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

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

SUBJECT: Decision Memorandum for the Preliminary Results of the Second
Antidumping Duty Administrative Review: Emulsion Styrene
Butadiene Rubber from Brazil; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting the second administrative review of the antidumping duty (AD) order on emulsion styrene butadiene rubber (ESB rubber) from Brazil. The review covers one producer/exporter of the subject merchandise, *i.e.*, ARLANXEO Brasil S.A. (ARLANXEO Brasil). The period of review (POR) is September 1, 2018 through August 31, 2019. We preliminarily find that sales of subject merchandise by ARLANXEO Brasil were made at prices less than normal value during the POR.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

On September 3, 2019, Commerce published a notice of opportunity to request an administrative review of the AD order on ESB Rubber from Brazil.¹ On September 30, 2019, Lion Elastomers LLC (the petitioner) requested that Commerce conduct a review of ARLANXEO Brasil's exports during the POR.² Pursuant to this request, on November 12, 2019, Commerce published in the *Federal Register* the *Initiation Notice*.³ On November 14, 2019, Commerce issued the AD

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 45949 (September 3, 2019).

² See Petitioner's Letter, "Antidumping Review of Emulsion Styrene Butadiene Rubber (E-SBR) from Brazil: Request for Second Administrative Review," dated September 30, 2019.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 61011 (November 12, 2019) (*Initiation Notice*).



questionnaire to ARLANXEO Brasil. Between December 2019 and December 2020, ARLANXEO Brasil timely responded to Commerce’s original and supplemental questionnaires.⁴

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁵ On June 23, 2020, Commerce extended the deadline for the preliminary results of this review by an additional 119 days.⁶ On July 21, 2020, Commerce tolled all deadlines for preliminary and final results in administrative reviews by an additional 60 days.⁷ The deadline for the preliminary results of this review is now January 19, 2020.

On December 2, 2020, Commerce notified interested parties of an opportunity to submit comments for Commerce to consider in these preliminary results.⁸ On December 15, 2020, ARLANXEO Brasil submitted comments for Commerce’s consideration.⁹

III. SCOPE OF THE ORDER

The product covered by this order is cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the order includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the order covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as “Clear” or “White Rubber.” The 1700 grades are oil-extended and thus darker in color, and are often called “Brown Rubber.”

⁴ See ARLANXEO Brasil’s December 17, 2019 Section A Questionnaire Response (ARLANXEO Brasil’s December 17, 2019 AQR); *see also* ARLANXEO Brasil’s January 9, 2020 Sections B, C, and D Questionnaire Response (ARLANXEO Brasil’s January 9, 2020 BCDQR); ARLANXEO Brasil’s May 27, 2020 Supplemental Questionnaire Response (ARLANXEO Brasil’s May 27, 2020 SQR); ARLANXEO Brasil’s June 26, 2020 Supplemental Questionnaire Response; ARLANXEO Brasil’s July 6, 2020 Supplemental Questionnaire Response (ARLANXEO Brasil’s July 6, 2020 SQR); ARLANXEO Brasil’s July 23, 2020 Supplemental Questionnaire Response; ARLANXEO Brasil’s December 11, 2020 Supplemental Questionnaire Response.

⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

⁶ See Memorandum, “2018-2019 Antidumping Duty Administrative Review of Emulsion Styrene Butadiene Rubber from Brazil: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated June 23, 2020.

⁷ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

⁸ See Commerce’s Letter, “Second Antidumping Duty Administrative Review of Emulsion Styrene-Butadiene Rubber from Brazil: Opportunity to Submit Comments on Preliminary Results of Review,” dated December 2, 2020.

⁹ See ARLANXEO Brasil’s Letter, “Emulsion Styrene-Butadiene Rubber from Brazil: ARLANXEO’s Pre-preliminary Comments,” dated December 15, 2020.

Specifically excluded from the scope of this order are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to this order are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003-55-8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act, and 19 CFR 351.414(c)(1) and (d), to determine whether ARLANXEO Brasil's sales of the subject merchandise from Brazil to the United States were made at less than normal value, Commerce compared the constructed export price (CEP) to the normal value as described in the "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 dumping margins by comparing weighted-average normal values to weighted-average exported prices (EPs) (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, Commerce examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.¹⁰

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹¹ Commerce finds that the differential pricing analysis used in those recent investigations may be

¹⁰ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews*; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

¹¹ 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).

instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs, (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes or city and state names) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and normal value for the individual dumping margins.

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

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.¹²

2. Results of the Differential Pricing Analysis

For ARLANXEO Brasil, based on the results of the differential pricing analysis, Commerce preliminarily finds that 94.97 percent of the value of U.S. sales pass the Cohen's *d* test,¹³ which 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 average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for ARLANXEO Brasil.

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

¹³ See Memorandum, "Antidumping Duty Administrative Review of Emulsion Styrene Butadiene Rubber from Brazil: Preliminary Results Analysis Memorandum for ARLANXEO Brasil S.A.," dated concurrently with this memorandum (Preliminary Analysis Memorandum).

B. Product Comparisons

In accordance with section 771(15) of the Act, Commerce considered all products produced and sold by ARLANXEO Brasil in Brazil, as described in the “Scope of the Order” section of this notice, above, that were in the ordinary course of trade. Commerce 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, Commerce compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade in accordance with sections 771(15) and (16) of the Act.

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristic reported by ARLANXEO Brasil (*i.e.*, IISRP grade). For ARLANXEO Brasil’s sales of ESB rubber in the United States, the reported control number (CONNUM) identifies the characteristics of ESB rubber, as reported by ARLANXEO Brasil.

C. Date of Sale

Section 351.401(i) of Commerce’s regulations states that, “{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business.” The regulation provides further 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.¹⁴ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹⁵

ARLANXEO Brasil reported the date of invoice to the first unaffiliated customer as the date of sale for both its home market sales and U.S. sales.¹⁶ As explained above, 19 CFR 351.401(i) states that, in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. Additionally, 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. In this case, ARLANXEO Brasil reported that the invoice date best represents the date of sale because, at that point, the material

¹⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; 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.

¹⁶ See ARLANXEO Brasil’s January 9, 2020 BCDQR at B-14 – B-15, Exhibit B-5, and C-14-C-15; see also ARLANXEO Brasil’s June 26, 2020 SQR at 5; and ARLANXEO Brasil’s July 6, 2020 SQR at 7-8, and Exhibit SC-3.

terms of the sale cannot be altered.¹⁷ Therefore, Commerce preliminarily has used the invoice date as the date of sale in both the home and U.S. markets for ARLANXEO Brasil, in accordance with our practice.

D. Constructed Export Price

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.

ARLANXEO Brasil classified its sales of ESB rubber to the United States as CEP sales. ARLANXEO Brasil reported that it sold the subject merchandise to its affiliated U.S. importer, ARLANXEO USA LLC (ARLANXEO USA), which then re-sold the merchandise to the unaffiliated U.S. customer. Further, Commerce concluded that EP, as defined by section 772(a) of the Act, was not otherwise warranted. Commerce calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States.¹⁸ Commerce made adjustments to reported prices for billing adjustments, where applicable. In accordance with section 772(c)(2)(A) of the Act, Commerce made deductions, where applicable, from the starting price for movement expenses including foreign inland freight from plant to distribution warehouse, foreign warehousing expenses, foreign inland freight from plant to port of exportation, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. warehousing expenses, U.S. inland freight, U.S. insurance expenses, and other U.S. transportation expenses.

In accordance with section 772(d)(1) of the Act, Commerce also deducted selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (*i.e.*, credit expenses) and indirect selling expenses (*i.e.*, inventory carrying costs and indirect selling expenses). In accordance with section 772(f) of the Act, Commerce calculated the CEP profit rate using the expenses incurred by ARLANXEO Brasil and its U.S. importer/affiliate, ARLANXEO USA, related to their sales of the foreign like product in the comparison market and their sales of the merchandise under consideration in the United States and the profit associated with those sales.¹⁹

E. Normal Value

1. 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 normal value (*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), Commerce normally compares the respondent's volume of home market sales of the

¹⁷ See ARLANXEO Brasil's January 9, 2020 BCDQR at Exhibit B-5; *see also* Brasil's July 6, 2020 SQR at Exhibit SC-3.

¹⁸ See Preliminary Analysis Memorandum.

¹⁹ *Id.*

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 Commerce determines that no viable home market exists, Commerce 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.

In this review, Commerce determined that the aggregate volume of home market sales of the foreign like product for ARLANXEO Brasil was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, Commerce used home market sales as the basis for normal value for ARLANXEO Brasil, in accordance with section 773(a)(1)(B) of the Act.²⁰

2. Affiliated Party Transactions and the Arm's-Length Test

Commerce may calculate normal value 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.²¹ Under section 773(a)(5) of the Act, Commerce has considerable discretion in deciding whether to include affiliated party sales when calculating normal value.²² Commerce excludes comparison market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade.²³ Consistent with 19 CFR 351.403(c) and (d) and in accordance with its practice, Commerce, "may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."²⁴ To test if sales to affiliates were made at arm's-length prices, we compare, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing (arm's-length test). Where prices to the affiliated party are, on average, within a range of 98-to-102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determine that the sales made to the affiliated party are at arm's length.²⁵

3. Cost of Production

Section 773(b)(2)(A)(ii) of the Act requires Commerce to request constructed value and cost of production (COP) information from respondent companies in all AD proceedings.²⁶ Accordingly, Commerce requested this information from ARLANXEO Brasil in this review. We examined ARLANXEO Brasil's cost data and determined that our quarterly cost

²⁰ See ARLANXEO Brasil's December 17, 2019 AQR at Exhibit A-1.

²¹ See 19 CFR 351.403(c).

²² See section 773(a)(5) of the Act; *see also NTN Corp. v. United States*, 306 F. Supp. 2d 1319, 1332 (CIT 2004) (affirming Commerce's discretion to apply the arm's-length test to determine whether to exclude certain home market sales to affiliated parties in the normal value calculation).

²³ See 19 CFR 351.403(c).

²⁴ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003).

²⁵ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).

²⁶ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015).

methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.²⁷

a. Calculation of COP

We calculated the COP for ARLANXEO Brasil based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses and packing, in accordance with section 773(b)(3) of the Act. We relied on the COP data provided by ARLANXEO Brasil in its most recently submitted cost database for the COP calculation except as follows:

- We revised the scrap offset for ESB rubber products by reallocating a portion of the costs that were assigned to scrap back to ESB rubber products.²⁸

b. Test of Comparison Market Sales Prices

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

c. Results of the COP Test

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

We found that, for certain specific products, more than 20 percent of ARLANXEO Brasil's respective home market sales during the POR 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

²⁷ See Preliminary Analysis Memorandum.

²⁸ *Id.*

therefore excluded these sales and used the remaining sales, if any, as the basis for determining normal value, in accordance with section 773(b)(1) of the Act.

F. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate normal value 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).²⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁰ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, Commerce examined 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.*, normal value based on either home market or third country prices),³¹ Commerce considered the starting prices before any adjustments. For CEP sales, Commerce considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³²

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 an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the normal value 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 normal value 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.³³

In this review, ARLANXEO Brasil reported that all of its sales were CEP sales. Commerce obtained information from ARLANXEO Brasil regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution.³⁴ Our LOT findings are summarized below.

²⁹ See 19 CFR 351.412(c)(2).

³⁰ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

³¹ Where normal value is based on constructed value, we determine the normal value LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for constructed value, where possible. See 19 CFR 351.412(c)(1).

³² See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

³³ See, e.g., *OJ from Brazil* IDM at Comment 7.

³⁴ See ARLANXEO Brasil's December 17, 2019 AQR at A-17-A-27 and Exhibits A-6 - A-7; ARLANXEO Brasil's May 27, 2020 SQR at 3-8, and Exhibit SA-4.

Based on our examination of ARLANXEO Brasil's submissions, we preliminarily find that the record does not support ARLANXEO Brasil's assertion that its home market sales were made at two different LOTs. ARLANXEO Brasil reported information about the level of intensity at which it performed the following selling activities during the POR for home-market sales to end users and distributors, and U.S. sales to its U.S. affiliate, ARLANXEO USA: (1) sales support; (2) technical support; (3) logistical services; and (4) sales related administrative activities.³⁵ ARLANXEO Brasil reported that it made POR home-market sales through two different channels of distribution corresponding to two different categories of customer (*i.e.*, end users and distributors), and that it made U.S. CEP sales to its U.S. affiliate, ARLANXEO USA, through one channel of distribution (*i.e.*, sales to ARLANXEO USA, which were then sold to downstream U.S. end-user and U.S. reseller customers).³⁶ ARLANXEO Brasil claims that it made home-market sales at two different LOTs corresponding to its two different customer categories (*i.e.*, end users and distributors) and that it made sales to U.S. CEP sales at one level of trade.³⁷ ARLANXEO Brasil asserts that its home-market sales to end users were made at a more advanced marketing stage than sales to distributors because it performed "qualitatively and quantitatively more selling functions for end users than for distributors" and, therefore, home-market sales to end users and distributors were made at two different LOTs.³⁸ ARLANXEO Brasil further claims that its home-market sales to distributors were made at the same LOT as sales to its U.S. affiliate, ARLANXEO USA.³⁹

During the instant proceeding, Commerce requested quantitative information related to ARLANXEO Brasil's claimed LOTs, including, *inter alia*, a request for ARLANXEO Brasil to demonstrate how indirect selling expenses varied by the different levels of trade claimed.⁴⁰ In response to this request for quantitative information, ARLANXEO Brasil provided certain information and an analysis of its indirect selling expenses in support of its claimed differences in reported LOTs.⁴¹ Commerce has examined ARLANXEO Brasil's indirect selling expense information, which may not be publicly disclosed, and preliminarily finds that it does not provide the required quantitative support for ARLANXEO Brasil's claimed home-market LOTs. For a discussion of the proprietary information Commerce examined in its LOT analysis, *see* the Preliminary Analysis Memorandum. Accordingly, Commerce preliminarily finds that ARLANXEO Brasil's claim that it made home-market sales at two LOTs is not supported by record evidence, and has compared home-market and U.S. sales without regard to reported LOT or making an LOT adjustment.

Further, Commerce preliminarily finds that the record lacks sufficient information required to determine the relationship of the CEP LOT with the information submitted regarding the home market LOT(s), and thus we have not granted a CEP offset.

³⁵ *See* ARLANXEO Brasil's December 17, 2019 AQR at A-17-A-27 and Exhibit A-7.

³⁶ *Id.* at A-17-A-27 and Exhibit A-6.

³⁷ *Id.* at A-17-A-27 and Exhibits A-6 - A-7.

³⁸ *Id.* at A-26.

³⁹ *Id.*

⁴⁰ *Id.* at A-27.

⁴¹ *Id.*; *see also* ARLANXEO Brasil's January 9, 2020 BCDQR at B-34 – B-35, C-38 – C-39, and Exhibit B-16; and ARLANXEO Brasil's May 27, 2020 SQR at 3-8, and Exhibit SA-4.

G. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for ARLANXEO Brasil, we based normal value on comparison market prices. We calculated normal value based on packed, ex-factory or delivered prices to unaffiliated customers in Brazil.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, Commerce also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. Commerce based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the merchandise under consideration.⁴²

Commerce calculated the normal value based on prices to unaffiliated customers. Commerce increased, where appropriate, the starting price to account for billing adjustments, in accordance with 19 CFR 351.401(c).⁴³ Commerce also made a deduction from the starting price for discounts and rebates, pursuant to 19 CFR 351.401(c). Next, pursuant to section 773(a)(6)(B)(iii) of the Act, Commerce made further deductions for certain taxes, (*i.e.*, IPI, ICMS, PIS, and COFINS taxes) that were imposed directly on sales of the foreign like product, but not collected on sales of the merchandise under consideration.⁴⁴

Commerce then adjusted the starting price for inland freight from plant to distribution warehouse, warehousing expenses, inland freight from plant/distribution warehouse to customer, and inland insurance, pursuant to section 773(a)(6)(B) of the Act. Next, Commerce made deductions pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410 for differences in circumstances of sale for home market credit expenses. In accordance with 19 CFR 351.410(e), Commerce also made adjustments to ARLANXEO Brasil's normal value for indirect selling expenses and inventory carrying costs incurred in the comparison market. In accordance with sections 773(a)(6)(A) and (B) of the Act, Commerce also deducted home market packing costs, and added U.S. packing costs.

H. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.⁴⁵

⁴² See 19 CFR 351.411(b); *see also* Preliminary Analysis Memorandum.

⁴³ See Preliminary Analysis Memorandum.

⁴⁴ See *Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 24524, 24526 (May 10, 2005) (where Commerce deducted PIS and COFINS taxes from home market prices that were compared to COP figures).

⁴⁵ The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

1/15/2021

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler

Assistant Secretary

for Enforcement and Compliance