Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3836 or (202) 482–2613, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1996, the Department published in the **Federal Register** (61 FR 24286) an antidumping duty order on polyvinyl alcohol (''PVA'') from Japan. On March 12, 1998, Colorcon, Inc. (''Colorcon'') requested that the Department conduct a changed circumstances review and revoke, in part, the antidumping duty order with respect to PVA from Japan for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement. Colorcon included in its request a statement from the petitioner dated October 30, 1997, expressing (i) no objection to a changed circumstances review, and (ii) no further interest in maintaining the antidumping duty order with respect to PVA imported from Japan for use in the manner described above.

On April 30, 1998, the Department published a notice of initiation of a changed circumstances antidumping duty review and preliminary results of the review with intent to revoke, in part, the antidumping duty order on PVA from Japan. In that notice, we stated that we intend to revoke in part, the antidumping duty order as it relates to ''imports of PVA for use as a pharmaceutical excipient or for use in the manufacture of film coating systems which are components of a drug or dietary supplement'' (63 FR 23722, April 30, 1998). Subsequently, it came to the Department's attention that our description of the type of PVA subject to the proposed revocation did not accurately reflect the description contained in the petitioner's expression of no further interest. In particular, the Department's description of the product subject to revocation did not include PVA ''for use in the manufacture of an excipient.'' As a result, we are amending our preliminary results published on April 30, 1998, to clarify our description of the type of PVA subject to the proposed revocation.

Scope of Review

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Amended Preliminary Results of Changed Circumstances Review and Intent To Revoke Order in Part

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a ''changed circumstances'' review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order in whole (or in part) if it determines that the producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. The affirmative statement of no interest by the petitioner covered PVA from Japan for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement. In the preliminary results issued on April 30, 1998 (63 FR 23722) we inadvertently excluded from our description of the product subject to revocation, PVA ''for use in the manufacture of an excipient.'' Therefore, we are hereby notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement.

Because of the error in the original description of the products covered by this changed circumstances review, we are affording the parties an additional opportunity to comment (*see* Public Comment section below). Suspension of liquidation will be extended accordingly.

If final revocation, in part, occurs, we intend to instruct the Customs Service to end, effective on the date of publication in the **Federal Register** of the final notice of partial revocation, the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of the above-described PVA not subject to final results of an administrative review. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 10 days after the date of publication of these results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 17 days after the date of publication of these amended preliminary results. The Department will issue its final results no later than 45 days after it has issued its amended preliminary results if all parties agree to our preliminary results.

The preliminary results in this review and notice are in accordance with section 751(b) of the Act (19 U.S.C. 1675(b)), and 19 CFR 351.216, 351.221, and 351.222.

Dated: June 6, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15875 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–824]

Polyvinyl Alcohol From Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On February 9, 1998, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan. The review covers two manufacturers/exporters of the subject merchandise to the United States, Chang Chun

Petrochemical and E.I. duPont de Nemours & Co. The period of review is May 15, 1996, through April 30, 1997.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical and computer programming errors, we have changed our results from those presented in our preliminary results, as described below in the comment section of this notice. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Everett Kelly at (202) 482–4194, or Sunkyu Kim at (202) 482–2613, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 353 (April 1, 1997). Although the Department's new regulations, codified at 19 CFR Part 351, 62 FR 27296 (May 19, 1997) (''*Final Regulations*''), do not govern this review, citations to those regulations are provided, where appropriate, as a statement of current departmental practice.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1998, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of the 1996–1997 administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan (63 FR 6526) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on our preliminary results. Air Products and Chemicals Inc. (''the petitioner''), E.I. du Pont de Nemours & Co. (''DuPont''), Chang Chun Petrochemical Co., Ltd. (''Chang Chun''), and Perry Chemical Corporation (''Perry'') submitted case briefs on March 11, 1998, and rebuttal briefs on March 18, 1998. Pursuant to a timely request from the petitioner, we held a public hearing on March 25, 1998. On April 23, 1998, the Department requested Chang Chun to provide supplemental information concerning its sales to the United States which were used in our preliminary results calculation (*see* ''Treatment of Sales of Tolled Merchandise'' section below for further discussion). Chang Chun provided this data on April 30, 1998. Additionally, Chang Chun provided data on additional shipments made during the POR which were not included in our preliminary results (*see* Memorandum to File from Everett Kelly, Case Analyst, dated May 20, 1998). In May 1998, the Department verified the data provided by Chang Chun (*see* Verification Report dated May 28, 1998).

On May 11, 1998, the petitioner filed a submission objecting to certain information provided by Chang Chun in its April 30, 1998, submission. Chang Chun submitted its response to the petitioner's comments on May 22, 1998 (*see* Comment 7 for Chang Chun for further discussion).

The Department has now completed this administrative review, in accordance with section 751(a) of the Act.

Scope of Review

The product covered by this review is polyvinyl alcohol (''PVA''). PVA is a dry, white to cream-colored, water-soluble synthetic polymer. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Treatment of Sales of Tolled Merchandise

As discussed in the *Preliminary Results* of this proceeding, DuPont and Perry sold in the U.S. and third-country markets subject merchandise tolled by the Taiwan producer, Chang Chun. Both DuPont and Perry claim that they are the manufacturer of the tolled merchandise under the Department's newly articulated treatment of tollers and subcontractors in tolling arrangements (*see* 19 CFR 351.401(h) (62 FR 27926) (May 19, 1997)). Accordingly, each company claims that it is entitled to its own dumping rate.

In our preliminary results, we determined that, based on the evidence on the record, DuPont is the manufacturer of the tolled merchandise, and therefore the appropriate respondent. With respect to Perry, based upon a review of the arrangement between Perry and Chang Chun, we preliminarily determined that Perry is not the manufacturer of PVA it imported into the United States during the POR.

For the final results, we continue to treat DuPont as the manufacturer/exporter of PVA produced under a tolling arrangement with Chang Chun (*see* Comment 1 for DuPont). With respect to Perry, we continue to find that Perry is not a manufacturer of the subject merchandise. As in the preliminary results, we are treating Perry as an importer and U.S. reseller of the subject merchandise (*see* Comment 1 for Chang Chun).

As a result of our preliminary decision that Chang Chun was the producer of the PVA sold to Perry, certain information was not on the record of this review, which required us to substitute missing data in the *Preliminary Results*. Initially, Chang Chun had reported a small number of EP sales to Perry which were not produced under the agreement with Perry. Included in that reporting were all the expenses associated with those sales, *i.e.*, movement expenses from Chang Chun's factory to the port of entry in the United States, and selling expenses including credit and bank charges. We also had a larger number of transactions originally reported by Perry, which were sales from Chang Chun to Perry produced pursuant to the agreement. In the *Preliminary Results*, we used both the sales reported by Chang Chun and those reported by Perry to calculate the EP for Chang Chun (*see Calculation Memorandum for the Preliminary Results for Chang Chun Petrochemical Co., Ltd.*, dated February 2, 1998 (''Preliminary Calculation Memorandum'').

Although Perry reported its expenses associated with selling the PVA at issue to unaffiliated customers in the United States, we did not have Chang Chun's selling expenses on the record for those sales. However, because all of the sales were made to Perry and were all shipped by Chang Chun on the same delivery terms, we used the movement and selling expenses associated with the sales reported by Chang Chun in its U.S. sales listing submitted on August 22, 1997, as a reasonable substitute for the missing expense data for the sales originally reported by Perry.

Furthermore, having determined that the Perry-reported transactions are sales by Chang Chun, we lacked appropriate, verified sales dates, shipment dates or the entry dates. As a result, in our *Preliminary Results,* from information on the record, we estimated the sales dates and shipment dates (*see* ''Preliminary Calculation Memorandum for Chang Chun'').

For these *Final Results* we gathered additional information from Chang Chun, which we verified, so that our review of Chang Chun's EP sales encompassed all sales shipped during the POR (*see* Comment 7 for Chang Chun). Additionally, we obtained and verified the prices Chang Chun's affiliate charged Perry, through an intermediary trading company, for the major input, VAM, during the POR. With this new data, we were able to properly construct Chang Chun's U.S. price to Perry for the PVA transactions covered by this review by combining the VAM prices with the prices Chang Chun charged Perry for converting the VAM into PVA (*see* Comment 2 for Chang Chun).

Normal Value Comparisons

To determine whether sales of the subject merchandise by the respondents to the United States were made at below normal value, we compared, where appropriate, the export price (''EP'') and constructed export price (''CEP'') to the normal value (''NV'') as described below. In accordance with section 777A(d)(2) of the Act, we compared, where appropriate, the EPs and CEPs of individual transactions to the monthly weighted-average price of sales of the foreign like product.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *Cemex* v. *United States,* 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (''CV'') as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this review. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this decision and has determined that it would be inappropriate to resort directly to CV as the basis for NV, in lieu of foreign market sales, if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping duty questionnaire.

Export Price and Constructed Export Price

We calculated EP and CEP, as appropriate, in accordance with section 772 of the Act. The calculation for each respondent was based on the same methodology used in the preliminary results, with the following exceptions:

Chang Chun

As noted in the ''Treatment of Sales of Tolled Merchandise'' section, we modified the gross unit prices and dates of sale and shipment for transactions used in our *Preliminary Results* based on information obtained after the preliminary results. We also included certain additional sales shipped during the POR which were not included in our preliminary analysis. Furthermore, as identified by Chang Chun in its case brief, we made corrections to the product characteristics for certain U.S. sales which were incorrectly assigned in our preliminary results calculation. We made the corrections based on information Chang Chun provided in its November 12, 1998, supplemental Section C response (*see Calculation Memorandum for the Final Results for Chang Chun Petrochemical Co., Ltd.* dated June 9, 1998, (''Final Calculation Memorandum for Chang Chun'')).

DuPont

In our *Preliminary Results,* as noted by DuPont in its case brief, we incorrectly stated that we calculated EP for some of DuPont's sales when, in fact, all of DuPont's sales should have been classified as CEP sales. In our preliminary margin program, however, we actually calculated all sales reported by DuPont as CEP transactions. For the final results, we corrected the CEP price calculation for DuPont's sales of further manufactured products by stating the prices on the same unit basis as the normal value (*see Calculation Memorandum for the Final Results for E.I. duPont de Nemours & Co.,* dated June 9, 1998 (''Final Calculation Memorandum for DuPont''), *see also, Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 60 FR 42835, 42845 (August 17, 1995) where the Department made the same type of adjustment to CEP calculation for sales of further manufactured merchandise).

Normal Value

For Chang Chun, we based NV on the prices at which the foreign like products were first sold for consumption in the home market. For DuPont, we based NV on the prices at which the foreign like products were first sold for consumption in the respondent's largest third-country market, Australia. We calculated NV based on the same methodology used in the preliminary results, except for DuPont where we modified the margin calculation program to correct for certain ministerial errors identified by the petitioner. Specifically, we made the following corrections:

1. We corrected the calculation of variable manufacturing costs (''VCOM'') for DuPont's further processed U.S. sales by stating the per unit costs on the same unit basis as the VCOM of the Australian sales (*see* ''Final Calculation Memorandum for DuPont'').

2. We corrected the gross unit price for a third-country market sale which was added to DuPont's sales listing based on findings at verification. We note, however, that the per unit price suggested by the petitioner in its case brief is incorrect. We calculated the gross unit price based on the verified quantity and total value listed on the invoice (*see* ''Final Calculation Memorandum for DuPont'').

3. We changed the difference-in-merchandise adjustment calculation to correct for a clerical error in the equation used in our preliminary margin program (*see* ''Final Calculation Memorandum for DuPont'').

4. Although we did not resort to CV as the basis for NV for any of DuPont's U.S. sales in the final results, we made corrections for certain clerical errors contained in the preliminary margin program for calculating CV (*see* ''Final Calculation Memorandum for DuPont'').

Cost of Production Analysis

As discussed in the preliminary results, we conducted an investigation to determine whether the respondents made sales of foreign like product in the comparison market during the POR at prices below their cost of production (''COP'') within the meaning of section 773(b)(1) of the Act. We calculated the COP following the same methodology as in the preliminary results on a model-specific basis, except that for Chang Chun, we reallocated costs between PVA and acetic acid based on relative sales value, and made the appropriate adjustment to the reported COP (*see* Comment 4 for Chang Chun and ''Final Calculation Memorandum for Chang Chun'').

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in ''substantial quantities'' in accordance with sections 773(b)(2) (B) and (C) of the Act, and because the below cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all contemporaneous sales of identical and similar merchandise were disregarded, we calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

For both Chang Chun and DuPont, we did not find that comparison market sales of PVA products were made at prices below COP within the POR.

Analysis of Comments Received

Chang Chun

Comment 1: Treatment of Sales of Perry's Tolled Merchandise. Perry argues that the Department has misinterpreted section 351.401(h) of its proposed and final regulations in failing to find that Perry is the producer of the subject merchandise under the tolling agreement with Chang Chun. Perry claims that it meets all of the stated requirements of section 351.401(h) which would qualify Perry as the producer. Perry maintains that it controls all aspects of the production and sales of the finished PVA and has ownership of the main input, VAM, as well as the finished product, PVA. According to Perry, the Department's conclusion in the preliminary results that Perry is not a producer is based on factors that are irrelevant to the Department's determination regarding the producer of subject merchandise under the tolling arrangement. Perry argues that to be considered a producer in a tolling situation, the Department's regulation at section 351.401(h) does not require that the party be engaged in some processing work and dismisses as irrelevant the fact that Perry does not engage in any production activities, including production of the main input, VAM, does not own production facilities, and does not engage in R&D activities. Perry claims that, in past cases, the Department has found a ''tollee'' to be a producer where no processing was done by the ''tollee.'' In support of its position, Perry cites to the following cases: *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Flanges from India,* 58 FR 68853 (December 29, 1993) (''Steel Flanges from India''), *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memories from Taiwan,* 63 FR 8909 (February 23, 1998) (''*SRAMS from Taiwan*''), and *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan,* 62 FR 51427 (October 1, 1997) (''*Collated Roofing Nails from Taiwan*''). Additionally, Perry claims that in the *Preliminary Results,* the Department cited ''obsolete reasoning'' in *Chrome Plated Lug Nuts from Taiwan,* 56, FR 36130 (July 31, 1991) which has been overtaken by the Department's later precedents cited above.

Furthermore, Perry contends that, contrary to the Department's statement in the *Preliminary Results* that Perry's normal course of conducting business has not substantively changed, the tolling arrangement has required substantial changes in Perry's PVA business because Perry now assumes all risks by acquiring control over VAM and PVA production.

The petitioner responds that the Department was correct in determining that Perry is not the producer of PVA it imports into the United States. The petitioner states that the Department's determination is consistent with past cases, in which the Department deemed it necessary that the manufacturer be engaged in production activities. According to the petitioner, Perry's lack of involvement in critical production functions, such as knowledge of the physical characteristics of toll produced PVA, demonstrates that Perry did not have control over the production of tolled PVA it purported to have, and thus, does not satisfy the requirements of a producer expressed in the Department's proposed and final regulation. Accordingly, the petitioner urges the Department to continue to find that Perry is not a producer of PVA entitled to its own dumping rate.

DOC Position: On the basis of Perry's tolling agreement and Perry's interpretation of the Department's new tolling regulation, Perry asserts that it is the producer of the PVA processed under this contract. *See* section 351.401(h) of the *Final Regulations.* We disagree. In assessing whether Perry is the producer, we are not restricted to a review of the four corners of the contract; rather, when determining whether a party is a producer or manufacturer of subject merchandise, we look at the totality of the circumstances presented. Moreover, section 351.401(h) of the *Final Regulations* does not purport to address all aspects of an analysis of tolling arrangements. It merely sets forth certain conditions under which we will not find that a toller or subcontractor is the producer of the subject merchandise. Based upon the totality of the circumstances in this case, including the factors set forth in section 351.401(h), we find that Chang Chun, not Perry, is the producer of the PVA in question.

The record establishes that Chang Chun engaged in processing VAM into PVA under the tolling contract with Perry. Evidence also establishes that Chang Chun is a manufacturer of chemicals and a long-time producer of PVA. In contrast, Perry has been a U.S. importer and reseller of PVA produced by Chang Chun since 1978. It was only after Chang Chun was found dumping and assigned a 19.21 percent margin that Perry entered into the tolling arrangement. Prior to this arrangement, at no time had Perry been in the business of producing or manufacturing PVA or any other chemical nor, as part of its normal business practice, was Perry ever engaged in subcontracting any kind of chemical production or processing of subject merchandise or any chemical. (62 FR at 6527). Moreover, we found no evidence to suggest that Perry's decision to enter into a tolling arrangement with Chang Chun was for the purpose of expanding its operations to begin producing PVA or any other chemical. (62 FR at 6527). We find the mere rearrangement of Perry's contractual relationship with Chang Chun insufficient to establish Perry as a producer of PVA.

Although Perry claims that it acquired ownership of both the major input and the PVA, under the circumstances this

does not persuade us that Perry is the producer of the PVA at issue. Notwithstanding that Perry may have acquired contractual rights in the VAM, the record establishes that, in effect, Chang Chun manufactured the VAM purchased by Perry, and that Chang Chun retained possession and control of the VAM before it underwent processing into subject merchandise. Through a single intermediary, Perry made all of its VAM purchases from an affiliate of Chang Chun, which produced the VAM in a facility near Chang Chun's in Taiwan.

Perry argues that when purchasing VAM from the intermediary Perry had no direct knowledge that the VAM was produced by a company affiliated with Chang Chun and objects to the Department's characterization in the *Preliminary Results* that Perry knew the intermediary purchased the VAM from Chang Chun's affiliate. (63 FR at 6527). We stand by our interpretation of Perry's statements as reasonable and regard Perry's comments after the fact as self-serving. However, we note that even Perry acknowledges that it knew that Chang Chun's affiliate was one of the suppliers of this intermediary. Additionally, Chang Chun provided the Department with the VAM prices charged by its affiliate to this intermediary, and Perry's name appears on supporting documentation from this affiliate, thus demonstrating that Chang Chun knew that Perry was the ultimate purchaser (*see* Exhibit 3 of Chang Chun's Supplemental Response submitted on April 30, 1998, *see also* Comment 2 for Chang Chun). These facts describe circumstances fundamentally different from DuPont's tolling arrangement, wherein DuPont produced and owned the VAM it sent for processing to Chang Chun.

Additionally, the record indicates that Perry was not the exporter of the PVA and in fact only gained possession and control over the PVA as the U.S. importer when it reached the United States. In contrast, DuPont produced the VAM and was the exporter, as well as the importer, of the PVA to the United States. Thus, the record demonstrates that, in essence, the transactions between Perry and Chang Chun did not change, Perry merely paid Chang Chun twice—once for the VAM and once for the PVA. It was Chang Chun that was the producer and exporter to the United States—it retained control and possession of the VAM it produced, it processed that VAM into PVA, and it exported the PVA to the United States.

We also disagree with Perry that examining whether it has engaged in any production activities is irrelevant under section 351.401(h) of the *Final Regulations.* Although Perry argues that section 351.401(h) does not explicitly require that a party perform some processing to be deemed a producer, section 351.401(h) only addresses the circumstances in which a toller will be considered a producer of subject merchandise. Therefore, the Department is not restricted to the factors set forth in that regulation when determining whether a party other than a toller is the producer of merchandise under consideration. Moreover, while examining the production activities of a party may not be decisive in every case, whether a party has engaged either directly or indirectly in some aspect of the production of subject merchandise is an important consideration.

Additionally, Perry is simply incorrect in claiming that the Department has found a party to be the producer when the party performed no processing or manufacturing. *See Sweaters Wholly or in Chief Weight of Man-Made Fibre From Taiwan,* 58 FR 32644 (1993) (Jia Farn not the manufacturer where it performed no processing); *Stainless Steel Flanges From India,* 58 FR 68853 (1993) (Akai producer where related party performed some processing); *Static Random Access Memories From Taiwan,* 63 FR 8909 (1998) (producer was party controlling design of processed wafer, which was a substantial element of production); *Collated Roofing Nails From Taiwan,* 62 FR 51427 (1997) (Lei Chu the producer where affiliated party performed some processing). Furthermore, a review of those cases demonstrates that Perry's claim that *Chrome-Plated Lug Nuts From Taiwan,* 56 FR 36130, 131 (1991) is no longer valid reasoning is unfounded. Even though *Chrome-Plated Lug Nuts From Taiwan* pre-dated these cases, the reasoning is entirely consistent with the later cases.

Finally, Perry's assertion that its control over PVA sales to unaffiliated customers qualifies it as the producer under section 315.401(h) is also not dispositive of the issue. As discussed above, the issue here is who is the producer of the subject merchandise. Because we have found that Chang Chun is the producer/exporter, Perry's sales to unaffiliated customers are irrelevant.

A review of the tolling arrangement at issue and the surrounding circumstances leads us to conclude that this arrangement merely re-ordered the contractual relationship between the parties, but had no significant effect on how they conducted business. Perry continued to purchase PVA from Chang Chun, albeit in two separate transactions instead of through a single purchase of the finished product. Therefore, Perry is not a producer. Perry remains an importer and reseller of subject merchandise. We find, as we did in our *Preliminary Results,* that Chang Chun is the producer of the PVA under consideration.

Comment 2: Gross Unit Prices Constructed for Sales from Chang Chun to Perry. The petitioner notes that the record does not contain the prices Chang Chun's affiliated party charged for the sales of VAM to the unaffiliated trading company which, in turn, sold the VAM to Perry. As a substitute for the price Perry would have paid had it bought the VAM directly from Chang Chun's affiliate, the petitioner argues that the Department should estimate the trading company's mark-up (*i.e.,* profit) by calculating the average mark-up Perry received on its U.S. sales of PVA. According to the petitioner, Perry's mark-up for its sales of PVA is a reasonable proxy for the trading company's mark-up on VAM because both companies are trading companies involved in the purchase and resales of chemical products.

Chang Chun argues that the adjustment proposed by the petitioner is arbitrary, untimely and unsupported by any factual grounds. According to Chang Chun, the adjustment requested by the petitioner seeks to penalize Chang Chun for an alleged gap in the record for which it bears no responsibility. Chang Chun submits that the sales price of VAM by its affiliate to the trading company, which in turn sold the VAM to Perry, was not on the record at the time of the preliminary results because such information was not requested by the Department. Thus, Chang Chun urges the Department to reject the petitioner's request.

DOC Position: Because these sales were originally reported by Perry, the record did not contain information regarding prices from Chang Chun to Perry (*see* ''Treatment of Sales of Tolled Merchandise''). Although we have determined that Chang Chun produced and sold PVA to Perry, Chang Chun charged Perry separately for VAM and for processing VAM into PVA. At the time of our preliminary results, the record contained the price charged by Chang Chun to Perry for the conversion of VAM into PVA. However, we lacked the price charged by Chang Chun's affiliate for the VAM, the sum of which would equal Chang Chun's export price to Perry. What we had for purposes of the preliminary results was the price Chang Chun's affiliate charged for the VAM to an unaffiliated trading company, which in turn sold the VAM

to Perry. Therefore, the gross unit prices we calculated for the additional U.S. sales in our preliminary results did not reflect actual revenues Chang Chun received from these sales, because, as noted by the petitioner, these sales prices include a mark-up paid by Perry to an unaffiliated trading company. For the final results, we requested Chang Chun to provide the prices Chang Chun's affiliated party charged for the sales of VAM to the unaffiliated trading company. Chang Chun provided this information on April 30, 1998, which the Department verified in May 1998. Therefore, in our final margin program, we recalculated the gross unit prices by adding the price of VAM Chang Chun's affiliate charged to the unaffiliated trading company to Chang Chun's conversion fee.

Comment 3: Entered Values for Sales Reported by Perry. The petitioner notes that, in assessing dumping margins, the Department's regulations state that it ''normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal Customs duty purposes.'' The petitioner further notes that the regulations go on to say that the Customs Service will ''assess dumping duties by applying the assessment rate to the entered value of the merchandise.'' The intent of the regulation, the petitioner observes, is to align the numerator and denominator of the dumping ratio.

The petitioner first notes that the entered values reported by Perry in its U.S. sales listing appear to be the sum of Perry's VAM costs and its processing fees. The petitioner claims, however, that the entered values reviewed at verification are systematically inconsistent with the values reported in Perry's U.S. sales listing. As a result, the petitioner contends that the total entered value of subject merchandise used in our assessment rate calculation is not calculated on the same basis as the entered value to which the rate will be applied. Because none of the reported entered values were the same as the verified entered values, the petitioner argues that the Department should revise the entered values to equal the average verified entered values.

Chang Chun argues that there were no discrepancies between the entered values reported by Perry in its sales listing and the entered values examined at verification. According to Chang Chun, the entered values of PVA as verified by the Department consistently reflected the sum of the reported VAM costs and the conversion fee Perry paid to Chang Chun.

DOC Position: We disagree with the petitioner that there were discrepancies between the entered values reported by Perry in its sales listing and the entered values examined at verification. At verification, we confirmed the entered values reported by Perry in its U.S. sales listing for the sales examined (*see Verification Report of Perry Chemical Corporation,* dated January 30, 1998, at page 11).

As noted by the petitioner, for duty assessment purposes, we calculate an assessment rate by dividing the dumping margin found on the sales of the subject merchandise examined by the entered value of such merchandise. In this case, as stated in our *Preliminary Results,* for duty assessment purposes, we estimated the entered values for Chang Chun's sales by subtracting international movement expenses from the gross sales value. We have continued to use this methodology in our final results. Specifically, for the sales in question, we estimated the entered values in the following manner: (1) for each sale of PVA shipped during the POR, we constructed the gross sales value by adding the price of VAM Chang Chun charged to the unaffiliated trading company to the price Chang Chun charged Perry for conversion of VAM to PVA; (2) we then subtracted international movement expenses from these gross sales value.

Comment 4: Allocation of Cost Between PVA and Glacial Acetic Acid. The petitioner contends that Chang Chun incorrectly allocated its costs between PVA and its coproduct, glacial acetic acid. Specifically, the petitioner asserts that Chang Chun did not allocate costs on the basis of relative sales value, as directed by the Department, resulting in a significant understatement of the cost of producing PVA. According to the petitioner, the flaw in Chang Chun's cost allocation methodology is evident from the resulting relative profit margins for PVA and acetic acid. The petitioner states that allocation of costs on the basis of relative sales value, when applied properly, should result in the same profit margins on the two products. In this case, the petitioner argues that Chang Chun's allocation methodology does not yield the same profit rate on PVA and acetic acid. Therefore, the petitioner contends that the Department should reallocate Chang Chun's reported costs as set forth in its case brief.

Chang Chun responds that the petitioner failed to identify any specific discrepancy in Chang Chun's allocation methodology and dismisses it as a conjecture without any support on factual grounds. Chang Chun asserts that it had correctly allocated its costs between acetic acid and PVA on a value basis, and therefore urges the Department to continue to use the reported costs in the final results.

DOC Position: We agree with Chang Chun, in part. The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on data from a respondent's normal books and records if they are prepared in accordance with the generally accepted accounting principles (''GAAP'') of the exporting country and reasonably reflect the costs of producing the merchandise (*see Notice of Final Results of antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand,* 63 FR 7392, 7398 (February 13, 1998)).

At verification, we noted that Chang Chun's methodology for allocating production costs to PVA and acetic acid was based on a relative-sales-value methodology and is consistent with the company's normal books and records prepared in accordance with its home country GAAP. Our review of Chang Chun's allocation methodology, however, indicates that Chang Chun relied upon sales prices of PVA occurring during the POR as a basis for allocating costs between PVA and acetic acid. While we determined in the less-than-fair-value investigation of this case that a relative-sales-value based allocation methodology is appropriate, we expressed concern that the sales value for PVA, used in our calculation, be representative of a period in which there is no allegation of dumping for the subject merchandise (*see Notice of Final Determination at Sales than Less Than Value: PVA from Taiwan* 61 FR 14064, 14071 (March 29, 1996) (''LTFV Determination''). Therefore, in the LTFV determination, we allocated joint production costs between PVA and acetic acid based on each product's relative sales values for a two-year period prior to the initial period of investigation (''POI'').

Consistent with our methodology established in the *LTFV Determination,* we consider it inappropriate, in this review, to rely on PVA sales prices occurring during a period of alleged dumping as a basis to allocate costs to PVA, particularly when these allocated costs are used as a means to measure the fairness of the selling prices for the same product, PVA. As stated in the *LTFV Determination,* we believe that by using sales of both products over an extended period prior to the original investigation, prices can reasonably be relied upon to form the basis for

allocating joint production costs, particularly in this case where acetic acid and PVA are commodity products, and their selling prices are influenced by world market forces of supply and demand.

Therefore, in this review, we requested Chang Chun to provide the relative sales value data for the two-year period prior to the POI (*see* October 16, 1997 Supplemental Questionnaire at page 10). Chang Chun provided the information in its November 7, 1997, supplemental response. For the final results, we have reallocated Chang Chun's joint production costs between PVA and acetic acid using the relative sales value of each product calculated on the basis of a two-year period prior to the POI (*see* ''Final Calculation Memorandum for Chang Chun'' dated June 9, 1998).

With respect to the petitioner's argument, while we agree that a relative-sales-value methodology should yield approximately the same profit rate for PVA and acetic acid, we note that the petitioner's data and analysis used to demonstrate that Chang Chun's allocation methodology results in distorted profit rates for PVA and acetic acid is based on incomplete information. Specifically, in calculating a profit rate for acetic acid, the petitioner used a different company's purchase price of acetic acid instead of Chang Chun's sales price because the record does not contain Chang Chun's actual average per unit sales price of acetic acid. Because the petitioner's analysis is not based on Chang Chun's own sales price information, we do not find it to be a reliable basis for reallocating Chang Chun's reported costs. Moreover, as stated above, for the final results, we have reallocated Chang Chun's costs between PVA and acetic acid in accordance with the methodology established in the LTFV determination.

Comment 5: Date of Sale. Chang Chun argues that the Department incorrectly determined the date of sale for a particular U.S. sales transaction, which can be confirmed from a worksheet contained in a verification exhibit. Based on this exhibit, Chang Chun provided a revised date of sale for this transaction and requested the Department to use the revised date in the final results.

The petitioner responds that the document used by Chang Chun to determine the revised date of sale is unreliable because it is unverified, and therefore, should not be used. Furthermore, the petitioner argues that the Department should recalculate the estimated date of sale not just for the one sale described by Chang Chun, but for all additional sales from Chang Chun to Perry included in our preliminary analysis.

DOC Position: As noted above in the ''Treatment of Sales of Tolled Merchandise'' section of the notice, for the final results, we used the actual dates of sale from Chang Chun to Perry provided by Chang Chun in its April 30, 1998, submission, which was verified by the Department. Therefore, both the respondent's and petitioner's comments are moot.

Comment 6: Chang Chun's Sales of PVA Shipped During the POR. On May 11, 1998, the petitioner filed a submission objecting to certain information provided by Chang Chun in its April 30, 1998, submission in response to the Department's request of April 23, 1998. The petitioner argues that the information on additional sales of PVA shipped during the POR which were not included in our preliminary analysis should be rejected. The petitioner claims that these new sales were untimely filed, incomplete, and relate to shipments that were not entered into the United States during the POR. As a result, the petitioner contends that these sales should not be included in the margin calculation.

Chang Chun objects to the petitioner's comments, stating that the information it provided in its April 30, 1998, submission was in accordance with the Department's specific requests for information. Chang Chun further argues that the additional sales of PVA shipped during the POR which were not included in the Department's preliminary analysis should be included for purposes of margin calculation if the Department continues to find the Chang Chun and not Perry is the producer of these sales of PVA.

DOC Position: With respect to the petitioner's argument that these sales should not be included in our margin calculation because they relate to shipments entered into the United States after the POR, we note that for purposes of administrative reviews, the Department's practice is to calculate dumping margins for export price sales based on sales entered during the POR, or if entry date is unavailable, based on sales shipped during the POR (*see Final Results of Antidumping Duty Administrative Review: Ferrosilicon From Brazil,* 62 FR 43504, 43509–10 (August 14, 1997) and *Final Results of Antidumping Duty Administrative Review: High-Tenacity Rayon Filament Yarn from Germany,* 61 FR 51421, 22 (October 2, 1996)). Here, the record indicates that Chang Chun could only accurately report its EP sales based on shipment dates in the POR. The antidumping questionnaire issued in this review specifically required Chang Chun to ''report each U.S. sale of merchandise entered for consumption during the POR, except: (1) For EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR.'' In response to these questionnaire instructions, Chang Chun reported its sales based on shipments of PVA made during the POR. Accordingly, in our preliminary analysis, we examined Chang Chun's transactions involving merchandise shipped during the POR, including the additional shipments Chang Chun identified in its April 30, 1998, submission.

We also disagree with the petitioner that the information on additional sales shipped during the POR provided by Chang Chun on April 30, 1998, was untimely information or incomplete. In a letter dated April 23, 1998, we requested Chang Chun to provide additional information (*i.e.,* date of sale and date of shipment) concerning its U.S. sales to Perry used in our preliminary results. Subsequently, through a telephone conversation, we instructed Chang Chun to include in its response to the Department date of sale and date of shipment information for sales of PVA shipped during the POR which were not included in our preliminary analysis (*see Memorandum to the File from Case Analyst,* dated May 20, 1998). Thus, the information Chang Chun provided was timely submitted in accordance with the Department's specific request.

Finally, with regard to the petitioner's argument that the information provided by Chang Chun is incomplete because Chang Chun did not include the necessary information regarding movement charges or selling expenses for these additional shipments, we limited the scope of our request to the date of sale and shipment for shipments occurring in the POR. For movement and selling expenses for these additional sales Chang Chun provided, we are applying the expenses reported by Chang Chun in its U.S. sales listing submitted to the Department on August 22, 1997. Because these additional sales were made to Perry and were shipped by Chang Chun on the same delivery terms, we find that the expenses Chang Chun originally reported for its EP sales reasonably reflect the expenses it incurred for the additional sales included in our analysis.

DuPont

Comment 1: DuPont is the Producer of Tolled-PVA. In our *Preliminary Results,*

we determined that DuPont is the producer of the PVA processed in Taiwan by Chang Chun from VAM produced by DuPont in the United States. The petitioner argues that, to be considered a producer in a tolling situation, the Department's new tolling regulation, section 351.401(h) of the *Final Regulations*, requires that the producer retain title to the raw material input. *See* Antidumping Rules; Countervailing Duties, 62 FR 27296, 27411, which is legally effective only for segments of the proceeding initiated based on requests filed after June 18, 1997, but nevertheless a restatement of the Department's practice. The petitioner points to a particular clause in the tolling contract between DuPont and Chang Chun as evidence that one of the conditions in section 351.401(h) has not been met. Because of the business proprietary nature of the tolling contract, our full discussion of the petitioner's claim is contained in a separate memorandum (*see Memorandum to Louis Apple, Office Director, from Team,* dated June 8, 1998 (''DuPont Memorandum'')). As a result, the petitioner argues that DuPont is not the producer of PVA processed under the tolling agreement.

DuPont takes issue with the petitioner's interpretation of the particular clause in the tolling contract and responds that, contrary to the petitioner's contention, the Department properly concluded that DuPont was the producer of the tolled merchandise.

DOC Position: After review of the tolling contract between DuPont and Chang Chun, we disagree with the petitioner's reading of the particular clause at issue and continue to find that DuPont is the producer under section 351.401(h). As noted above, because the tolling contract itself and this particular clause is business proprietary, our discussion of this issue is contained in the ''DuPont Memorandum.''

Comment 2: Cost of Production Calculation for Sales of DuPont. The petitioner argues that the Department should have used Chang Chun's actual processing costs when conducting the sales-below-cost analysis, instead of the fee DuPont paid to Chang Chun for the tolling of VAM into PVA. The petitioner notes that the statute clearly requires Department to investigate the actual cost of producing the merchandise in any sales-below-cost investigation. According to the petitioner, even though the Department appears to consider DuPont to be the respondent in this case, because Chang Chun is the entity actually producing the subject merchandise in Taiwan, Chang Chun's cost of production should be examined. Citing to *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway,* 56 FR 7661 (February 25, 1991) (''*Salmon from Norway*'') and *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695 (April 17, 1992) (''*Kiwifruit from New Zealand*''), the petitioner contends that the Department's practice has been to base the cost of production, not on the purchase price between the respondent and the unaffiliated producer, but on the actual cost of producing the subject merchandise.

DuPont argues that it would be contrary to the statute and Department practice to use Chang Chun's actual cost of production because, according to DuPont, Chang Chun is nothing more than a supplier of services to DuPont. According to DuPont, the statute calls for determining costs from the records of the producer, and not from the records of any supplier of services to the producer. DuPont further argues that the statutory language governing the cost of production investigation does not support the petitioner's argument that the arm's-length price charged by Chang Chun to DuPont for tolling services should be disregarded in favor of Chang Chun's costs of production. DuPont contends that since DuPont is the producer in this case, its costs are the ones that should be examined.

DOC Position: We disagree with the petitioner. We find no statutory basis or precedent for the petitioner's argument that Chang Chun's actual cost of processing should be examined when determining DuPont's cost of production. Section 773(f)(1)(A) of the Act states that, for purposes of conducting an analysis of sales at less than COP, the ''costs shall be based on the records of the exporter or producer of the merchandise...'' In this review, we determined that DuPont is the producer of PVA processed by Chang Chun. Accordingly, the costs we examine in our analysis should reflect the total costs incurred by DuPont. DuPont's total costs consist of its cost to produce VAM and the cost it incurred to convert the VAM into PVA, which is the fee DuPont paid to Chang Chun.

We also note that the cases cited by the petitioner do not support its claim because these cases involved respondents who were resellers, not producers. The Department generally does not base COP on a reseller's cost to acquire the subject merchandise. However, the Department does base COP on the producer's actual costs, including the cost of inputs and services. *See* section 773(f) of the Act. In this case, DuPont is the producer and therefore, its actual costs are the proper basis for COP.

Comment 3: *Affiliation.* The petitioner argues that, if the Department cannot examine Chang Chun's actual cost of producing PVA without finding Chang Chun and DuPont affiliated under section 771(33)(G) of the Act, then the Department should determine that the parties are affiliated pursuant to the tolling contract. According to the petitioner, the Department should have found DuPont and Chang Chun to be affiliated because the tolling contract affords DuPont control over production of PVA, and the legal and operational ability to exercise direction over Chang Chun. The petitioner claims that the fact that, under the tolling contract, DuPont does not exercise direction over all activities of Chang Chun does not in any way diminish the fact that DuPont is in a position to, and does indeed, exercise direction over some of Chang Chun's operations, namely the production of tolled PVA. According to the petitioner, the statute requires that parties be deemed affiliated where legal or operational control exists as it does here under the tolling contract, regardless of whether the ability to exercise restraint or direction over the other person is pervasive or encompassing all aspects of the other person's business.

DuPont contends that the statutory definition of affiliation based on intercorporate control under section 771(33)(G) of the Act does not apply in this case. DuPont asserts that the contractual relationship between DuPont and Chang Chun is a mere supply contract relationship in which a producer of goods (*i.e.,* DuPont) contracts out a portion of the processing of those goods to another company (*i.e.,* Chang Chun). According to DuPont, such contractual relationship is not sufficient, in and of itself, to find affiliation between DuPont and Chang Chun. DuPont contends that none of the factors listed in the Department's regulations, such as a close supplier relationship, support a finding of affiliation under section 771 (33)(G). DuPont notes that, even in a far more extreme situation where a manufacturer was its customer's sole supplier, the Department declined to conclude that the manufacturer controlled the customer (*see Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from South Africa,* 62 FR 61084 (November 14, 1997) (''*Furfuryl Alcohol from South Africa*''). Accordingly, DuPont urges the Department to reject the petitioner's argument and sustain its position in the preliminary results that DuPont and Chang Chun are not affiliated.

DOC Position: We agree with DuPont. In our *Preliminary Results*, we examined this issue and found that DuPont was not affiliated with Chang Chun based solely on the tolling agreement. As we stated, the tolling contract, in and of itself, does not establish that DuPont has legal or operational control over Chang Chun for the purposes of section 771(33)(G) of the Act (63 FR at 6527). We find no surrounding circumstances or other connections between the parties which would lead us to a contrary conclusion.

We cannot agree with the petitioner that the statutory language of section 771(33)(G) must be read so broadly as to require affiliation based solely on a conventional tolling agreement, which provides, at most, narrowly drawn legal obligations of limited duration involving some processing of subject merchandise. As DuPont notes, the contract here is not unlike any contract that may exist between a producer of goods and a company performing a portion of the production of those goods for a fee. Hence, to find that a party is affiliated solely because it is under a legal obligation to fulfill the terms of an agreement for subcontracting would be to infer control under section 771(33)(G) whenever such a contractual relationship exists, regardless of the surrounding circumstances or whether there are other connections between the parties. Such an outcome is not supported by section 771(33)(G).

Comment 4: *Major Input Rule*. The petitioner notes that under the major input rule set forth in section 773 (f)(3) of the Act, the Department may determine the value of the major input on the basis of the cost of production if the Department has reasonable grounds to believe or suspect that the amount represented as the value of such input is less than the cost of production of such input. Pursuant to the major input rule, the petitioner argues that the Department should have used Chang Chun's actual cost of production of PVA, rather than the tolling fee charged to DuPont, for purposes of calculating DuPont's COP. According to the petitioner, information on the record demonstrates that the actual cost of producing PVA incurred by Chang Chun was greater than the nominal tolling fee paid by DuPont. Moreover, the petitioner claims that there is no economic basis for assuming that the tolling fee Chang Chun charged to DuPont is equal to or exceeds its total cost of producing PVA. In fact, the petitioner further claims that, so long as the tolling fee Chang Chun charges to DuPont exceeds its marginal cost of production, Chang Chun has an incentive to provide its services, even if the tolling fee does not cover the full cost of producing PVA.

DuPont counters that the major input rule does not apply in this case since the Department has concluded that DuPont and Chang Chun are not affiliated.

DOC Position: DuPont is correct that the major input rule set forth in section 773(f)(3) of the Act applies only where the supplier of the input is affiliated with the producer of the merchandise. Because we have determined that Chang Chun and DuPont are not affiliated, the major input rule is inapplicable (*see* Comment 3 for DuPont).

Comment 5: Tolling Regulation Is an Illegal Interpretation of the Law. The petitioner contends that the Department's new tolling regulation is contrary to the statute, and cannot stand if the regulation does not permit an analysis of the costs incurred in the subject country in the course of producing the subject merchandise. According to the petitioner, an antidumping duty administrative review concerning subject merchandise produced in a subject country that fails to analyze the activity undertaken in the subject country solely because the production is pursuant to a tolling agreement is an impermissible construction of the statute and an abuse of the Department's discretion.

DOC Position: We disagree with petitioner that the Department's tolling regulation set forth in19 CFR 351.401(h) is inconsistent with the statute. The tolling regulation provides a means for determining when a toller will be considered the producer of a product, as discussed above (see Comment 2 for DuPont). Once the producer is determined, the Department must use the producer's actual costs of producing the merchandise, in accordance with section 773(f)(1)(A). DuPont's actual costs to produce PVA in Taiwan are its costs to produce VAM and its cost for processing services in Taiwan. There is no basis in the statute or the regulations for the petitioner's argument that the Department must go behind the producer's actual cost for inputs and services.

Comment 6: Special Merchandise Difference Adjustment. DuPont contends that one of its reported U.S. sales should either be excluded from the Department's calculations, or a value-based difference in merchandise (''difmer'') adjustment should be applied to it, because the sale involved a particular type of PVA with a certain physical characteristic that does not result in manufacturing cost differences. Because of this physical difference which, according to DuPont, is shown in DuPont Verification Exhibit 8(e), DuPont claims that the merchandise could not be sold for normal commercial uses at a market price. DuPont further explains that there are no corresponding sales of this product in the Australian market against which to compare this transaction.

Citing to *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363 (November 4, 1991), DuPont argues that it is a recognized practice of the Department to exclude such an isolated transaction for which a NV cannot be calculated. Alternatively, DuPont asserts that the Department should make a value-based adjustment to NV to account for the physical differences of this particular product based on differences in market value. According to DuPont, the Department's conventional difmer cost-based adjustment would not properly adjust for the product's physical differences because the physical difference, in this case, is not attributable to a manufacturing cost difference. DuPont claims that the only way to quantify the appropriate adjustment for the physical differences of this particular transaction is to examine the differences in price between that sale and all its other U.S. sales. In support of its claim, DuPont cites to *Final Determination of Sales at Less Than Fair Value: Nepheline Syenite From Canada*, 57 FR 9237 (March 17, 1992) and *U.H.F.C. Co.* v. *United States*, 916 F.2d 689 (C.A.F.C. 1990), where the Court of Appeals directed the Department to make a value-based difmer adjustment.

The petitioner contends that this sale should not be excluded because there is no basis for excluding sales to the United States from the margin calculation in administrative reviews. In addition, the petitioner notes that DuPont did not request a difmer adjustment based on market value prior to its case brief, nor did it submit any information to justify any such adjustment. According to the petitioner, the cases cited by DuPont refer to situations in which physical differences were demonstrated to affect the market value of the merchandise under consideration. For the DuPont sale in question, however, the petitioner argues that there is no information to indicate whether the difference in the price is limited to a difference in value associated with physical differences in the merchandise, or whether the difference in price on this sale was a result of a combination of factors, possibly including a physical difference in the merchandise. The petitioner

asserts, therefore, that there is no basis to quantify or make an adjustment for the difference in value.

DOC Position: Although the Department has the discretion to adjust for physical differences based on value, we agree with the petitioner that the sale in question does not warrant a value-based difmer adjustment based on information on the record for this proceeding (see 19 CFR 353.57(b) and 19 CFR 351.411(b)). We reviewed the documentation included in DuPont's verification Exhibit 8(e), and noted that information in the exhibit does not establish that the product sold was physically different from other U.S. sales made by DuPont during the POR. Because the nature of the physical difference DuPont alleges is proprietary, our full analysis of this issue is contained in the ''DuPont Memorandum.'' Therefore, because DuPont has not established that the PVA in question was physically different from any other PVA sold in the United States during the POR, we have continued to use this sale in our final margin analysis.

Comment 7: Foreign Inland Freight. In our preliminary results, we disallowed DuPont's claim for an inland freight expense from the Australian port to its warehouse for its comparison market sales because, at verification, the company failed to provide supporting documentation for the claimed amount. DuPont contends that the Department's action in this regard was improper and that a deduction for foreign inland freight should be allowed because it is an undisputed fact that a freight expense was incurred by DuPont in moving goods from the dock to its warehouse. DuPont further contends that verification generally was successful in establishing the completeness and accuracy of the information submitted by DuPont. According to DuPont, the problem at verification with regard to inland freight was that the company did not have ready access to original documentation supporting the freight deduction.

The petitioner contends that no deduction should be allowed in this instance. The petitioner notes that sections 782(i)(3) and 776(a)(2)(D) of the Act direct the Department to verify all information relied upon in making a final determination in an administrative review, and allow the Department to use facts otherwise available if an interested party ''provides such information but the information cannot be verified.'' Because DuPont did not provide evidence to support its claimed adjustment at verification, the petitioner states that the Department is correct in denying the adjustment.

DOC Position: We agree with the petitioner. The Department has a long-standing practice of denying a claim for an adjustment where the Department could not verify the claimed adjustment because the respondent fails to provide supporting evidence (*see, e.g., Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate From Finland*, 63 FR 2952, 2953 (January 20, 1998)). At verification, DuPont was unable to provide any supporting documentation to establish an expense for foreign inland freight. Accordingly, we have continued to disallow the claimed deduction for foreign inland freight for comparison market sales in our final margin calculation.

Comment 8: Scope of the Order. DuPont argues that its imports of PVA from Taiwan through a tolling agreement with Chang Chun are outside the scope of the antidumping duty order. According to DuPont, because it is a U.S. company and the producer of the PVA tolled by Chang Chun, it can not be subject to the antidumping law or the antidumping order. DuPont cites to its arguments on this point as expressed in its October 1, 1996, Application for a Scope Ruling and its brief to the Court of International Trade.

The petitioner responds that the Department correctly determined that the subject merchandise is produced in Taiwan, and hence within the scope of the order.

DOC Position: We disagree with DuPont. DuPont is the producer of the PVA at issue. The PVA is produced in Taiwan and is a product of Taiwan. Therefore, DuPont's Taiwanese PVA is subject to the order. The fact that DuPont is a U.S. company is irrelevant. *See E.I. DuPont de Nemours* v. *United States*, Slip.-Op. 98–46 (CIT April 17, 1998), which upheld the Department's scope ruling that the PVA produced by DuPont in Taiwan through the tolling agreement with Chang Chun is a product of Taiwan and thus subject to the antidumping duty order; *see also*, the Department's brief to the Court of International Trade, dated October 22, 1997, in opposition to DuPont's brief, made part of the record of this review by petitioner.

Final Results of the Review

As a result of our review, we determine that the following weighted-average margins exist for the period May 15, 1996, through April 30, 1997:

Manufacturer/producer/exporter	Margin (percent)
Chang Chun Petrochemical Co. Ltd	0.42
E.I. duPont de Nemours & Co.	9.46

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined transactions in the POR to the total entered value of the same transactions. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions concerning the respondents directly to the U.S. Customs Service.

Furthermore, the following deposit rates shall be required for merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for DuPont and Chang Chun will be the rates indicated above; (2) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or LTFV investigation; and (3) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will be 19.21 percent, the ''All Other'' rate made effective by the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial

protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c).

Dated: June 9, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–15876 Filed 6–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–071]

Viscose Rayon Staple Fiber From Finland: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 10, 1997, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty finding on viscose rayon staple fiber from Finland. This review covers one company, Kemira Fibres Oy, and the period of March 1, 1996 through February 28, 1997. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Alexander Amdur, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4740 or (202) 482–5346, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all references to the regulations of the Department of Commerce (Commerce) are as codified at 19 CFR part 353, as they existed on April 1, 1997. Since the new regulations do not apply in these final results, we should note that whenever the new regulations are cited, they operate as a restatement of the Department's interpretation of the Act. *See !62 FR 27296 (May 19, 1997).*

Background

On December 10, 1997, we published in the **Federal Register** (62 FR 65063) the preliminary results of administrative review of the antidumping duty finding on viscose rayon staple fiber from Finland (44 FR 17156, March 21, 1979). We received a case brief from the sole respondent, Kemira Fibres Oy (Kemira), on January 22, 1998, as amended on January 30, 1998. The petitioners, Courtauld Fibers Inc. and Lenzing Fibers Corporation, submitted a rebuttal brief on January 29, 1998. We held a public hearing on February 5, 1998. The Department extended the final results of this review until June 8, 1998. We are conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this review is viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). The term includes both commodity and specialty fiber. This product is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 5504.10.00 and 5504.90.00. The HTS numbers are provided for convenience and customs purposes. The written description of the scope of the finding remains dispositive.

Scope Issues

Kemira claims that short-cut (LK) fiber and fire retardant (VISIL) fiber are not covered by the scope of the order, while petitioners claim that they are covered.

The Department included LK and VISIL fibers within the scope of the order for the purposes of the preliminary results of this review (*see* 62 FR 65063). We stated in our notice of preliminary results that because of the complexity of the issues relating to LK and VISIL fibers, we would commence a scope inquiry to determine whether LK and VISIL fibers are covered by the scope of the order.

We asked interested parties to submit comments on these scope issues, which we analyzed pursuant to 19 CFR 353.29(d)(6). On matters concerning the scope of an antidumping finding or duty order, the normal bases for determining whether a product is included within the scope are the descriptions of the product contained in the determinations by the Department (or the Treasury Department) and the ITC, the initial investigation, the petition and, if applicable, prior scope rulings. *See* 19 CFR 353.29(i)(1). If these descriptions are not dispositive, the Department refers to the criteria listed under 19 CFR 353.29(i)(2). By reference to the product descriptions provided by the parties, as well as the descriptions of the product contained in the final determinations of the Treasury Department and the ITC, and the petition, the Department is able to determine whether LK and VISIL fibers are covered by the scope of the order. Therefore, we have determined that it is unnecessary to refer to the additional factors of section 353.29(i)(2).

Based on our analysis under 19 CFR 353.29(i)(1), the Department has determined that LK and VISIL fibers are within the scope of the antidumping order on Viscose Rayon Staple Fiber from Finland. *See* June 8, 1998 Memorandum to Maria Harris Tildon from Holly Kuga Regarding Whether Short-Cut (LK) Fiber And Fire Retardant (VISIL) Fiber Are Within The Scope of the Finding (Order) on Viscose Rayon Staple Fiber from Finland.

Analysis of the Comments Received

Comment 1: Kemira argues that the Department erroneously reclassified certain export price (EP) sales made through its selling agent in the United States as constructed export price (CEP) sales. Kemira notes that all of the sales at issue were made prior to importation based on the date the order was confirmed and shipped directly from Kemira's factory to the customer in the United States. Kemira argues that its selling agent in the United States, Newco Fibres Company (Newco), relocates (in part) routine selling functions of the company from Finland to the United States, and does not perform any more selling functions in the United States than those U.S. entities in various cases in which the Department concluded that the sales were EP sales (*see, Certain Stainless Steel Wire Rods from France,* 58 FR 68865, 68869, (December 29, 1993); *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547, 18552, (April 26, 1996)). Kemira also argues that the Department's re-characterization of the sales at issue is