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Investigation
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August 25, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that granular 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 January 27, 2021, Commerce received an antidumping duty (AD) petition concerning imports of granular PTFE resin from India, filed in proper form by Daikin America, Inc. (the petitioner), a domestic producer of granular PTFE resin.¹ On February 16, 2021, Commerce initiated the AD investigation on granular PTFE resin from India.²

We obtained and placed on the record U.S. Customs and Border Protection (CBP) data for entries of granular PTFE resin from India under the Harmonized Tariff Schedule of the United

¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties: Granular Polytetrafluoroethylene Resin from India and Russia,” dated January 27, 2021 (Petition).

² See *Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Initiation of Less-Than-Fair Value Investigations*, 86 FR 10926 (February 23, 2021) (*Initiation Notice*).



States (HTSUS) subheadings 3904.61.0010 and 3904.69.5000.³ In the *Initiation Notice*, we stated that we intended to select respondents based on CBP data on entries of granular PTFE resin from India made during the period of investigation (POI).⁴ On March 12, 2021, we selected Gujarat Fluorochemicals Limited (GFCL) as the sole mandatory respondent in this investigation.⁵

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of granular PTFE resin to be reported in response to Commerce's AD questionnaire.⁶ On March 8, 2021, we received timely-filed comments from interested parties.⁷ On March 18, 2021, we received timely-filed rebuttal comments from interested parties.⁸ On March 26, 2021, Commerce issued the AD questionnaire to GFCL.⁹

On March 19, 2021, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of granular PTFE resin from India and Russia.¹⁰

GFCL provided a timely response to section A of Commerce's AD questionnaire, *i.e.*, the section relating to general information, in April 2021.¹¹ In May 2021, GFCL responded to sections B, C, and D of Commerce's AD questionnaire, *i.e.*, the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.¹² From May through July 2021, we issued supplemental questionnaires to GFCL. We received timely responses to these supplemental questionnaires between May and August 2021.¹³ During the same time period, the petitioner submitted comments regarding GFCL's questionnaire responses.

³ See Memorandum, "Release of Customs Data from U.S. Customs and Border Protection," dated February 12, 2021.

⁴ See *Initiation Notice*, 86 FR at 10929.

⁵ See Memorandum, "Respondent Selection," dated March 12, 2021.

⁶ See *Initiation Notice*, 86 FR at 10927.

⁷ See Petitioner's Letter, "Comments on Model Match Methodology"; HaloPolymer's Letter, "Comments on Product Characteristics"; and GFCL's Letter, "Gujarat Fluorochemicals Limited's Comments on Scope of Investigation," all dated March 8, 2021.

⁸ See Petitioner's Letters, "Rebuttal Comments on Scope of Investigation"; and "Rebuttal Comments on Model Match Methodology"; see also GFCL's Letter, "Gujarat Fluorochemicals Limited's Rebuttal Comments on Product Characteristics," all dated March 18, 2021.

⁹ See Commerce's Letter, AD Questionnaire, dated March 26, 2021 (Initial AD Questionnaire).

¹⁰ See *Granular Polytetrafluoroethylene Resin from India and Russia: Determinations* (Investigation Nos. 701-TA-663-664 and 731-TA-1555-1556) (Preliminary), 86 FR 14957 (March 19, 2021) (USITC Preliminary Determination).

¹¹ See GFCL's Letter, "Section A Questionnaire Response," dated April 26, 2021 (AQR).

¹² See GFCL's Letter, "Sections B, C, and D Questionnaire Response," dated May 18, 2021.

¹³ See GFCL's Letters, "Section A Supplemental Questionnaire Response," dated May 24, 2021 (SAQR); "Section B Supplemental Questionnaire Response," dated June 28, 2021; "Section C Supplemental Questionnaire Response," dated July 9, 2021 (SCQR); "Section D Supplemental Questionnaire Response," dated July 13, 2021; "Second Supplemental Sections A&C Questionnaire Response (PART I – Questions 3, 5, 6 and Revised U.S. Sales Database)," dated August 4, 2021; "Second Supplemental Sections A&C Questionnaire Response (PART II – Questions 1, 2, 4 and 7)," dated August 9, 2021; and "Third Supplemental Section C Questionnaire Response," dated August 9, 2021.

On June 8, 2021, the petitioner alleged, pursuant to 19 USC 1671b(e) and 1673b(e), and 19 USD 351.206, that critical circumstances exist with regard to imports of granular PTFE resin from India.¹⁴ On June 11, 2021, Commerce postponed the preliminary determination of this investigation by 50 days, to August 25, 2021, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).¹⁵ We issued the preliminary scope comments decision memorandum on June 28, 2021.¹⁶

On August 5, 2021, the petitioner submitted a request to extend the deadline to issue the final determination in this investigation.¹⁷ Also on August 5, 2021, GFCL submitted a request to extend the deadline to issue the final determination in this investigation, and to extend provisional measures to a period not to exceed six months.¹⁸

The petitioner submitted pre-preliminary comments on August 3, 2021.¹⁹ GFCL submitted pre-preliminary comments on August 12, 2021.²⁰ The petitioner submitted additional pre-preliminary comments on August 16, 2021.²¹

III. PERIOD OF INVESTIGATION

The POI is January 1, 2020, through December 31, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was January 2021.²²

IV. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

To determine whether sales of granular PTFE resin from India to the United States were made at LTFV, we compared the export prices (EPs) and constructed export prices (CEPs) to the normal value (NV), as described in the “Export Price/Constructed Export Price” and “Normal Value” sections of this memorandum, below.

¹⁴ See Petitioner’s Letter, “Allegation of the Existence of Critical Circumstances,” dated June 8, 2021 (Critical Circumstances Allegation). On June 16, 2021, the petitioner updated information in its original allegation. See Petitioner’s Letter, “Critical Circumstances Addendum,” dated June 16, 2021 (Critical Circumstances Addendum).

¹⁵ See *Granular Polytetrafluoroethylene Resin from India and the Russian Federation: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 86 FR 31276 (June 11, 2021); see also Petitioner’s Letter, “Request to Extend Due Date for Preliminary Determination,” dated June 3, 2021.

¹⁶ See Memorandum, “Comments on Scope of Investigations,” dated June 28, 2021.

¹⁷ See Petitioner’s Letter, “Request to Postpone Final Determination,” dated August 5, 2021.

¹⁸ See GFCL’s Letter, “Gujarat Fluorochemicals Limited’s Request to Postpone Final Determination,” dated August 5, 2021.

¹⁹ See Petitioners’ Letter, “Pre-Preliminary Comments,” dated August 3, 2021.

²⁰ See GFCL’s Letter, “Gujarat Fluorochemicals Limited’s Pre-Preliminary Comments,” dated August 12, 2021.

²¹ See Petitioner’s Letter, “Response to Pre-Preliminary Comments,” dated August 16, 2021.

²² See 19 CFR 351.204(b)(1).

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates 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. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations and reviews, Commerce has 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.²³ Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this investigation.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs 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. Regions are defined using the reported destination code, *i.e.*, zip code, 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 reported 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.

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

²³ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *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); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 account 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.²⁴

²⁴ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

2. Results of the Differential Pricing Analysis

For GFCL, based on the results of the differential pricing analysis, Commerce preliminarily finds that 88.25 percent of the value of U.S. sales pass the Cohen's *d* test,²⁵ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.

Further, we preliminarily determine that the average-to-average method cannot account for such differences because there is a 25 percent relative change 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, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for GFCL.

B. Product Comparisons

As stated above, Commerce gave parties an opportunity to comment on the appropriate hierarchy of physical characteristics used to define each product, including for model matching purposes, within a certain deadline.²⁶ We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining the product control numbers of granular PTFE resin in this AD investigation. Commerce identified six criteria for the physical characteristics of the subject merchandise: (1) fill; (2) filler type; (3) filler percentage; (4) modification; (5) particle size; and (6) sintered.

In accordance with section 771(16) of the Act, we considered all products produced and sold by GFCL in India during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate.

C. Date of Sale

Section 351.401(i) of Commerce's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, {Commerce} normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business."

Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁷ 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.²⁸ In this investigation, GFCL reported the invoice date as

²⁵ See Memorandum, "Preliminary Determination Margin Calculation for Gujarat Fluorochemicals Limited," dated August 25, 2021 (Preliminary Determination Calculation Memorandum).

²⁶ See *Initiation Notice*, 86 FR at 10927.

²⁷ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (*Allied Tube*) (quoting 19 CFR 351.401(i)).

²⁸ See, e.g., *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester*

the date of sale for home market and U.S. sales.²⁹ As we have not found that a different date better reflects the date on which the material terms of sale were set for home market and U.S. sales, consistent with our practice, we preliminarily used the invoice date as the date of sale for home market and U.S. market sales.

D. Export Price/Constructed Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” We used the EP methodology, in accordance with section 772(a) of the Act, when the merchandise under consideration was first sold before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, and the CEP methodology was not otherwise warranted. We adjusted GFCL’s EP prices in accordance with section 772(c) of the Act.

We used the CEP methodology, in accordance with section 772(b) of the Act, when the subject merchandise was first sold in the United States before or after the date of importation by a U.S. seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, and the EP methodology was not otherwise warranted. We adjusted GFCL’s CEP sales in accordance with section 772(c) and (d) of the Act.

We calculated both EP and CEP based on packed, delivered prices to unaffiliated purchasers in the United States. We made an adjustment, where appropriate, to the starting prices for billing adjustments and discounts. We also made deductions, where appropriate, for movement expenses (*e.g.*, foreign inland freight, foreign inland/marine insurance, international freight (including foreign brokerage and handling), U.S. brokerage and handling expenses, U.S. inland freight (port to warehouse and warehouse to customer), and U.S. warehousing expenses) in accordance with section 772(c)(2)(A) of the Act.

For CEP transactions, in accordance with section 772(d)(1) of the Act, we also deducted selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses, commissions, and bank charges) and indirect selling expenses (inventory carrying costs and other indirect selling expenses³⁰). We also made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by GFCL and its U.S. affiliate on their sales of the foreign like product in the comparison market and their sales of the subject merchandise in the United States and the profit associated with those sales.

Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review, 74 FR 65517 (December 10, 2009).

²⁹ See AQR at A-26.

³⁰ We reclassified certain expenses reported as direct selling expenses as indirect selling expenses. See Preliminary Determination Calculation Memorandum.

E. Normal Value

1. 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, we normally compare 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.

Based on a comparison of home market sales of foreign like product to the volume of U.S. sales of the subject merchandise, in this investigation, we preliminarily determine that the aggregate volume of home market sales of the foreign like product for GFCL was more than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that GFCL's home market of India is viable. Therefore, we used home market sales as the basis for NV for GFCL in accordance with sections 773(a)(1)(A) and (B) of the Act.

2. 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).³¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³² 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,³³ we consider 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.³⁴

³¹ See 19 CFR 351.412(c)(2).

³² *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 (August 18, 2010) (*OJ from Brazil*), and accompanying Issues and Decision Memorandum (IDM) at Comment 7.

³³ 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 (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

³⁴ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

When Commerce is unable to match 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 to sales at a different LOT in the comparison market, where available data make it possible, we make an 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.³⁵

In this investigation, we obtained information from GFCL regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.³⁶ In addition to the levels of intensity provided in the selling functions chart, GFCL provided detailed descriptions, as well as support documentation, for the various selling functions, including where the expenses are captured in the responses.³⁷ Our LOT findings are summarized below.

In the home market, GFCL reported that it made sales through one channel of distribution: *i.e.*, direct sales to unaffiliated customers (Channel 1).³⁸ Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) performance of sales-related administrative activities.³⁹ For home market sales, GFCL performed sales support, training services, logistical services, and sales-related administrative activities.⁴⁰ We preliminarily determine that there is one LOT in the home market, as all sales are made through a single distribution channel and the selling activities do not vary within the channel.⁴¹

In the U.S. market, GFCL reported that it made EP sales through one channel of distribution: *i.e.*, direct sales to unaffiliated customers (Channel 1).⁴² GFCL performed sales support, training services, technical support, logistical services, and sales-related administrative activities for its EP sales.⁴³ We preliminarily determine that there is one LOT for EP sales, as all EP sales are made through a single distribution channel and the selling activities do not vary within the channel.⁴⁴

GFCL reported that it made CEP sales through four channels of distribution: *i.e.*, shipment directly to unaffiliated U.S. customers with the U.S. affiliate acting as the importer of record (Channel 2); sales from the U.S. affiliates' warehouse to unaffiliated U.S. customers (Channel 3); consignment sales from the U.S. warehouse to unaffiliated U.S. customers (Channel 4); and

³⁵ See, e.g., *OJ from Brazil* IDM at Comment 7.

³⁶ See AQR at A-17 – A-25 and Exhibit A-11; see also SAQR at Exhibit SA-7.

³⁷ *Id.*

³⁸ See AQR at A-17.

³⁹ See Initial AD Questionnaire at A-15.

⁴⁰ See AQR at A-20 – A-22 and Exhibit A-11; see also SAQR at Exhibit SA-7.

⁴¹ See SAQR at Exhibit SA-7.

⁴² See AQR at A-17 – A-18.

⁴³ *Id.* at A-22 – A-23 and Exhibit A-11; see also SAQR at Exhibit SA-7.

⁴⁴ See SAQR at Exhibit SA-7.

sales made by consultants, who are paid fixed consulting fees, and are appointed by GFCL to promote sales to certain U.S. customers (Channel 6).⁴⁵ For sales made through Channel 2, GFCL performed sales support, training services, technical support, logistical services, and sales-related administrative activities and the selling activities do not vary within the channel.⁴⁶ For sales made through Channels 3, 4, and 6, GFCL performed most selling activities, *i.e.*, sales support, technical support, and training services, and the selling activities and level of intensity are the same for the three sales channels.⁴⁷ Although logistical services and sales related administrative activities are not performed for Channels 3, 4, and 6, sales support, training services and technical assistance are performed for all CEP channels, and the level of intensity varies across the four channels of distribution for only three of the 11 particular selling activities performed within the general categories of selling functions. Therefore, we do not find the differences in selling functions/activities to be significant enough to warrant a finding that the four CEP sales channels constitute different LOTs. Accordingly, we preliminarily determine that there is one LOT for CEP sales.

As stated above, Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. In this case, logistical services and sales related administrative activities are performed for EP sales but are never performed for 3 of the 4 CEP sales channels. With respect to the CEP sales channel where logistical service and sales related administrative activities are performed, we compared the EP sales channel to the CEP sales channel and found that for approximately one third of the selling activities the frequency varied between the two channels and the level of intensity often varied significantly. Therefore, we preliminarily determine that EP and CEP sales to the United States were made at different LOTs.

We compared the EP LOT to the home market LOT and found that although activities in four of the five selling function categories were performed for both EP and home market sales (*i.e.*, sales support, training services, logistical services, and sales related administrative activities), the level of intensity for the selling activities varied significantly between the two channels. When comparing the CEP and home market LOTs, we found that in the home market the selling activities were generally performed at a high level within four selling function categories (*i.e.*, sales support, training services, logistical services, and sales related administrative activities). However, for the majority of the CEP sales channels, activities within these selling function categories were not performed at all. Moreover, with respect to sales support and training services, activities were performed at a much higher intensity for home market sales.

Based on the foregoing analysis, we preliminarily determine that the NV LOT is at a more advanced stage of distribution than either the EP or CEP LOTs. However, because there is only one LOT in the home market, we were unable to calculate an LOT adjustment based on GFCL's home market sales of the foreign like product, and we have no other information that provides an

⁴⁵ See AQR at A-18. There were no sales made through Channel 5 (consignment sales shipped directly from India to unaffiliated U.S. customers) during the POI.

⁴⁶ See SAQR at Exhibit SA-7.

⁴⁷ *Id.*

appropriate basis for determining an LOT adjustment. Accordingly, we granted a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

3. Cost of Production (COP) Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP and CV information from GFCL in this investigation. We examined the cost data and determined that our quarterly cost methodology is not warranted and, therefore, we are applying our standard methodology of using annual costs based on GFCL's reported data.

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by GFCL, with the exception noted below.⁴⁸

- We revised GFCL's reported G&A expense rate. Specifically, we revised the calculation of net G&A expenses to include restructuring expenses.

b. Test of Comparison Market Sales Prices

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

c. Results of the COP Test

In determining whether to disregard home 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 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.

⁴⁸ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Gujarat Fluorochemicals Limited," dated August 25, 2021.

We found that, for certain products, more than 20 percent of GFCL'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 as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

F. Calculation of NV Based on Comparison-Market Prices

We calculated NV for GFCL based on prices to unaffiliated customers. We made deductions from the starting price for inland freight and inland insurance pursuant to section 773(a)(6)(B)(ii) of the Act. Where appropriate, we offset these movement expenses with reported freight revenue, with the latter capped at no higher than the sum of movement expenses, in accordance with our normal practice.⁴⁹

For comparisons to EP sales, we made adjustments, where appropriate, under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b) for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, imputed credit expenses) and added U.S. direct selling expenses (*i.e.*, credit expenses and bank charges).

For comparisons to CEP sales, we made deductions pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for home market credit expenses which we recalculated.⁵⁰ We made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the less of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

When comparing U.S. sales with home market sales of similar, but not identical merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁵¹ We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

G. Calculation of NV Based on Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of GFCL's material and fabrication costs, SG&A expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by GFCL in connection with the production and sale of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for differences in

⁴⁹ See, e.g., *CC Metals and Alloys, LLC v. United States*, 145 F. Supp. 3d 1299, 1307-08 (Ct. Int'l Trade 2016).

⁵⁰ See Preliminary Determination Calculation Memo.

⁵¹ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

V. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

In an LTFV investigation where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy."⁵²

Commerce determined in the preliminary determination of the companion granular PTFE resin CVD investigation that GFCL benefitted from certain subsidy programs contingent on exports totaling 3.08 percent.⁵³ Commerce has calculated the cash deposit rate for GFCL by subtracting from its estimated dumping margin the export subsidies preliminarily determined for GFCL in the companion CVD investigation (*i.e.*, 3.08 percent). Therefore, consistent with our practice,⁵⁴ we will apply the applicable export subsidy offset to the cash deposit rates in the accompanying *Federal Register* notice.

VI. AFFIRMATIVE PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

A. Background

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist by no later than the date of the preliminary determination.⁵⁵ On June 8, 2021, the petitioner alleged that critical circumstances exist with respect to imports of subject merchandise from India.⁵⁶ The preliminary determination is scheduled for August 25, 2021; therefore, the petitioner has alleged that critical circumstances exist more than 20 days before the preliminary determination in accordance with 19 CFR 351.206(c)(2)(i).

⁵² See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

⁵³ See *Granular Polytetrafluoroethylene Resin from India: Postponement of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 86 FR 35479 (July 6, 2021), and accompanying Preliminary Decision Memorandum (PDM).

⁵⁴ See *Glycine from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 18487 (May 1, 2019).

⁵⁵ See, *e.g.*, *Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations: Policy Bulletin 98/4 Regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998).

⁵⁶ See Critical Circumstances Allegation; see also Critical Circumstances Addendum.

On June 9, 2021, and July 29, 2021, we requested monthly quantity and value shipment data from GFCL.⁵⁷ On June 15, 2021, and August 5, 2021, GFCL responded to Commerce’s request for shipment information.⁵⁸ Commerce’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to Commerce, such as: (1) the evidence presented in the petitioners’ critical circumstances allegation; (2) U.S. import statistics; and (3) shipment information submitted to Commerce by the respondents selected for individual examination.⁵⁹

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (A)(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206 of Commerce’s regulations provides that imports must increase by at least 15 percent during the “relatively short period,” compared to imports during an immediately preceding period of comparable duration, to be considered “massive”⁶⁰ and defines a “relatively short period” as a period that normally begins on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.⁶¹ The regulations also provide, however, that if Commerce finds that importers, exporters or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.⁶²

B. History of Dumping and Material Injury/Knowledge of Sales below Fair Value and Material Injury

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current AD orders imposed by another

⁵⁷ See Commerce’s Letters, “Request for Monthly Quantity and Value Shipment Data,” dated June 9, 2021; and “Request for Additional Monthly Quantity and Value Shipment Data,” dated July 29, 2021.

⁵⁸ See GFCL’s Letters, “Gujarat Fluorochemicals Limited’s Quantity and Value Questionnaire Response,” dated June 15, 2021; and “Gujarat Fluorochemicals Limited’s Response to Request for Additional Monthly Quantity and Value Shipment Data,” dated August 5, 2021.

⁵⁹ See, e.g., *Certain Carbon and Alloy Steel Wire Rod from the Russian Federation and the United Arab Emirates: Affirmative Preliminary Determinations of Sales at Less Than Fair Value, and Affirmative Preliminary Determination of Critical Circumstances for Imports of Certain Carbon and Alloy Steel Wire Rod from the Russian Federation*, 82 FR 42794 (September 12, 2017), and accompanying PDM at 11, unchanged in *Certain Carbon and Alloy Steel Wire Rod from the Russian Federation and the United Arab Emirates: Affirmative Final Determinations of Sales at Less Than Fair Value, and Partial Affirmative Finding of Critical Circumstances*, 82 FR 56214 (November 28, 2017); and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008) (*CWP from China*).

⁶⁰ See 19 CFR 351.206(h).

⁶¹ See 19 CFR 351.206(i).

⁶² *Id.*

country with regard to imports of the same merchandise.⁶³ Commerce has not previously issued an AD order on granular PTFE resin from India. Moreover, Commerce is not aware of other active AD orders imposed on granular PTFE resin from India, and the petitioners cite to no such orders in their allegation. Therefore, there is no history of dumping of the subject merchandise.

To determine whether importers knew or should have known that exporters were selling subject merchandise at less than fair value, pursuant to section 733(e)(1)(A)(ii) of the Act, we typically consider the magnitude of the estimated weighted-average dumping margins, or alternatively the dumping margins alleged in the petition.⁶⁴ Commerce has found that a rate of 15 percent or more and 25 percent or more, depending on whether U.S. sale prices are defined as CEP or EP, respectively, to be sufficient for this purpose.⁶⁵ The estimated weighted-average dumping margin preliminarily determined for GFCL, whose U.S. sale prices are defined as CEPs and EPs, is not above the 15 percent or more threshold for an estimated weighted-average dumping margin based on CEPs or the 25 percent or more threshold for an estimated weighted-average dumping margin based on EPs (*i.e.*, 13.09 percent). Further, we apply this same finding for all other producers and exporters to whom we have applied the same estimated weighted-average dumping margin.

To determine whether importers knew or should have known that there was likely to be material injury, we typically consider the preliminary injury determinations of the International Trade Commission (ITC).⁶⁶ If the ITC finds material injury (as opposed to the threat of injury), we normally find that the ITC's determination provided importers with sufficient knowledge of injury. Here, the ITC's finding that "there is a reasonable indication that an industry in the United States is materially injured by reason of imports of granular polytetrafluoroethylene resin from India and Russia" is sufficient to impute knowledge of the likelihood of material injury.⁶⁷

⁶³ See, e.g., *CWP from China*, 73 FR at 31972-73; and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009).

⁶⁴ See, e.g., *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia*, 67 FR 47509 (July 19, 2002).

⁶⁵ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

⁶⁶ See, e.g., *Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010), unchanged in *Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry*, 75 FR 30377 (June 1, 2010).

⁶⁷ See USITC Preliminary Determination at 1.

C. Massive Imports

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 733(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

For GFCL, we based our analysis on shipment information provided by the respondent.⁶⁸ We compared its shipment data for the periods of September 2020 through January 2021, and February 2021 through June 2021.⁶⁹ Based on this comparison, we preliminarily determine that imports of subject merchandise into the United States from GFCL increased by more than 15 percent. Therefore, we preliminarily find that there were massive imports of subject merchandise from GFCL over a relatively short period pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206.

For “all other producers and exporters,” Commerce started with U.S. import data sourced from Global Trade Atlas (GTA) for the HTSUS subheadings identified in the scope of the investigation for the periods February 2021 through June 2021 (the last month for which U.S. import data is currently publicly available) and the preceding five-month period of September 2020 through January 2021.⁷⁰ We then subtracted shipments reported by GFCL for these same periods from the U.S. import data. Based on a comparison of the adjusted U.S. import data for the base and comparison periods, we preliminarily determine that imports of subject merchandise into the United States from all other companies in India increased by more than 15 percent. Therefore, we preliminarily find that there were massive imports of subject merchandise from all other producers and exporters in India over a relatively short period pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206.⁷¹

D. Conclusion

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist for GFCL and all other producers and exporters with respect to imports of granular PTFE resin from India.

We will issue our final determination concerning critical circumstances when we issue our final LTFV determination. All interested parties will have the opportunity to address the preliminary determination regarding critical circumstances in case briefs.

⁶⁸ See Memorandum, “Monthly Shipment Quantity and Value Analysis for Critical Circumstances,” dated concurrently with this memorandum.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

VII. CURRENCY CONVERSION

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

VIII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

8/25/2021

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance