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Investigation  
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DATE: January 26, 2018

MEMORANDUM TO: P. Lee Smith  
Deputy Assistant Secretary for Policy and Negotiations

FROM: James P. Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination,  
Postponement of Final Determination, and Extension of  
Provisional Measures in the Less-Than-Fair-Value Investigation of  
Low Melt Polyester Staple Fiber from Taiwan

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that low melt polyester staple fiber (low melt PSF) from Taiwan 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 June 27, 2017, Commerce received an antidumping duty (AD) petition covering imports of low melt PSF from Taiwan,<sup>1</sup> which was filed in proper form on behalf of Nan Ya Plastics Corporation, America (the petitioner). Commerce initiated this investigation on July 17, 2017.<sup>2</sup>

In the *Initiation Notice*, Commerce stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>3</sup> Accordingly, on July 21, 2017, Commerce released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding

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<sup>1</sup> See the Petitions for the Imposition of Antidumping Duties on Imports of Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan, dated June 27, 2017 (the Petition).

<sup>2</sup> See *Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 34277 (July 24, 2017) (*Initiation Notice*).

<sup>3</sup> See *Initiation Notice*, 82 FR at 34280.



the data and respondent selection.<sup>4</sup> Commerce did not receive any comments on the CBP data and respondent selection. Commerce determined that there were a large number of exporters or producers and it would not be practicable to individually examine each known exporter or producer. Therefore, on August 7, 2017, Commerce limited the number of respondents selected for individual examination to the two largest producers/exporters of the subject merchandise by volume, Far Eastern New Century Corporation (FENC) and Far Eastern Textile Ltd. (Far Eastern Textile),<sup>5</sup> and issued the AD questionnaire to them the next day.<sup>6</sup>

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation and how it may overlap with the scopes of other proceedings concerning PSF, as well as the opportunity to comment on the appropriate physical characteristics of low melt PSF to be reported in response to Commerce's AD questionnaire.<sup>7</sup> In August 2017, the petitioner and FENC submitted comments regarding the physical characteristics of the subject merchandise to be used for reporting purposes,<sup>8</sup> and the petitioner and Huvis Corporation, a South Korean producer of low melt PSF, filed rebuttal comments.<sup>9</sup> Based on the comments received, Commerce issued a letter to interested parties which contained the product characteristics for this investigation.<sup>10</sup>

On August 17, 2017, the U.S. 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 low melt PSF from Taiwan.<sup>11</sup>

In September 2017, FENC submitted a timely response to sections A through D of Commerce's AD questionnaire, *i.e.*, the sections relating to general information, home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.<sup>12</sup>

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<sup>4</sup> See Commerce's Letter re: Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from Taiwan: Customs Data for Use in Respondent Selection, dated July 21, 2017.

<sup>5</sup> See Memorandum, "Respondent Selection for the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from Taiwan," dated August 7, 2017.

<sup>6</sup> See Commerce's Letter to FENC re: Antidumping Duty Questionnaire, dated August 8, 2017 (FENC AD Questionnaire); and Commerce's Letter to Far Eastern Textile re: Antidumping Duty Questionnaire, dated August 8, 2017. We later determined that Far Eastern Textile is the former name of FENC; thus, we are examining FENC as the sole mandatory respondent in this investigation. For further discussion, *see* the "Respondent Selection" section of this memorandum, below.

<sup>7</sup> See *Initiation Notice*, 82 FR at 34277-78.

<sup>8</sup> See Petitioner's Letter re: Petitioner's Comments on the Hierarchy of Product Matching Characteristics, dated August 10, 2017; and FENC's Letter re: Comments on Product Characteristics, dated August 7, 2017.

<sup>9</sup> See Petitioner's Letter re: Petitioner's Rebuttal Comments on the Hierarchy of Product Matching Characteristics, dated August 15, 2017; and Huvis Corporation's Letter re: Rebuttal Model Match Comments, dated August 15, 2017.

<sup>10</sup> See Commerce's Letter re: Product Characteristics for the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from Taiwan, dated August 21, 2017.

<sup>11</sup> See *Low Melt Polyester Staple Fiber from Korea and Taiwan*, 82 FR 39131 (August 17, 2017). See also Petitioner's Letter re: Submission of ITC Preliminary Report, dated October 26, 2017 (placing the ITC's Preliminary Report on the record of this investigation).

<sup>12</sup> See FENC's September 8, 2017 Section A Questionnaire Response (FENC's September 8, 2017 AQR); FENC's September 25, 2017 Sections B & C Response (FENC's September 25, 2017 BCQR); and FENC's September 28, 2017 Section D Response (FENC's September 28, 2017 DQR).

In October 2017, the petitioner also submitted comments on the scope of this investigation and the potential overlap with other AD proceedings concerning PSF.<sup>13</sup> From October 2017 through December 2017, we issued supplemental questionnaires to FENC. We received responses to these supplemental questionnaires from October 2017 to January 2018.<sup>14</sup>

In November 2017, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based on the request, Commerce published a postponement of the preliminary determination until no later than January 23, 2018.<sup>15</sup> Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary determination of this investigation is now January 26, 2018.<sup>16</sup>

In January 2018, the petitioner and FENC requested that Commerce postpone the final determination, and FENC also requested that provisional measures be extended.<sup>17</sup>

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

### **III. PERIOD OF INVESTIGATION**

The period of investigation (POI) is April 1, 2016, through March 31, 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.<sup>18</sup>

### **IV. SCOPE COMMENTS**

In accordance with the *Preamble* to Commerce's regulations,<sup>19</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope, and we stated

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<sup>13</sup> See Petitioner's Letter re: Petitioner's Comments on Potential Scope Overlap, dated October 5, 2017.

<sup>14</sup> See FENC's October 19, 2017 Supplemental Section A Questionnaire Response (FENC's October 19, 2017 SAQR); FENC's November 2, 2017 Supplemental Sections B and C Questionnaire Response; FENC's November 13, 2017 Supplemental Section D Questionnaire Response; FENC's December 6, 2017 Second Supplemental Sections A-C Questionnaire Response; and FENC's January 2, 2018 Section Supplemental Section D Questionnaire Response.

<sup>15</sup> See *Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 55091 (November 20, 2017).

<sup>16</sup> 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," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

<sup>17</sup> See FENC's Letter, "Low Melt Polyester Staple Fiber (PSF)," dated January 2, 2018; and Petitioner's Letter, "Petitioner's Request Regarding Extension of the Final Determination Deadline," dated January 8, 2018.

<sup>18</sup> See 19 CFR 351.204(b)(1).

<sup>19</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

that all such comments must be filed within 20 calendar days of publication of the *Initiation Notice*.<sup>20</sup> During this period, no interested party commented on the scope of this investigation.

Moreover, in the *Initiation Notice*, we noted that the proposed scope of this investigation overlapped in certain respects with the scope language of the existing AD order on PSF from Taiwan.<sup>21</sup> Specifically, the scope of this investigation covers all bi-component polyester fiber, where one component melts at a lower temperature than the other component; the scope does not limit the two fiber components to any specific configuration. However, at the time of the *Initiation Notice*, the scope of the existing PSF Taiwan AD order only excluded low melt PSF in a “sheath-and-core” configuration.<sup>22</sup> As a result, low melt PSF in other configurations (such as “side-by-side”) was covered by the scopes of both proceedings.

On December 8, 2017, the petitioner requested that Commerce conduct a changed circumstances review (CCR) of the existing PSF Taiwan AD order to exclude all low melt PSF (irrespective of configuration) from the scope.<sup>23</sup> Because Commerce has not yet completed this CCR, we are preliminarily modifying the scope language as it appeared in the *Initiation Notice* to eliminate the overlap in product coverage with the existing PSF Taiwan AD order.<sup>24</sup> See the revised scope in Appendix I of the accompanying *Federal Register* notice.

## V. RESPONDENT SELECTION

As noted above, we initially selected the two largest producers/exporters of the subject merchandise by volume based on CBP data as mandatory respondents in this investigation: FENC and Far Eastern Textile.<sup>25</sup> In its response to the supplemental section A questionnaire, FENC explained that Far Eastern Textile changed its name to FENC in 2009.<sup>26</sup> Accordingly, we preliminarily find that FENC and Far Eastern Textile should be treated as a single respondent for the purposes of this investigation.

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<sup>20</sup> See *Initiation Notice*, 82 FR at 34277-78.

<sup>21</sup> At the time of the *Initiation Notice*, the scope of this LTFV investigation also overlapped with the scope of an ongoing LTFV investigation on fine denier from Taiwan. Because this overlap was subsequently eliminated, it is not necessary to discuss it further here. For further discussion, see *Fine Denier Polyester Staple Fiber from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 668 (January 5, 2018).

<sup>22</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000).

<sup>23</sup> See Memorandum, “Placing the Request for Changed Circumstances Reviews on the Record,” dated January 17, 2018.

<sup>24</sup> We intend to remove this language from the scope if Commerce completes the pending CCR before the date of the final determination in this case.

<sup>25</sup> See Memorandum, “Respondent Selection for the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from Taiwan,” dated August 7, 2017.

<sup>26</sup> See FENC’s October 19, 2017 SAQR at SE-3 to SE-4. In its submission, FENC also noted that it later reregistered the name to prevent misuse by others. FENC owns 100 percent of the newly-registered Far Eastern Textile and stated that this company is not involved in the production or sale of the merchandise under investigation. We intend to examine Far Eastern Textile’s operations during the POI at the verification of FENC.

## VI. DISCUSSION OF THE METHODOLOGY

### Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether FENC's sales of subject merchandise from Taiwan to the United States were made at LTFV, Commerce compared the export price (EP) to the normal value (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 weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (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 recent investigations, 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.<sup>27</sup> Commerce finds 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 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 a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export 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. 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,

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<sup>27</sup> 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).

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 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.<sup>28</sup>

## B) Results of the Differential Pricing Analysis

For FENC, based on the results of the differential pricing analysis, Commerce preliminarily finds that 39.29 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>29</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce 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 those U.S. sales that passed the Cohen's *d* test and the average-to-average method to those sales that did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for FENC, in accordance with 19 CFR 351.414(c)(1) and (d).

## VII. 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, 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.<sup>30</sup>

FENC reported the shipment date as the date of sale for all home market sales and noted that it issues the invoice for the sale on the same date.<sup>31</sup> For its U.S. sales, FENC reported the earlier of the shipment or invoice date as the date of sale.<sup>32</sup> Therefore, we preliminarily followed

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<sup>28</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) recently 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.

<sup>29</sup> See Memorandum, "Preliminary Determination Margin Calculation for Far Eastern New Century Corporation (FENC)" dated January 23, 2018 (Preliminary Analysis Memorandum), at 3.

<sup>30</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>31</sup> See FENC's September 25, 2017 BCQR, at B-17.

<sup>32</sup> See FENC's October 19, 2017 SAQR, at SE-5.

Commerce's long-standing practice of basing the date of sale for all home market and U.S. sales on the earlier of the invoice date or the shipment date.<sup>33</sup>

## VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by FENC in Taiwan 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. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade or CV, as appropriate.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by FENC in the following order of importance: fiber melt point temperature, fiber color, specialty fiber, fiber type, denier range, additives, and cut length.

## IX. 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 the 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.

For all sales made by FENC, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, and marine insurance expenses, in accordance with section 772(c)(2)(A) of the Act. We reclassified certain of FENC's reported U.S. direct selling expenses (*i.e.*, "containerization" expenses) as movement expenses. For further discussion, *see* Preliminary Analysis Memorandum.

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<sup>33</sup> 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 Issues and Decision Memorandum (IDM) at Comment 11; *see also* *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.



## X. NORMAL VALUE

### A) Home 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.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for FENC 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 FENC, 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).<sup>34</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>35</sup> 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,<sup>36</sup> 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.<sup>37</sup> 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 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

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<sup>34</sup> See 19 CFR 351.412(c)(2).

<sup>35</sup> *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 IDM at Comment 7.

<sup>36</sup> 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).

<sup>37</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

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.<sup>38</sup>

In this investigation, we obtained information from FENC regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.<sup>39</sup> Our LOT findings are summarized below.

In the home market, FENC reported that it made sales through one channel of distribution, *i.e.*, sales to end users.<sup>40</sup> According to FENC, it performed the following selling functions for sales to all home market customers: sales forecasting, strategic/economic planning, sales promotion, packing, order input/processing, direct sales personnel, market research, technical assistance, and freight and delivery.<sup>41</sup>

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that FENC performed sales and marketing, freight and delivery, and warranty and technical support for its home market sales. Because we find that there were no differences in selling activities performed by FENC to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for FENC.

With respect to the U.S. market, FENC reported that it made sales through two channels of distribution, *i.e.*, sales to distributors and sales to end users.<sup>42</sup> FENC reported that it performed the following selling functions for sales in both distribution channels: sales forecasting, strategic/economic planning, sales promotion, packing, order input/processing, direct sales personnel, market research, technical assistance, and freight and delivery.<sup>43</sup> In addition, FENC reported that it paid commissions for its U.S. sales to end users.<sup>44</sup>

Based on the selling function categories noted above, we find that FENC performed sales and marketing, freight and delivery, and warranty and technical support for all its reported U.S. sales. According to 19 CFR 351.412(c)(2), 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. Because we determine that substantial differences in

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<sup>38</sup> See, e.g., *OJ from Brazil*, and accompanying IDM at Comment 7.

<sup>39</sup> See FENC's September 8, 2017 AQR, at A-12 to A-16 and Exhibits A-3-a and A-3-c; and FENC's Letter, "Low Melt Polyester Staple Fiber (PSF)," dated January 16, 2018, at Exhibit A-3-c (FENC's Public Selling Function Chart).

<sup>40</sup> See FENC's September 25, 2017 BCQR, at B-24.

<sup>41</sup> See FENC's Public Selling Function Chart.

<sup>42</sup> See FENC's September 25, 2017 BCQR, at C-20.

<sup>43</sup> See FENC's Public Selling Function Chart.

<sup>44</sup> See FENC's September 25, 2017 BCQR, at C-29 to C-30.

FENC's selling activities do not exist between its U.S. channels, we determine that sales to the U.S. market during the POI were made at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions FENC performed for its U.S. and home market customers do not differ significantly. Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT, and, as a result, no LOT adjustment is warranted.

### C) Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP information from FENC. We examined FENC's cost data and determine that our quarterly cost methodology is not warranted, and therefore, we are applying our standard methodology of using annual costs based on FENC's 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 and interest 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 home market sales prices of the foreign like product, 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, discounts, and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

#### 3. 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.

We found that, for certain products, more than 20 percent of FENC'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 calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions for movement expenses, *i.e.*, inland freight expenses and warehouse transport expenses, under section 773(a)(6)(B)(ii) of the Act. We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. We reclassified certain of FENC's reported home market and U.S. direct selling expenses (*i.e.*, "containerization" expenses) as either movement or packing expenses. For further discussion, *see* Preliminary Analysis Memorandum.

For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses and bank charges, and added U.S. direct selling expenses, *i.e.*, commissions, credit expenses, and bank charges. Where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the comparison market.<sup>45</sup>

When comparing U.S. sales with home market sales of similar merchandise, we also adjusted 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.<sup>46</sup>

## XI. 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.

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<sup>45</sup> See 19 CFR 351.410(e).

<sup>46</sup> See 19 CFR 351.411(b).

## **XII. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

1/26/2018

X



Signed by: PRENTISS SMITH

\_\_\_\_\_  
P. Lee Smith  
Deputy Assistant Secretary  
for Policy and Negotiations