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

FROM: Scot T. Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Acetone from
Belgium

I. SUMMARY

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

II. BACKGROUND

On February 19, 2019, Commerce received an antidumping duty (AD) petition concerning imports of acetone from Belgium that was properly filed with Commerce by the Coalition for Acetone Fair Trade (the petitioner).¹ On February 22 and 25, 2019, Commerce issued supplemental questionnaires to the petitioner.² On February 26, 2019, the petitioner filed supplemental questionnaire responses regarding the Petition.³ On February 27 and 28, 2019, Commerce spoke with counsel to the petitioner concerning issues related to the Petition.⁴ On

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping on Imports of Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain," dated February 19, 2019 (Petition). The members of the Coalition for Acetone Fair Trade are AdvanSix Inc., Altivia Petrochemicals, LLC, and Olin Corporation.

² See Commerce's Letters, "Petition for the Imposition of Antidumping Duties on Imports of Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain: Supplemental Questions," dated February 22, 2019; and "Petition for the Imposition of Antidumping Duties on Imports of Acetone from Belgium: Supplemental Questions," dated February 25, 2019.

³ See Petitioner's Letters, "Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain: Petitioner's Responses to Supplemental Questions Regarding Volume I," dated February 26, 2019; and "Acetone from Belgium: Petitioner's Responses to Supplemental Questions Regarding Volume II," dated February 26, 2019.

⁴ See Memoranda, "Petitions for the Imposition of Antidumping Duties on Acetone from Belgium, Korea, Saudi

March 4, 2019, the petitioner submitted certain revisions to the scope as requested by Commerce.⁵ Also on March 4, 2019, the petitioner responded to Commerce's request for further information concerning the Petition.⁶ Commerce initiated this investigation on March 11, 2019.⁷ On April 11, 2019, 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 acetone from Belgium.⁸

In the *Initiation Notice*, Commerce stated that it intended to examine all known producers in the Belgium investigation, as indicated by the supporting information included in the Petition.⁹ According to the Petition, INEOS Phenol Belgium NV (INEOS Belgium) is the only known producer of acetone in Belgium and was named as the sole mandatory respondent.¹⁰ Commerce received no comments on its respondent selection.

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 acetone to be reported in response to Commerce's AD questionnaire.¹¹ On April 8, 2019, Commerce received comments from the petitioner and Sasol South Africa Limited (Sasol) relating to the physical characteristics of acetone to be reported in response to the AD questionnaire.¹² On April 22, 2019, Commerce received rebuttal comments from the petitioner and Sasol on the physical characteristics of acetone to be reported in the AD questionnaire.¹³ Comments and rebuttal comments received concerning the scope of the investigation are discussed below under the section, "Scope Comments."

Arabia, Singapore, South Africa, and Spain: Phone Call with Counsel to the Petitioner," dated February 28, 2019; and "Petition for the Imposition of Antidumping Duties on Acetone from Belgium: Phone Call with Counsel to the Petitioner," dated March 1, 2019.

⁵ See Petitioner's Letter, "Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain: Petitioner's Responses to Supplemental Questions Regarding Scope," dated March 4, 2019 (Scope Supplemental).

⁶ See Petitioner's Letter, "Acetone from Belgium: Petitioner's Responses to Second Supplemental Questions Regarding Volume II," dated March 4, 2019.

⁷ See *Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 9755 (March 18, 2019) (*Initiation Notice*).

⁸ See *Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain; Investigation Nos. 731-TA-1435-1440 (Preliminary)*, 84 FR 14673 (April 11, 2019).

⁹ See *Initiation Notice*, 84 FR at 9759.

¹⁰ See Petition, Volume I at Exhibit I-10.

¹¹ See *Initiation Notice*, 84 FR at 9756-57.

¹² See Petitioner's Letter, "Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain: Petitioner's Comments on Product Characteristics," dated April 8, 2019; see also Sasol's Letter, "Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Scope and Product Characteristic Comments," dated April 8, 2019 (Sasol's Scope and Product Characteristic Comments).

¹³ See Petitioner's Letter, "Acetone from Belgium, Korea, Saudi Arabia, South Africa, and Spain: Petitioner's Rebuttal Comments on Scope and Product Characteristics," dated April 22, 2019 (Petitioner's Scope and Product Characteristic Rebuttal Comments); see also Sasol's Letter, "Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Product Characteristic Rebuttal Comments," dated April 22, 2019.

On March 21, 2019, Commerce issued the AD questionnaire to INEOS Belgium.¹⁴ On April 4, 2019, INEOS Europe AG (INEOS Europe) notified Commerce of potential difficulties in responding to the questionnaire.¹⁵ On April 24, 2019, Commerce finalized the proposed product characteristics, and other information related to the proposed model matching, for the LTFV investigations of acetone from Belgium, Korea, South Africa, and Spain, and set the deadlines for INEOS Europe's response to Sections B-D of the AD questionnaire.¹⁶

On April 23, 2019, INEOS Europe submitted its response to Section A of the initial questionnaire.¹⁷ In that response, INEOS Europe stated that "all of INEOS Europe's sales of the merchandise under investigation in the United States, in the home market and in its largest three third country markets were produced by INEOS Europe under a tolling arrangement with INEOS Belgium."¹⁸ On May 20, 2019, INEOS Europe responded to Commerce's supplemental section A questionnaire.¹⁹ On May 29, 2019, INEOS Europe submitted its responses to Sections B and C of the initial questionnaire.²⁰ On June 5, 2019, INEOS Europe submitted its response to Section D of the initial questionnaire.²¹ On June 7, 2019, the petitioner submitted deficiency comments on INEOS Europe's responses to sections B-D of the initial questionnaire, and the supplemental section A questionnaire.²² On June 19, 2019, Commerce sent a second supplemental questionnaire to INEOS Europe.²³ INEOS Europe responded to the questionnaire on July 5, 2019.²⁴

On July 1, 2019, the petitioner requested Commerce postpone the preliminary determination in the investigation.²⁵ On July 15, 2019, Commerce postponed the deadline for the preliminary determination of this investigation.²⁶ As a result, the revised deadline for the preliminary determination of this investigation is now September 17, 2019.

¹⁴ See Commerce's Letter, "Antidumping Duty Questionnaire," dated March 21, 2019 (Initial AD Questionnaire).

¹⁵ See INEOS Europe's Letter, "Acetone from Belgium: Identification of Appropriate Comparison Market and Extension Request for Response to Section A of the Department's Questionnaire," dated April 4, 2019.

¹⁶ See Memoranda, "Acetone from Belgium: Product Characteristics,"; and "Acetone from Belgium: Clarification of Product Characteristics," dated April 24, 2019.

¹⁷ See INEOS Europe's April 23, 2019 Section A Questionnaire Response (INEOS Europe April 23, 2019 AQR).

¹⁸ *Id.* at 3.

¹⁹ See Commerce's Letter, "Acetone from Belgium: INEOS Europe AG – Supplemental Questionnaire Section A," dated May 6, 2019; *see also* INEOS Europe's May 20, 2019 Supplemental Section A Questionnaire Response.

²⁰ See INEOS Europe's May 29, 2019 Sections B and C Questionnaire Response (INEOS Europe May 29, 2019 BCQR).

²¹ See INEOS Europe's June 5, 2019 Section D Questionnaire Response.

²² See Petitioner's Letter, "Acetone from Belgium: Petitioner's Deficiency Comments Regarding INEOS' Questionnaire Responses," dated June 7, 2019.

²³ See Commerce's Letter, "Acetone from Belgium: INEOS Europe AG – Second Supplemental Questionnaire," dated June 19, 2019.

²⁴ See INEOS Europe's July 5, 2019 Supplemental Questionnaire Response.

²⁵ See Petitioner's Letter, "Acetone from Belgium: Petitioner's Request for Postponement of the Preliminary Determination," dated July 1, 2019.

²⁶ See *Acetone from Belgium, the Republic of Korea, and the Republic of South Africa: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 33739 (July 15, 2019).

On July 29, 2019, Commerce sent another supplemental questionnaire to INEOS Europe.²⁷ INEOS Europe submitted its response on August 14, 2019.²⁸

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2018 through December 31, 2018. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was February 2019.²⁹

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On August 14, 2019, the petitioner requested, pursuant to 19 CFR 351.210(b)(i) and (ii), that Commerce postpone the final determination in the event of a negative preliminary determination.³⁰ On August 23, 2019, INEOS Europe requested, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination, and that provisional measures be extended to a period not to exceed six months.³¹ 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 exporter accounts 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,³² the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).³³ As mentioned above, certain interested parties from the companion acetone investigations commented on the scope of the acetone investigations, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.³⁴

²⁷ See Commerce's Letter, "Antidumping Duty Less Than Fair Value Investigation of Acetone from Belgium," dated July 29, 2019.

²⁸ See INEOS Europe's August 14, 2019 Supplemental Section D Questionnaire Response.

²⁹ See 19 CFR 351.204(b)(1); *see also Initiation Notice*, 84 FR at 9756.

³⁰ See Petitioner's Letter, "Acetone from Belgium, Korea, and South Africa: Petitioner's Request for Postponement of the Final Determinations," dated August 14, 2019.

³¹ See INEOS Europe's Letter, "Acetone from Belgium: Request for Postponement of Final Determination and Provisional Measures Period," dated August 23, 2019.

³² See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³³ See *Initiation Notice*, 84 FR at 9756-7.

³⁴ See Memorandum, "Acetone from Belgium, Korea, Singapore, South Africa, and Spain: Scope Comments

VI. SINGLE ENTITY ANALYSIS

In its initial questionnaire response, INEOS Europe reported that it is a subsidiary of the INEOS Group, and that the operations relating to the production and sale of acetone are managed by the Phenol business within the INEOS Group.³⁵ INEOS Europe also states that “all members of the INEOS Group should be considered affiliated by reason of their ultimate ownership by the same individual shareholder.”³⁶ INEOS Europe reported the following affiliates, relevant to the production and sale of acetone: INEOS Belgium, INEOS Phenol GmbH, and INEOS Americas LLC.³⁷

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.
- (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.” “Actual control...is not required by the statute... Rather, a person is considered to be in a position of control if he is legally in a position to exercise restraint or direction over the other person.”³⁸ “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”³⁹

19 CFR 351.401(f) 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, the Secretary 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

Preliminary Decision Memorandum,” dated July 29, 2019 (Preliminary Scope Decision Memorandum) for further discussion.

³⁵ See INEOS Europe April 23, 2019 AQR at 11.

³⁶ *Id.* at 14.

³⁷ *Id.*

³⁸ See *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1293 (CIT 2005) (*TIJID*).

³⁹ See 19 CFR 351.102(b).

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 the Secretary 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.⁴⁰

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 margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.⁴¹ While section 19 CFR 351.401(f) explains when producers may be treated as a single entity, Commerce has found it to be instructive in determining whether non-producers should be treated as a single entity and has used some of the criteria outlined in the regulation in its analysis, when some of the entities are not producers. In a number of past cases, Commerce has treated exporting companies as a single entity,⁴² as well as producers and exporters as a single entity.⁴³

Furthermore, the CIT has upheld Commerce's practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities were not both producers.⁴⁴ For example, in *Hontex II*,⁴⁵ the CIT held that, once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.⁴⁶

⁴⁰ See 19 CFR 351.401(f).

⁴¹ 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) (*Shrimp from Brazil*) and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

⁴² *Id.*

⁴³ See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010).

⁴⁴ See *Queen's Flowers de Colon v. United States*, 981 F. Supp. 617, 628 (CIT 1997).

⁴⁵ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) (*Hontex II*).

⁴⁶ *Id.*

A. INEOS Europe/INEOS Belgium

We preliminarily determine that INEOS Europe and INEOS Belgium are affiliated pursuant to section 771(33)(E) of the Act, and that these companies should be treated as a single entity for AD purposes consistent with our practice and 19 CFR 351.401(f).⁴⁷ INEOS Europe states in its section A response that INEOS Europe, and INEOS Belgium are part of the INEOS Group, and that all members of the INEOS Group should be considered affiliated by reason of their ultimate ownership by the same individual majority shareholder, Sir James Ratcliffe.⁴⁸ According to INEOS Europe, INEOS Belgium is the toll producer of the merchandise under investigation, while INEOS Europe exported the merchandise under consideration that was toll-produced by INEOS Belgium to the United States during the POI.⁴⁹ We find that INEOS Europe and INEOS Belgium meet the definition of affiliated persons under section 771(33)(F) of the Act due to INEOS Europe's and INEOS Belgium's common control by the same individual majority shareholder.

While 19 CFR 351.401(f) applies only to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed, and has used the criteria in the regulation in its analysis.⁵⁰ We preliminarily determine that there is a significant potential for the manipulation of price or production among these companies as evidenced by the level of common ownership, the degree of management overlap, and the intertwined nature of the operations of these companies. Specifically, management authority for INEOS Belgium is located at INEOS Europe. In addition, "overall strategic planning for sales of acetone to all markets are made at {INEOS Europe}, as well as sales and marketing activity for sales of acetone in Belgium and other third country markets."⁵¹ Therefore, consistent with 19 CFR 351.401(f) and Commerce's practice,⁵² we are treating INEOS Europe and INEOS Belgium as a single entity (collectively referred to herein as INEOS Europe)⁵³ for the purposes of this preliminary determination.

⁴⁷ See, e.g., *Shrimp from Brazil* IDM at Comment 5; *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010).

⁴⁸ See INEOS Europe April 23, 2019 AQR at 14 and 16.

⁴⁹ *Id.* at 3.

⁵⁰ See, e.g., *Certain Steel Nails from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015).

⁵¹ See INEOS Europe April 23, 2019 AQR at 12.

⁵² See Memorandum, "Antidumping Duty Investigation of Acetone from Belgium – Preliminary Determination Margin Calculation for INEOS Europe AG," dated September 17, 2019 (INEOS Europe Preliminary Calculation Memorandum); see also *Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010) and accompanying IDM.

⁵³ See *Seamless Refined Copper Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 89434 (December 12, 2016), and accompanying IDM at 1, unchanged in *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 11178 (February 21, 2017).

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 INEOS Europe's sales of subject merchandise from Belgium to the United States were made at LTFV, Commerce compared the export prices (EP) and constructed export prices (CEP) to the normal value (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 LTFV 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.⁵⁴ 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 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.

⁵⁴ See, e.g., *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

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 INEOS Europe. Regions are defined using the reported destination codes (*i.e.*, states) 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 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 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 is considered significant, and the sales 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. 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.⁵⁵

2. Results of the DP Analysis

Based on the results of the DP analysis, Commerce preliminarily finds that 54.66 percent of INEOS Europe'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. However, 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 INEOS Europe when calculated using the A-to-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average 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 INEOS Europe.⁵⁶

VIII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration 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.⁵⁷ Further, Commerce has a long-standing practice of finding that, where

⁵⁵ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. See, e.g., *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁵⁶ See INEOS Europe Preliminary Analysis Memorandum.

⁵⁷ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) ("As elaborated by Department 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.").

the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁵⁸

For both home market sales and U.S. sales, INEOS Europe reported the date of sale as the invoice date, as the material terms of sale are not set until that date.⁵⁹ After further examination of the record, we preliminarily determine that the sales invoice date is the correct date of sale for INEOS Europe's sales in the home market and to the United States.⁶⁰

IX. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in Belgium during the POI that fit the description in the "Scope of Investigation" section of this 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.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent: purity, benzene presence, and alcohol content. For INEOS Europe's sales of acetone in the United States, the reported control number identifies the characteristics of acetone, as exported by INEOS Europe.⁶¹ INEOS Europe did not report sales of non-prime acetone to the United States.⁶²

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 CEP for INEOS Europe.

INEOS Europe reported having only CEP sales during the POI.⁶³ With respect to CEP sales, the prices were calculated based on the sales price to unaffiliated purchasers in the United States. In

⁵⁸ 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 IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

⁵⁹ See INEOS Europe April 23, 2019 AQR at 23 and 27-28.

⁶⁰ See INEOS Europe Preliminary Calculation Memorandum.

⁶¹ See INEOS Europe May 29, 2019 BCQR at C-14.

⁶² *Id.* at C-14 to C-15.

⁶³ See, e.g., INEOS Europe April 23, 2019 AQR at 2.

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 includes direct and indirect selling expenses, along with the profit allocated to those 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.⁶⁴

XI. PARTICULAR MARKET SITUATION

A. Background

In its section A response, INEOS Europe reported that its sales in Belgium do not permit a proper comparison with its sales to the United States “...because Belgium presents a particular market situation pursuant to section 773(a)(C)(iii) of the Act...,” therefore, {Belgium} should be disregarded as a comparison market in this investigation.”⁶⁵ INEOS Europe contends that Commerce should base NV on INEOS Europe’s largest third country market, Germany.⁶⁶ On April 25, 2019, the petitioner filed rebuttal comments concerning INEOS Europe’s particular market situation (PMS) claim.⁶⁷ INEOS Europe submitted rebuttal comments in response to the petitioner’s comments in its section B response.⁶⁸

B. Interested Parties’ Arguments

INEOS Europe bases its PMS claims on three arguments. First, INEOS Europe notes that all of its sales in Belgium were made to a single customer, pursuant to a single commercial agreement, which INEOS Europe claims “could support a finding of a particular market situation, and has also been one basis on which {Commerce} has made a similar finding in prior cases.”⁶⁹ Second, INEOS Europe argues that the nature of the pricing mechanism in the contract is such that it is impossible to extract a meaningful price for acetone.⁷⁰ INEOS Europe claims that since acetone is a by-product of the production of phenol, the intrinsic linkage of the two products makes it “impossible to extract a pure, representative price for either phenol or acetone from {the} contract.”⁷¹ Furthermore, INEOS Europe argues that “the price {for acetone in the home market} is not comparable to any of INEOS Europe’s U.S. sales, which were all made under contracts for sale{s} of acetone alone and not linked to phenol prices.”⁷² Finally, INEOS Europe maintains that the contract covers deliveries from two INEOS production facilities to multiple locations at the same price. According to INEOS Europe, this means that the price for acetone in

⁶⁴ See INEOS Europe Preliminary Calculation Memorandum.

⁶⁵ See INEOS Europe April 22, 2019 AQR at 3.

⁶⁶ *Id.* at 6-7.

⁶⁷ See Petitioner’s Letter, “Acetone from Belgium – Petitioner’s Response to INEOS’ PMS Allegation,” dated April 25, 2019 (Petitioner’s PMS Response).

⁶⁸ See INEOS Europe May 29, 2019 BCQR at B-1 to B-3.

⁶⁹ See INEOS Europe April 23, 2019 AQR at 3-4; see also *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007) (*Pasta from Italy*), *aff’d Atar S.r.l. v. U.S.*, 637 F. Supp 2d 1068 (CIT 2009).

⁷⁰ See INEOS Europe April 23, 2019 AQR at 4.

⁷¹ *Id.*

⁷² *Id.* at 5.

the contract could be potentially distorted.⁷³ Since Belgian and German acetone is sold at the same price, the price formula in “the contract was not necessarily calculated specifically for the subject merchandise,” acetone from Belgium.⁷⁴ Furthermore, INEOS Europe argues that the differences in the terms of sale, specifically, the differences in transportation costs between acetone sold in Belgium, and acetone sold in Germany, lead to distortions in the relative prices of acetone.⁷⁵

The petitioner argues that, even if a PMS exists in Belgium as alleged by INEOS Europe, “Commerce’s interpretation of the Trade Preferences Extension Act of 2015 (TPEA) is that, where home market sales are disregarded because of a PMS, NV should be based on constructed value rather than third country sales.”⁷⁶ Furthermore, according to the petitioner, the SAA explains that a PMS may exist “where there is only ‘a single sale in the home market’ or ‘where there is government control over pricing to such an extent that home market prices cannot be considered competitively set.’”⁷⁷ Neither of those situations applies in this investigation, and the situation here is not analogous to *Pasta from Italy*, “which involved a single sale to Angola with unusual terms and conditions.”⁷⁸ The petitioner states that acetone is not a by-product of phenol production, it is a co-product (with phenol) of the cumene peroxidation process.⁷⁹ The petitioner notes that INEOS Europe did not cite any precedent for finding a PMS based on such a pricing mechanism.⁸⁰ The petitioner also argues that INEOS Europe “has a commercial incentive...to negotiate a true market price for acetone,” and there is no reason to conclude “that the contract price for acetone is arbitrary or somehow unrepresentative of a true market price.”⁸¹ Finally, the petitioner argues that INEOS Europe’s differences in terms of sale between markets does not establish distortion that would rise to the level of a PMS.⁸²

INEOS Europe rebuts the petitioner’s arguments concerning the TPEA by stating that Commerce “recognized in the *Biodiesel* cases cited by {the petitioner}, the TPEA amendments do not mandate the use of {CV} where a {PMS} is found.”⁸³ According to INEOS Europe, “the

⁷³ *Id.*

⁷⁴ *Id.* at 6.

⁷⁵ *Id.*

⁷⁶ See Petitioner’s PMS Response at 2 (citing *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 50391 (October 31, 2017) (*Biodiesel from Argentina Prelim*), unchanged in *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018); and *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017), unchanged in *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018)).

⁷⁷ *Id.* at 3 (citing *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA) at 822).

⁷⁸ *Id.* (citing *Pasta from Italy* IDM at Comment 1).

⁷⁹ *Id.* at 3-4 (citing the Petition at Volume 1, pages 8 and 16 and Exhibit I-2).

⁸⁰ *Id.* at 4.

⁸¹ *Id.* at 5 (BPI omitted).

⁸² *Id.* at 6.

⁸³ See INEOS Europe May 29, 2019 BCQR at B-2 (citing *Biodiesel from Argentina Prelim*, accompanying Preliminary Decision Memorandum at 22).

language of the Act, even as amended by the TPEA, is more properly read to direct {Commerce} to rely on third country sales where a {PMS} is found.”⁸⁴

C. Analysis

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 {EP} or {CEP}.” Pursuant to sections 771(15) and 773(a)(1)(C)(iii) of the Act, Commerce shall find sale prices to be “outside the ordinary course of trade” in situations in which it “determines that the particular market situation prevents a proper comparison with the {EP} or {CEP}.” Pursuant to sections 771(15) and 773(a)(1)(C)(iii) of the Act, Commerce shall find sale prices to be “outside the ordinary course of trade” in situations in which it “determines that the particular market situation prevents a proper comparison with the export price or constructed export price.” Section 504 of the TPEA⁸⁵ added the concept of “particular market situation” in the definition of the term “ordinary course of trade.” The TPEA also added language to section 773(e) of the Act to state that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.”

The statute does not define “particular market situation,” but the SAA explains that such a situation may exist for sales “where there is government control over pricing to such an extent that home market prices cannot be considered competitively set.”⁸⁶ Additionally, in the *Salmon from Chile LFTV*, which pre-dated the TPEA, Commerce determined that a PMS exists because “home market sales were incidental to the Chilean salmon industry, which is export oriented.”⁸⁷ In *Pasta from Italy*, Commerce determined that a PMS existed because the respondent had a single third country sale “which prevents a proper comparison.”⁸⁸ More recently, in *OCTG from Korea*, Commerce determined a PMS existed in Korea which distorted OCTG COP.⁸⁹

In *Pasta from Italy*, Commerce disregarded the respondent’s third country comparison market because Commerce found that the single sale at issue, which had unusual terms and conditions, was an insufficient basis upon to establish an NV to compare to U.S. sales.⁹⁰ As part of its analysis, Commerce explained that the respondent had made no other sales of the foreign like

⁸⁴ *Id.* at B-2.

⁸⁵ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

⁸⁶ See SAA at 822.

⁸⁷ See *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998).

⁸⁸ See *Pasta from Italy*.

⁸⁹ See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017), and accompanying IDM (*OCTG from Korea*) at Comment 3.

⁹⁰ See *Pasta from Italy* IDM at Comment 1.

product to the third country either during the POR or at any other time in its history.⁹¹ Finally, Commerce found that it must have the ability to ensure that NV is based on sufficient transactions to make the market viable for establishing the normal value.⁹²

INEOS Europe concedes that its home market sales in Belgium are viable pursuant to section 773(2)(1)(B)(ii)(II) of the Act.⁹³ Moreover, unlike the *Pasta from Italy* case where the respondent has a single sale, INEOS Europe had multiple sales in Belgium both during and prior to the POI.⁹⁴ Moreover, these home market sales do not appear to be made pursuant to unusual terms and conditions. The fact that the contract at issue is for both acetone and phenol, co-products of the same production process, does not undermine the market nature of the prices charged for acetone under the contract. The ITC found that “prices for most acetone sales in the U.S. market, both contract and spot sales, are based on a negotiated discount off the Large Buyer Price, an index published monthly.”⁹⁵ Both the respondent and the unaffiliated customer in Belgium similarly negotiated and agreed to the prices set in the contract. There is no indication that these negotiated prices are anything other than market prices. Thus, we find that INEOS Europe’s reliance on *Pasta from Italy* is inapposite.

Finally, we find no merit in the argument that the nature of INEOS Europe’s contract, which covers sales of multiple products, from multiple facilities, to multiple destinations, constitutes a PMS that could cause a distortion in the reported price of acetone. Regarding any difference in home market transportation costs, the statute provides for an adjustment to remove such costs, to render the dumping calculation neutral with regard to transportation costs.⁹⁶

Therefore, we preliminarily conclude that a PMS does not exist with respect to INEOS Europe’s home market sales of acetone; and, as discussed below, we have used INEOS Europe’s sales of acetone in Belgium as the basis for NV.

XII. NORMAL VALUE

Section 773(a)(1)(B)(i) of the Act defines NV as “the price at which 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 {EP} or {CEP}.” 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.” 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.

⁹¹ *Id.* IDM at 8.

⁹² *Id.*

⁹³ See INEOS Europe April 23, 2019 AQR at 8.

⁹⁴ *Id.* at 4 and 27-29.

⁹⁵ See *Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain*, Investigation Nos. 731-TA-1435-1440 (Preliminary), USITC Publication No. 4884 (April 2019) at 27.

⁹⁶ See section 773(a)(6)(B)(i) and (ii) of the Act.

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

We have determined that the aggregate volume of INEOS' home market sales of acetone is greater than five percent of the aggregate volume of its U.S. sales of the merchandise under consideration. Therefore, we used home market sales as the basis for NV for INEOS 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.⁹⁷ Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considered 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."⁹⁸

During the POI, INEOS Europe reported that it did not make sales of the foreign-like product in the home market to any affiliated party, as defined in section 771(33)(F) of the Act.⁹⁹

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.¹⁰⁰ Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).¹⁰¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.¹⁰² In order to determine whether the comparison

⁹⁷ See 19 CFR 351.403(c).

⁹⁸ 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)).

⁹⁹ See INEOS Europe May 29, 2019 BCQR at B-6.

¹⁰⁰ See section 773(a)(7)(A) of the Act.

¹⁰¹ See 19 CFR 351.412(c)(2).

¹⁰² *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and*

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, 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),¹⁰³ we consider the starting prices to be the gross unit prices less all discounts and rebates. 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.¹⁰⁴

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market to 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.¹⁰⁵

INEOS Europe provided information regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Finally, INEOS Europe stated that “in all markets, sales are made at one {LOT}, and the {LOT} in the United States, the home market, and in Germany are approximately equivalent.”¹⁰⁶

Selling activities can generally be grouped into five categories for our analysis: Provision of Sales Support,¹⁰⁷ Provision of Training Services,¹⁰⁸ Provision of Technical Support,¹⁰⁹ Provision of Logistical Services,¹¹⁰ and Performance of Sales Related Administrative Activities.¹¹¹

Notice of Intent Not to Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7 (*OJ from Brazil*).

¹⁰³ 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).

¹⁰⁴ *See Micron Tech, Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

¹⁰⁵ *See, e.g., OJ from Brazil* at Comment 7.

¹⁰⁶ *See* INEOS Europe April 23, 2019 AQR at 19.

¹⁰⁷ The Provision of Sales Support can include: sales forecasting, strategic/economic planning, advertising, sales promotion, sales/marketing support, market research, and other related activities. *See* Initial AD Questionnaire at A-15.

¹⁰⁸ The Provision of Training Services can include: personnel training/exchange, distributor/dealer training, and other related activities. *Id.*

¹⁰⁹ The Provision of Technical Support can include: engineering services, technical assistance, and other related activities. *Id.*

¹¹⁰ The Provision of Logistical Services can include: inventory maintenance, post-sale warehousing, repacking, freight and delivery, and other related activities. *Id.*

¹¹¹ The Performance of Sales Related Administrative Activities can include: order input/processing, rebate programs, warranty service, and other related activities. *Id.*

In the home market, INEOS Europe reported that it made sales through one channel of distribution.¹¹² It reported that it performed the following sales activities for all sales in the home market: provision of sales support at low intensity; provision of logistical support at low intensity; and performance of sales related administrative activities at low intensity.¹¹³ We preliminarily find that INEOS Europe's sales in the home market are made at one LOT.

In the United States, INEOS Europe reported that it made sales through five channels of distribution through its U.S. affiliate INEOS America.¹¹⁴ INEOS Europe reported that "the only differences between {the channels} arise due to the location of the sale, the delivery terms of sale, and the nature of the customer's business."¹¹⁵ INEOS Europe reported the following sales activities in its sales to INEOS America in the U.S. market, which were the same regardless of the channels of distribution: provision of sales support at low intensity; provision of logistical support at low intensity; and performance of sales related administrative activities at low intensity.¹¹⁶ Therefore, notwithstanding that INEOS Europe reported five channels of distribution, we find that the differences were not sufficient to warrant finding different LOTs in the U.S. market. Thus, we preliminarily find that INEOS Europe's U.S. sales in the U.S. market were made at one LOT.

We compared the selling activities at the U.S. LOT with the selling activities at the home market LOT and found, after deducting selling functions corresponding to economic activities in the United States, *i.e.*, those performed by INEOS America, that the levels of trade in the U.S. and home markets were identical. Information on the record shows that INEOS Europe provided the selling activities at the same intensity (*i.e.*, the provision of sales support at low intensity; provision of logistical support at low intensity; and performance of sales related administrative activities at low intensity) in the home market and the U.S. market, irrespective of distribution channel.¹¹⁷ Thus, we preliminarily find that INEOS Europe's home market and U.S. market sales were made at the same LOT and that a CEP offset is not warranted for INEOS Europe, pursuant to section 773(a)(7)(B) of the Act.

D. 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 cost of production (COP), we based NV on comparison market prices. We calculated NV based on packed, delivered, or ex-works prices to unaffiliated customers in the home market. We made a deduction from the starting price for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and for circumstances of sale (imputed credit expenses and other selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

¹¹² See INEOS Europe May 29, 2019 BCQR at B-18.

¹¹³ See INEOS Europe April 23, 2019 AQR at Exhibit A-7.

¹¹⁴ *Id.* at 24.

¹¹⁵ *Id.* at 25.

¹¹⁶ *Id.*

¹¹⁷ See INEOS Europe April 23, 2019 AQR at Exhibit A-7.

When comparing U.S. sales with home market sales of merchandise similar to that sold in the U.S. market, we 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.¹¹⁸

E. Calculation of NV Based on Constructed Value (CV)

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of INEOS Europe's material and fabrication costs, selling general, and administrative (SG&A) expenses, profit and U.S. packing costs, as adjusted. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by INEOS Europe in connection with the production and sale of the foreign like product at the most similar LOT as the U.S. sale, as discussed above, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

F. Cost of Production (COP) Analysis

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses. We relied on the COP data submitted by INEOS Europe, except for the following adjustments.¹¹⁹

- We replaced the tolling fee paid to INEOS Belgium with the actual production costs incurred by INEOS Belgium. In our calculation of INEOS Belgium's costs, we added additional production costs incurred by INEOS Belgium, which are not normally included as part of a tolling fee.
- We calculated a G&A ratio for INEOS Europe using the audited financial statements of INEOS Europe. In calculating the revised G&A expense, we disallowed income related to bad debt expenses.

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, 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

¹¹⁸ See 19 CFR 351.411(b).

¹¹⁹ See Memorandum, "Antidumping Duty Less Than Fair Value Investigation of Acetone from Belgium: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – INEOS Europe AG," dated September 17, 2019.

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 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.

XIII. 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.

XIV. VERIFICATION

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

XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

9/17/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance