




A-583-862
Investigation
Public Document
E&C/Office VII: AC/JJZ

DATE: April 27, 2018

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

FROM: Edward Yang 
Senior Director
Enforcement & Compliance, Office VII

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Polyethylene Terephthalate
Resin from Taiwan

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that polyethylene terephthalate resin (PET resin) 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 accompanying the *Federal Register* notice.

II. BACKGROUND

On September 26, 2017, Commerce received an antidumping duty (AD) petition covering imports of PET resin from Taiwan that was properly filed on behalf of DAK Americas LLC, Indorama Ventures USA, Inc. (Indorama), M&G Polymers USA, LLC, and Nan Ya Plastics Corporation, America (collectively, the petitioners).¹ The petitioners are domestic producers of PET resin.² On September 29, 2017, Commerce requested supplemental information pertaining

¹ See Petitioners’ Letter, “Polyester (*sic*) Terephthalate (PET) Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petition for the Imposition of Antidumping Duties,” dated September 26, 2017 (the petitions).

² See Volume I of the petitions, at 1.

to certain sections of the petitions.³ The petitioners filed a response to our request on October 3, 2017.⁴ Commerce initiated this investigation on October 16, 2017.⁵

On November 13, 2017, the International Trade Commission (ITC) preliminarily determined that there was a reasonable indication that the industry in the United States is materially injured by reason of imports of PET resin from Taiwan.⁶

In the *Initiation Notice*, Commerce stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁷ Commerce released the CBP entry data under administrative protective order on October 18, 2017, and requested comments regarding the data and respondent selection.⁸ No interested party submitted comments on the CBP entry data.

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation as well as the appropriate physical characteristics of PET resin to be reported in response to Commerce's antidumping questionnaire.⁹ Comments and rebuttal comments received concerning the scope of the investigation are discussed below under the section, "Scope Comments." Regarding physical characteristics, we received comments from the petitioners and Far Eastern New Century Corporation.¹⁰ We received rebuttal comments from Novatex Limited and SK Chemicals.¹¹ On November 28, 2017, Commerce finalized the proposed product characteristics, and other information relating to proposed model matching, for the LTFV investigations of PET resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan.¹²

On November 27, 2017, Commerce selected Far Eastern Textile Ltd. (Far Eastern Textile), Shinkong Synthetic Fibers Corporation (Shinkong), and Worldwide Polychem (HK) Limited (WWP) as the mandatory respondents on the basis that they were the three publicly-identifiable

³ See Commerce's Letter, "Petition for the Imposition of Antidumping Duties on Imports of Polyethylene Terephthalate Resin from Taiwan: Supplemental Questions," dated September 29, 2017.

⁴ See Petitioners' Letter, "Polyethylene Terephthalate ("PET") Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petitioners' Amendment to Volume VI Relating to Taiwan Antidumping Duties," dated October 3, 2017.

⁵ See *Polyethylene Terephthalate Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 48977 (October 23, 2017) (*Initiation Notice*).

⁶ See *Polyethylene Terephthalate (PET) Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan; Determinations*, Investigation Nos. 731-TA-1387-1391 (Preliminary), 82 FR 53523 (November 16, 2017).

⁷ See *Initiation Notice*, 82 FR at 48980-48981.

⁸ See Memorandum, "Antidumping Duty Investigation on Polyethylene Terephthalate Resin from Taiwan: Release of Customs and Border Protection Entry Data," dated October 18, 2017.

⁹ See *Initiation Notice* at 48977.

¹⁰ See Petitioners' Letter, "Petitioners' Comments on Product Matching Criteria and Hierarchy of Physical Characteristics," dated November 6, 2017; see also Far Eastern's Letter, "Correction to Product-Matching Comments," dated November 7, 2017.

¹¹ See Memorandum, "Less Than Fair Value Investigation of Polyethylene Terephthalate (PET) Resin from Taiwan: Placing Scope Comments on the Record from the Concurrent PET Resin Investigations," dated April 11, 2018.

¹² See, e.g., Commerce's Letter, Initial Questionnaire for Far Eastern New Century Corporation and Far Eastern Textile Ltd., dated November 28, 2017 at 2.

producers or exporters that account for the largest volume of subject merchandise.¹³ Commerce issued the initial questionnaire to Far Eastern Textile, Shinkong, and WWP on November 28, 2017. In its extension request to the initial questionnaire, Far Eastern Textile informed Commerce that Far Eastern New Century Corporation (Far Eastern) would be responding to the questionnaire on behalf of its subsidiaries, Far Eastern Textile and WWP.¹⁴ Accordingly, Far Eastern and Shinkong timely filed their responses to the initial questionnaire between December 29, 2017, and January 18, 2018.¹⁵

On January 23, 2018, Commerce exercised its discretion to toll deadlines for the closure of the Federal Government from January 20 through 22, 2018.¹⁶ Commerce subsequently fully postponed the deadline for issuing the preliminary determination in this investigation to no later than 190 days after the date on which it initiated this investigation.¹⁷

Commerce issued supplemental questionnaires to Far Eastern and Shinkong between January 19, 2018, and March 21, 2018,¹⁸ with responses timely filed between February 1, 2018 and April 2, 2018.¹⁹

¹³ See Memorandum, “Respondent Selection for the Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Taiwan,” dated November 27, 2017.

¹⁴ See Far Eastern’s Letter, “Investigation of Polyethylene Terephthalate Resin from Taiwan – Extension Request for Responses to Initial Questionnaire,” dated December 13, 2017.

¹⁵ See Far Eastern’s December 29, 2017 Section A Questionnaire Response (Far Eastern December 29, 2017 AQR); see also Shinkong’s December 29, 2017 Section A Questionnaire Response (Shinkong December 29, 2017 AQR); see also Shinkong’s January 16, 2018 Sections B-D Questionnaire Response (Shinkong January 16, 2018 BCDQR); see also Far Eastern’s January 17, 2018 Sections B-C Questionnaire Response (Far Eastern January 17, 2018 BCQR); see also Far Eastern’s January 18, 2018 Section D Questionnaire Response (Far Eastern January 18, 2018 DQR).

¹⁶ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated January 23, 2018.

¹⁷ See *Polyethylene Terephthalate Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 83 FR 7655 (February 22, 2018).

¹⁸ See Commerce’s Letter, “Polyethylene Terephthalate Resin from Taiwan: Shinkong Synthetic Fibers Corporation – Supplemental Questionnaire Section A,” dated January 19, 2018; see also Commerce’s Letter, “Polyethylene Terephthalate Resin from Taiwan: Far Eastern New Century Corporation – Supplemental Questionnaire Section A,” dated January 19, 2018; see also Commerce’s Letter, “Polyethylene Terephthalate Resin from Taiwan: Far Eastern New Century Corporation – Supplemental Questionnaire Sections B and C,” dated February 6, 2018; see also Commerce’s Letter, “Polyethylene Terephthalate Resin from Taiwan: Shinkong Synthetic Fibers Corporation – Supplemental Questionnaire Sections B and C,” dated February 6, 2018; see also Commerce’s Letter, “Antidumping Duty Less Than Fair Value Investigation of Polyethylene Terephthalate Resin from Taiwan,” dated February 8, 2018; see also Commerce’s Letter, “Antidumping Duty Less Than Fair Value Investigation of Polyethylene Terephthalate Resin from Taiwan,” dated February 9, 2018; see also Commerce’s Letter, “Antidumping Duty Less Than Fair Value Investigation of Polyethylene Terephthalate Resin from Taiwan,” dated March 12, 2018; see also Commerce’s Letter, “Polyethylene Terephthalate Resin from Taiwan: Far Eastern New Century Corporation – Second Supplemental Questionnaire Section A,” dated March 16, 2018; see also Commerce’s Letter, “Polyethylene Terephthalate Resin from Taiwan: Shinkong Synthetic Fibers Corporation – Second Round Supplemental Questionnaire,” dated March 21, 2018.

¹⁹ See Far Eastern’s February 1, 2018 Supplemental Section A Questionnaire Response (Far Eastern February 1, 2018 SAQR); see also Shinkong’s February 1, 2018 Supplemental Section A Questionnaire Response (Shinkong February 1, 2018 SAQR); see also Shinkong’s February 16, 2018 Supplemental Sections B and C Questionnaire Response (Shinkong February 16, 2018 SBCQR); see also Far Eastern’s February 21, 2018 Supplemental Sections B and C Questionnaire Response (Far Eastern February 21, 2018 SBCQR); see also Shinkong’s February 27, 2018 Supplemental Section D Questionnaire Response (Shinkong February 27, 2018 SDQR); see also Far Eastern’s

On March 27, 2018, the petitioners filed a critical circumstances allegation and, subsequently, Commerce issued a request for parties to submit quantity and value information.²⁰ Far Eastern and Shinkong submitted quantity and value information related to the critical circumstances allegation on April 3 and 16, 2018.²¹ On April 24, 2018, Commerce preliminarily determined that critical circumstances exist for imports of subject merchandise from Taiwan produced or exported by Far Eastern and “all other” producers/exporters not individually examined.²²

Between April 11, 2018, and April 13, 2018, the petitioners filed pre-preliminary determination comments.²³

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

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2016, through June 30, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petitions, which was September 2017.²⁴

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On April 12, and April 17, 2018, pursuant to 19 CFR 351.210(e), Shinkong and Far Eastern, respectively, requested that Commerce postpone the final determination and that provisional

February 27, 2018 Supplemental Section D Questionnaire Response (Far Eastern February 27, 2018 SDQR); *see also* Shinkong’s March 22, 2018 Second Supplemental Section D Questionnaire Response (Shinkong March 22, 2018 2nd SDQR); *see also* Far Eastern’s April 2, 2018 Second Supplemental Section A Questionnaire Response (Far Eastern April 2, 2018 2nd SAQR); *see also* Shinkong’s April 2, 2018 Second Round Supplemental Questionnaire Response (Shinkong April 2, 2018 2nd SQR).

²⁰ *See* the petitioners’ Letter, “Polyethylene Terephthalate (PET) Resin from Indonesia, Korea, and Taiwan - Critical Circumstances Allegation,” dated March 27, 2018 (Critical Circumstances Allegation); *see also e.g.*, Commerce’s Letter, “Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Taiwan: Request for Quantity and Value Shipment Data,” dated March 27, 2018.

²¹ *See* Far Eastern’s Letter, “Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Taiwan – Monthly Quantity and Value Shipment Data,” dated April 3, 2018; *see also* Shinkong’s Letter, “Polyethylene Terephthalate (PET) Resin from Taiwan: Shipment Data Response,” dated April 3, 2018; *see also* Far Eastern’s Letter, “Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Taiwan – Monthly Quantity and Value Shipment Data,” dated April 16, 2018; *see also* Shinkong’s Letter, “Polyethylene Terephthalate (PET) Resin from Taiwan: Second Shipment Data Response,” dated April 16, 2018.

²² *See Antidumping Duty Investigations on Polyethylene Terephthalate Resin from Indonesia, the Republic of Korea, and Taiwan; Preliminary Determinations of Critical Circumstances*, 83 FR 17791 (April 24, 2018).

²³ *See* the petitioners’ Letter, “Polyethylene Terephthalate (PET) Resin from Taiwan – Petitioners’ Pre-Preliminary Comments for Far Eastern,” dated April 11, 2018 (the petitioners’ Far Eastern Pre-Prelim Comments); *see also* the petitioners’ Letter, “Polyethylene Terephthalate Resin from Taiwan – Petitioners’ Comments Concerning Shinkong Synthetic Fibers Corporation in Advance of the Department’s Preliminary Antidumping Determination,” dated April 13, 2018 (the petitioners’ Shinkong Pre-Prelim Comments).

²⁴ *See* 19 CFR 351.204(b)(1); *see also Initiation Notice*, 82 FR at 48977.

measures be extended to a period not to exceed six months.²⁵ On April 12, 2018, the petitioners also requested that Commerce postpone the final determination.²⁶ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

V. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,²⁷ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).²⁸ We received comments from the Government of Indonesia (GOI) and SK Chemicals, Co., Ltd (SK Chemicals).²⁹ We received rebuttal comments from the petitioners and Novatex Limited (Novatex).³⁰

The GOI argued Commerce should exclude from its investigation producers of PET resin manufactured solely from recycled material.³¹ SK Chemicals argued that Commerce should clarify that the scope of the investigation is identical to the scope of previous PET resin investigations and to the now "retired" HTSUS subheading 3907.60.0030, regardless of the use of new and different HTSUS codes in the description of the scope of the current investigation.³² In particular, Commerce should clarify that the scope is limited to "packaging grade (bottle grade and other)" PET resins and does not include chemically modified PET resins, especially PET resins modified via the addition of cyclohexanedimethanol (CHDM), which results in PET-glycol resins (sometimes referred to as "PETG") and "PET-BR resins."³³ Novatex stated its support for SK Chemicals' arguments in its rebuttal comments.³⁴ In their rebuttal comments, the petitioners stated there was currently no language in the scope description suggesting an intent to

²⁵ See Shinkong's Letter, "Re: Polyethylene Terephthalate (PET) Resin from Taiwan; Request to Extend Final Determination," dated April 12, 2018; *see also* Far Eastern's Letter, "Investigation of Polyethylene Terephthalate Resin from Taiwan — Request for the Department's Final Determination Extension of Deadline," dated April 17, 2018.

²⁶ See Petitioners' Letter, "Polyethylene Terephthalate Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan - Petitioners' Request to Extend the Antidumping Duty Final Determinations," dated April 12, 2018.

²⁷ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

²⁸ See *Initiation Notice*.

²⁹ See the Government of Indonesia's Letter, "Comments on Scope of the Investigation," dated November 6, 2017 (GOI Comments); *see also* SK Chemicals' Letter, "Comments on the Scope of Investigation," dated November 6, 2017 (SK Chemicals Comments).

³⁰ See Petitioners' Letter, "Petitioners' Rebuttal Scope Comments to SK Chemicals," dated November 16, 2017 (Petitioners Rebuttal Comments); *see also* Novatex Limited's Letter, "Novatex's Rebuttal Comments on Product Characteristics and Scope," dated November 16, 2017 (Novatex Rebuttal Comments).

³¹ See GOI Comments at 1.

³² See SK Chemicals Comments at 5-6.

³³ *Id.* at 3 and 9.

³⁴ See Novatex Rebuttal Comments at 4-5.

exclude all PET resins modified by the addition of CHDM,³⁵ but that they would consider proposing a possible exclusion of certain modified PET resins, encompassing PET-glycol resins, but not PET-BR resins.³⁶ The petitioners also rejected arguments that the scope of the investigation should be considered coterminous with CBP's subheading description or that the language of the scope description should be reduced to "generic" terms such as "packaging grade" or "bottle grade," although acknowledging that "packaging end uses comprise a significant majority of end uses for covered PET resin."³⁷

On January 5, 2018, the petitioners submitted their exclusion language, proposing to exclude PET-glycol resins, created through the addition of at least 10 percent, by weight, of CHDM or one of four other modifiers.³⁸ In the same submission, the petitioners argued PET-BR resins should not be excluded, as such products contain only one to five percent CHDM.³⁹ On January 10, 2018, SK Chemicals responded to the petitioners' proposal, stating its agreement with the exclusion language.⁴⁰

Regarding the GOI's comments, the scope language of both the petition and the preliminary determination are already limited to products containing at least 50 percent virgin PET resin. Moreover, none of the selected mandatory respondents have claimed to be producers of 100 percent recycled products. Therefore, no further clarification appears necessary.

Regarding the comments of SK Chemicals, supported by Novatex, as all parties acknowledge,⁴¹ the use of HTSUS subheadings by Commerce is for reference purposes only and the language of the scope description remains dispositive. Therefore, we are not "clarifying" that the scope of this investigation is identical to the description of 3907.60.0030 given by CBP. Furthermore, while we are adopting the petitioners' proposed exclusion language for PET-glycol resins, we are not excluding other PET resins, such as PET-BR, made through the addition of any amount of chemical modifiers. The scope language included in the petition contains no ambiguity suggesting that such an exclusion was intended.

Finally, as noted, we are adopting the petitioners' proposed exclusion language with only certain minor style modifications.

VI. AFFILIATION AND COLLAPSING

Section 771(33) of the Act states, in pertinent part, that Commerce shall consider the following persons to be affiliated:

- (A) Members of a family, including brothers and sisters (whether by whole or by half-blood), spouse, ancestors, and lineal descendants.

³⁵ See Petitioners Rebuttal Comments at 2-3.

³⁶ *Id.* at 7.

³⁷ *Id.* at 3-6.

³⁸ See Petitioners' Letter, "Petitioners' Proposed Scope Exclusion for PET-Glycol," dated January 5, 2018 (Petitioners Proposed Scope Exclusion).

³⁹ *Id.* at 5.

⁴⁰ See SK Chemicals' Letter, "Response to Petitioners' Scope Exclusion Letter," dated January 10, 2018.

⁴¹ See, e.g., SK Chemicals Comments at 2.

- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such person.

Section 771(33) of the Act further states that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”⁴² Commerce’s regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.⁴³

Section 19 CFR 351.401(f) of Commerce’s regulations outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings:

- (1) In general. In an antidumping proceeding under this part, {Commerce} will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors {Commerce} may consider include:
 - (i) The level of common ownership;
 - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
 - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.⁴⁴

Commerce “need not find all of the factors in the regulation present to find a significant

⁴² See 19 CFR 351.102(b)(37).

⁴³ See also *Preamble*, 62 FR at 27298.

⁴⁴ See 19 CFR 351.401(f).

potential for manipulation of price or production.”⁴⁵ Instead, the factors are considered by Commerce in light of the totality of the circumstances, meaning that “no one factor is dispositive in determining whether to collapse the producers.”⁴⁶

Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity, and to determine a single weighted-average dumping margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.⁴⁷ While section 19 CFR 351.401(f) explicitly applies to producers,⁴⁸ Commerce has found it to be instructive in determining whether non-producers should be collapsed, and has used the criteria outlined in the regulation in its analysis.⁴⁹

A. Far Eastern

As set forth below, we preliminarily determine that the following entities are affiliated, pursuant to section 771(33) of the Act: Far Eastern and WWP. Furthermore, based on our evaluation of record evidence, we preliminarily find that Far Eastern and WWP should be treated as a single entity, pursuant to 19 CFR 351.401(f).

As an initial matter, Commerce found Far Eastern to be the successor-in-interest of Far Eastern Textile effective July 8, 2010.⁵⁰ Additionally, Far Eastern submitted a combined questionnaire response for Far Eastern and WWP.⁵¹ In that questionnaire, Far Eastern stated that it is a publicly-traded company whose shares are listed on the Taiwan Stock Exchange.⁵² Far Eastern

⁴⁵ See *United States Steel Corp. v. United States*, 179 F. Supp. 3d 1114, 1139 (CIT 2016); see also *Preamble*, 62 FR at 27346.

⁴⁶ See *Zhaoqing New Zhongya Aluminum Co. v. United States*, 70 F. Supp. 3d 1298, 1304 (CIT 2015) (citation omitted).

⁴⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 5.

⁴⁸ While 19 CFR 351.401(f) uses the term “producers,” Commerce’s practice is to apply this regulation to resellers and other affiliated companies as well. See, e.g., *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996) (citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988)).

⁴⁹ See, e.g., *Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 10, 2012), *unchanged in Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); *Shrimp from Brazil*, 69 FR at 76910, and accompanying Issues and Decision Memorandum at Comment 5. The Court of International Trade (CIT) has held that collapsing exporters is consistent with a “reasonable interpretation of the {antidumping} statute.” See *Hontex Enters. v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004).

⁵⁰ See *Final Results of Changed-Circumstances Antidumping Duty Administrative Review of Polyester Staple Fiber from Taiwan*, 75 FR 39208 (July 8, 2010). Far Eastern reported that a new entity named Far Eastern Textile was created in December 2011 and that the new Far Eastern Textile was not involved in the development, production, sales or distribution of PET resin products during the investigation period. See Far Eastern December 29, 2017 AQR at 10. Far Eastern reported that Far Eastern Textile’s only income during the POI consisted of consulting fees paid by another Far Eastern subsidiary whose main line of business is the production of garments. See Far Eastern February 1, 2018 SQR at 3.

⁵¹ See Far Eastern December 29, 2017 AQR at 1.

⁵² *Id.* at 10.

further explained that WWP is a wholly-owned subsidiary of Far Eastern.⁵³ WWP is a corporation established in Hong Kong that serves as an intermediary for some of Far Eastern's export sales of PET resin and other products.⁵⁴ Although WWP was not involved in the production of PET resin, it was involved in certain of Far Eastern's sales of PET resin to the United States during the period.⁵⁵ Specifically, Far Eastern reported that WWP purchased PET resin from Far Eastern, took title to the merchandise, and then invoiced the final unaffiliated customers for some of Far Eastern's U.S. sales during the investigation period. Further, Far Eastern reported that all of WWP's functions are actually performed by Far Eastern employees, as WWP does not have any employees or facilities.⁵⁶

On the basis that Far Eastern owns and directly controls WWP, we find that, under section 771(33)(F) of the Act, these companies are affiliated and should be treated as a single entity for antidumping purposes pursuant to 19 CFR 351.401(f). As described above, this finding is based on: 1) the fact that Far Eastern wholly owns WWP, and thus both are under common ownership; 2) the fact that Far Eastern exercises complete control over its wholly-owned subsidiary WWP; and 3) the level of intertwined operations⁵⁷ between Far Eastern and WWP. In particular, the significant amount of transactions of the subject merchandise that were sold between Far Eastern and WWP during the POI, the same Far Eastern staff and office conducted the sales of subject merchandise for both Far Eastern and WWP, through the sharing of sales information, involvement in the production and pricing decisions, etc. Therefore, we preliminarily find that there is a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f)(2).

B. Shinkong

As set forth below, we preliminarily determine that the following entities are affiliated, pursuant to section 771(33) of the Act: Shinkong, Shinkong Materials Technology Corporation (SMTC), and Pan Asian Plastics Corp. (Pan Asian).

Shinkong is a publicly traded company, whose shares are traded on the Taiwan Stock Exchange.⁵⁸ Pan Asian is a wholly-owned subsidiary of Shinkong.⁵⁹ Shinkong directly owns 80.07% of SMTC, and indirectly owns a further 4.95% of SMTC.⁶⁰ Shinkong reported that Pan Asian purchased PET resin from Shinkong to produce PET bottles, PET Sheet, and PET preforms, "but Pan Asian itself is not engaged in the development, production, sale, or

⁵³ *Id.* at 1.

⁵⁴ *Id.* at 10.

⁵⁵ *Id.* at 1.

⁵⁶ *Id.*

⁵⁷ *Id.* at 1 and 10.

⁵⁸ See Shinkong December 27, 2017 AQR at 6-7.

⁵⁹ *Id.* at Exhibit 4; see also Shinkong February 1, 2018 SAQR at Exhibit 2.

⁶⁰ See Shinkong December 27, 2017 AQR at Exhibit 4; see also Shinkong February 1, 2018 SAQR at Exhibit 2.

distribution of the merchandise under consideration.”⁶¹ Further, Shinkong reports that “SMTC itself is not engaged in the production or sale of the merchandise under consideration.”⁶²

On the basis that Shinkong owns and directly controls Pan Asian and SMTC, we find that Pan Asian and SMTC meet the definition of affiliated under section 771(33)(E) and (F) of the Act. However, we have preliminarily determined not to treat Shinkong, Pan Asian and SMTC as a single entity pursuant to 19 CFR 351.401(f) because Shinkong “does not have any affiliate which has the ability to produce the merchandise under consideration without substantial retooling of its facilities.”⁶³

VII. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Far Eastern’s and Shinkong’s sales of subject merchandise were made at less than NV, Commerce compared the export prices (EP) and constructed export prices (CEP), as appropriate, to the NV, as described in the “Export Price and Constructed Export Price” and “Normal Value” sections of this memorandum.

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 or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method or A-to-T 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” (DP) analysis for determining whether application of the A-to-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁶⁴ Commerce finds that the DP 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

⁶¹ See Shinkong February 1, 2018 SAQR at 4.

⁶² *Id.* at 5; for the business proprietary discussion of Shinkong’s affiliates, see Memorandum, “Antidumping Duty Investigation of Polyethylene Terephthalate Resin from Taiwan: Preliminary Determination Margin Calculation for Shinkong Synthetic Fibers Corporation,” dated concurrently with this memorandum (Shinkong Preliminary Analysis Memorandum).

⁶³ See Shinkong February 1, 2018 SAQR at 7.

⁶⁴ 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).

proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-to-A method in calculating a respondent's weighted-average dumping margin.

The DP 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 DP analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes reported by Far Eastern and Shinkong. Regions are defined using the reported destination codes (*i.e.*, zip codes) 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 being examined 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 any characteristics of the 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 DP 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 means (*i.e.*, weighted-average price) of a test group and 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 a 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 (*i.e.*, 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 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 were 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 A-to-T method to all sales as an alternative to the A-to-A 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 A-to-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-to-A method, and application of the A-to-A 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 A-to-A 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 DP analysis, Commerce examines whether using only the A-to-A 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 A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A 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 A-to-A method and the appropriate alternative method where both rates 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 DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For Far Eastern, based on the results of the differential pricing analysis, Commerce preliminarily finds that 59.76 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce finds that the A-to-A method appropriately accounts for such differences because there is not a meaningful difference in the weighted-average dumping margins calculated for Far Eastern when calculated using the A-to-A method and the A-to-T method applied to all U.S. sales. Accordingly, Commerce has preliminarily determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin Far Eastern.⁶⁵

Based on the results of the DP analysis, Commerce preliminarily finds that 98.30 percent of Shinkong's U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differs significantly among purchasers, regions or time periods. Further, Commerce finds that the A-to-A method appropriately accounts for such differences because there is not a meaningful difference in the weighted-average dumping margins calculated for Shinkong when calculated using the A-to-A method and the A-to-T method applied to all U.S. sales.

⁶⁵ See Memorandum, "Antidumping Duty Investigation of Polyethylene Terephthalate Resin from Taiwan: Far Eastern New Century Corporation Preliminary Determination Analysis," dated concurrently with this memorandum (Far Eastern Preliminary Analysis Memorandum).

Accordingly, Commerce has preliminarily determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for Shinkong.⁶⁶

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in Taiwan during the POI that fit the description in the “Scope of Investigation” section of the accompanying 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.

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristics reported by the respondents in the following order of importance: intrinsic viscosity, blend, copolymer/homopolymer, additives, and acetaldehyde content.

IX. DATE OF SALE

Section 351.401(i) of Commerce’s regulations states that, in identifying the date of sale of the merchandise under consideration of foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁶⁷ Further, 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.⁶⁸

Far Eastern

Far Eastern reported the date of shipment as the date of sale for all U.S. and home-market sales. For U.S. sales for which the merchandise was stored in a U.S. warehouse in WWP inventory in the United States pending the customer’s release instructions, the date of shipment from U.S. warehouse has been reported as the date of sale. For all other sales, the date of shipment from

⁶⁶ See Shinkong Preliminary Analysis Memorandum.

⁶⁷ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied Tube & Conduit Corp.*) (“As elaborated by Commerce practice, a date other than invoice date ‘better reflects’ the date when ‘material terms of sales are established if the party shows that the ‘material terms of sale’ undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date”).

⁶⁸ 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 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 Issues and Decision Memorandum, at Comment 2.

Far Eastern's factory has been reported as the date of sale.⁶⁹ We have reviewed the information submitted by Far Eastern and preliminarily determine that the reported date of sale (*i.e.*, shipment date) always precedes invoice date. Therefore, consistent with our practice, Commerce has relied on shipment date as the date of sale in both markets for purposes of this preliminary determination.⁷⁰

Shinkong

Shinkong reported invoice date as the date of sale in its sales databases.⁷¹ We have reviewed the information submitted by Shinkong and preliminarily determine that the invoice date kept in Shinkong's normal books and records, the reported date of sale, is indicative of the date on which the exporter or producer established the material terms of sale. Therefore, consistent with our practice, Commerce has relied on invoice date as the date of sale in each market for the purposes of this preliminary determination.⁷²

X. EXPORT PRICE AND 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)." Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." In accordance with section 772(a) of the Act, we based the U.S. price on the EP or CEP, as appropriate, for Far Eastern and based the U.S. price on the EP for Shinkong.

Far Eastern

Far Eastern reported having both EP and CEP sales during the POI. With respect to EP and CEP, the prices were calculated based on the sales price to unaffiliated purchases in the U.S. We made deductions, where applicable, for any movement expenses (*e.g.*, freight, warehouse fees, brokerage and handling, bank charges, and U.S. duties), in accordance with section 772(c)(2)(A) of the Act.⁷³ We made certain reclassifications of Far Eastern's sales channels for sales in the United States. Specifically, for Far Eastern's Channel 1B sales that were reported as EP sales, we preliminarily treated these sales as CEP sales, pursuant to Section 772(b) of the Act, because the record shows that Far Eastern made these sales through its affiliate WWP and then WWP sold the subject merchandise to unaffiliated customers. For Far Eastern's Channel 2C sales that were reported as CEP sales, we preliminarily treated these sales as EP sales, pursuant to Section

⁶⁹ See Far Eastern December 29, 2017 AQR at 24.

⁷⁰ See Far Eastern Preliminary Analysis Memorandum.

⁷¹ See Shinkong's December 29, 2017 AQR at 21; *see also* Shinkong's February 16, 2018 SBCQR at 13.

⁷² See Shinkong Preliminary Analysis Memorandum.

⁷³ See Far Eastern Preliminary Analysis Memorandum.

772(a) of the Act, because the record shows that Far Eastern made these sales directly to unaffiliated customers prior to importation of the subject merchandise.⁷⁴ Moreover, we preliminarily find that Far Eastern provided us with the necessary information to make such a determination.

Further, for Far Eastern's CEP sales through WWP, in accordance with section 772(d)(1) and (3) of the Act and 19 CFR 351.402(b), we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct and indirect selling expenses, along with the profit allocated to these expenses. Finally, we made an adjustment to the calculation of interest expenses related to these expenses in accordance with section 772(d)(3) of the Act.⁷⁵

Shinkong

Shinkong reported having only EP sales during the POI. Commerce preliminarily determines that these sales are EP sales because, consistent to section 772(a) of the Act, Shinkong sells the subject merchandise directly to unaffiliated customers prior to importation of the subject merchandise.⁷⁶ Accordingly, we calculated EP based on the sales price to unaffiliated purchasers in the United States. We made deductions from the starting price, where applicable, for any movement expenses (*e.g.*, freight, warehouse fees, brokerage and handling, inspection fees, survey fees, stowage, port charges, bank charges, export taxes), in accordance with section 772(c)(2)(A) of the Act.⁷⁷

XI. NORMAL VALUE

Section 773(a)(1)(B)(i) of the Act defines NV as “the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price.” Alternatively, section 773(a)(1)(B)(ii) of the Act provides that NV may be based on “the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States” when the foreign like product is not sold (or offered for sale) for consumption in the exporting country.⁷⁸ Section 773(a)(4) of the Act provides that if Commerce determines that NV cannot be determined under section 773(a)(1)(B)(i), “then, notwithstanding section 773(a)(1)(B)(ii),” NV may be based on CV under section 773(e) of the Act.

A. Home Market Viability

Where there are home market sales, Commerce normally evaluates whether a sufficient volume of sales of the foreign like product exists in the home market to serve as a viable basis for

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See Shinkong December 29, 2017 AQR at Exhibit 7.

⁷⁷ See Shinkong Preliminary Analysis Memorandum.

⁷⁸ See section 773(a)(1)(C) of the Act.

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), in accordance with section 773(a)(1)(C) of the Act. When sales in the home market are not viable, section 773(a)(1)(B)(ii) of the Act provides that sales to a third-country market may be utilized if: (1) the prices in such market are representative; (2) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (3) Commerce does not determine that a PMS prevents a proper comparison with the U.S. price.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent 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 Far Eastern and Shinkong, in accordance with section 773(a)(1)(B) of the Act.

B. Affiliated-Party Transactions and Arm's-Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁷⁹ Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin calculation analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, Commerce "may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's-length."⁸⁰

Far Eastern reported that it did not make any sales of the foreign like product to affiliates during the POI.⁸¹ Shinkong reported that it made sales of PET resin in the home market to affiliated parties, as defined in section 771(33) of the Act.⁸² Consequently, we tested Shinkong's sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). In addition to comparing sales at the same level of trade, the test adjusts affiliated and unaffiliated party prices for numerous differences relating to the sales. The adjustments account for, among other things, differences in packing expenses, movement expenses from the original place of shipment, discounts and rebates, and selling expenses that relate directly to the sale at issue. While Commerce's questionnaire specifically requests information pertaining to a number of adjustments, it also allows for responding companies to claim additional adjustments for other expenses relating to the sales at issue. Thus, provided that a respondent has accurately reported its claimed differences in circumstances of sale, along with other expenses and price adjustments relating to the reported sales, the arm's-length test will account for such differences between sales to affiliates and non-affiliates. Pursuant to 19 CFR 351.403(c) and, in accordance with

⁷⁹ See 19 CFR 351.403(c).

⁸⁰ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

⁸¹ See Far Eastern January 16, 2018 BCQR at B, page 10.

⁸² See Shinkong January 16, 2018 BCDQR at B, page 6.

Commerce's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.⁸³

C. 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).⁸⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁸⁵ 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,⁸⁶ we consider the starting prices before any adjustments. When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP 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 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.⁸⁷

In this investigation, we obtained information from Far Eastern and Shinkong regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution.⁸⁸ Our LOT findings are summarized below.

⁸³ See section 771(15) of the Act and 19 CFR 351.102(b).

⁸⁴ See 19 CFR 351.412(c)(2).

⁸⁵ *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), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

⁸⁶ 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).

⁸⁷ See *OJ from Brazil* at Comment 7.

⁸⁸ See Far Eastern December 29, 2017 AQR at 16-20 and Exhibit A-3-a; see also Shinkong December 29, 2017 AQR at Exhibit 8.

Far Eastern

In the home market, Far Eastern reported that it made sales through one channel of distribution, *i.e.*, direct sales to unaffiliated end-user or distributor customers.⁸⁹ According to Far Eastern, it usually performed the following selling functions for sales to all home market customers: freight (from the manufacturing facility or warehouse to the customer's site), packing of the subject merchandise at the manufacturing facility, technical assistance, and offering of rebates and warranty services.⁹⁰

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 there were no significant differences in selling activities performed by Far Eastern to sell to its home market customers. Thus, we preliminarily determine that there is one LOT in the home market for Far Eastern.

With respect to the U.S. market, Far Eastern reported that it made sales through two channels of distribution, *i.e.* direct sales to unaffiliated customers, and transactions in which the merchandise was shipped by Far Eastern to a U.S. storage warehouse before the U.S. customer requested that the merchandise be released.⁹¹ For the shipment to a U.S. storage warehouse, WWP and its unaffiliated subcontractor took title to the subject merchandise, acted as importer of record, and arranged for warehousing and delivery to the unaffiliated customers.⁹² Far Eastern reported that it performed the following selling functions for sales to U.S. customers: sales forecasting/planning, order input/processing, packing of the subject merchandise at the manufacturing facility, technical assistance, and offering of freight and delivery.⁹³ Even though the U.S. market reported two different channels of distribution, we find that differing channels of distribution, alone, do not qualify as separate LOTs because the selling functions performed for each customer class are sufficiently similar.⁹⁴ As such, we preliminarily determine that there is one LOT in the U.S. market for Far Eastern.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Far Eastern performed for its U.S. and home market customers are almost identical in all respects except for minor differences. Specifically, Far Eastern reported no sales activities or services in all of the following categories for both home and U.S. market: personnel training/exchange, engineering services, advertising, distributor/dealer training, procurement/sourcing services, sales/marketing support, market research, provision of cash discounts, provision of guarantees, provision of after-sales services, repacking, and provision of post-sale warehousing.⁹⁵ We found that Far Eastern's selling functions which were provided to customers in the reported channels of distribution in the home market and U.S. market were virtually the same. Thus, we determined that there is only one LOT for Far Eastern's sales to all

⁸⁹ See Far Eastern December 29, 2017 AQR at 16.

⁹⁰ *Id.* at Exhibit A-3-c.

⁹¹ *Id.* at 16.

⁹² *Id.* at 10.

⁹³ *Id.* at Exhibit A-3-c.

⁹⁴ See 19 CFR 351.412(c)(2).

⁹⁵ *Id.*

markets. 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.

Shinkong

In the home market, Shinkong reported that it made sales through a single channel of distribution, *i.e.*, direct sales to unaffiliated and affiliated customers.⁹⁶ According to Shinkong, it usually performed the following selling functions for sales to all home market customers: sales forecasting, strategic planning, personnel training, inventory maintenance, order input/processing, direct sales personnel, sales marketing, market research, freight (from the manufacturing facility to the customer's site), and packing of the cargo at the manufacturing facility.⁹⁷

With respect to the U.S. market, Shinkong reported that it made sales through one channel of distribution, *i.e.*, direct sales to unaffiliated customers on various terms.⁹⁸ Shinkong reported that it performed the following selling functions for sales to U.S. customers: sales forecasting, strategic planning, personnel training, order input/processing, direct sales personnel, sales marketing, market research, commissions, freight (from the manufacturing facility to the seaport), and packing of the cargo at the manufacturing facility.⁹⁹

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Shinkong performed for its U.S. and home market customers were identical in almost all respects, except for the minor differences explained above. Further, Shinkong reported no sales activities or services in the following categories for both home and U.S. market: engineering services, advertising, sales promotion, distributor/dealer training, procurement/sourcing services, technical assistance, provision of rebates, provision of cash discounts, warranty, provision of guarantees, provision of after-sales services, and repacking.¹⁰⁰ We found that Shinkong's selling functions provided to customers in the reported channel of distribution in the home market and the reported channel of distribution in the U.S. market were virtually the same. 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.

D. Cost of Production (COP) Analysis

Section 773(b)(2)(A)(ii) of the Act requires Commerce to request constructed value and cost of production information from respondent companies in all AD proceedings.¹⁰¹ Accordingly, Commerce requested this information from Far Eastern and Shinkong. We examined Far Eastern's and Shinkong's cost data and determined that our quarterly cost methodology is not

⁹⁶ See Shinkong December 29, 2017 AQR at Exhibit 7.

⁹⁷ See Shinkong February 1, 2018 SAQR at Exhibit 11.

⁹⁸ See Shinkong December 29, 2017 AQR at Exhibit 7.

⁹⁹ See Shinkong February 1, 2018 SAQR at Exhibit 11.

¹⁰⁰ *Id.*

¹⁰¹ See Section 773(b)(2)(A)(ii) of the Act.

warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.¹⁰² We preliminarily determine that Far Eastern and Shinkong made sales in the home market during the POI that were below their respective COPs.

1. 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.¹⁰³

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

Far Eastern

We revised the total per-unit costs submitted for blended products to segregate fixed and variable overhead costs.

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 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, 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.

¹⁰² See, e.g., Far Eastern January 18, 2018 DQR; Shinkong January 16, 2018 BCDQR at D.

¹⁰³ See Section 773(b)(3) of the Act.

We found that, for certain products, more than 20 percent of Far Eastern and Shinkong's home market sales 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.¹⁰⁴ 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.

E. Calculation of NV Based on Comparison Market Prices

Far Eastern

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight where appropriate under section 773(a)(6)(B)(ii) of the Act.

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. 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 added U.S. direct selling expenses, (*i.e.*, credit expenses and bank charges) and U.S. commissions.

When comparing U.S. sales with home market sales of similar 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.¹⁰⁵

Shinkong

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act.

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. 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 added U.S. direct selling expenses, (*i.e.*, credit expenses and bank charges) and U.S. commissions. In accordance with 19 CFR 351.401(e), we made a commission offset by deducting indirect selling expenses incurred in the home market up to the amount of the reported U.S. commission.

¹⁰⁴ See Far Eastern Preliminary Analysis Memorandum; see also Shinkong Preliminary Analysis Memorandum.

¹⁰⁵ See Far Eastern Preliminary Analysis Memorandum.

When comparing U.S. sales with home market sales of similar 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.¹⁰⁶

XII. CURRENCY CONVERSION

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

XIII. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify Far Eastern's and Shinkong's information relied upon in making our final determination.

XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

☐

Agree

Disagree

4/27/2018

X

James Maeder

Signed by: JAMES MAEDER

James Maeder

Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

¹⁰⁶ See 19 CFR 351.411(b).