



A-469-814
Administrative Review
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August 8, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of the 2017-2018
Antidumping Duty Administrative Review of Chlorinated
Isocyanurates from Spain

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on chlorinated isocyanurates (chlorinated isos) from Spain. This review covers a single producer/exporter of subject merchandise, Ercros, S.A. (Ercros). The period of review (POR) is June 1, 2017 through May 31, 2018. We preliminarily find that Ercros did not sell chlorinated isos in the United States below normal value (NV).

II. BACKGROUND

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b), on June 27, 2018, domestic interested party Bio-Lab Inc., Clearon Corp., and Occidental Chemical Corporation (collectively, the petitioners), filed a timely request for an administrative review of Ercros.¹ Accordingly, on August 10, 2018, Commerce initiated this administrative review of the AD order on chlorinated isos from Spain for Ercros.²

On November 14, 2018, Commerce issued the AD questionnaire to Ercros; Ercros filed its response to Section A of the AD questionnaire on December 6, 2018, and Sections B-D on January 15, 2019. In April 2019, Commerce issued supplemental questionnaires and responses were timely filed in May 2019.

¹ See Petitioners' Letter, "Chlorinated Isocyanurates from Spain: Request for Administrative Review of Antidumping Order," dated June 27, 2018.

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 39688 (August 10, 2018).

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.³ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. In accordance with section 751(a)(3)(A) of the Act, on April 10, 2019, Commerce extended the deadline of these preliminary results by 90 days,⁴ and on July 8, 2019, extended the preliminary results deadline by an additional 30 days.⁵

III. SCOPE OF THE ORDER

The products covered by the order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid ($\text{Cl}_3(\text{NCO})_3$), (2) sodium dichloroisocyanurate (dihydrate) ($\text{NaCl}_2(\text{NCO})_3 \cdot 2\text{H}_2\text{O}$), and (3) sodium dichloroisocyanurate (anhydrous) ($\text{NaCl}_2(\text{NCO})_3$). Chlorinated isocyanurates are available in powder, granular, and tableted forms. The order covers all chlorinated isocyanurates. Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. ALLEGATION OF A PARTICULAR MARKET SITUATION

On March 6, 2019, the petitioners submitted a particular market situation (PMS) allegation with respect to the cost of production of chlorinated isos in Spain.⁶ The petitioners alleged that a PMS exists because the prices paid by Ercros for cyanuric acid (CYA), a major input in the production of chlorinated isos, are below market prices. The petitioners contend that import/export data show that CYA market prices are higher than those paid by Ercros, and that an antidumping order is in place with respect to imports of chlorinated isos from China to the European Union (EU), which creates an incentive for Chinese producers to ship CYA to the EU.⁷ The petitioners

³ See Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁴ See Memorandum, "Chlorinated Isocyanurates from Spain: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review – 2017-2018," dated April 10, 2019.

⁵ See Memorandum, "Chlorinated Isocyanurates from Spain: Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review – 2017-2018," dated July 8, 2019.

⁶ See Petitioners' Letter, "Chlorinated Isocyanurates from Spain (2017-2018 Antidumping Administrative Review): Particular Market Situation Allegation Regarding Ercros' Cost of Production," dated March 6, 2019 (Petitioners' PMS Allegation).

⁷ *Id.* at 7 and 8.

cite to *Biodiesel from Indonesia*⁸ where Commerce found a PMS based on distortion to input prices.

Ercros submitted a rebuttal to the PMS allegation on March 12, 2019. Ercros argued that the petitioners failed to meet their evidentiary burden because the import/export data provided in the PMS allegation are either overly broad such that they do not allow a meaningful comparison, or they are not relevant to CYA imports into Spain. Ercros argued that similar prices for CYA sourced from Japan in the previous review show that the Spanish market for CYA is not distorted by Chinese imports. Ercros also notes that the petitioners did not submit any evidence of price controls or other government policies which distort prices for CYA. Ercros contends that the petitioners' PMS allegation is virtually identical to the PMS allegation in the previous review, and that Commerce should reject this allegation, as it did in the previous review.⁹

A. Legal Framework and Recent Administrative Determinations

Section 504 of the Trade Preferences Extension Act of 2015¹⁰ added the concept of “particular market situation” in the definition of the term “ordinary course of trade,” for purposes of constructed value under section 773(e) of the Act, and through these provisions for purposes of the cost of production (COP) under section 773(b)(3) of the Act. Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” The statute does not define “particular market situation,” but the SAA explains that such a situation may exist for sales “where there is government control over pricing to such an extent that home market prices cannot be considered competitively set.”¹¹ Prior to the TPEA, in a limited number of cases, Commerce found that a PMS existed and, as a result, declined to use an entire market for purposes of calculating NV, as provided for in section 351.404(c)(2) of Commerce’s regulations.¹² More recently, Commerce determined that a PMS existed, which distorted the domestic costs of major inputs used in the production of merchandise under consideration.¹³ Our analysis concerning whether to investigate an allegation of a PMS starts with an evaluation of whether we received an allegation supported by information that reasonably demonstrates that such a situation exists.

⁸ See *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) (*Biodiesel from Indonesia Final*), and accompanying Issues and Decision Memorandum (IDM).

⁹ See Ercros’ Letter, “Chlorinated Isocyanurates from Spain; Response to Petitioners’ Particular Market Situation Allegation,” dated March 12, 2019.

¹⁰ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

¹¹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 822.

¹² For examples of prior cases where Commerce has found the existence of a PMS, see *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998); *Mechanical Transfer Presses from Japan; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Administrative Order in Part*, 63 FR 37331 (July 10, 1998); and *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007).

¹³ See, e.g., *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017), and accompanying IDM at 40-41; and *Biodiesel from Indonesia Final* IDM at 15.

B. Analysis

After reviewing the petitioners' PMS allegation, we determine that the allegation does not contain sufficient evidence to warrant a further investigation to determine whether a PMS exists in this review. Specifically, the petitioners' PMS allegation lacks evidentiary support for the proposition that prices for CYA in Spain were depressed or distorted such that the "the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production {of chlorinated isos in Spain} in the ordinary course of trade." The import/export information placed on the record by the petitioners are not specific to the input CYA; rather, the information covers a broad category of chemical products, including chlorinated isos, *i.e.*, the finished merchandise, or is not specific to Spain. Therefore, we find that this information does not provide sufficient evidence of price distortion for CYA.

As in the 2016-2017 review,¹⁴ we continue to find that the petitioners' comparison to *Biodiesel from Indonesia* is misplaced. Unlike *Biodiesel from Indonesia*, we have not found considerable evidence of price distortion using reliable benchmarks, or of government price controls, production quotas, or export taxes and levies imposed upon inputs which distort prices.¹⁵ While in this review, unlike in the prior review, the petitioners provided one data source that is specific to CYA (*i.e.*, data for individual entries, including product descriptions, gathered from the Port Import/Export Reporting Service (PIERs)),¹⁶ that data is for entries into the United States. As an initial matter, we note that PIERs data does not represent a world market price benchmark, but rather is limited to the United States market. The petitioners have not demonstrated that such data provides a reasonable benchmark for evaluating whether prices in Spain are distorted. Additionally, the high CYA values indicated by the PIERs data appear to contradict the petitioners' claim that CYA is being sold into markets, such as the EU and the United States, at below market prices, in response to orders in place on imports of chlorinated isos. Moreover, the petitioners' theory that CYA is being sold into the EU at distorted prices in response to the EU's order on chlorinated isos is not supported by evidence, such as a formal EU finding indicating that CYA is being dumped in the EU or even the initiation of an investigation into the dumping of CYA. Although we acknowledge that there is a price difference between the Ercros prices for CYA in Spain and the PIERs data prices for entries in the United States, the petitioners provided no evidence demonstrating that this difference is the result of distortion caused by the alleged actions of Chinese exporters, rather than normal market operations in two different countries. By contrast, in *Biodiesel from Indonesia*, there was ample evidence indicating that the gap between domestic and world market prices for soybeans was the result of actions undertaken by the Government of Indonesia.

The burden is on the petitioners to provide evidence of the existence of a PMS such that further investigation by Commerce is warranted. We find that the petitioners' claim is unsubstantiated.

¹⁴ See *Chlorinated Isocyanurates from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 31725 (July 9, 2018) and accompanying Preliminary Decision Memorandum (PDM) at 3-4, unchanged in *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53607 (October 24, 2018).

¹⁵ See *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 and accompanying PDM at 20-21, unchanged in *Biodiesel from Indonesia Final*.

¹⁶ See Petitioners' PMS Allegation at Exhibit 6.

For this reason, we find that the petitioners' allegation in its current state does not warrant a further investigation into whether a PMS exists. Accordingly, we find that it is unnecessary, pursuant to 19 CFR 351.301(c)(2)(v), to solicit rebuttal information or additional comments from interested parties.

V. COMPARISONS TO NORMAL VALUE

Pursuant to section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Ercros' sales of subject merchandise from Spain to the United States were made at less than NV, Commerce compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average NVs to the EP or CEP of individual U.S. sales (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.¹⁷

In recent proceedings, Commerce has applied a differential pricing analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹⁸ Commerce finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such

¹⁷ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *JBK RAK, LLC v. United States*, 790 F. 3d 1358, 1362–1365 (CAFC 2015); and *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1314–1316 (CIT 2016).

¹⁸ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 48143 (August 7, 2013), and accompanying PDM at "Determination of Comparison Method" and "Results of Differential Pricing Analysis," unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 11406 (February 28, 2014), and accompanying IDM.

differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported 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 POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce uses in making comparisons between export price 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data 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 net prices to a particular purchaser, region or time period differ significantly from the net 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. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group were found to have passed 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 passes 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 passes 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, we examine whether

using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative 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, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative 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 margin between the average-to-average method and the appropriate alternative method when both results are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

B. Results of the Differential Pricing Analysis

For Ercros, based on the results of the differential pricing analysis, Commerce preliminarily finds that the value of U.S. sales passing the Cohen's *d* test is 100 percent, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.¹⁹ However, Commerce preliminarily determines that there is no meaningful difference (*i.e.*, a 25 percent relative change) between the weighted-average dumping margin calculated using the standard average-to-average methodology and the alternative methodology applying the average-to-transaction method to all sales.²⁰ Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Ercros.

VI. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we compared prices for products sold in the U.S. market with prices for products sold in the home market, which were either identical or most similar in terms of the physical characteristics. In the order of importance, these physical characteristics are chemical structure, free available chlorine content, physical form, and packaging. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product based on the characteristics listed above.

VII. DATE OF SALE

19 CFR 351.401(i) states that Commerce normally will use the date of invoice, as recorded in the producer or exporter's records kept in the ordinary course of business, as the date of sale. The

¹⁹ For additional details, *see* Memorandum, "Preliminary Analysis for Ercros S.A.," dated concurrently with this Memorandum (Ercros Analysis Memorandum).

²⁰ *Id.*

regulation provides further that Commerce may use a date other than the date of the invoice if Commerce is satisfied that a different date better reflects the date on which the material terms of sale are established.

Ercros reported the earlier of the invoice date or shipment date as the date of sale. After reviewing the information submitted by Ercros, for purposes of the margin calculations, Commerce has preliminarily relied on the dates of sale, as reported by Ercros, for the home market and U.S. sales.

VIII. EXPORT PRICE

Commerce based the price of all U.S. sales of subject merchandise by Ercros on EP, as defined in section 772(a) of the Act, because the merchandise was sold by Ercros to an unaffiliated purchaser in the United States before importation.²¹ We calculated EP based on the packed price to unaffiliated purchasers in the United States, as appropriate.²² We made adjustments to price for billing adjustments, where applicable, and deducted all movement expenses reported by Ercros. We have adjusted reported direct selling expenses to account for factoring expenses applicable to home market and U.S. sales.

IX. NORMAL VALUE

A. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), Ercros had a viable home market during the POR. Consequently, we based NV on home market sales.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act and the SAA,²³ to the extent practicable, Commerce determines NV based on sales in the comparison market at the same level of trade as the EP. Pursuant to 19 CFR 351.412(c)(1), the NV level of trade is based on the starting price of the sales in the comparison market or, when NV is based on constructed value, the starting price of the sales from which we derive selling, general, and administrative expenses and profit. For EP sales, the U.S. level of trade is based on the starting price of the sales in the U.S. market, which is usually from the exporter to the importer.

To determine whether comparison market sales are at a different level of trade than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution

²¹ See Ercros' October 6, 2018 Section A Questionnaire Response (Ercros' October 6, 2018 AQR) at Exhibit 1.

²² See section 772(c) of the Act.

²³ See H.R. Doc. No. 316, 103d Cong., 2d Sess. 829-831 (1994).

between the producer and the unaffiliated customer.²⁴ If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act.

Commerce obtained information from Ercros 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. Ercros reported that it made EP sales in the U.S. market through a single distribution channel (*i.e.*, sales to industrial users). Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one level of trade in the U.S. market.

Ercros reported that it made sales in the home market through two channels of distribution (*i.e.*, industrial customers and distributor/retail customers). Ercros made identical arguments in a previous review.²⁵ Consistent with the previous review, we preliminarily find that Ercros performed similar selling activities in the home market for these two distribution channels. Ercros reported that nine of the 17 reported selling activities had identical levels of activity. Of the remaining seven selling activities for which Ercros reported differences in the two channels of distribution, we continue to find that three were provided at essentially the same levels of activity and two can be accounted for as adjustments to NV. Ercros reported that for freight and delivery in the home market, the merchandise is almost always sent by truck with carriage and insurance paid terms, no matter the channel of distribution.²⁶ In addition, Ercros noted that the respective procedures for its quantity rebates and cash discounts do not differ between the two channels of distribution in the home market.²⁷ The two other selling activities that Ercros reported, packing and commissions, can already be accounted for as adjustments to NV.²⁸ Consistent with previous reviews, we preliminarily find that only two of the 16 reported selling activities, order processing and direct sales personnel, differ among the two distribution channels. Thus, we preliminarily find that sales to the industrial and distributor/retail customers in the home market constitute sales at one NV level of trade.

Finally, Commerce compared the EP level of trade to the home market level of trade. Commerce finds that selling activities performed by Ercros for industrial users in the U.S. market and industrial and distributor/retail customers in the home market, are similar. Because Ercros provided virtually the same level of customer support services on its U.S. sales (all of which were EP) as it did on its home market sales, and that the minor differences that do exist do not establish a distinct and separate level of trade, we determine that the EP and the starting price of home market sales represent the same stage in the marketing process, and are, thus, at the same LOT. For this reason, we preliminarily find that a level of trade adjustment is not warranted for Ercros. As there are no CEP sales, no CEP offset is appropriate.

²⁴ See 19 CFR 351.412(c)(2).

²⁵ See *Chlorinated Isocyanurates from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 41367 (July 10, 2013) and accompanying PDM at 9.

²⁶ See Ercros' October 6, 2018 Section AQR at 22.

²⁷ *Id.* at 21.

²⁸ *Id.* at 20-21.

C. Cost of Production Analysis

Pursuant to section 773(b)(2)(A) of the Act, Commerce requires that respondents provide constructed value and COP information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

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 and interest expenses. We examined Ercros' cost data and determined that our quarterly cost methodology is not warranted.²⁹ Therefore, we have applied our standard methodology of using annual average costs based on the reported data.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weight-averaged COP to the home market sales of the foreign like product, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were made at prices less than the COP, we do not disregard below-cost sales of that product because we determine that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's home market sales of a given product are at prices less than the COP, we disregard the below-cost sales because (1) they are 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 of the COPs, they are 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. Accordingly, we determined to disregard certain of Ercros' sales in the determination of NV because (1) 20 percent or more of a given product was sold at prices less than COP, and (2) based on our comparison of prices to weighted-average COP for the POR, they were made at prices that would not permit recovery of all costs within a reasonable period of time.³⁰ We used the remaining home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

²⁹ See Ercros' January 15, 2019 Section D Questionnaire Response at Exhibit D-4.

³⁰ See 773(b)(2)(D) of the Act; *see also* Ercros Analysis Memorandum.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV for Ercros on the reported ex-factory prices to unaffiliated customers in the home market. We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including imputed credit expenses). Where applicable, we added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with home market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in 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.³¹

X. CURRENCY CONVERSION

We made currency conversions in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the official exchange rates published by the Federal Reserve Bank.³²

XI. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

☒

Agree

☐

Disagree

8/8/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

³¹ See 19 CFR 351.411(b).

³² The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.