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DATE: March 4, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

CASE: Polyethylene Terephthalate Resin from the Sultanate of Oman

SUBJECT: Certain Polyethylene Terephthalate Resin from the Sultanate of
Oman: Issues and Decision Memorandum for the Final
Determination of Sales at Less-Than-Fair-Value

SUMMARY

The Department of Commerce (“the Department”) finds that certain polyethylene terephthalate resin (“PET resin”) from the Sultanate of Oman (“Oman”) is being, or is likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 735 of the Tariff Act of 1930, as amended (“the Act”). The period of investigation (“POI”) is January 1, 2014, through December 31, 2014.

After analyzing the comments submitted by interested parties, we made certain changes to the dumping margin calculations for the mandatory respondent, OCTAL SAOC-FZC (“OCTAL”). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues for which we received comments:

- Comment 1: Sale Type Classification (Export Price (“EP”) or Constructed Export Price (“CEP”))
- Comment 2: Indirect Selling Expenses Incurred in the United States
- Comment 3: Affiliated Party Expenses
- Comment 4: Ministerial Errors
- Comment 5: Cost Data Revision



BACKGROUND

The following events have taken place since the Department published the *Preliminary Determination* in this investigation on October 15, 2015.¹ Between November 15, 2015 and December 9, 2015, the Department verified the information provided by OCTAL.² Furthermore, on January 6, 2016, DAK Americas LLC, M&G Chemicals, and Nan Ya Plastics Corporation (“Petitioners”) and OCTAL submitted case briefs.³ Additionally, on January 13, 2016, Petitioners and OCTAL submitted rebuttal briefs.⁴ All parties withdrew their requests for a hearing.

The Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government because of Snowstorm “Jonas”. Thus, all of the deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now March 4, 2016.⁵

SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process. The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the

¹ See *Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 62021 (October 15, 2015) (“*Preliminary Determination*”), and accompanying Preliminary Issues and Decision Memorandum (“PDM”).

² See Memorandum to the File from Sheikh M. Hannan, Senior Accountant, through Michael P. Martin, Lead Accountant, and Neal M. Halper, Office Director, regarding “Verification of the Cost Response of OCTAL SAOC-FZC in the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from the Sultanate of Oman,” (December 9, 2015) (“Cost Verification Report”); see also memorandum to the File, from Howard Smith and Jonathan Hill, AD/CVD Operations, Office IV, to the File “Verification of the Sales Information Submitted by OCTAL SAOC-FZC in the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from the Sultanate of Oman,” (December 23, 2015) (“Sales Verification Report”); see also memorandum to the File “Verification of the Sales Information Submitted by OCTAL Inc. in the Antidumping Duty Investigation of Polyethylene Terephthalate Resin from the Sultanate of Oman,” (December 23, 2015) (“CEP Verification Report”).

³ See Letter from Petitioners to the Secretary of Commerce “Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Petitioners’ Case Brief,” dated January 6, 2016 (“Petitioners’ Brief”); see also letter from OCTAL to the Secretary of Commerce “Antidumping Case Brief of OCTAL SAOC-FZC: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman,” dated January 6, 2016 (“OCTAL Brief”).

⁴ See Letter from Petitioners to the Secretary of Commerce “Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Petitioners’ Rebuttal Brief,” dated January 13, 2016 (“Petitioners’ Rebuttal Brief”); see also letter from OCTAL to the Secretary of Commerce “Antidumping Case Rebuttal Brief of OCTAL SAOC-FZC: Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman,” dated January 13, 2016 (“OCTAL Rebuttal Brief”).

⁵ See Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas,” dated January 27, 2016.

United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

DISCUSSION OF THE ISSUES

Comment 1: Sale Type Classification (Export Price (“EP”) or Constructed Export Price (“CEP”))

OCTAL’s Arguments:

- The Department must analyze three factors when determining whether to designate a sale as an EP or CEP sale: (1) whether the sale takes place outside of the United States;⁶ (2) whether the foreign producer directly makes the sale to the U.S. purchaser;⁷ and (3) whether the sale occurs before or after the date of importation.⁸ Among these criteria, the location of the sale is the most important.⁹
- When a foreign producer or exporter has a U.S. affiliate, the U.S. sales transactions should receive EP treatment when the sales are executed outside of the United States.¹⁰
- All of OCTAL’s sales were made outside of the United States because: (1) the sales took place when the invoice was issued and (2) OCTAL in Oman (not OCTAL Inc. (“OCTAL US”) (OCTAL’s U.S. affiliate) was the entity that issued the invoice.
- All aspects of the sales negotiations with the U.S. customer (*i.e.*, establishing the final selling price), movement, and management of warehouse storage in the United States of PET resin were handled by OCTAL personnel in Oman.
- OCTAL US never takes title to the imported PET resin.
- Although OCTAL US is the official importer of record, OCTAL US does not perform any physical functions related to the importation of PET resin.
- In *Corus Staal*, the United States Court of Appeals for the Federal Circuit (“CAFC”) determined that the sale occurred in the United States because the U.S. affiliate provided the final written confirmation of the agreement, which set forth the agreed prices and quantities to its U.S. customer.¹¹ The CAFC focused its decision regarding whether to designate a sale as an EP or CEP sale on the party that finalized the pricing and quantities of the sale.

Petitioners’ Arguments:

- The issue of whether a sale takes place outside of the United States, or whether a foreign producer directly makes a sale to a U.S. purchaser is only relevant when determining whether sales (made prior to importation) should be classified as EP or CEP sales. The cases cited by OCTAL involve sales to an unaffiliated purchaser that were made prior to importation, and are thus not relevant to OCTAL sales made after importation.¹²

⁶ See *AK Steel Corp. v. United States*, 226 F.3d 1361 and 1370-71 (CAFC 2000) (“*AK Steel*”).

⁷ *Id.*

⁸ See *Corus Staal BV v. United States*, 502 F.3d 1370 and 1376-77 (CAFC 2007) (“*Corus Staal*”).

⁹ *Id.* at 1377 (“{T}he location of the sale appears to be critical to the distinction between the two categories.” (quoting *AK Steel*, 226 F.3d at 1369)).

¹⁰ See *Nucor Corp. v. United States*, 612 F. Supp. 2d 1264, 1277-81 (CIT 2009) (“*Nucor Corp.*”); see also *USEC Inc. v. United States*, 498 F. Supp. 2d 1337, 1351-52 (CIT 2007) (“*USEC Inc.*”).

¹¹ See *Corus Staal* at 1377.

¹² See *AK Steel* at 1365, *Nucor* at 1264, and *USEC* at 10 1351-52.

- Establishment of the price before importation is the only way a sale can be eligible for EP classification. CEP classification is not dependent on the location of the merchandise at the time of sale. The statute provides that the CEP methodology can apply either “before or after the date of importation” and that the sale can be “by or for the account of the producer or exporter...” Thus, CEP is contemplated even if the sale is “by...the producer or exporter” located outside of the United States.
- The proper classification of a sale as an EP or CEP sale is not determined by the location of a sale and identity of the seller, but the selling structure and operations of the respondent.
- The timing of a sale is the most important criterion in determining the proper classification of a sale by the respondent to an unaffiliated U.S. customer.¹³
- The Department has long applied a CEP classification to transactions that occur after importation.¹⁴
- OCTAL stated that OCTAL US supports sales and marketing efforts and acts as the importer of record for sales of PET resin.
- The Department should reject OCTAL’s contention that “statements” and “explanations” by OCTAL US employees at the CEP verification are “record evidence” supporting no involvement by OCTAL US in selling PET resin in the United States.
- The bank statements examined at the CEP verification reveal numerous transactions which are ambiguous as to whether they pertain to subject or non-subject merchandise.
- Evidence indicates that OCTAL US’ employees also undertook activities that related to PET resin.

Department’s Position:

The Department disagrees with OCTAL’s position that the sales at issue should be classified as EP sales. Section 772(a) of the Act defines EP as “the price at which the subject merchandise is

¹³ See, e.g., *Gold E. Paper (Jiangsu) Co. v. United States*, 918 F. Supp. 2d 1317, 1331 (Court of International Trade (“CIT”) 2013) in which the CIT stated that the record supported EP classification because the respondent “invoiced the U.S. customer prior to the date of importation.”; see, e.g., *Corus Staal* at 1377 (Federal Circuit 2007) in which the Federal Circuit stated that sales made after importation “may not be classified as EP sales” under 772(a) of the Act.

¹⁴ See, e.g., *Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: 2012- 2013*, 79 FR73034 (December 9, 2014) in which the Department stated that CEP was warranted because the first sale to an unaffiliated purchaser occurred after importation); see, e.g., *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) and accompanying Issues and Decision Memorandum at Comment 17 (stating that because the sales were made after importation into the United States, “this fact alone provides a sufficient basis to classify these sales as CEP because, pursuant to the Act, EP sales cannot be made after importation to the United States”); see, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 72 FR 28676 (May 22, 2007) (“*Steel Flat Products PRC (2007)*”) (“Since no sale or agreement to sell was made until after importation, the Department continues to hold these sales are precluded from EP consideration and were correctly classified by the Department as CEP sales.”); see, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 72 FR 28676 (May 22, 2007) (“Since no sale or agreement to sell was made until after importation, the Department continues to hold these sales are precluded from EP consideration and were correctly classified by the Department as CEP sales.”); see, e.g., *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan*, 63 FR 40461 (July 29, 1998) (“*Steel Wire Rod Taiwan (1998)*”) (“The main factors in analyzing whether U.S. sales are EP or CEP sales are whether they are first sold to an unaffiliated purchaser before or after importation, and if such sales are made before importation, whether such sales are made outside or in the United States.”).

first sold (or agreed to be sold) before the date of importation by the producer or exporter of 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 subsection (c).” Further, Section 772(b) of the Act defines CEP as “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...” The record shows that the U.S. sales at issue were not made until after importation. OCTAL has not contested this fact. Thus, based on the plain language of the statute, which defines EP sales as sales “before the date of importation”, the sales as issue may not be classified as EP sales as argued by OCTAL. Therefore, we find the statute is dispositive of the matter. Nonetheless, we have addressed OCTAL’s other arguments below.

OCTAL contends that the Department must consider a number of factors when determining whether to designate a sale as an EP or CEP sale, namely whether the sale takes place outside of the United States, whether the foreign producer directly makes the sale to the U.S. purchaser, and whether the sale occurs before or after the date of importation, with the location of the sale being the most important factor. We addressed the “before or after the date of importation” aspect of the analysis above. Thus, we turn to the other factors enumerated by OCTAL. We agree with OCTAL that the courts have focused on the location of the sale when reviewing the Department’s determinations as to whether sales are EP or CEP transactions. In *AK Steel*, the CAFC stated that “the plain meaning of the {EP and CEP} language enacted by Congress ... focuses on where the sale takes place ...”¹⁵ Furthermore, in *Nucor Corp*, the CIT stated “that the gravamen of *AK Steel* is the significance of the location of the sale or transaction – specifically, “whether the sale or transaction takes place inside or outside the United States.”¹⁶ OCTAL essentially argues that the sales at issue took place outside of the United States because OCTAL in Oman, rather than OCTAL US, made the sales and issued the sales invoices. However, in *AK Steel*, the CAFC noted that “{i}n general, a producer/exporter in a dumping investigation will always be located outside the United States.”¹⁷ Thus, the CAFC held that the important issue is “the locus of the transaction” and “not the location of the company”.¹⁸ The CAFC specifically noted that “the statute appears to allow for a sale made by the foreign exporter or producer to be classified as a CEP sale if such a sale is made ‘in the United States.’” More importantly, *AK Steel* “not only used the term “location of the sale,” {to define EP or CEP sales} it specifically defined it – as the place of “the transfer of ownership or title.”¹⁹ Additionally, the CAFC held that “{n}either a sale nor an agreement to sell occurs until there is a mutual assent to the material terms {of a deal} (price and quantity).”²⁰ In the case at hand, the sales at issue did not occur until after the PET resin was already in the United States. OCTAL stated that “the date of invoice is when there is ownership transfer of the merchandise and is when revenue recognition happens.”²¹ These facts indicate that the transfer of ownership occurred in the United States and thus, based on *AK Steel*, the location of the sales at issue is the United States. Given that the

¹⁵ See *AK Steel* at 1369.

¹⁶ See *Nucor Corp* at 1275.

¹⁷ See *AK Steel* at 1370.

¹⁸ *Id.* at 1369.

¹⁹ See *Nucor Corp* at 1278.

²⁰ See *Corus Staal* at 1376.

²¹ See OCTAL’s May 26, 2015 section A response at 19.

statutory definition of EP sales are sales made “outside the United States” while the statutory definition of CEP sales involves sales “in the United States”, the sales at issue are CEP sales, not EP sales.

Additionally, the Department disagrees with OCTAL’s contention that based on the CAFC’s ruling in *Corus Staal*, the Department should determine whether a sale is classified as an EP or CEP sale based on the location of the party who finalized the pricing and quantity of the sale. Just as in *AK Steel*, the material terms of the sales in question in *Corus Staal* were not only finalized in the United States, but were also made after importation. In *Corus Staal*, the issue was whether the sales predated importation and the CIT agreed with the Department that they did not.²² The facts in *Corus Staal* are similar to those in the instant investigation.

Corus’s sales process for the goods in question operated as follows: First, Corus issued frame agreements that set forth a general framework outlining the estimated volume and pricing of the unaffiliated customer’s likely purchases. Second, when Corus shipped merchandise to the United States, it issued pro forma invoices listing the shipped items for customs purposes. The goods were then stored at a warehouse in the United States until the customer placed a purchase order, at which point Corus performed a price calculation based on the quantity ordered and then-current market conditions. Once a price was finalized and agreed upon, Corus issued a sales invoice setting forth the terms of sale including product, quantity and price. It then directed the goods to be shipped to the customer. Upon receipt, the customer remitted payment to Corus’s U.S. affiliate or, later, to Corus directly.

In the instant investigation, OCTAL has a sales process which includes issuing a “commercial invoice” that accompanies the PET resin when it leaves OCTAL’s factory in Salalah for customs purposes and issuing the “accounting invoice” to the customer after importation (for sales in question) for customer payment purposes.²³ In *Corus Staal* the CAFC found that the material terms of the sales at issue were not agreed to until after importation; thus the sales occurred in the United States after importation and the sales may not be classified as EP sales. Similarly, with respect to the transactions at issue in this case (as in *Corus Staal*), “{u}nder 19 USC 1677a, those transactions thus may not be classified as EP sales.”²⁴

OCTAL argues that in *Corus Staal* the CAFC determined that the sale occurred in the United States because the U.S. affiliate provided the final written confirmation of the agreement, which set forth the agreed prices and quantities to its U.S. customer. This is not correct. The facts described by OCTAL pertain to the investigation, not the second administrative review of the antidumping order covering hot-rolled steel from the Netherlands which was litigated in *Corus Staal*. In fact, in *Corus Staal*, the CAFC stated that “Corus noted that, following that determination {the Department’s determination in the investigation in the proceeding}, it eliminated the use of a U.S. affiliate as a sales intermediary in an effort to avoid CEP treatment of its sales ...”²⁵

²² See *Corus Staal* at 1377.

²³ See OCTAL’s August 14, 2015 supplemental questionnaire response at page 4-5.

²⁴ See *Corus Staal* at 1376.

²⁵ *Id.* at 1377.

Finally, we disagree with OCTAL's reliance on *Nucor Corp* and *USEC Inc.* The structure of the transactions in *Nucor Corp* and *USEC Inc.* differ from those in this case. In *Nucor Corp*, the CIT held that "the administrative record in this matter adequately supports Commerce's determination that each of the transactions at issue occurred outside the United States."²⁶ The CIT noted that "all of ICDAS' sales to the United States were based upon contracts which were negotiated and finalized in Turkey prior to ICDAS' shipment of merchandise."²⁷ Additionally, the CIT noted the following:

In this case, Commerce 'examined the documents taken at verification and {concluded} that none of the contracts for POR entries shows that title passed after entry.' ... In other words, Commerce determined that – as to each transaction at issue – title transferred outside the United States. ... One sale which was verified by Commerce specified that title passed when payment for the merchandise was received in full – which occurred well before the import entry date.... Commerce thus confirmed that title for that sale passed before the goods entered this country – that is, outside the United States. ... In addition, as to all other sales at issue, Commerce determined that all deliveries of ICDAS' goods were made outside the United States, in accordance with the terms of each of the sales, which were governed by certain specific Incoterms provisions.

Furthermore, in *USEC Inc.*, the CIT found that the Department reasonably concluded that that the sales contract was consummated outside of the United States noting all of the sales activities performed by the foreign producer/exporter including "holding of product material at fabricators prior to book transfer to the customer."²⁸ In both cases, the sales in question occurred outside of the United States where the material terms were finalized, whereas in this case, the sales were made after importation into the United States. Therefore, based on the above, we continue to find that the sales in question are CEP sales.²⁹

Comment 2: Indirect Selling Expenses Incurred in the United States

Petitioners' Arguments:

- OCTAL reported that all of its selling expenses related to CEP sales were incurred in Oman; thus its U.S. indirect selling expense ("INDIRSU") ratio does not reflect expenses incurred by its U.S. affiliate, OCTAL US.
- Because all of the expenses incurred by OCTAL US support OCTAL's selling activities in the United States, and they were not demonstrated to apply to manufacturing operations or entirely to selling non-subject merchandise, the Department should use the total expenses in OCTAL US's 2014 tax return to calculate the INDIRSU ratio.

²⁶ See *Nucor Inc.* at 1283.

²⁷ *Id.* at 1280.

²⁸ See *USEC Inc.* at 1351.

²⁹ See *Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 75789 (December 19, 2014) (where the Department treated similar sales (*i.e.*, sales made after importation from an unaffiliated warehouse to the ultimate U.S. customer) as CEP sales), unchanged in *Stainless Steel Bar from Brazil: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 12805 (March 11, 2015).

- In *Tires PRC (2013)*, the Department stated that “in requesting that specific ISEs be excluded or allocation methodologies be accepted, the burden of demonstrating that such exclusions or methodologies are accurate and non-distortive falls on the respondent. In particular, the regulations state that ‘any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary’s satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions.’”³⁰
- The Department requires that the respondent “clearly demonstrate that all ISEs related to the sale of subject merchandise are incorporated in the final ISE ratio calculation.”³¹ OCTAL has not demonstrated that its zero percent subject merchandise, 100 percent non-subject merchandise allocation is appropriate in the case of OCTAL US’ expenses.
- OCTAL US’ 2014 tax return and income statement do not suggest that a greater proportion of its expenses relate to non-subject merchandise.
- OCTAL US has not provided any evidence to demonstrate that it exists to handle only non-subject merchandise and had no significant role with respect to subject merchandise. The Department cannot set a standard whereby it accepts assertions that subject merchandise was sold in the United States with no material support from the respondent’s U.S. affiliate (OCTAL US).

OCTAL’s Arguments:

- Petitioners’ contention that the INDIRSU ratio should include all expenses booked by OCTAL US is contrary to AD law and Department practice. By definition, “indirect selling expenses” means that the expense is not tied only to sales of subject merchandise; otherwise they would be considered direct selling expenses. Thus, by definition, indirect selling expenses include expenses that were incurred for sales of merchandise other than subject merchandise.
- The Department verified that OCTAL US sold both subject merchandise (PET resin) and non-subject merchandise (PET sheet) during the POI.
- OCTAL US employees spent the majority of their time on PET sheet sales in the United States (non-subject merchandise) and PET sheet and PET resin sales in certain third country markets (other than the U.S. market).
- OCTAL’s allocation methodology for indirect selling expenses is consistent with 19 CFR 351.401(g)(2), *i.e.*, “the allocation is calculated on as specific a basis as is feasible.”
- The Department found no discrepancies or inaccuracies in OCTAL’s indirect selling expense allocation methodology at verification.³² Also, the Department found: (1) OCTAL US deals with PET sheet quality claims and does not own the machinery necessary to deal with PET resin quality claims;³³ (2) although OCTAL US tracks PET resin and PET sheet sales, sales

³⁰ See, e.g., *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review: 2011–2012*, 78 FR 33341 (June 4, 2013) (“*Tires PRC (2013)*”) and accompanying Issues and Decision Memorandum at Comment 3.

³¹ *Id.* The Department has found that allocations reflected in normal business practices and supported by evidence at verification can be acceptable. See, e.g., *Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review: 2011–2012*, 78 FR 64914 (October 30, 2014) and accompanying Issues and Decision Memorandum Comment 2.

³² See Sales Verification Report at 33.

³³ See CEP Verification Report at 2.

orders and shipments only relate to PET sheet, not PET resin;³⁴ and (3) U.S. direct expenses relate to PET sheet sales, not PET resin sales.³⁵

Department's Position: The Department disagrees with Petitioners' contention that OCTAL's U.S. indirect selling expense ratio does not reflect expenses incurred by OCTAL US. On September 8, 2015, OCTAL submitted a revised U.S. sales database to the Department which included per-unit indirect selling expenses incurred in the United States (INDIRSU).³⁶ OCTAL explained that it calculated the amount reported in the INDIRSU field by allocating OCTAL US' total indirect selling expenses between subject and non-subject merchandise. The Department verified this allocation and found no discrepancies or inaccuracies in OCTAL's allocation methodology. Thus the amount reported for INDIRSU does reflect indirect selling expenses incurred by OCTAL US. In the *Preliminary Determination*, the Department used the amount reported in the INDIRSU field in OCTAL's margin calculation program.³⁷ As such, the Department has fulfilled its obligation under section 772(d) of the Act and 19 C.F.R. 351.402(b).³⁸

The Department also disagrees with Petitioners' contention that the Department should use the total expenses reflected in OCTAL US' 2014 tax return to calculate the INDIRSU ratio. The Department verified that OCTAL US performed activities related to subject merchandise (PET resin) and non-subject merchandise (PET sheet). Specifically, at verification, the verifiers reviewed sales order entries made at OCTAL US for both subject and non-subject merchandise. Furthermore, it would not be appropriate to use the total expenses reflected in OCTAL US' 2014 tax return to calculate the INDIRSU ratio because, after reviewing OCTAL US' operational accounts at verification, the verifiers found that certain expenses were related to non-subject merchandise. Specifically, the sales promotion expenses, sales consultancy expenses, and travel meals and entertainment expenses were related to PET sheet analysis services, trade shows, and sales employee expenses.³⁹

Moreover, although Petitioners claim that OCTAL US has not provided any evidence to demonstrate that it had no significant role with respect to subject merchandise, at verification the verifiers found no direct expenses related to PET resin sales.⁴⁰ Thus, Petitioners have not demonstrated that OCTAL's allocation methodology is not consistent with 19 CFR 351.401(g)(2), *i.e.*, "the allocation is calculated on as specific a basis as is feasible," nor have Petitioners demonstrated that OCTAL US' employees did not process both subject and non-

³⁴ *Id.* at 3.

³⁵ *Id.* at 6.

³⁶ See Letter from OCTAL to the Secretary of Commerce "OCTAL's response to Department Request: Certain Polyethylene Terephthalate Resin from the Sultanate of Oman," dated September 8, 2015.

³⁷ See Letter from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office IV through Howard Smith, Program Manager, AD/CVD Operations, Office IV to The File "Analysis Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: OCTAL SAOC FZC," dated October 6, 2015 at 10.

³⁸ Petitioners state that pursuant to 19 USC 1677a, the Department to reduce the starting price used to establish the CEP price, by the amount of certain expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling subject merchandise. Petitioners further state that pursuant to 19 CFR 351.402(b), the Department "will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid.

³⁹ See CEP Verification at 6.

⁴⁰ *Id.*

subject sales orders. Therefore, for the final determination, the Department will continue to use OCTAL's reported U.S. indirect selling expenses.

Comment 3: Affiliated Party Expenses

Petitioners' Arguments:

- OCTAL ignored the Department's request to provide the financial statements of one of its affiliates. The absence of the financial statements of this affiliate and documentation of its expenses represents a significant deficiency.
- Thus, the Department cannot consider OCTAL to have cooperated to the best of its ability and should apply an adverse inference with respect to the missing information.
- Specifically, the Department should treat certain expenses incurred by some of OCTAL's affiliates as indirect selling expenses or general and administrative ("G&A") expenses incurred in the United States. The Department found in other cases that such administrative expenses can be treated as U.S. indirect selling expenses.⁴¹

OCTAL's Arguments:

- OCTAL answered every question from the Department to the best of its ability. Petitioners are confusing information they sought with information the Department decided was actually appropriate and necessary to request for this investigation. The Department issued several supplemental questionnaires to OCTAL that focused on certain affiliated companies that had transactions with OCTAL, but declined to expand the request to companies that had no such transactions. OCTAL provided complete responses to the requests with the information in its possession.
- At the Department's request, OCTAL confirmed that out of all of its affiliates, only OCTAL US is associated with the PET resin business. Further, OCTAL confirmed that none of its other affiliates incurred expenses in connection with the production or sale of PET resin.
- During verification, the Department reviewed the nature of the affiliations and all transactions (if any) with numerous affiliated companies. All transactions with a number of these affiliates were disclosed and discussed extensively in the notes to the audited financial statements of both OCTAL and its parent company, OCTAL Holding. Further, the Department verified these affiliated party transactions twice: once during the cost verification, and then again in the sales verification in Oman.
- The Oman sales verification report specifically confirmed that OCTAL had no financial records for the affiliate at issue.
- The cost verification report specifically describes testing OCTAL's accounts payable and loans payable ledgers to identify any undisclosed affiliated party transactions. Further, the cost verification report notes that one of the affiliated parties submitted claims for reimbursement of travel and entertainment expenses. This fact illustrates that any costs or expenses incurred are being passed through to OCTAL and have been disclosed.

⁴¹ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value: Fresh Cut Roses From Ecuador*, 59 FR 48292 (September 20, 1994) where the Department stated "Finally, Guaisa did not include the administrative expenses of its U.S sales subsidiary in its calculation of U.S. indirect selling expenses... Because the U.S. subsidiary is solely a sales organization, we reclassified its administrative expenses as indirect selling expenses, and included these expenses in our calculations."

Department's Position: The Department disagrees with Petitioners' assertion that OCTAL did not cooperate to the best of its ability by not submitting the financial statements of one of its affiliates. As an initial matter, the Department notes that prior to its sales verification, the Department never requested that OCTAL provide financial statements for the affiliate in question. In a supplemental questionnaire, the Department requested that OCTAL state whether a number of affiliated parties identified by the Department, including the affiliate at issue here, "incurred any expenses associated with the production or sale of the merchandise under consideration or subject merchandise."⁴² In response to this question, OCTAL reported that the named affiliates, including the affiliate at issue, "did not incur any expenses in connection with the production or sale of PET resin."⁴³ At the sales verification in Oman, the verifiers sought evidence to test OCTAL's claim regarding its affiliates. At the verification, OCTAL provided financial statements and detailed records, (e.g., general ledgers), from all but one of the affiliates at issue. Moreover, although OCTAL did not have financial statements for the one affiliate in question, it provided what records it had available at that time that related to the affiliate.⁴⁴ Therefore, we have determined that the record does not support finding that OCTAL failed to cooperate to the best of its ability.

Moreover, we believe that when the financial statements at issue are considered in the context of the purpose of the verification procedure performed, there is no basis for applying an adverse inference. The purpose of verification is to test information provided, or claims made, by a respondent for accuracy and completeness, not to audit every item.⁴⁵ Here, the purpose of the verification procedure was to test OCTAL's claims regarding numerous affiliated parties. The verifiers were able to test those claims by examining financial records for almost every affiliate in question. The records examined support OCTAL's descriptions of the nature of the affiliates' operations and did not yield any evidence that the affiliates examined incurred expenses related to the sale and/or production of the merchandise under consideration. Further, during the cost verification, the verifiers found that all of the affiliated party transactions and the associated amounts were disclosed in OCTAL's audited financial statements,⁴⁶ in the audited consolidated financial statements of OCTAL Holding SAOC, and in submissions filed with the Department. None of those transactions were related to the company in question.⁴⁷

Based on the above, the Department does not find that OCTAL failed to cooperate to the best of its ability when responding to the Department's request for information to confirm its claims that certain affiliated parties "did not incur any expenses in connection with the production or sale of PET resin."⁴⁸ Thus, the Department has not applied an adverse inference with respect to the missing information.

⁴² See OCTAL's September 18, 2015 supplemental questionnaire response ("September 18th Response") at 2-5.

⁴³ *Id.*

⁴⁴ See Sales Verification Report at 4-7.

⁴⁵ See *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006) and accompanying Issues and Decision Memorandum at Comment 14.

⁴⁶ See OCTAL's June 22, 2015 section D response at exhibit 14. Respondent submitted the 2014 fiscal year company-specific financial statements of OCTAL in exhibit 14.

⁴⁷ See OCTAL's June 22, 2015 section D response at page 11; see also OCTAL's August 7, 2015 first supplemental section D response at pages 2-14.

⁴⁸ See OCTAL's September 13, 2015 supplemental questionnaire response at 3-5.

Comment 4: Ministerial Errors

Petitioners' Arguments:

- The Department failed to revise OCTAL's total cost of manufacturing ("COM") and interest expense ratio to reflect the changes the Department made to reported costs in its Preliminary Cost Memorandum.⁴⁹

OCTAL's Arguments:

- The Department inadvertently converted the difference in merchandise ("DIFMER") amount into U. S. dollars ("USD") and incorrectly calculated OCTAL's commission offset by not converting its comparison market inventory carrying and indirect selling expenses into Omani Rial.

Department's Position: The Department agrees with both parties. In its Preliminary Cost Memorandum, the Department set forth certain corrections to OCTAL's reported cost data but did not revise OCTAL's reported total cost of manufacturing and interest expense ratio to reflect those changes. Also, a conversion to USD of the DIFMER amount was unnecessary as it was already reported in USD. Regarding OCTAL's commission offset, if the variables used to calculate a commission offset are reported in a non-comparison market currency (as OCTAL reported them), the Department should convert the comparison market indirect selling and inventory carrying costs into the comparison market currency. In this case the Department did not convert the variables into Omani Rials. For the final determination, the Department has corrected these errors.⁵⁰

Comment 5: Cost Data Revisions

OCTAL's Arguments:

- The numerator of the net financial expense ratio should only include financing expenses related to import letter of credit charges because the financing expenses related to export letter of credit bills discounted have been included in the bank charges and reported as direct selling expenses.⁵¹

Petitioners' Arguments:

- The Department should continue to make the cost adjustments that were made in the *Preliminary Determination*.
- The per-unit manufacturing costs should be recalculated for the revised production quantities, the denominator of the general and administrative ("G&A") expense ratio should be reduced

⁴⁹ See Memorandum from Sheikh Hannan, Senior Accountant to Neal M. Halper, Director, Office of Accounting "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination OCTAL SAOC- FZC." dated October 6, 2015 ("Preliminary Cost Memorandum").

⁵⁰ See Memorandum from Jonathan Hill, International Trade Compliance Analyst to Howard Smith, Program Manager, AD/CVD Operation, Office IV "Analysis Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: OCTAL SAOC-FZC," dated concurrently with this memorandum.

⁵¹ See September 18th Response at exhibit 9.

by packing labor, and the numerator of the net financial expense ratio should include the financing expenses related to import letter of credit charges and export letter of credit bills discounted.

Department's Position: The Department agrees with OCTAL with regards to the recalculation of the net financial expense ratio. For the final determination, we only included financing expenses related to import letter of credit charges in the numerator of the net financial expense ratio because OCTAL included financing expenses related to export letter of credit bills discounted in bank charges and reported bank charges as direct selling expenses.⁵²

On the other hand, the Department agrees with Petitioners with regards to the remaining cost adjustments. We have continued to make the cost adjustments made in the *Preliminary Determination*. We recalculated the per-unit manufacturing costs for the revised production quantities and reduced the denominator of the G&A expense ratio by the packing labor.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination in the *Federal Register*.

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 MARCH 2016

Date

⁵² See Sales Verification Report at pages 30 to 31.