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International Trade Administration
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Investigation
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December 29, 2020

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Passenger Vehicle and Light Truck Tires from Taiwan

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that passenger vehicle and light truck (PVLT) tires from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the "Preliminary Determination" section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On May 13, 2020, Commerce received an antidumping duty (AD) petition concerning imports of PVLT tires from Taiwan, filed in proper form on behalf of the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioner).[1] On June 22, 2020, Commerce initiated the AD investigation on PVLT tires from Taiwan.[2]

The Petition identified the producers and/or exporters of the subject merchandise in Taiwan.[3] In the *Initiation Notice*, Commerce notified the public that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the

[1] *See* Petitioner's Letter, "Petition for the Imposition of Antidumping and Countervailing Duties: Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and Vietnam," dated May 13, 2019 (Petition).
[2] *See Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 38854 (June 29, 2020) (*Initiation Notice*).
[3] *See* the Petition, Volume I at Exhibit 8.

INTERNATIONAL TRADE ADMINISTRATION

"Scope of the Investigations," in the appendix.[4] Accordingly, on June 16, 2020, Commerce released the CBP entry data to all interested parties under an administrative protective order (APO), and invited comments regarding the data and respondent selection.[5] On July 2, 2020, Commerce received comments concerning respondent selection from Cheng Shin Rubber Ind. Co. Ltd. (Cheng Shin), Atturo Tire Corp (Atturo), and Federal Corporation.[6]

On July 22, 2020, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PVLT tires from Taiwan.[7]

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of passenger tires to be reported in response to Commerce's AD questionnaire. From July through December 2020, we received timely-filed comments from certain interested parties on the scope of this investigation as it appeared in the *Initiation Notice*. We issued the Preliminary Scope Decision Memorandum concurrently with this memorandum.

On July 28, 2020, Commerce selected Nankang and Cheng Shin for individual examination as mandatory respondents in this investigation. Nankang and Cheng Shin are the two producers/exporters with the largest volume of subject exports into the United States during the period of investigation (POI).[8] Accordingly, we issued the AD questionnaire to Nankang and Cheng Shin.[9]

On October 16, 2020, Commerce postponed the preliminary determination of this investigation by 50 days to December 29, 2020, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).[10]

On September 11, 2020, we received timely responses to section A of Commerce's AD questionnaire from Nankang and Cheng Shin.[11] Between September 25, 2020, and September 29, 2020, Nankang and Cheng Shin timely filed their responses to sections B through D of the

[4] *See Initiation Notice*, 85 FR at 38857.
[5] *See* Memorandum, "U.S. Customs and Border Protection (CBP) Data Release," dated June 16, 2020.
[6] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan; Comments on CBP Data and Respondent Selection," dated July 2, 2020; *see also* Atturo's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Comments on CBP Data and Respondent Selection," dated July 2, 2020; and Federal Corporation's Letter, "Investigation of Passenger Vehicle and Light Truck Tires from Taiwan: Federal Respondent Selection Comments and Request to be a Mandatory Respondent," dated July 2, 2020.
[7] *See Passenger Vehicle and Light Truck Tires from Korea, Taiwan, Thailand, and Vietnam,* Investigation Nos. 701-TA-647 and 731-TA-1517-1520 (Preliminary), 85 FR 44322 (July 22, 2020).
[8] *See* Memorandum, "Less-Than-Fair-Value Investigation of Passenger Vehicle and Light Truck Tires from Taiwan: Selection of Respondents for Individual Examination," dated July 28, 2020.
[9] *See* Commerce's Letter, "Antidumping Duty Questionnaire," dated August 5, 2020.
[10] *See Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 85 FR 65791 (October 16, 2020).
[11] *See* Nankang's Letter, "LFTV Investigation on Passenger Vehicle and Light Truck Tires from Taiwan – Response to Section A of Department's August 5 Questionnaire," dated September 11, 2020 (Nankang's September 11, 2020 AQR); *see also* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Section A Response," dated September 11, 2020 (Cheng Shin's September 11, 2020 AQR).

Initial AD Questionnaire.[12] Between September 28, 2020 and December 7, 2020, we issued multiple supplemental questionnaires to Nankang and Cheng Shin, and received timely responses to these questionnaires.[13] The petitioners submitted comments on Nankang and Cheng Shin's questionnaire responses between September 29, 2020 and October 30, 2020.[14]

On December 7, 2020 and December 8, 2020, Cheng Shin and Nankang respectively requested that, in the event of an affirmative preliminary determination in this investigation, Commerce postpone its final determination in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month to a six-month period.[15]

Between December 15 and December 18, 2020, we received pre-preliminary comments from the petitioner, and rebuttal comments from Nankang.[16]

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[12] *See* Nankang's Letter, "LFTV Investigation on Passenger Vehicle and Light Truck Tires from Taiwan – Response to Sections B and C of Department's August 5 Questionnaire (Volume I)," dated September 25, 2020 (Nankang's September 25, 2020 BCQR); *see also* Nankang's Letter, "LFTV Investigation on Passenger Vehicle and Light Truck Tires from Taiwan – Response to Sections B and C of Department's August 5 Questionnaire (Volume III)," dated September 25, 2020 (Nankang's September 25, 2020 CQR); Nankang's Letter, "LFTV Investigation on Passenger Vehicle and Light Truck Tires from Taiwan – Response to Section D of Department's August 5 Questionnaire," dated September 29, 2020; Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Sections B and D Response," dated September 25, 2020 (Cheng Shin's September 25, 2020 BQR); Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Section C Questionnaire Response," dated September 29, 2020; and Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Sections B and D Response," dated September 25, 2020 (Cheng Shin's September 25, 2020 BDR).

[13] *See* Nankang's Letter, "LTFV Investigation on Passenger Vehicle and Light Truck Tires from Taiwan – Response to the Department's September 28 Supplemental Questionnaire," dated October 9, 2020 (Nankang's October 9, 2020 ASQR); *see also* Nankang's Letter, "LTFV Investigation on Passenger Vehicle and Light Truck Tires from Taiwan – Response to the Department's October 23 Supplemental Questionnaire," dated November 16, 2020 (Nankang's November 16, 2020 ABCSQR); Nankang's Letter, "LTFV Investigation on Passenger Vehicle and Light Truck Tires from Taiwan – Response to the Department's November 4 Supplemental Questionnaire," dated November 23, 2020; Nankang's Letter, "LTFV Investigation of Passenger Vehicle and Light Truck Tires from Taiwan – Response to the Department's December 2 Supplemental Questionnaire," dated December 11, 2020; Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Section A Supplemental Response," dated October 16, 2020 (Cheng Shin's October 16, 2020 ASQR); Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Supplemental Section B and C Response," dated November 16, 2020; Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Supplemental Section D Response," dated November 24, 2020; and Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Supplemental Section ABC Response," dated December 16, 2020.

[14] *See* Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Taiwan: Comments on Nankang's Section A Response," dated September 29, 2020; *see also* Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Comments on Cheng Shin's Section A Response," dated September 29, 2020; and Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Taiwan: Comments on Nankang's Cost Response," dated October 30, 2020.

[15] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Request to Postpone Final Determination and to Extend Provisional Measures," dated December 7, 2020; *see also* Nankang's Letter, "Antidumping Investigation of Passenger Vehicle and Light Truck Tires from Taiwan – Request for Extension of Final Determination," dated December 8, 2020.

[16] *See* Petitioner's Letters, "Passenger Vehicle and Light Truck Tires from the Republic of Taiwan: Pre-Preliminary Determination Comments Regarding Nankang," dated December 15, 2020; and "Passenger Vehicle and Light Truck

We are conducting this investigation in accordance with section 773(b) of the Act.

## III. PERIOD OF INVESTIGATION

The POI is April 4, 2019 through March 31, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was May 2020.[17]

## IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are PVLT tires from Taiwan. For a full description of the scope of the investigation, *see* the accompanying preliminary determination *Federal Register* Notice at Appendix I.

## V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,[18] in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).[19] As noted above, certain interested parties commented on the scope of this investigation, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttals and our accompanying analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.

## VI. DISCUSSION OF THE METHODOLOGY

### A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether sales of PVLT tires from Taiwan to the United States were made at LTFV, Commerce compared the export prices (EPs) and/or constructed export prices (CEPs) to the normal value (NV), as described in the "U.S. Price" and "Normal Value" sections of this memorandum, below.

#### 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 (A-to-A) method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with EPs or CEPs of individual sales, *i.e.*, the average-to-transaction (A-

Tires from the Republic of Taiwan: Pre-Preliminary Determination Comments regarding Cheng Shin," dated December 18, 2020; *see also* Nankang's Letter, "LTFV Investigation on Passenger Vehicle and Light Truck ("PVLT") Tires from Taiwan – Response to Petitioner's December 15, Pre-Preliminary Comments," dated December 16, 2020.

[17] *See* 19 CFR 351.204(b)(1); *see also Initiation Notice*, 85 FR at 38855.

[18] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[19] *See Initiation Notice*, 85 FR at 38855.

to-T) method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a "differential pricing" 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.[20] Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-to-A method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the 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. 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 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 (CONNUM) and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price), of a test group and the mean (*i.e.*, weighted-average price), of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there

[20] *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).

is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8), threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the 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 under the "mixed method." 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 differential pricing 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 comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the 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 margins between the A-to-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.[21]

2. Results of the Differential Pricing Analysis

For Nankang, based on the results of the differential pricing analysis, Commerce preliminarily finds that 53.30 percent of the value of Nankang's U.S. sales pass the Cohen's *d* test, and therefore confirms the existence of a pattern of export prices that differ significantly among

[21] The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. July 12, 2017) recently affirmed much of our differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

purchasers, regions or time periods. Further, Commerce preliminarily determines 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 Nankang when calculated using the A-to-A method and an alternative method based on the A-to-T method applied to the U.S. sales which pass the Cohen's *d* test and the A-to-A method to those sales which did not pass the Cohen's *d* test. 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 Nankang.[22]

For Cheng Shin, based on the results of the differential pricing analysis, Commerce preliminarily finds that 70.67 percent of the value of Cheng Shin's U.S. sales pass the Cohen's *d* test, and therefore confirms the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Further, Commerce preliminarily determines 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 Cheng Shin 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 for Cheng Shin.[23]

B. Product Comparisons

As stated above, Commerce gave parties an opportunity to comment on the appropriate hierarchy of physical characteristics used to define each product, including for model matching purposes, within a certain deadline.[24] We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining the CONNUMs of PVLT tires in this AD investigation. Commerce identified 13 criteria for the physical characteristics of the subject merchandise to be used in creating the CONNUMs: (1) tire service type; (2) tire construction; (3) rim diameter; (4) nominal section width; (5) nominal aspect ratio; (6) outer diameter for flotation tires; (7) section width for flotation tires; (8) load range; (9) speed rating; (10) body ply fabric; (11) tread depth; (12) cap ply count; and (13) cap ply fabric. We instructed the respondents to use these product characteristics in their responses to the AD questionnaire issued in this investigation.[25]

In accordance with section 771(16) of the Act, we considered all products produced and sold by Nankang and Cheng Shin in Taiwan during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sale prices of subject merchandise to normal values based on home market sale prices of the foreign like product based on the 13 product characteristics identified. Where there were no POI home market sales in the ordinary course of trade of foreign like products that were identical or

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[22] *See* Memorandum, "Nankang Rubber Tire Corp. Ltd Preliminary Analysis," dated concurrently with this Preliminary Decision Memorandum.
[23] *See* Memorandum, "Cheng Shin Rubber Ind. Co., Ltd. Preliminary Analysis," dated concurrently with this Preliminary Decision Memorandum (Cheng Shin Preliminary Analysis Memorandum).
[24] *See Initiation Notice*, 85 FR at 38855.
[25] *See* Product Characteristics Letter.

similar to subject merchandise sold in the United States during the POI, we made comparisons of U.S. prices to normal values based on the constructed value (CV).

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, Commerce will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[26] Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.[27]

Nankang

In the home market, Nankang reported the date of sale as the earlier of invoice date or shipment date for all three reported sales channels.[28] Because record evidence does not indicate that a different date better reflects the date on which the mandatory respondent established the material terms of sale, consistent with 19 CFR 351.401(i) and Commerce's practice, we have preliminarily used the earlier of invoice date or shipment date as the date of sale for all home market sales.

Nankang reported four sales channels for U.S. sales. For sales made in channel one, three, and four, Nankang reported the shipment date as the date of sale, explaining that the material terms of these sales are subject to change until the merchandise is shipped to the customer.[29] Therefore, consistent with Commerce's practice we are using shipment date as the date of sale for all sales made in channels one, three, and four. For sales made as part of channel two, Nankang reported the order date as the date of sale.[30] According to Nankang, sale prices for this channel were fixed by quarterly price agreements, while sale quantities were fixed at the time that a customer submitted their order.[31] Because the material terms of sale for channel two sales

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[26] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (quoting 19 CFR 351.401(i)).

[27] *See, e.g.*, *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009); and *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 (IDM) at Comment 10.

[28] *See* Nankang's September 11, 2020 AQR at 23; *see also* Nankang's September 25, 2020 BQR at 18; and Nankang's November 16, 2020 ABCSQR at 20.

[29] *See* Nankang's September 11, 2020 AQR at 22-23; *see also* Nankang's September 25, 2020 CQR at 18; and Nankang's November 16, 2020 ABCSQR at 40-41 and 48-49.

[30] *See* Nankang's September 11, 2020 AQR at 22-23; *see also* Nankang's September 25, 2020 CQR at 18; and Nankang's November 16, 2020 ABCSQR at 40-41 and 48-49.

[31] *See* Nankang's September 11, 2020 AQR at 22 and Appendix A-8; *see also* Nankang's November 16, 2020 ABCSQR at 40-41.

are set at the order date, which occurs prior to both the invoice and shipment dates, we are preliminarily using order date as the date of sale for all channel two sales. For further discussion of the business proprietary information related to the dates of sale selected for Nankang's U.S. sales, *see* the Preliminary Analysis Memorandum.

Cheng Shin

Cheng Shin reported shipment date as the date on which the material terms of sale are fixed. Furthermore, in the home market the invoice and shipment dates are the same.[32] Therefore, consistent with 19 CFR 351.401(i) and Commerce's practice, we used shipment date as the date of sale in both markets.

D. 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 772(c) of the Act.

In accordance with section 772(a) of the Act, we calculated EP for all of Nankang's U.S. sales because the subject merchandise was first sold directly to the first unaffiliated U.S. purchaser prior to importation into the United States, and the CEP methodology was not otherwise warranted based on the facts of the record. For Cheng Shin we calculated EPs where Cheng Shin first sold the subject merchandise to an unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not otherwise warranted. We calculated EP for Nankang and Cheng Shin based on the ex-factory or delivered prices charged to the first unaffiliated customers. We made deductions, where appropriate, for movement expenses (*i.e.*, inland freight from the factory or warehouse to the port of exportation, container lifting charges, domestic brokerage and handling, harbor service fees, trade promotion fees, import brokerage and handling (Netherlands), international freight, marine insurance, credit, and bank charges), other direct selling expenses, indirect selling expenses, and packing expenses in accordance with section 772(c)(2)(A) of the Act.[33]

E. Constructed Export Price

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. "It is Commerce's established practice to treat as 'sales for exportation to the United States' sales made to unaffiliated parties which are delivered to a U.S. destination, regardless of whether any

[32] *See* Cheng Shin's September 11, 2020 AQR at A-17 and September 25, 2020 BQR at B-29 and B-30.
[33] *See* Cheng Shin's September 11, 2020 AQR at A-17 and September 25, 2020 BQR at B-29 and B-30.

underlying paperwork may indicate possible subsequent export to a third country."[34] Therefore, in our calculations we have included Cheng Shin's sales to one U.S. customer that Cheng Shin claims were later exported outside the U.S.[35] In accordance with section 772(b) of the Act, we calculated CEPs where Cheng Shin's U.S. affiliate first sold the subject merchandise to an unaffiliated purchaser in the United States after importation. In accordance with 19 CFR 351.401(c), and sections 772(c)(2)(A), (d)(1), and (d)(3) of the Act, we calculated CEPs for Cheng Shin by subtracting, where appropriate, from starting packed prices charged to the first unaffiliated customer: (1) rebates and other discounts; (2) movement expenses (foreign inland freight expenses, international freight expenses, marine insurance expenses, U.S. brokerage expenses, U.S. warehousing expenses, U.S. inland freight expenses, U.S. import duties); (3) selling expenses associated with economic activities occurring in the United States (*e.g.*, imputed credit expenses, bank charges, indirect selling expenses); and (4) U.S. domestic taxes, other than federal excise taxes.

F. Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market (a sufficient volume is five percent or more of the aggregate volume of U.S. sales) to serve as a viable basis for calculating NV, we compared the volume of Nankang and Cheng Shin's home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. We preliminarily found the aggregate volume of both Nankang and Cheng Shin's home market sales of the foreign like product are more than five percent of the aggregate volume of their U.S. sales of subject merchandise. Therefore, we preliminarily determine that Nankang and Cheng Shin both have a viable home market is and have based NV on their home market sale prices of the foreign like product in accordance with section 773(a)(1)(A) and (B) of the Act.

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[36] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[37] 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

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[34] *See Certain Uncoated Groundwood Paper from Canada: Final Determination of Sales at Less Than Fair Value*, 83 FR 39412 (August 9, 2018), and accompanying IDM at Comment 6 (citing *Final Results of Remand Redetermination Pursuant to Hiep Thanh Seafood Joint Stock Co. v. United States*, Ct. No. 09-00270 (June 23, 2011) at 6).
[35] For further information, *see* Cheng Shin's Preliminary Analysis Memorandum.
[36] *See* 19 CFR 351.412(c)(2).
[37] *Id.*; *see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

distribution system in each market (*i.e.*, the chain of distribution), including selling functions, 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),[38] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[39]

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales 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.[40]

<u>Nankang</u>

Nankang reported that it made sales through three channels of distribution in the home market: (1) sales to affiliated distributors Taipei Nanhong Rubber Tire Corp., Ltd. (Nanhong) and Nanguan Rubber Tire Corp., Ltd. (Nanguan), who resold the merchandise to unaffiliated customers; (2) direct sales to the Taiwanese military; and (3) sales to employees of Nankang and employees of its suppliers.[41] Nankang reported that Nanhong and Nanguan resold merchandise as: (1) sales from inventory maintained at one of Nanhong or Nanguan's warehouses, and (2) sales delivered directly from Nankang to unaffiliated customers designated by Nanhong or Nanguan.[42] Nankang reported dissimilar selling functions and/or intensities thereof across its home market channels for the following selling function categories: provision of sales support, provision of training services, provision of technical support, provision of logistical services, and performance of sales related administrative activities.[43] Consistent with Commerce's practices regarding the examination of selling activities, we limited our analysis to the five selling function categories outlined in the chart provided in our AD questionnaire.[44]

With respect to the U.S. market, Nankang reported that it made sales through four channels of distribution: (1) sales to a specific unaffiliated distributor; (2) sales to an unaffiliated brand-owner that sold the merchandise under its own brand; (3) sales to an unaffiliated trading

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[38] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).
[39] *See Micron Tech, Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).
[40] *See, e.g., OJ from Brazil* IDM at Comment 7.
[41] *See* Nankang's September 11, 2020 AQR at 21 and Appendix A-6; *see also* Nankang's September 25, 2020 BQR at 17 and Appendix B-2; Nankang's October 9, 2020 ASQR at 6-8 and Appendix SA-3-B.
[42] *See* Nankang's September 11, 2020 AQR at 21 and Appendix A-6.
[43] *See* Nankang's October 9, 2020 ASQR at 6-8 and Appendix SA-2-B.
[44] *Id*. at Appendix SA-2-B; *see also* AD Questionnaire at A-15.

company for sales in Puerto Rico; and (4) sales to an unaffiliated U.S. distributor arranged by Nankang's affiliated distributor in the Netherlands, Nankang Tire Netherlands B.V. (NKNL).[45] Nankang reported dissimilar selling functions and/or intensities thereof across its U.S. market channels for the following selling functions: provision of sales support, provision of training services, provision of logistical services, and performance of sales related administrative activities.[46] As noted above, consistent with Commerce's practices regarding the examining of selling activities, we limited our analysis to the five selling function categories outlined in the chart provided in our AD questionnaire.[47]

Nankang reported that it undertook fewer selling functions for its U.S. sales than for home market sales made through Nanhong and Nanguan.[48] However, in its AD Questionnaire, Commerce requested quantitative information related to Nankang's claimed different LOTs, including a request that Nankang demonstrate how indirect selling expenses varied by the claimed LOTs and explain how the quantitative analysis supports the claimed levels of intensity for the selling activities reported in the selling functions table.[49] While Nankang reported that its home market sales were at a different more advanced LOT than its U.S. sales, in order for Commerce to determine whether the home market and U.S. market LOTs are different LOTs, the respondent must first demonstrate that substantial differences exist between the LOTs of sales in each market, in accordance with 19 CFR 351.412(c)(2). Nankang did not provide the requested quantitative analysis, to be substantiated with source documents, to show how: (1) the expenses for sales made at different claimed LOTs impact price comparability; or (2) the claimed levels of intensity for the selling activities reported in the selling functions chart are quantitatively supported. Because Nankang did not provide the requested quantitative analysis, we find that the record lacks the quantitative information required to determine the relationship of the U.S. LOT with the information submitted regarding the home market LOT. Thus, we have preliminarily determined that a LOT adjustment is not supported by the record.

<u>Cheng Shin</u>

Cheng Shin's questionnaire responses indicate that its sales in both the U.S. and home markets are at the same LOT.[50] In addition, Cheng Shin states that there is no difference in the selling functions that Cheng Shin performs between its sales through its U.S. affiliate and in the home market.[51] Specifically, there is no difference in the indirect selling expenses of the home and U.S. markets.[52] Furthermore, Cheng Shin did not provide any of the requested quantitative analysis required to make a LOT adjustment. Therefore, we preliminarily determine that there is one LOT for all sales in both the home market and the U.S. market and, consequently, no basis

[45] *See* Nankang's September 25, 2020 CQR at 17.
[46] *See* Nankang's October 9, 2020 ASQR at 6-8 and Appendix SA-2-B.
[47] *See* AD Questionnaire at A-15.
[48] *See* Nankang's September 11, 2020 AQR at 20; *see also* Nankang's October 9, 2020 ASQR at 4-5.
[49] *See* Commerce's Letter, "Request for Information: Antidumping Duty Investigation: Nankang Rubber Tire Corp., Ltd.," dated August 5, 2020 at pages A7-8.
[50] *See* Cheng Shin's October 16, 2020 ASQR at SA-4 to SA-5.
[51] *Id*.
[52] *Id*.

exists for a LOT adjustment or CEP offset. Cheng Shin also stated that they are not claiming any LOT adjustment.[53]

3. Affiliated Party Transactions and the 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.[54] Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin 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."[55]

During the POI, Nankang and Cheng Shin each made sales of PVLT tires in the home market to affiliated parties.[56] Consequently, we tested these 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. To test whether the sales to affiliates were made at arm's-length prices, where appropriate, we compared the unit prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and, in accordance with 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 preliminarily 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.[57]

All of Nankang's sales of the foreign like product to affiliated resellers Nanhong and Nanguan and Cheng Shin's sales of the foreign like product to affiliated reseller Maxxis Trading Company Limited (Maxxis TW) failed the arm's-length test. Therefore, we used the reported downstream sales of these affiliates in our calculations for the preliminary determination.

G. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, we obtained CV and cost of production (COP) information from Nankang and Cheng Shin. We examined the respondents' respective data and determined that our quarterly cost methodology is not warranted. Therefore, we are applying our standard methodology of using annual costs based on Nankang and Cheng Shin's reported cost data in calculating COP.

[53] *See* Cheng Shin's September 11, 2020 AQR at A-15.
[54] *See* 19 CFR 351.403(c).
[55] *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)).
[56] *See* Nankang's September 11, 2020 AQR at 2-3; *see also* Cheng Shin's September 11, 2020 AQR at A-15.
[57] *See* section 771(15) of the Act; and 19 CFR 351.102(b).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of material and fabrication for the foreign like product, plus amounts for general, and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by Nankang. For Cheng Shin we relied on their COP data submitted except as follows:

- We revised Cheng Shin's submitted general and administrative expense rate calculation to exclude certain non-operating income items.[58]

2. Test of Comparison Market Sales Prices

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

3. Results of 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 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 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.

Where we found that, for certain products, more than 20 percent of Nankang and Cheng Shin's home market sales were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we 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.

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[58] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Cheng Shin Rubber Ind. Co. Ltd," dated concurrently with this Preliminary Decision Memorandum.

## H. Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for Nankang and Cheng Shin, we based NV on comparison market prices. We calculated NV based on packed, delivered or ex-works prices to unaffiliated customers in Taiwan. We deducted movement expenses from the starting price and made other deductions, including early payment discounts, promotion discounts, other discounts, rebates, and billing adjustments in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including, where appropriate, foreign inland freight and insurance, under section 773(a)(6)(B)(ii) of the Act. We deducted comparison-market packing costs and added U.S. packing costs for Nankang, in accordance with sections 773(a)(6)(A) and (B) of the Act. For Cheng Shin, we excluded one channel of certain overlapped sales that were already accounted for in a separate sales channel from our margin calculation analysis.[59]

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.*, imputed credit expenses and other direct selling expenses, and added U.S. direct selling expenses, *i.e.*, imputed credit expenses and direct selling expenses.

When comparing U.S. sales with home market sales of similar, but not identical, merchandise, Commerce also made adjustments for 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 subject merchandise.[60]

## I. Calculation of NV Based on CV

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for Nankang and Cheng Shin's products for which we could not determine the NV based on comparison market sales because, as noted in the "Results of the COP Test" section above, certain sales of the comparable products failed the COP test, we based NV on CV.

In accordance with section 773(e) of the Act, we used CV as the basis for NV for the U.S. sales for which we could not find comparison market sales of similar or identical merchandise. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of materials and fabrication, SG&A expenses, U.S. packing expenses, and profit. For Nankang and Cheng Shin, we calculated the COP component of constructed value as described above in the "Calculation of COP" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit for Nankang and Cheng Shin on the amounts incurred and realized for each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

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[59] *See* Cheng Shin Preliminary Analysis Memorandum at 2.
[60] *See* 19 CFR 351.411(b).

## VII. CURRENCY CONVERSION

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

## VIII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒ ☐

Agree Disagree

12/29/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance