacted price comparability.

While Hansol Paper relied on actual expenses in its analysis of its indirect selling expense ratios (INDIRSH and DINDIRSU), and the ratios appear to be based on a range of expenses, in addition to salespersons' salaries, it is not clear that the ratios support the claimed levels of intensities for the activities reported in the selling functions table. For three out of the four categories of selling activities in which it engaged to sell foreign like product in the home market during the POI, Hansol Paper reported the highest possible level of intensity (10 on a scale of 0 - 10).<sup>77</sup> In contrast for the majority of its CEP sales, Hansol Paper reported that it either did not engage in these types of selling activities to sell subject merchandise to its U.S. affiliate during the POI or, at most, it engaged in the activity at a low level of intensity (level 2 on a scale of 0-10).<sup>78</sup> However, Hansol Paper's qualitative description of the intensities at which it performed various selling activities is not supported by its quantitative analysis of its indirect selling expense ratios. Specifically, while Hansol Paper reported significant differences in the levels of intensity at which it performed various selling expenses activities in the home market for home market and U.S. sales, there is not a significant difference between the home market indirect selling expense ratios for home market (INDIRSH) and U.S. sales (DINDIRSU).<sup>79</sup> This is in contrast to the situation in *CORE from Korea*, where Commerce found that the indirect selling expense ratio for home market sales was more than two times greater than the ratio for U.S. sales and granted a CEP offset.<sup>80</sup>

Moreover, Hansol Paper's indirect selling expense ratio analysis does not demonstrate how expenses for sales made at different claimed LOTs impacted price comparability. The analysis only shows a variation in the home market indirect selling expense ratios.

We find the absence of an adequate quantitative analysis to be a significant issue. As Commerce explained in the 2017-2018 administrative review of the antidumping order on emulsion styrene-butadiene rubber from Brazil (*ESB Rubber from Brazil*):

Commerce's requirement that respondents support LOT claims with quantitative evidence in all proceedings was implemented in 2018 to enhance Commerce's ability to determine whether reported differences in selling functions are substantial enough to warrant a finding that sales were made at different LOTs.<sup>81</sup>

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<sup>77</sup> See Hansol Paper Supp ABQR at Exhibit S-2.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at Exhibit S-9.

<sup>80</sup> See Petitioners' Rebuttal Brief at 8-9 (citing *CORE from Korea*).

<sup>81</sup> See, e.g., *Magnesium from Israel: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 32712 (July 9, 2019), and accompanying PDM at 13, unchanged in *Magnesium from Israel: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 65781 (November 29, 2019)); and *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 34868 (July 19, 2019), and accompanying PDM at 10, unchanged in *Certain Cold-Rolled Steel Flat Products from the United*

Although qualitative information is helpful and relevant to the LOT analysis, reliance on this information alone limits Commerce's ability to analyze selling functions to determine if LOTs identified by a party are meaningful and to evaluate whether a respondent's LOT claims are reasonable and accurate.<sup>82</sup> Indeed, reliance on qualitative evidence, such as narrative descriptions of differences in selling functions, customer correspondence, sample sales records, meeting presentations and the like, without supporting quantitative evidence frequently does not present a complete understanding of a respondent's selling activities. Additionally, reliance on purely qualitative information may create the potential for manipulation (or inaccurate reporting) by permitting respondents to create a narrative that is not linked in any way to its verifiable financial data. Requiring quantitative evidence enhances our LOT analysis because such information allows us to determine whether differences in prices among various customer categories or differences in levels of expenses in different claimed LOTs are, in fact, attributable to differences in LOTs or to some other unrelated factor such as relative sales volumes.<sup>83</sup> Quantitative information, such as the selling expense information requested by Commerce in the instant review, permits Commerce to examine whether respondent's narrative explanations and qualitative evidence are supported by its books and records maintained in the ordinary course of business. Additionally, the requirement that respondents provide quantitative support for their claimed LOTs reduces subjectivity and the likelihood of inconsistency in the application of Commerce's analytical framework that results from the analysis of purely qualitative information, which can be, by its nature, subject to different interpretations.

While Hansol Paper claimed that there are many cases with a fact pattern similar to the one in this investigation where Commerce granted a respondent a CEP offset, the cases cited by Hansol Paper were before Commerce began requiring a quantitative LOT analysis in its questionnaire.

Finally, the absence of specific descriptions or examples of acceptable types of quantitative analyses in the AD Questionnaire does not alleviate Hansol Paper of its burden to support any claimed differences in LOTs or to support its request for a CEP offset. Section 351.401(b)(1) of Commerce's regulations states that "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." Furthermore, as Commerce explained in *ESB Rubber from Brazil*:

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*Kingdom: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 59771 (November 6, 2019).

<sup>82</sup> See *Pasta Zara*, 34 CIT 355, 366 (CIT 2010) ("{T}he statute indicates that two sales with substantial differences in selling activities nevertheless may be at the same level of trade, and the {Statement of Administrative Action} adds that two sales with some common selling activities nevertheless may be at different levels of trade. Rather, the Department must analyze selling functions to determine if levels of trade identified by a party are meaningful." (emphasis added) (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27,296, 27,371 (May 19, 1997))).

<sup>83</sup> See, e.g., *Timken United States Corp. v. United States*, 434 F.3d 1345 (Fed. Cir. 2006); see also *Pakfood Pub. Co. v. United States*, 34 CIT 1122, 1138 (CIT 2010); and *Alloy Piping Prods. v. United States*, 33 CIT 349, 358-59 (CIT 2009).

... even though Commerce began expressly requesting that respondents support their LOT claims with quantitative evidence in 2018, respondents have long borne the burden of establishing their eligibility for a LOT adjustment by demonstrating that different prices and selling expenses are caused by differences in LOT and not by other factors, such as volume sold or arbitrary pricing.<sup>84</sup>

The types of books and records maintained by respondents differ. Thus, even if Commerce's AD questionnaire had contained an example of a type of quantitative analysis, the example may not have been applicable in all situations. In any case, Commerce explained in a supplemental questionnaire that Hansol Paper's initial quantitative LOT analysis was lacking, and we provided it with another opportunity to "provide a quantitative analysis showing how the expenses assigned to POI sales made at different claimed levels of trade impact price comparability."<sup>85</sup> However, for the reasons explained above, Hansol Paper's response to Commerce's request for a quantitative analysis was insufficient.

Hansol Paper did not provide the necessary quantitative analyses: (1) showing how expenses assigned to POI sales made at different claimed LOTs impacted price comparability and (2) supporting the claimed levels of intensity of activities reported in the selling functions table. Therefore, we have not granted Hansol Paper a CEP offset.

## VI. RECOMMENDATION

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



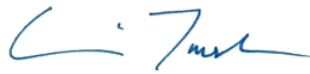
Agree



Disagree

9/24/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>84</sup> See *NSK Ltd. v. Koyo Seiko Co.*, 190 F.3d 1321, 1330 (Fed. Cir. 1999) ("Although NTN submitted evidence that merchandise at different levels of trade had different prices and selling expenses, NTN did not provide evidence to prove that those differences were not caused by other factors, such as volume sold or arbitrary pricing practices. In other words, NTN did not present evidence to establish that the difference in the level of trade caused the differences in price and selling expenses.")

<sup>85</sup> See Commerce Supp ACQ.