




A-351-852  
Investigation  
**Public Document**  
E&C/VII: EB, KW

DATE: April 27, 2018

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair Value Investigation of Polyethylene Terephthalate  
Resin from Brazil; and Postponement of Final Determination and  
Extension of Provisional Measures

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that polyethylene terephthalate resin (PET resin) from Brazil 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 September 26, 2017, Commerce received an antidumping duty (AD) petition concerning imports of PET resin from Brazil that was properly filed with Commerce by DAK Americas LLC, Indorama Ventures USA, Inc., M&G Polymers USA, and Nan Ya Plastics Corporation (the petitioners).<sup>1</sup> The petitioners are domestic producers of PET resin. On September 29, 2017, Commerce issued supplemental questionnaires to the petitioners regarding the petition.<sup>2</sup> On October 3, 2017, the petitioners filed supplemental questionnaire responses.<sup>3</sup> As a result,

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<sup>1</sup> See Petitioners' Letter, "Polyethylene Terephthalate ("PET") Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petition for the Imposition of Antidumping Duties," dated September 26, 2017 (Petition).

<sup>2</sup> See Commerce's Letter, "Petition for the Imposition of Antidumping Duties on Imports of Certain Polyethylene Terephthalate Resin from Brazil: Supplemental Questions," dated September 29, 2017.

<sup>3</sup> See Petitioners' Letter, "Polyethylene Terephthalate ("PET") Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petitioners' Amendment to Volume I Relating to General Issues," dated October 3, 2017; see also Petitioners' Letter, "Polyethylene Terephthalate ("PET") Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petitioners' Amendment to Volume II Relating to Brazil Antidumping Duties," dated

Commerce initiated this investigation on October 23, 2017.<sup>4</sup>

In the *Initiation Notice*, Commerce stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>5</sup> Accordingly, on October 18, 2017, Commerce released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.<sup>6</sup> No parties submitted comments on the CBP import data.

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of PET resin to be reported in response to Commerce's AD questionnaire.<sup>7</sup> On November 6, 2017, Commerce received comments from the petitioners relating to the physical characteristics of PET resin to be reported in response to the AD questionnaire.<sup>8</sup> Comments and rebuttal comments received concerning the scope of the investigation are discussed below under the section, "Scope Comments." Regarding physical characteristics, we received comments from the petitioners and Far Eastern New Century Corporation.<sup>9</sup> We received rebuttal comments from Novatex Limited (Novatex) and SK Chemicals, Co., Ltd. (SK Chemicals).<sup>10</sup> On November 28, 2017, Commerce finalized the proposed product characteristics, and other information relating to proposed model matching, for the LTFV investigations of PET resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan.<sup>11</sup>

On November 13, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PET resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan.<sup>12</sup>

On November 27, 2017, Commerce limited the number of mandatory respondents selected for individual examination to the two largest publicly-identifiable producers or exporters of the subject merchandise by volume. Accordingly, we selected Companhia Integrada Textil de Pernambuco (Textil de Pernambuco) and M&G Polimeros Brasil S.A., (MGP Brasil) as

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October 3, 2017.

<sup>4</sup> See *Polyethylene Terephthalate Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 48977 (October 23, 2017) (*Initiation Notice*).

<sup>5</sup> *Id.* at 48980.

<sup>6</sup> See Memorandum, "Antidumping Duty Investigation on Polyethylene Terephthalate Resin from Brazil: Release of Customs and Border Protection Entry Data," dated October 18, 2017 (Customs Data Memorandum).

<sup>7</sup> See *Initiation Notice*, 82 FR at 48977-48978.

<sup>8</sup> See Petitioners' Letter, "Polyethylene Terephthalate Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan – Petitioners' Comments on Product Matching Criteria and Hierarchy of Physical Characteristics," dated November 6, 2017.

<sup>9</sup> See Letter from Petitioners, "Petitioners' Comments on Product Matching Criteria and Hierarchy of Physical Characteristics," dated November 6, 2017, and Letter from Far Eastern New Century Corporation, "Correction to Product-Matching Comments," dated November 7, 2017.

<sup>10</sup> See Letter from Novatex, "Novatex's Rebuttal Comments on Product Characteristics and Scope," dated November 16, 2017; see also SK Chemicals' Letter, "Rebuttal Comments Regarding Product Characteristics," dated November 16, 2017.

<sup>11</sup> See, e.g., Commerce's Letter, "Antidumping Duty Questionnaire," dated November 28, 2017 at 2.

<sup>12</sup> See *Polyethylene Terephthalate (PET) Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan: Determinations, Investigation Nos. 731-TA-1387-1391 (Preliminary)*, 82 FR 53523 (November 16, 2017).

mandatory respondents in this investigation.<sup>13</sup>

On November 28, 2017, Commerce issued the AD questionnaire to MGP Brasil and Textil de Pernambuco. On December 15, 2017, and December 22, 2017, MGP Brasil and Textil de Pernambuco submitted, respectively, timely responses to section A of Commerce's AD questionnaire (*i.e.*, the section relating to general information).<sup>14</sup> On January 16, 2018, both companies responded to sections B, C, and D of Commerce's AD questionnaire (*i.e.*, the sections relating to home market and U.S. sales, and cost of production (COP) information).<sup>15</sup> From January through March 2018, Commerce issued supplemental questionnaires to MGP Brasil and Textil de Pernambuco. MGP Brasil and Textil de Pernambuco provided timely responses to these supplemental questionnaires.

On January 23, 2018, Commerce issued a memorandum tolling all deadlines for this investigation by three days due to the shutdown of the federal government.<sup>16</sup> On January 29, 2018, the petitioners filed a request to fully postpone the preliminary determination.<sup>17</sup> On February 22, 2018, Commerce fully extended the deadline for this preliminary determination.<sup>18</sup>

The petitioners filed comments in advance of this preliminary determination with respect to Textil de Pernambuco on April 9, 2018,<sup>19</sup> and with respect to MGP Brasil on April 11, 2018.<sup>20</sup>

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

### III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2016 through June 30, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was September 2017.<sup>21</sup>

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<sup>13</sup> See Memorandum, "Respondent Selection for the Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil," dated November 27, 2017.

<sup>14</sup> See MGP Brasil's December 16, 2017 Section A Questionnaire Response (MGP Brasil's December 15, 2017 AQR); see also Textil de Pernambuco's December 22, 2017 Section A Questionnaire Response (Textil de Pernambuco's December 22, 2017 AQR).

<sup>15</sup> See MGP Brasil's January 16, 2018 Section B-D Questionnaire Response (MGP Brasil's January 16, 2018 BCDQR; see also Textil de Pernambuco's January 16, 2018 BCDQR).

<sup>16</sup> See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

<sup>17</sup> See Petitioners' Letter, "Polyethylene Terephthalate Resin from Brazil, Indonesia, the Republic of Korea, Pakistan and Taiwan: Petitioners' Request to Postpone the Preliminary Determinations," dated January 29, 2018.

<sup>18</sup> See *Polyethylene Terephthalate Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 83 FR 7655 (February 22, 2018).

<sup>19</sup> See Petitioners' Letter, "Polyethylene Terephthalate Resin from Brazil – Petitioners' Pre-Preliminary Determination Comments on CITEPE," dated April 9, 2018 (Petitioners' Pre-Preliminary Comments Textil de Pernambuco).

<sup>20</sup> See Petitioners' Letter, "Polyethylene Terephthalate Resin from Brazil – Petitioners' Pre-Preliminary Determination Comments on MGP Brasil," dated April 11, 2018 (Petitioners' Pre-Preliminary Comments MGP Brasil).

<sup>21</sup> See 19 CFR 351.204(b)(1); see also *Initiation Notice*, 82 FR at 48977.

#### IV. POSTPONMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On March 29, 2018, Textil de Pernambuco 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.<sup>22</sup> On April 12, 2018, the petitioners requested, pursuant to 19 CFR 351.210(b)(2)(i) and (ii), that Commerce postpone the final determination.<sup>23</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

#### V. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,<sup>24</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>25</sup> We received comments from the Government of Indonesia (GOI) and SK Chemicals.<sup>26</sup> We received rebuttal comments from the petitioners and Novatex.<sup>27</sup>

The GOI argued Commerce should exclude from its investigation producers of PET resin manufactured solely from recycled material.<sup>28</sup> SK Chemicals argued that Commerce should clarify that the scope of the investigation is identical to the scope of previous PET resin investigations and to the now "retired" HTSUS subheading 3907.60.0030, regardless of the use of new and different HTSUS codes in the description of the scope of the current investigation.<sup>29</sup> In particular, Commerce should clarify that the scope is limited to "packaging grade (bottle grade and other)" PET resins and does not include chemically modified PET resins, especially PET

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<sup>22</sup> See Textil de Pernambuco's Letter, "Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil: Thailand: Request for Postponement of Final Determination and Provisional Measures Period," dated March 29, 2018.

<sup>23</sup> See Petitioners' Letter, "Polyethylene Terephthalate ("PET") Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petitioners' Request to Extend the Antidumping Duty Final Determinations," dated April 12, 2018.

<sup>24</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>25</sup> See *Initiation Notice*.

<sup>26</sup> See Government of Indonesia's Letter, "Comments on Scope of the Investigation," dated November 6, 2017 (GOI's Comments), and SK Chemicals' Letter, "Comments on the Scope of Investigation," dated November 6, 2017 (SK Chemicals' Comments). These submissions were moved to the instant investigation's record on March 30, 2018. See Memorandum, "Placing Scope Comments on the Record from the Concurrent PET Resin Investigations" dated March 30, 2018 (Scope Comments Memorandum).

<sup>27</sup> See Petitioners' Letter, "Petitioners' Rebuttal Scope Comments to SK Chemicals," dated November 16, 2017 (Petitioners' Rebuttal Comments), and Letter from Novatex Limited, "Novatex's Rebuttal Comments on Product Characteristics and Scope," dated November 16, 2017 (Novatex's Rebuttal Comments). This submission was moved to the instant investigation's record on March 30, 2018. See Scope Comments Memorandum.

<sup>28</sup> See GOI's Comments at 1.

<sup>29</sup> See SK Chemicals' Comments at 5-6.

resins modified via the addition of cyclohexanedimethanol (CHDM), which results in PET-glycol resins (sometimes referred to as “PETG”) and “PET-BR resins.”<sup>30</sup> Novatex stated its support for SK Chemicals’ arguments in its rebuttal comments.<sup>31</sup> In their rebuttal comments, the petitioners stated there was currently no language in the scope description suggesting an intent to exclude all PET resins modified by the addition of CHDM,<sup>32</sup> but that they would consider proposing a possible exclusion of certain modified PET resins, encompassing PET-glycol resins, but not PET-BR resins.<sup>33</sup> The petitioners also rejected arguments that the scope of the investigation should be considered coterminous with CBP’s subheading description or that the language of the scope description should be reduced to “generic” terms such as “packaging grade” or “bottle grade,” although acknowledging that “packaging end uses comprise a significant majority of end uses for covered PET resin.”<sup>34</sup>

On January 5, 2018, the petitioners submitted their exclusion language, proposing to exclude PET-glycol resins, created through the addition of at least 10 percent, by weight, of CHDM or one of four other modifiers.<sup>35</sup> In the same submission, the petitioners argued PET-BR resins should not be excluded, as such products contain only one to five percent CHDM.<sup>36</sup> On January 10, 2018, SK Chemicals responded to the petitioners’ proposal, stating its agreement with the exclusion language.<sup>37</sup>

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

Regarding the comments of SK Chemicals, supported by Novatex, as all parties acknowledge,<sup>38</sup> the use of HTSUS subheadings by Commerce is for reference purposes only and the language of the scope description remains dispositive. Therefore, we are not “clarifying” that the scope of this investigation is identical to the description of 3907.60.0030 given by CBP. Furthermore, while we are adopting the petitioners’ proposed exclusion language for PET-glycol resins, we are not excluding other PET resins, such as PET-BR, made through the addition of any amount of chemical modifiers. The scope language included in the petition contains no ambiguity suggesting that such an exclusion was intended.

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

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<sup>30</sup> *Id.* at 3 and 9.

<sup>31</sup> See Novatex’s Rebuttal Comments at 4-5.

<sup>32</sup> See Petitioners’ Rebuttal Comments at 2-3.

<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Id.* at 3-6.

<sup>35</sup> See Petitioners’ Letter, “Petitioners’ Proposed Scope Exclusion for PET-Glycol,” dated January 5, 2018 (Petitioners’ Proposed Scope Exclusion).

<sup>36</sup> See Petitioners’ Proposed Scope Exclusion at 5.

<sup>37</sup> See SK Chemicals’ Letter, “Response to Petitioners’ Scope Exclusion Letter,” dated January 10, 2018. This submission was moved to the instant investigation’s record on March 30, 2018. See Scope Comments Memorandum.

<sup>38</sup> See, e.g., SK Chemicals’ Comments at 2.

## **VI. AFFILIATION**

Section 771(33) of the Act states, in pertinent part, that the Department 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.” “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”<sup>39</sup>

### **A. Textil de Pernambuco**

Textil de Pernambuco and PSUAPE are separate legal entities owned 100 percent by Petróleo Brasileiro S.A. (Petrobras).<sup>40</sup> PSUAPE manufactures and sells purified terephthalic acid (PTA), which is a major input in the production of PET resin.<sup>41</sup> On the basis that Textil de Pernambuco and PSUAPE are both 100 percent owned by Petrobras, we find that they meet the definition of affiliated persons under section 771(33)(F) of the Act.

### **B. MGP Brasil**

MGP Brasil reported that it sold merchandise under consideration through its related party, M&G Polymers USA LLC (M&G USA), to the United States. Both companies produce and sell the merchandise under investigation. Information on the ownership relations between MGP Brasil and M&G USA on the record of this investigation confirms that both companies are commonly owned by one entity.<sup>42</sup> Based on our analysis of the information on the record, we determine that MGP Brasil and M&G USA are affiliated persons under section 771(33)(F) of the Act.

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<sup>39</sup> See 19 CFR 351.102(b).

<sup>40</sup> See Textil de Pernambuco’s December 22, 2017 AQR at 5.

<sup>41</sup> *Id.*

<sup>42</sup> See MGP Brasil’s February 1, 2018 ASQR at 7-8. Because the information is business proprietary in nature, see MGP Brasil’s Preliminary Analysis Memorandum at 2.

## 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 MGP Brasil's and Textil de Pernambuco's sales of subject merchandise from Brazil to the United States were made at less than normal value (NV) or constructed value (CV), where applicable, Commerce compared the export prices (EP) and constructed export prices (CEP), to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

#### 1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method or A-to-T method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, Commerce has applied a "differential pricing" (DP) analysis for determining whether application of the A-to-T method is appropriate in a particular situation, pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>43</sup> 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 (EP) or constructed export prices (CEP) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The DP analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For both Textil de Pernambuco and MGP Brasil, purchasers are based on the reported customer codes.<sup>44</sup> Regions are defined using the reported destination codes (*i.e.*, zip codes) and are grouped into

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<sup>43</sup> See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

<sup>44</sup> See MGP Brasil's February 16, 2018 Supplemental Questionnaire Response, Section C (MGP Brasil's February 16, 2018 CSQR) at C-8, and Textil de Pernambuco's January 16, 2018 BCDQR at C-10.

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 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 or CV 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 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 (*i.e.*, 0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales were found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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



weighted-average dumping margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

## 2. Results of the DP Analysis

For MGP Brasil, based on the results of the differential pricing analysis, Commerce preliminarily finds that 48.46 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>45</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the 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 A-to-A method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the A-to-A method for all U.S. sales to calculate the weighted-average dumping margin for MGP Brasil.

Based on the results of the DP analysis, Commerce preliminarily finds that 87.53 percent of Textil de Pernambuco's U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differs significantly among purchasers, regions or time periods. Further, Commerce finds that the A-to-A method appropriately accounts for such differences because there is not a meaningful difference in the weighted-average dumping margins calculated for Textil de Pernambuco when calculated using the A-to-A method and the average-to-transaction 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 Textil de Pernambuco.<sup>46</sup>

## 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, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>47</sup> Further, Commerce has a long-standing

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<sup>45</sup> See Memorandum to the File, "Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil: MGP Brasil Preliminary Determination Analysis," (MGP Brasil Preliminary Analysis Memorandum) at 4.

<sup>46</sup> See Memorandum to the File, "Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil: Textil de Pernambuco," (Textil de Pernambuco Preliminary Analysis Memorandum) at Attachment 2.

<sup>47</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by 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").

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.<sup>48</sup>

### *MGP Brasil*

For home market and U.S. sales, MGP Brasil reported date of invoice as the date of sale. Although Commerce normally uses the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale, 19 CFR 351.401(i) provides that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (*e.g.*, price and quantity).<sup>49</sup> In particular, as noted above, where the shipment date precedes the invoice date, Commerce will consider the shipment date to be the date of sale, as the shipment date better reflects the date on which the material terms of sale were established. Accordingly, for MGP Brasil's U.S. sales, where shipment date precedes invoice date, we have used the shipment date as the date of sale.<sup>50</sup>

### *Textil de Pernambuco*

For home market sales, Textil de Pernambuco reported the date of sale as the commercial invoice date because this is the date that the material terms of sale are fixed and binding.<sup>51</sup> We have reviewed the information submitted by Textil de Pernambuco and preliminarily determine that the reported date represents the date on which the material terms of sale were established. Thus, for the preliminary determination, Commerce has relied on the date of sale reported (*i.e.*, the invoice date) as the date of sale.

With respect to U.S. sales, Textil de Pernambuco reported the date of sale as the date that the order was registered in the company's enterprise resource planning (ERP) system, or the *pro forma* invoice date.<sup>52</sup> We have reviewed the information submitted by Textil de Pernambuco and preliminarily find that there is insufficient information to determine that the material terms of sale are established on the *pro forma* invoice date in the U.S. market. Accordingly, for the preliminary determination, Commerce has relied on the invoice date as the date of sale for all U.S. sales.<sup>53</sup>

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<sup>48</sup> See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum, at Comment 2.

<sup>49</sup> See, *e.g.*, *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>50</sup> See MGP Brasil's February 16, 2018 CSQR at the accompanying U.S. sales database.

<sup>51</sup> See Textil de Pernambuco's January 16, 2018 BCDQR at B-15.

<sup>52</sup> *Id.* at C-12; see also Textil de Pernambuco's February 12, 2018 Supplemental Questionnaire Response, Sections B & C (Textil de Pernambuco's February 12, 2018 BCSQR) at 15.

<sup>53</sup> *Id.*

## IX. PRODUCT COMPARISONS

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

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: intrinsic viscosity, blend, copolymer/homopolymer, additives, and acetaldehyde content. For MGP Brasil’s and Textil de Pernambuco’s sales of PET resin in the United States, the reported control number identifies the characteristics of the PET resin, as exported by MGP Brasil and Textil de Pernambuco.<sup>54</sup> Neither MGP Brasil nor Textil de Pernambuco reported sales of non-prime PET resin to the United States or in the home market.

## 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 sections 772(a) and 772(b) of the Act, we based the U.S. price on the CEP for MGP Brasil and based the U.S. price on the EP for Textil de Pernambuco.

### *MGP Brasil*

MGP Brasil reported having only CEP sales during the POI.<sup>55</sup> In accordance with section 772(b) of the Act, CEP is 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. MGP Brasil reported that it sold all of its subject merchandise to the United States through its affiliated reseller and producer of subject merchandise, M&G USA.<sup>56</sup>

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<sup>54</sup> See MGP Brasil’s December 15, 2017 AQR at 25, MGP Brasil’s February 1, 2018 Supplemental Questionnaire Response, Section A (MGP Brasil’s February 1, 2018 ASQR) at 11-12, MGP Brasil’s February 12, 2018 BSQR at B-3-5, and MGP Brasil’s February 16, 2018 CSQR at C-3-5; *see also* Textil de Pernambuco’s December 22, 2017 AQR at 25-27, Textil de Pernambuco’s February 1, 2018 Supplemental Questionnaire Response, Section A (Textil de Pernambuco’s February 1, 2018 ASQR) at 2-4; and Textil de Pernambuco’s BCSQR at 6-7.

<sup>55</sup> See MGP Brasil’s February 16, 2018 CSQR at 8.

<sup>56</sup> See MGP Brasil’s February 1, 2018 ASQR at 4, 7-8 and MGP Brasil’s February 16, 2018 CSQR at Exhibit S1-1b

We calculated the CEP based on a packed price delivered to customers in the United States. We made deductions from the starting price (adjusted for billing adjustments and deductions for rebates, where applicable, in accordance with 19 CFR 351.401(c)) for any movement expenses (e.g., foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, and U.S. inland freight), in accordance with section 772(c)(2)(A) of the Act.<sup>57</sup>

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses, bank charges, commissions, and foreign and U.S. inventory carrying costs) and indirect selling expenses.<sup>58</sup> Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by MGP Brasil and its U.S. affiliate, M&G USA, on their sales of the subject merchandise in the United States, based on the sales price to unaffiliated purchasers in the United States and the profit associated with those sales.<sup>59</sup>

### *Textil de Pernambuco*

Textil de Pernambuco reported having only EP sales during the POI.<sup>60</sup> In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Textil de Pernambuco reported that it sold all of its subject merchandise in the U.S. to unaffiliated distributors in the U.S.<sup>61</sup>

We calculated the EP based on the sales price to the unaffiliated U.S. customers. We made deductions, where applicable, for any movement expenses (e.g., freight, warehouse fees, brokerage and handling, container sealing fees, terminal charges, insurance), packing, and selling expenses in accordance with section 772(c)(2)(A) of the Act.<sup>62</sup>

## **XI. DUTY DRAWBACK**

Section 772(c)(1)(B) of the Act states that EP shall be increased by “the amount of any import duties imposed by the country of exportation...which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether a respondent is entitled to duty drawback, Commerce traditionally applies<sup>63</sup> the following two-prong test, which was upheld by the United States Court of International Trade (CIT):<sup>64</sup> first,

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at C-7.

<sup>57</sup> See MGP Brasil’s February 16, 2018 CSQR at C-15 and C-18-21.

<sup>58</sup> *Id.* at C-25-32.

<sup>59</sup> See MGP Brasil Preliminary Analysis Memorandum at 3-4, and Margin Program Log and Output.

<sup>60</sup> See Textil de Pernambuco’s December 22, 2017 AQR at A-14.

<sup>61</sup> See Textil de Pernambuco’s January 16, 2018 BCDQR at C-11.

<sup>62</sup> See Textil de Pernambuco’s Preliminary Analysis Memorandum at Attachment 2.

<sup>63</sup> See, e.g., *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed Cir. 2011).

<sup>64</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006), citing *Wheatland Tube Company*

that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and second, that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.<sup>65</sup>

Textil de Pernambuco reported that it utilized two programs for duty drawback during the POI: (1) duty exemption drawback, and (2) duty suspension drawback.<sup>66</sup> However, as discussed below, we find that there is incomplete and insufficient information on the record regarding the programs for which Textil de Pernambuco makes duty drawback claims to determine whether any adjustments should be granted. Accordingly, for the Preliminary Determination, Commerce will not grant duty drawback adjustments for either program.

### A. Duty Exemption Drawback

Regarding Textil de Pernambuco's reported participation in the duty exemption drawback program, in response to Commerce's initial and supplemental questionnaires, Textil de Pernambuco's description of the program was unintelligible and incomplete. For example, in our initial questionnaire, Commerce requested that Textil de Pernambuco "{r}eport the unit amount of any duty drawback received...{and} explain how the amount of duty drawback received is calculated." Textil de Pernambuco's only description of the drawback exemption program in its first questionnaire response was:

*{Textil de Pernambuco} used another modality of DRAWBACK, the EXEMPTION (number 170006905), which consist in export material first, and after import the corresponding raw material with total exemption registration fees.*<sup>67</sup>

In a supplemental questionnaire, Commerce asked that Textil de Pernambuco "{d}etail the specific program(s) under which you are claiming the duty drawback adjustment. Provide the applicable laws and regulations, and demonstrate that the claimed adjustment is based on imported inputs used in the production of subject merchandise." With regard to the duty exemption drawback, Textil de Pernambuco's only response in its supplemental questionnaire was:

*{Textil de Pernambuco} used a second drawback regime, called exemption drawback for a smaller portion of its exports...The exemption drawback modality*

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*v. United States*, 414 F. Supp. 2d 1271, 1287 (CIT 2006); *Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (CIT 2005); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1093 (CIT 2001); *Far East Machinery Co., Ltd v. United States*, 699 F. Supp. 309, 311 (CIT 1988); *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987).

<sup>65</sup> See, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2; see also *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 70 FR 73447 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 7; and *Federal-Mogul Corp. v. United States*, 862 F. Supp. 384, 410 (CIT 1994).

<sup>66</sup> See Textil de Pernambuco's January 16, 2018 BCDQR at C-34 and Textil de Pernambuco's February 12, 2018 BCSQR at 19-21.

<sup>67</sup> See Textil de Pernambuco's January 16, 2018 BCDQR at C-35.

*to import raw material with the exemption of import tax, IPI and AFRMM (Additional Freight for the Renewing of the Merchant Marine) for goods in equivalent quality or quantity, destined to the reposition of goods previously imported with the entire collection of taxes used in the industrialization of the exported product.*<sup>68</sup>

Textil de Pernambuco provided no further description of the program features beyond these responses, which we find to be unintelligible. In addition, Textil de Pernambuco provided incomplete and insufficient supporting documentation to evidence the reported adjustment. Specifically, Textil de Pernambuco submitted one primary document, the “Ato Concessorio” which it alleges confirms the approval and terms of Textil de Pernambuco’s commitment to the duty exemption drawback program. However, the Ato Concessorio’s translation is indecipherable.<sup>69</sup> Moreover, the average savings calculation spreadsheet that refers to the duty exemption drawback is not entirely translated and has no supporting documentation to substantiate the claimed volume of imported or exported merchandise.<sup>70</sup> Textil de Pernambuco did not further support its claim to have utilized the duty exemption drawback with import or export declarations, or other documentation that substantiated its claim for duty exemption drawback. Accordingly, as stated above, Commerce finds that there is incomplete and insufficient evidence to warrant a duty drawback adjustment with regard to this program.

## **B. Duty Suspension Drawback**

In response to Commerce’s questionnaires, Textil de Pernambuco provided supporting documentation regarding its utilization of the duty suspension drawback program, including its application documents, the Ato Concessorio, one export registration and declaration, one import declaration, a list of total exports benefiting from duty drawback, and an average savings calculation.<sup>71</sup> Although Textil de Pernambuco provided a narrative description of the duty suspension drawback program, the supporting documentation suffers from similar deficiencies as the exemption program. For example, the average savings calculation is only partially translated.<sup>72</sup> Further, the calculation is not accompanied by an adequate explanation of how it was derived. Specifically, several values lack explanation or supporting evidence to substantiate their origin. In addition, the export and import declarations do not support the average savings calculation. There are no values that tie to the export declaration. With regard to the import declaration, the quantity and license number of one import included in the average savings calculation ties to the document; however, the value listed on the import declaration does not match the value listed in the average savings calculation.<sup>73</sup>

Without a sufficient explanation of the duty suspension drawback program, and given the contradictory and inconsistent supporting documentation on the record, we find that Textil de Pernambuco’s claim for a duty suspension drawback adjustment is insufficient and incomplete.

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<sup>68</sup> See Textil de Pernambuco’s February 12, 2018 BCSQR at 20.

<sup>69</sup> See Textil de Pernambuco’s January 16, 2018 BCDQR at Exhibit C-13(5).

<sup>70</sup> See Textil de Pernambuco’s February 12, 2018 BCSQR at Exhibit BC-17(d).

<sup>71</sup> See Textil de Pernambuco’s January 16, 2018 BCDQR at C-34-36 and Textil de Pernambuco’s February 12, 2018 BCSQR at 19-21 and Exhibit BC-17(a)-(e).

<sup>72</sup> See Textil de Pernambuco’s February 12, 2018 BCSQR at Exhibit BC-17(a)-(e).

<sup>73</sup> See Textil de Pernambuco’s January 16, 2018 BCDQR at Exhibit C-13(5) and Textil de Pernambuco’s February 12, 2018 BCSQR at Exhibit BC-17(a)-(e).

Accordingly, we have not granted the duty suspension drawback adjustment claimed by Textil de Pernambuco.

## **XII. NORMAL VALUE**

Section 773(a)(1)(B)(i) of the Act defines NV as “the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the {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.

### **A. Sample Sales**

Pursuant to section 773(a)(1)(B)(i), NV is the price at which the foreign like product is first “sold” for consumption in the exporting country “in the usual commercial quantities and in the ordinary course of trade.” Thus, the price of the merchandise is included in the margin calculation if, among other things, the merchandise is “sold” in the “ordinary course of trade.” If it is not “sold” or not sold in the “ordinary course of trade,” the merchandise is excluded from the NV calculation. The U.S. Court of Appeals for the Federal Circuit (CAFC) has held the term “sold” requires: (1) a transfer of ownership to an unrelated party; and (2) consideration.<sup>74</sup>

#### *Textil de Pernambuco*

Textil de Pernambuco reports that it sent sample sales to its home market customers during the POI and that its home market customers are not charged for the samples in question.<sup>75</sup> In *NSK*, the CAFC held “that the term ‘sold’ . . . requires both a transfer of ownership to an unrelated party and consideration.”<sup>76</sup> Thus, a zero-priced transaction does not qualify as a “sale” and, therefore, by definition, would not be included in Commerce’s NV calculation. The distribution of PET resin for no consideration is not a sale and, we do not include zero-priced transactions in the NV calculations under section 773 of the Act. Therefore, we are preliminarily excluding zero-priced transactions in our margin calculation for Textil de Pernambuco.

### **B. Home Market Viability**

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

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<sup>74</sup> See *NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997) (*NSK*).

<sup>75</sup> See Textil de Pernambuco’s January 16, 2018 BCDQR at C-49 and Textil de Pernambuco’s February 12, 2018 BCSQR at 6.

<sup>76</sup> See *NSK*, 115 F.3d at 975.

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.

### *MGP Brasil*

We have determined that the aggregate volume of MGP Brasil's home market sales of the foreign like product is greater than five percent of the aggregate volume of its U.S. sales of the merchandise under consideration.<sup>77</sup> Therefore, we used home market sales as the basis for NV for MGP Brasil, in accordance with section 773(a)(1)(B) of the Act.

### *Textil de Pernambuco*

We have determined that the aggregate volume of Textil de Pernambuco's home market sales of the foreign like product is greater than five percent of the aggregate volume of its U.S. sales of the merchandise under consideration.<sup>78</sup> Based on Commerce's analysis of Textil de Pernambuco's home market sales data, Commerce disregarded all of Textil de Pernambuco's home market sales because there are no sales above the cost of production. Because there are no sales of the foreign like product in the foreign market suitable for matching to the subject merchandise, Commerce used constructed value (CV)<sup>79</sup> as the basis for NV for Textil de Pernambuco, in accordance with section 773(a)(4) of the Act.

## **C. 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.<sup>80</sup> 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."<sup>81</sup>

During the POI, MGP Brasil and Textil de Pernambuco reported that they did not make sales of the foreign-like product in the home market to an affiliated party, as defined in section 771(33)(F) of the Act. Therefore, we did not test whether respondents' sales were made at arm's-length prices, in accordance with 19 CFR 351.403(c).

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<sup>77</sup> See MGP Brasil's December 15, 2017 AQR at Exhibit A-1.

<sup>78</sup> See Textil de Pernambuco's December 22, 2018 AQR at Exhibit A-1.

<sup>79</sup> The constructed value is the sum of: (1) the cost of materials and fabrication of the subject merchandise, (2) selling, general, and administrative expenses and profit in the foreign market, and (3) the cost of packing for exportation to the United States. (Section 773(e) of the Act; 19 CFR 351.405 and 351.407).

<sup>80</sup> See 19 CFR 351.403(c).

<sup>81</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).



#### D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>82</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>83</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>84</sup> 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.<sup>85</sup>

When Commerce is unable to match U.S. 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.<sup>86</sup>

Commerce's practice is to group selling activities into four selling function categories for its LOT analysis: 1) sales and marketing; 2) freight and delivery services; 3) warranty and technical support; and 4) inventory maintenance and warehousing.

#### *MGP Brasil*

To determine if MGP Brasil's home-market sales are made at a different LOT than its CEP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between MGP Brasil and the unaffiliated customers.

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<sup>82</sup> See 19 CFR 351.412(c)(2).

<sup>83</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

<sup>84</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>85</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>86</sup> See, *e.g.*, *OJ from Brazil* at Comment 7.

In the home market, MGP Brasil reported that it made sales through one channel of distribution.<sup>87</sup> However, based on MGP Brasil's selling functions chart, we find that there are in fact two channels of distribution (*i.e.*, two customer categories, making direct shipments to unaffiliated end-users and to unaffiliated distributors).<sup>88</sup> Therefore, we compared the selling activities MGP Brasil performed in each channel, and found that there is no significant difference between the selling functions performed between the channels.<sup>89</sup> Specifically, for both channels of distribution, MGP Brasil reported that it performed the same eight selling activities: sales packing; direct sales personnel; technical assistance; provide rebates; provide cash discounts; pay commissions, provide guarantees; and freight and delivery arrangements. MGP Brasil further reported that it performs seven of these eight selling functions at the same relative level of intensity for all of its home market sales in both channels of distribution. As a result, we determine that all of MGP Brasil's home market sales are at the same LOT.<sup>90</sup>

With respect to its U.S. sales, MGP Brasil reported that it sold all of its subject merchandise to the United States through its affiliated reseller and producer of subject merchandise, M&G USA.<sup>91</sup> As noted above, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>92</sup> We find that MGP Brasil made sales through one channel of distribution. We further find that MGP Brasil performed only three of the eight selling activities that it performs for its home market customers (*i.e.*, freight and delivery services, packing, and providing guarantees).<sup>93</sup> While MGP Brasil performs these three selling activities in both markets at the same level of intensity, the respondent performs a broader range of selling functions for its home market sales, suggesting that they take place at a more advanced stage of distribution. Therefore, we determine that MGP Brasil's home market LOT is at a more advanced stage of distribution than its LOT for sales to the United States.

Therefore, based on the totality of the facts and circumstances, we preliminarily determine that MGP Brasil's home market LOT is more advanced than its LOT for U.S. sales. Because MGP Brasil's home market LOT is more advanced, and no LOT adjustment is possible, a CEP offset is warranted.<sup>94</sup> Accordingly, we have granted MGP Brasil a CEP offset pursuant to section 773(a)(7)(B) of the Act.

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<sup>87</sup> *Id.* at Exhibit A-7.

<sup>88</sup> *Id.* at Exhibit A-8.

<sup>89</sup> See MGP Brasil's February 12, 2018 BSQR at Exhibit A-8.

<sup>90</sup> *Id.* at Exhibit S1B-5.

<sup>91</sup> See MGP Brasil's February 1, 2018 ASQR at 4, 7-8 and MGP Brasil's February 16, 2018 CSQR at Exhibit S1-1b at C-7.

<sup>92</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>93</sup> With respect to CEP transactions in the U.S. market, the U.S. LOT is defined as the level of the constructed sale from the exporter to the importer. See 19 CFR 351.412(c)(1)(ii).

<sup>94</sup> Given that there is only one LOT in the home market and one LOT in the U.S. market, which are at different LOTs, and the NV LOT is at a more advanced stage of distribution than the LOT of the CEP sales, 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 under section 773(a)(7)(A) of the Act and 19 CFR 351.412, the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act..

### *Textil de Pernambuco*

To determine if Textil de Pernambuco's home-market sales are made at a different LOT than its EP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between Textil de Pernambuco and the unaffiliated customers.

Textil de Pernambuco reported two channels of distribution in the home market: (1) sales to unaffiliated end-users and distributors (HM Channel 1) and (2) sales distributors whose purpose is to sell to smaller customers that purchase less-than-truck-load quantities (HM Channel 2).<sup>95</sup> In determining whether separate LOTs exist in the home market, we compared the selling functions performed by Textil de Pernambuco in each of the home market channels of distribution.

We compared the selling activities Textil de Pernambuco performed in each channel, and found that there is no significant difference between the selling functions performed between the channels.<sup>96</sup> As a result, we found that Textil de Pernambuco performed the same selling functions for both home market distribution channels. Accordingly, we determined that all home market sales constitute one LOT.

Textil de Pernambuco reported one channel of distribution for the U.S. market: sales made directly to distributors or trading companies in the U.S.<sup>97</sup> Because there is only one channel of distribution in the U.S. market, we determined that all U.S. market sales constitute one LOT. Next, we compared the selling activities in the one LOT in the home market to the selling activities in the one LOT in the U.S. The selling function chart submitted by Textil de Pernambuco in Exhibit A-10 of its December 22, 2017, Section A questionnaire response shows that for each of the following items, Textil de Pernambuco performed corresponding selling activities at the same or a similar level of intensity in both the U.S. and comparison markets: (1) sales and marketing; (2) freight and delivery services; and (3) post-sales assistance.<sup>98</sup>

Although in certain instances the level of intensity for sales and marketing services differed between the U.S. and comparison markets, that difference alone does not mean these different levels of intensity constitute different marketing stages given that (1) most of the listed selling activities were performed in the U.S. and comparison markets, and (2) in most cases, the respondent performed corresponding selling activities at the same or a similar level of intensity in the U.S. and comparison markets. Thus, while there appears to be a somewhat greater focus in the home market on "sales and marketing services," based on the totality of the information reported with respect to selling activities and the intensity levels at which these activities were performed, we do not find that Textil de Pernambuco sold foreign like product and subject merchandise at significantly different marketing stages. Therefore, we preliminarily find that, during the POI, Textil de Pernambuco sold the foreign like product and subject merchandise at the same LOT. Accordingly, all comparisons of EP to NV are at the same LOT, and thus a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

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<sup>95</sup> See Textil de Pernambuco's December 22, 2017 AQR at 13.

<sup>96</sup> *Id.* at Exhibit A-8-10.

<sup>97</sup> *Id.* at 12.

<sup>98</sup> *Id.* at Exhibit A-8.

## **E. 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 and inland insurance 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.

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.<sup>99</sup>

## **F. 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 Textil de Pernambuco'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) of the Act and Commerce's practice,<sup>100</sup> we based SG&A expenses on the amounts incurred and realized by Textil de Pernambuco in connection with the production and merchandise under investigation 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. In addition, we based profit and indirect selling expenses on the actual amounts incurred and realized by MGP Brasil in connection with the production and merchandise under investigation 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.<sup>101</sup>

## **G. Cost of Production (COP) Analysis**

### **1. Calculation of COP**

#### *MGP Brasil*

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 examined MGP Brasil's cost data and determined that our quarterly cost methodology is not warranted, therefore, we applied our standard methodology of using annual costs based on the reported data. We relied on the COP

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<sup>99</sup> See 19 CFR 351.411(b).

<sup>100</sup> 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).

<sup>101</sup> See Textil de Pernambuco's Preliminary Analysis Memorandum for the business proprietary discussion of this issue.

data submitted by MGP Brasil in its section D and supplemental section D questionnaire responses, except for the following adjustments: We adjusted MGP Brasil's reported cost of manufacturing to reflect the purchase of PTA from affiliated suppliers at arm's length prices. In addition, we adjusted MGP Brasil's general and administrative expenses to include fixed asset impairments and certain royalties.<sup>102</sup>

### *Textil de Pernambuco*

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 examined Textil de Pernambuco's cost data and determined that our quarterly cost methodology is not warranted, therefore, we applied our standard methodology of using annual costs based on the reported data. We relied on the COP data submitted by Textil de Pernambuco in its section and supplemental section D questionnaire responses, except for the following adjustments: we revised PSUAPE's cost of production (COP) to include asset impairment losses and plant idleness expenses in the selling, general, and administrative expenses (SG&A) calculation; included PSUAPE's SG&A expenses in the calculation of reimbursement of shared activities; revised Textil de Pernambuco's general and administrative expense ratio to include the asset impairment losses and idle facility expenses; and calculated Textil de Pernambuco's CV profit and selling expenses using MGP Brasil's combined CV profit and selling expenses.<sup>103</sup>

## 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 exclusive of any applicable billing adjustments, movement charges, actual direct and indirect selling expenses, and packing expenses

## 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and

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<sup>102</sup> See Memorandum, "Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – M&G Polimeros Brasil, S.A.," (MGP Brasil Preliminary Accounting Memorandum) at 1-2.

<sup>103</sup> See Memorandum, "Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Brazil: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Companhia Integrada Textil de Pernambuco (Textil de Pernambuco)," (Textil de Pernambuco Preliminary Accounting Memorandum) at 1-2.

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.

#### *MGP Brasil*

We found that, for certain products, more than 20 percent of MGP Brasil’s home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### *Textil de Pernambuco*

We found that, for all products, more than 20 percent of Textil de Pernambuco’s home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded the below-cost sales as the basis for determining NV, in accordance with section 773(b)(1) 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, 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 MGP Brasil’s and Textil de Pernambuco’s information relied upon in making our final determination.

## XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/27/2018

**X**

*James Maeder*

Signed by: JAMES MAEDER

James Maeder

Associate Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

performing the duties of Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations