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Investigation
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DATE: April 30, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of
the Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Polytetrafluoroethylene
Resin from India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that imports of polytetrafluoroethylene (PTFE) resin from India is being, or is likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On September 28, 2017, Commerce received an antidumping duty (AD) petition covering imports of PTFE resin from India,¹ which was filed in proper form on behalf of The Chemours Company FC LLC (the petitioner). Commerce initiated this investigation on October 18, 2017.²

On October 20, 2017, Commerce released CBP import data to interested parties.³ On November 20, 2017, we selected Gujarat Fluorochemicals Limited (GFL) as the mandatory

¹ See Letter to the Secretary of Commerce, “Re: Polytetrafluoroethylene (PTFE) Resin from the People’s Republic of China and India: Antidumping and Countervailing Duty Petitions,” dated September 28, 2017 (Petition).

² See *Polytetrafluoroethylene Resin from India and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 49587 (October 26, 2017) (*Initiation Notice*).

³ See Memorandum, “Polytetrafluoroethylene (PTFE) Resin from India Antidumping Duty Petition: Release of



respondent because, based on U.S. Customs and Border Protection (CBP) data, it accounts for the largest volume of exports of subject merchandise during the period of investigation (POI).⁴

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of PTFE resin to be reported in response to Commerce's AD questionnaire.⁵ In response to comments and rebuttals filed by interested parties on the scope of the investigation, Commerce issued the preliminary scope determination on February 28, 2018.⁶

On November 13, 2017, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PTE resin from India.⁷

On November 29, 2017, we issued the AD questionnaire to GFL.⁸ From December 2017 through January 2018, GFL submitted timely responses to Commerce's AD questionnaire for section A (*i.e.*, the section relating to general information) and sections B, C, and D (*i.e.*, the sections relating to home market and U.S. sales and cost of production).⁹ On January 17, 2018, based on information provided in GFL's section A response, Commerce requested GFL to provide a response for section E (*i.e.*, Cost of Further Manufacturing or Assembly Performed in the United States).¹⁰ On February 2, 2018, GFL timely submitted its section E questionnaire response.¹¹

U.S. Customs and Border Protection," dated October 20, 2017 (CBP Entry Data Memorandum).

⁴ See Memorandum, "Less-Than-Fair-Value Investigation of Polytetrafluoroethylene (PTFE) Resin from India: Respondent Selection," dated November 20, 2017 (Respondent Selection Memo).

⁵ See *Initiation Notice*, 82 FR at 49587.

⁶ See Memorandum, "Polytetrafluoroethylene Resin from India and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," (Preliminary Scope Decision Memorandum) dated February 28, 2018.

⁷ See *Polytetrafluoroethylene ("PTFE") Resin from China and India*, 82 FR 53521 (November 16, 2017), and *Polytetrafluoroethylene ("PTFE") Resin from China and India: Inv. Nos. 701-TA-588 and 731-TA-1392-1393*, USITC Pub. 4741 (November 2017).

⁸ See letter from Commerce to GFL, dated November 29, 2017.

⁹ See letters to the Secretary of Commerce: "Polytetrafluoroethylene Resin from India: Gujarat Fluorochemicals Ltd.'s Section A Questionnaire Response," (AQR), dated December 22, 2017; "Re: Polytetrafluoroethylene Resin From India: Gujarat Fluorochemicals Ltd.'s Sections B, C, and D Questionnaire Response," (BQR, CQR, and DQR, respectively), dated January 19, 2018.

¹⁰ See letter from Commerce to GFL, "Re: Antidumping Investigation of Polytetrafluoroethylene Resin from India: Request for Section E Response," dated January 17, 2018.

¹¹ See letter to the Secretary of Commerce, "Polytetrafluoroethylene Resin from India: Gujarat Fluorochemicals Ltd.'s Section E Questionnaire Response," (EQR), dated February 2, 2018.

In January 2018, Commerce issued supplemental questionnaires to GFL, and we received responses to these supplemental questionnaires from February through March 2018.¹² The petitioner submitted comments with respect to the responses submitted by GFL.¹³

Commerce exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018.¹⁴ Because the new deadline fell on a non-business day, in accordance with Commerce's practice, the deadline became the next business day. Thus, the deadline for the preliminary determination of this investigation was March 12, 2018. On February 27, 2018, Commerce published the notice of postponement for the preliminary determination in this investigation, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(f)(1).¹⁵ As a result of the 50-day postponement, the revised deadline for the preliminary determination of this investigation moved to April 30, 2018.¹⁶

On April 3, 2018, the petitioner submitted pre-preliminary comments for consideration in this preliminary determination.¹⁷ On April, 13, 2018, Commerce met with the petitioner with respect to its pre-preliminary comments.¹⁸ On April 17, 2018, GFL submitted comments to rebut the petitioner's pre-preliminary comments.¹⁹ On April 23, 2018, the petitioner submitted comments responding to GFL's April 17 submission.²⁰ On April 26, 2018, Commerce issued a supplemental questionnaire to GFL,²¹ the response to which is pending.

¹² See letters to the Secretary of Commerce, "Polytetrafluoroethylene Resin From India: Gujarat Fluorochemicals Ltd.'s Supplemental Section A Questionnaire Response," (ASQR) dated February 27, 2018, "Polytetrafluoroethylene Resin From India: Gujarat Fluorochemicals Ltd.'s Supplemental Sections B, C and D Questionnaire Response," (BCDSQR) dated March 22, 2018, "Polytetrafluoroethylene Resin From India: Gujarat Fluorochemicals Ltd.'s Second Supplemental Sections D and E Questionnaire Response," (DESQR), dated April 2, 2018.

¹³ See letters to the Secretary of Commerce, "Re: Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Factual Information Response," dated January 16, 2018, "Re: Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Comments on GFL's Section A, B, and C Questionnaire Response," dated February 5, 2018, "Re: Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Comments on GFL's Section D Questionnaire Response," dated February 6, 2018.

¹⁴ See Memorandum, for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

¹⁵ See *PTFE Resin from India: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 83 FR 8423 (February 27, 2018).

¹⁶ *Id.*

¹⁷ See letter to the Secretary of Commerce "Re: Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Preliminary Determination Comments," dated April 3, 2018.

¹⁸ See "Re: Antidumping Duty Investigation of Polytetrafluoroethylene Resin from India: Meeting with The Chemours Company FC LLC," dated April 16, 2018.

¹⁹ See letter to the Secretary of Commerce "Re: Polytetrafluoroethylene (PTFE) Resin from India: Gujarat Fluorochemicals Limited's Response to Chemours' Pre-Preliminary Comments," dated April 17, 2018.

²⁰ See letter to the Secretary of Commerce "Re: Polytetrafluoroethylene (PTFE) Resin from India: Chemours' Response to GFL's April 17th Comments," dated April 23, 2018.

²¹ See Letter from Commerce "Polytetrafluoroethylene (PTFE) Resin from India: Supplemental Questionnaire for Gujarat Fluorochemicals Limited," dated April 26, 2018.

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The POI is July 1, 2016, through June 30, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2017.²²

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²³ we set aside a period of time until November 7, 2017, for parties to comment on product coverage (scope).²⁴ Based on our analysis of the comments and rebuttals we received, we have preliminarily not modified the scope of this investigation.²⁵ The scope of this and the companion PTFE resin investigations will be finalized with the final determination in the concurrent countervailing duty (CVD) investigation of PTFE resin from India.

V. PRODUCT CHARACTERISTICS

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics until November 7, 2017.²⁶ The petitioner and other interested parties provided comments,²⁷ which we took into consideration in determining the physical characteristics outlined in the AD questionnaire.²⁸

VI. SELECTION OF RESPONDENTS

Section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the investigation. Pursuant to section 777A(c)(2) of the Act, Commerce may limit its examination to: (A) a sample of exporters, producers or types of products that Commerce determines is statistically valid based on the information available to Commerce at the time of selection; or (B) exporters and producers accounting for the largest volume of the subject

²² See 19 CFR 351.204(b)(1).

²³ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁴ See *Initiation Notice*, 82 FR at 49587.

²⁵ See Preliminary Scope Decision Memorandum for a full discussion of all scope comments.

²⁶ *Id.*

²⁷ See GFL's Letter, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China: Comments on Product Characteristics" dated November 7, 2017, Gujarat Fluorochemicals Ltd.'s (GFL's) Letter, "Polytetrafluoroethylene Resin From India and the People's Republic of China; GFL Comments on Product Characteristics" dated November 7, 2017; the petitioner's Letter, "Polytetrafluoroethylene (PTFE) Resin from the People's Republic of China and India: Petitioner's Response to Comments Regarding Product Characteristics" dated November 17, 2017; and, GFL's Letter, "Polytetrafluoroethylene Resin From India and the People's Republic of China: GFL's Rebuttal Comments on Product Characteristics" dated November 17, 2017.

²⁸ See the AD questionnaire to GFL dated November 29, 2017.

merchandise from the exporting country that Commerce determines can be reasonably examined. In this AD proceeding, because of the large number of companies involved in the investigation and its limited resources, Commerce selected respondents that account for the largest volume of the subject merchandise that can reasonably be examined, pursuant to section 777A(c)(2)(B) of the Act.

In the *Initiation Notice*, we notified the public that we intended to select respondents for examination based on CBP data for U.S. imports of PTFE resin from India during the POI under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.²⁹ On October 20, 2017, Commerce released CBP import data to interested parties.³⁰ On October 27, 2017, we received comments on the CBP data from the petitioner.³¹ On November 20, 2017, we selected GFL as the mandatory respondent because, based on CBP data, it accounts for the largest volume of exports of subject merchandise during the POI.³²

VII. DISCUSSION OF THE METHODOLOGY

Application of Facts Available

For purposes of this preliminary determination, we find, pursuant to section 776(a) of the Act, that the use of facts otherwise available is warranted for certain expenses on sales GFL made in the U.S. market. Specifically, GFL reported not incurring certain expenses on specific U.S. sales where the terms of sale indicate the company would incur such expenses.³³ Therefore, pursuant to section 776(a)(1) of the Act, as facts available, for purposes of this preliminary determination, in order to account for these unreported expenses, consistent with the sales terms as reported by GFL, we are calculating expenses for these sales using the same methodology GFL used to calculate these expenses for certain other U.S. sales.³⁴

Comparisons to Fair Value

To determine whether the respondent's sales of the subject merchandise from India to the United States were made at less than fair value, we compared the export price (EP) and constructed export price (CEP) to the normal value (NV) as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

²⁹ See *Initiation Notice*, 82 FR at 49590.

³⁰ See Memorandum, "Polytetrafluoroethylene (PTFE) Resin from India Antidumping Duty Petition: Release of U.S. Customs and Border Protection," dated October 20, 2017 (CBP Entry Data Memorandum).

³¹ See Letter to the Secretary of Commerce, "Re: Less-Than-Fair-Value Investigation of Polytetrafluoroethylene (PTFE) Resin from India: Respondent Selection," dated November 20, 2017.

³² See Memorandum, "Less-Than-Fair-Value Investigation of Polytetrafluoroethylene (PTFE) Resin from India: Respondent Selection," dated November 20, 2017 (Respondent Selection Memo).

³³ A discussion of our analysis concerning these expenses is only possible by means of reference to business proprietary information. See the Memorandum to the File from Nicholas Czajkowski, "Less-Than-Fair-Value Investigation of Polytetrafluoroethylene Resin from India: Preliminary Determination Analysis Memorandum for Gujarat Fluorochemicals Ltd.," dated concurrently with this document (GFL Preliminary Analysis Memorandum) at pages 5-8.

³⁴ *Id.*

A) *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), we calculate weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. Commerce's regulations also provide that dumping margins may be calculated by comparing NVs based on individual transactions, to the EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions (average-to-transaction method).³⁵

In recent investigations, we applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³⁶ We find that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and based on our additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes reported by GFL.³⁷ Regions are defined using the reported destination code (*i.e.*, state) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

³⁵ See 19 CFR 351.414(b)(1) and (2).

³⁶ See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351, 33352 (June 4, 2013), and accompanying Issues and Decision Memorandum; *Steel Concrete Reinforcing Bar from Mexico: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014), and accompanying Preliminary Decision Memorandum at "Determination of Comparison Method," unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum at "Margin Calculations."

³⁷ See BQR at B-11-12.

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

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting

weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

B) Results of the Differential Pricing Analysis

For GFL, based on the results of the differential pricing analysis, the Department preliminarily finds that 68.22 percent of the value of U.S. sales pass the Cohen's *d* test,³⁸ and this confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for GFL.

VIII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁹ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁴⁰

For both its home market and U.S. sales, GFL reported the invoice date as its date of sale, stating that it selected the invoice date as the date of sale because the issuing of the invoice represents the point in the sales process at which the material terms of sale are set.⁴¹ Accordingly, we are using the invoice date as the date sale for purposes of this preliminary determination.

³⁸ See GFL Preliminary Analysis Memorandum at page 4.

³⁹ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

⁴⁰ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment 11; *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

⁴¹ See BQR at page B-14; see also CQR at pages C-13 to -15.

IX. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in India during the POI that fit the description in the “Scope of Investigation” section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. We compared U.S. sale prices to sale prices in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sale prices, we compared U.S. sale prices to sale prices of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: form, quality, filler, filler type, filler percentage, modification, particle size, sintered, reduction ratio, PTFE percent. For sales by GFL of PTFE resin in the United States, the reported control number identifies the characteristics of PTFE resin, as exported by GFL.

X. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

In accordance with section 772(a) of the Act, we calculated EP for all of GFL’s U.S. sales where subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. We based EP on a packed price to the first unaffiliated purchaser in the United States. We made adjustments for billing adjustments, as appropriate. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign and U.S. inland freight, foreign inland insurance, international freight, brokerage and handling, warehousing, and U.S. customs duties.

GFL classified some of its sales of merchandise under consideration to the United States as CEP sales because such sales were invoiced and sold by GFL’s U.S. affiliate, Gujarat Fluorochemicals Americas LLC (GFL US). We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including, where appropriate, foreign and U.S. inland freight, foreign inland insurance, international freight, brokerage and handling, warehousing, and U.S. customs duties in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at the CEP. Finally, pursuant to section 772(d)(2) of the Act, we also deducted the cost of further manufacturing in the United States.

XI. NORMAL VALUE

A. *Comparison Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), Commerce normally compares the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that, during the POI, the aggregate volume of home market sales of the foreign like product for GFL was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for GFL, in accordance with section 773(a)(1)(B) of the Act.

B. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴² Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴³ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁴⁴ Commerce considers the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴⁵

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in

⁴² See 19 CFR 351.412(c)(2).

⁴³ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum (*Orange Juice from Brazil*) at Comment 7.

⁴⁴ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁴⁵ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴⁶

GFL reported that it sold all of its PTFE resin in the comparison market through one channel of distribution in which the goods are sold directly by GFL to unaffiliated customers. GFL reported that its U.S. sales were made to distributors through eight channels of distribution, two of which were EP sales directly to the unaffiliated U.S. customers, while the remaining six were CEP sales made through GFL US.⁴⁷

GFL provided a chart of the following selling functions for the home market and the U.S. market and reported the level of intensity at which they perform each function: Sales Forecasting, Strategic/Economic Planning, Personnel Training/Exchange, Engineering Services, Advertising, Sales Promotion, Distributor/Dealer Training, Procurement/Sourcing Services, Packing, Inventory Maintenance, Order Input/Processing, Direct Sales Personnel, Sales/Marketing Support, Market Research, Technical Assistance, Provide Rebates, Provide Cash Discounts, Pay Commissions, Provide Warranty Service, Provide Guarantees, Provide After-Sales Services, Perform Repacking, Provide Freight and Delivery, Provide Post-Sale Warehousing.⁴⁸

The majority of GFL's U.S. sales during the POI are CEP sales.⁴⁹ GFL has stated that it qualifies for a CEP offset because its sales to unaffiliated customers in the home market are at a more advanced level than its U.S. CEP sales.⁵⁰ Based on the data reflected in the selling functions chart discussed above, the intensity of GFL's activities for its home market sales appears to be much higher than for its U.S. CEP sales, and thus, would qualify GFL for a CEP offset. However, in comparing the information in this selling functions chart to other information on the record, we have found a number of inconsistencies.⁵¹ Based on these circumstances, we are preliminarily not finding different LOTs in either market and, thus, are not granting GFL a CEP offset.

C. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding Commerce's requests for

⁴⁶ See, e.g., *Orange Juice from Brazil*, at Comment 7.

⁴⁷ See AQR at pages 18 and 19.

⁴⁸ *Id.* at Exhibit A-11.

⁴⁹ See, e.g., *Id.* at page 28.

⁵⁰ *Id.*

⁵¹ A discussion of our analysis concerning these inconsistencies is only possible by means of reference to business proprietary information. See GFL Preliminary Analysis Memorandum at pages 2 and 3 for a detailed discussion of Commerce's level of trade analysis for GFL.

information on sales at less than cost of production.⁵² The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretive rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁵³ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire had not been issued as of August 6, 2015. It requires Commerce to request constructed value (CV) and cost of production (COP) information from respondent companies in all AD proceedings.⁵⁴ Accordingly, we requested this information from GFL. We examined the respondent's cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and financial expenses.⁵⁵

We relied on the COP data submitted by GFL, except as follows:⁵⁶

- We adjusted GFL's reported cost of manufacturing to reflect the costs as recorded in the company's normal books and records.
- We revised GFL's reported cost of goods sold denominator in the financial expense ratio to exclude packing expense and include a by-product offset.
- We revised GFL's reported further manufacturing general and administrative expenses to exclude freight expenses.

2. Test of Comparison Market Sales Prices

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

In determining whether to disregard comparison market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an

⁵² See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁵³ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (Applicability Notice).

⁵⁴ *Id.* at 46794-95.

⁵⁵ See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

⁵⁶ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Gujarat Fluorochemicals Ltd." dated concurrently with this memorandum.

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

3. Results of the COP Test

We found for certain product matching control numbers that more than 20 percent of GFL's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. *Calculation of NV Based on Comparison-Market Prices*

We based NV on comparison market prices to unaffiliated purchasers. We made adjustments, where appropriate, from the starting price for billing adjustments and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

XII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

XIII. CONCLUSION


We recommend applying the above methodology for this preliminary determination.



Agree

Disagree

4/30/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of
the Assistant Secretary for Enforcement and Compliance