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

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review and Preliminary Determination of No
Shipments: Polyethylene Terephthalate Film, Sheet, and Strip
from Taiwan; 2016-2017

I. Summary

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Taiwan. This review covers two respondents Nan Ya Plastics Corporation (Nan Ya) and Shinkong Materials Technology Corporation (SMTC). The period of review (POR) is July 1, 2016, through June 30, 2017. We preliminarily find that Nan Ya did not sell PET film in the United States below normal value (NV). We also preliminarily find that SMTC had no reviewable sales during the POR.

If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we will issue the final results no later than 120 days after the publication of these preliminary results.



II. Background

In July 2002, Commerce published in the *Federal Register* an antidumping duty order on PET film from Taiwan.¹ Subsequently, on July 3, 2017, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the antidumping duty order on PET film from Taiwan for the period July 1, 2016, through June 30, 2017.² In July 2017, in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(b)(1), the petitioners³ and Polyplex USA LLC (Polyplex USA), a domestic producer and interested party,⁴ requested reviews of Nan Ya and SMTC. Nan Ya also requested a review of its sales.⁵ On September 13, 2017, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation of administrative review of the antidumping duty order on PET Film from Taiwan.⁶

SMTC submitted a letter stating that it did not make any sales or shipments during the POR.⁷ Commerce issued the initial AD duty questionnaire to Nan Ya on October 11, 2017. Nan Ya submitted a timely response.⁸ On January 23, 2018, Commerce exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through January 22, 2018. As a result, all of the deadlines in this segment of the proceeding have been extended by three days.⁹

On March 22, 2018, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce extended the due date for the preliminary results by an additional 60 days (from April 5, 2018) to June 4, 2018.¹⁰ On June 1, 2018, in accordance with section

¹ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR 44174 (July 1, 2002).

² See *Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 30833 (July 3, 2017).

³ DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (the petitioners). See Letter from DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (the petitioners), re: Request for Antidumping Duty Administrative Review, dated July 31, 2017.

⁴ See Letter from Polyplex USA LLC re: Request for Antidumping Duty Administrative Review, dated July 31, 2017. On December 12, 2017, Polyplex USA timely withdrew its review request for Nan Ya and SMTC. See Letter from Polyplex USA LLC re: Polyethylene Terephthalate (PET) Film, Sheet and Strip from Taiwan: Request for Withdraw of Antidumping Duty Administrative Review,” dated December 12, 2017.

⁵ See Letter from Nan Ya Plastics Corporation, RE Polyethylene Terephthalate (PET) Film from Taiwan, dated July 31, 2017.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974 (September 13, 2017).

⁷ See Letter to Commerce from SMTC, “Polyethylene Terephthalate Film from Taiwan; No Shipment Certification,” dated October 11, 2017 (SMTC No Shipment Certification Letter). For more information, see the “Preliminary Finding of No Shipments for SMTC” below.

⁸ See Nan Ya’s November 6, 2017 Section A Questionnaire Response (Nan Ya’s November 6, 2017 AQR); Nan Ya’s December 12, 2017 Section B-D Questionnaire Responses (Nan Ya’s December 12, 2017 Section B-D Questionnaire Responses).

⁹ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government” (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

¹⁰ See Memorandum “Polyethylene Terephthalate Film, Sheet and Strip from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review – 2015-2016,” dated March 22, 2018.

751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce extended the due date for the preliminary results by an additional 60 days to August 3, 2018.¹¹

III. Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

IV. Preliminary Finding of No Shipments for SMTC

As noted above, SMTC submitted a letter stating that it did not make any sales or shipments during the POR.¹² On December 14, 2017, Commerce placed Customs and Border Protection (CBP) entry packages on the record.¹³ On April 25, 2018, we sent CBP a no shipment inquiry.¹⁴ On May 24, 2018, CBP responded to our no shipment inquiry.¹⁵ On May 17, 2018, Commerce placed a memorandum on the record to all interested parties “providing an opportunity for interested parties to comment on these entry packages from CBP.”¹⁶ On May 23, 2018, SMTC submitted comments on the CBP Entry Packages.¹⁷

In its May 23, 2018, comments, SMTC stated that neither it nor Shinkong Synthetic Fibers Corporation (SSFC), SMTC’s parent company, sold subject merchandise directly to the United States and that they did not sell subject merchandise in the domestic or third country markets, which they knew to be destined for the U.S. market.¹⁸ Information that SMTC placed on the record of this review supports its claims.¹⁹

On this basis, Commerce preliminarily finds that SMTC’s claim of no shipments or entries of subject merchandise is substantiated. Based upon the certifications and the evidence on the record, we are satisfied that SMTC did not have any shipments of subject merchandise to the

¹¹ See Memorandum “Polyethylene Terephthalate Film from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review (2016-2017),” dated June 1, 2018.

¹² See SMTC No Shipment Letter.

¹³ See Memorandum to All Interested Parties, dated December 14, 2017, regarding “Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip from Taiwan: U.S. Customs Entries.”

¹⁴ See Memorandum to the File, “RE: No shipment inquiry with respect to the company below during the period 07/01/2016 through 06/30/2017,” dated May 29, 2018.

¹⁵ *Id.*

¹⁶ See Memorandum to All Interested Parties, dated May 17, 2018.

¹⁷ See Letter to Commerce from SMTC, “Polyethylene Terephthalate Film from Taiwan: Comments on CBP Entry Packages,” dated May 23, 2018.

¹⁸ *Id.*; see also Memorandum on Public Treatment of SSFC, July 16, 2018.

¹⁹ See Memorandum to the File from Jacqueline Arrowsmith, “Analysis of Shinkong Materials Technology Corporation (SMTC)’s May 23, 2018, Comments on CBP Entry Packages to Corroborate SMTC’s No Shipments Claim,” dated concurrently with the Preliminary Results.

United States during the POR and, as such, we preliminarily determine that SMTC had no shipments during the POR. (The details of our analysis of the entry packages and SMTC's comments are proprietary.)²⁰ Consistent with our automatic assessment regulation, we find it appropriate to instruct CBP to liquidate any existing entries of merchandise produced by SMTC and exported by any other parties at the all others rate should we continue to find in our final results that it had no shipments of subject merchandise from Taiwan.²¹

V. Product Comparisons

In accordance with section 771(16) of the Act, we compared Nan Ya's prices for products sold in the U.S. market with prices for products sold in the home market which were either identical or most similar in terms of the physical characteristics. In the order of importance, these physical characteristics are grade, specification, thickness, thickness category, and surface treatment. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product based on the characteristics listed above.

VI. Comparisons to Normal Value

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

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(b) and (c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEP)) (the average-to-average 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 to the EP or CEP of individual U.S. sales (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping duty investigations.²²

In recent proceedings, Commerce applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation

²⁰ *Id.*

²¹ See, e.g., Brass Sheet and Strip from Germany: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014, 80 FR 61369 (October 13, 2015).

²² See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1; see also *CP Kelco Oy v. United States*, 978 F. Supp. 2d 1315, 1324 (CIT 2014).

pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act. Commerce finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.²³ Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods.²⁴ 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 differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For the respondent, purchasers are based on the reported customer codes for Nan Ya. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce uses in making comparisons between 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference

²³ See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3; see also *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014), and accompanying Issues and Decision Memorandum at Comment 2.

²⁴ See *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and the accompanying Issues and Decision Memorandum at Comment 3; and *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and the accompanying Issues and Decision Memorandum at Comment 3.

was considered significant, and the sales in the test group were found to have passed the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

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

B. Results of the Differential Pricing Analysis

For Nan Ya, based on the results of the differential pricing analysis, Commerce preliminarily finds that the value of all U.S. sales passing the Cohen's *d* test is 30.74 percent, and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods.²⁵ Thus, the results of the Cohen's *d* and ratio tests do not

²⁵ See Commerce Memorandum, "Analysis Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Nan Ya Plastics Corporation (Nan Ya), dated concurrently with this memorandum (Nan Ya Prelim Analysis Memorandum) at 3.

support consideration of an alternative to the average-to-average method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Nan Ya.²⁶

C. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, under that regulation, 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.²⁷ In addition, Commerce's long-standing practice is to rely on shipment date where it precedes invoice date as the date of sale.²⁸ Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale in both markets, in accordance with our practice.²⁹

In the instant review, as in the most recently completed review, Nan Ya reported the date of shipment from the factory (what Nan Ya refers to as the delivery note date) as the date of sale for both its home market and U.S. sales.³⁰ Our review of information on the record indicates that in the home market, Nan Ya issues its invoice on the same day that it ships the merchandise.³¹ Therefore, pursuant to 19 CFR 351.401(i) we are preliminarily using invoice date as the date of sale in the home market.

However, for the U.S. market, Nan Ya reported that it issued the commercial invoice after shipment of the merchandise.³² Our analysis of information on the record indicates that Nan Ya issues its commercial invoice after it ships the subject merchandise. Therefore, consistent with Commerce's regulation 19 CFR 351.401(i) and the Department's practice as noted above, we have preliminarily used the shipment date as the date of sale for Nan Ya's U.S. sales.³³

²⁶ See Nan Ya Prelim Analysis Memorandum at 3.

²⁷ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

²⁸ See, e.g., *Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015) (*Copper Pipe and Tube From Mexico*), and accompanying Issues and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

²⁹ *Id.*

³⁰ See *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 36122 (August 3, 2017), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 6162 (February 13, 2018).

³¹ See Nan Ya's Section A QR dated November 6, 2017 at 15, "Nan Ya issues an invoice in the form of a Government Uniform Invoice ("GUI") at the time of shipment."

³² See Nan Ya's Section C QR dated December 12, 2017 at C-10.

³³ See also, e.g., *Non-Oriented Electrical Steel From the Republic of Korea: Preliminary Affirmative Determination*

D. Export Price

For sales to the United States, we calculated Nan Ya's EP in accordance with section 772(a) of the Act because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States. We calculated EP based on packed prices to customers in the United States. We made deductions from U.S. price for domestic inland freight from plant to port of exportation, various brokerage and handling charges incurred in the country of manufacture and the United States, trade promotion fee, and marine insurance, in accordance with section 772(c)(2)(A) of the Act.³⁴

E. Normal Value

1. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales of PET film in the home market to serve as a viable basis for calculating NV, Commerce compared the volume of Nan Ya's home market sales of the foreign like product to their volume of U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Pursuant to section 773(a)(1)(B) of the Act, because its aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison purposes for Nan Ya.³⁵

2. Level of Trade

In accordance with section 773(a)(1)(B) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act,³⁶ to the extent practicable, Commerce determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value (CV), the starting price of the sales from which we derive the adjustments to CV for selling expenses and profit. For EP sales, the U.S. LOT is based on the starting price of the sales in the U.S. market, which is usually from the exporter to the importer.

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

of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 29426 (May 22, 2014) and accompanying Decision Memorandum at 16, unchanged at *Non-Oriented Electrical Steel From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 61612 (October 14, 2014) ("As the information on the record indicates that the material terms of sale...could change until the date of shipment or invoice, where applicable, for both U.S. and comparison market sales, for purposes of this preliminary determination, we used the date of shipment (if earlier than the date of invoice) or the date of invoice as the date of sale for POSCO's reported U.S. and comparison market sales.")

³⁴ See Nan Ya Prelim Analysis Memorandum.

³⁵ See Nan Ya's Section A QR dated November 6, 2017 at A-3 and NY-Exhibit A-1.a-1.

³⁶ See H.R. Doc. No. 316, 103d Cong., 2d Sess. 829-831 (1994).

producer and the unaffiliated customer.³⁷ If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Nan Ya reported that it sold to end-users and distributors in its home market, and that most of its selling functions were performed at the same or similar levels of intensity in both channels of distribution.³⁸ Because the selling activities to Nan Ya's customers did not vary for sales in the home market through its two channels of distribution, we preliminarily determine that there is one LOT in the home market. Similarly, Nan Ya reported two channels of distribution in the U.S. market for sales made to importers and end user. However, the selling functions performed in both these reported channels were at the same or similar levels of intensity, and therefore, we preliminarily determine that there is one LOT in the U.S. market.³⁹

Nan Ya also provided Commerce with information on its selling activities in the home and U.S. markets.⁴⁰ We find that Nan Ya provided mostly similar level of customer support services on their U.S. sales (all of which were EP) as it did on its home market sales, and that the minor differences that do exist do not establish a distinct and separate LOT. Thus, we determine that for Nan Ya, the EP and the starting price of home market sales represent the same stage in the marketing process, and are, thus, at the same LOT. For this reason, we preliminarily find that an LOT adjustment for Nan Ya is not warranted. As there are no CEP sales, no CEP offset is appropriate.

3. Cost of Production Analysis

The Trade Preferences Extension Act of 2015 (TPEA) requires Commerce to request constructed value (CV) and cost of production (COP) information from respondent companies in all AD proceedings.⁴¹ Accordingly, Commerce requested this information from Nan Ya.⁴² We preliminarily determine that Nan Ya in fact made sales in the home market during the POR that were below the costs of production in its home market.

4. Cost of Production Test

We calculated the COP on a product-specific basis, based on the sum of Nan Ya's costs of materials and fabrication for the foreign like product plus amounts for general and administrative expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment in accordance with section 773(b)(3) of the Act.

We relied on Nan Ya's COP/CV data submitted as part of its questionnaire responses to the Department's original questionnaire.

³⁷ See 19 CFR 351.412(c)(2).

³⁸ See Nan Ya's Section A response of November 6, 2017 at A-10 to A-12, Exhibit A-3.a, and Exhibit A-3.c.

³⁹ *Id.* at Exhibit A-3.a.

⁴⁰ *Id.* at Exhibit A-3.c.

⁴¹ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat 362 (2015).

⁴² The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also Letter from Commerce to Nan Ya, dated October 11, 2017 (Nan Ya's Initial Questionnaire).

5. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales by Nan Ya had been made at prices below the COP. In particular, in determining whether to disregard home market sales made at prices below their COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b) of the Act. We determined the net comparison market prices for the below-cost test by adjusting the gross unit price for all applicable movement charges, discounts, rebates, billing adjustments, direct and indirect selling expenses, and packing expenses excluding all adjustments for imputed expenses.⁴³

6. Results of the Cost of Production Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's home market sales of a given product were at prices less than the COP, we disregarded the below-cost sales because: (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 of the COPs, 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. Because we are applying our standard annual weighted-average cost methodology in these preliminary results, we also applied our standard cost-recovery test with no adjustments.

Our cost test for Nan Ya indicated that for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales in our analysis as outside of the ordinary course of trade and used the remaining sales to determine NV.⁴⁴

F. Calculation of Normal Value Based on Comparison Market Prices

We based NV on the starting prices of Nan Ya's sales to unaffiliated home market customers, pursuant to sections 773(a)(1)(A) and 773(a)(1)(B)(i) of the Act and, where appropriate, made deductions from NV for movement expenses (*i.e.*, inland freight) in accordance with section 773(a)(6)(B)(ii) of the Act. In accordance with 19 CFR 351.401(c), we made adjustments for discounts and rebates. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit and warranty expenses). When applicable, we also made adjustments in accordance with 19 CFR 351.410(e), for indirect

⁴³ *Id.*

⁴⁴ *Id.*

selling expenses incurred on comparison-market or U.S. market sales where commissions were granted on sales in one market but not the other. Specifically, 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 the commission paid in the U.S. market, and (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same method. We also made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act.⁴⁵

When comparing U.S. sale prices with NVs based on comparison market sale prices of similar, but not identical, merchandise, we also made adjustments for physical differences in 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 products and the subject merchandise.⁴⁶

G. Price-to-Constructed Value Comparisons

Where we were unable to determine NV based on home market sales of comparable merchandise, in accordance with section 773(a)(4) of the Act, we based NV on constructed value (CV). Where appropriate, we made adjustments to CV, in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of respondents' COP, SG&A expenses, profit and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Nan Ya in connection with the production and sales of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison (*i.e.*, home) market.

H. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance web site at <http://enforcement.trade.gov/exchange/index.html>.

⁴⁵ See Nan Ya Prelim Analysis Memorandum for further details.

⁴⁶ See 19 CFR 351.411(b).

VII. Recommendation

We recommend applying the above methodology for these preliminary results.

☒

Agree

☐

Disagree

8/3/2018

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance