



A-580-895  
Investigation  
**Public Document**  
E&C/OII AM

DATE: January 26, 2018

MEMORANDUM TO: P. Lee Smith  
Deputy Assistant Secretary for Policy and Negotiations

FROM: James P. Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination and  
Affirmative Determination of Critical Circumstances, in Part, in  
the Less-Than-Fair-Value Investigation of Low Melt Polyester  
Staple Fiber from the Republic of Korea (Korea)

---

## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that low melt polyester staple fiber (low melt PSF) from Korea 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). Commerce also preliminarily determines that critical circumstances exist for Toray Chemical Korea Inc. (TCK) and all other exporters/producers of low melt PSF from Korea, with the exception of Huvis Corporation (Huvis). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On June 27, 2017, Commerce received an antidumping duty (AD) petition covering imports of low melt PSF from Korea,<sup>1</sup> which was filed in proper form on behalf of Nan Ya Plastics Corporation, America (the petitioner). Commerce initiated this investigation on July 17, 2017.<sup>2</sup>

In the *Initiation Notice*, Commerce stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the

---

<sup>1</sup> See the Petitions for the Imposition of Antidumping Duties on Imports of Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan, dated June 27, 2017 (the Petition).

<sup>2</sup> See *Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 34277 (July 24, 2017) (*Initiation Notice*).



investigation.<sup>3</sup> Accordingly, on July 21, 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>4</sup> On August 9, 2017, Commerce limited the number of respondents selected for individual examination to the two largest producers/exporters of the subject merchandise by volume, Huvis and TCK,<sup>5</sup> and issued the AD questionnaire to these two companies the next day.<sup>6</sup>

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation and how it may overlap with the scopes of other proceedings concerning PSF, as well as the opportunity to comment on the appropriate physical characteristics of low melt PSF to be reported in response to Commerce's AD questionnaire.<sup>7</sup> In August 2017, the petitioner and Far Eastern New Century Corporation (Far Eastern), a Taiwanese producer of low melt PSF submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes,<sup>8</sup> and the petitioner and Huvis, filed rebuttal comments.<sup>9</sup> In October 2017, the petitioner also submitted comments on the scope of this investigation and the potential overlap with other AD/countervailing duty proceedings concerning PSF.<sup>10</sup>

On August 17, 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 low melt PSF from Korea.<sup>11</sup>

In September 2017, Huvis and TCK submitted timely responses to sections A-D of Commerce's AD questionnaire, *i.e.*, the sections relating to general information, home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.<sup>12</sup> From October 2017

---

<sup>3</sup> See *Initiation Notice*, 82 FR at 34280.

<sup>4</sup> See Commerce's Letter re: Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea: Customs Data for Use in Respondent Selection, dated July 21, 2017.

<sup>5</sup> See Memorandum, "Respondent Selection for the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea," dated August 9, 2017.

<sup>6</sup> See Commerce's Letter to Huvis re: Antidumping Duty Questionnaire, dated August 10, 2017; and Commerce's Letter to TCK re: Antidumping Duty Questionnaire, dated August 10, 2017.

<sup>7</sup> See *Initiation Notice*, 82 FR at 34277-78.

<sup>8</sup> See the petitioner's Letter re: Petitioner's Comments on the Hierarchy of Product Matching Characteristics, dated August 10, 2017; and Far Eastern's Letter re: Comments on Product Characteristics, dated August 7, 2017.

<sup>9</sup> See the petitioner's Letter re: Petitioner's Rebuttal Comments on the Hierarchy of Product Matching Characteristics, dated August 15, 2017; and Huvis' Letter re: Rebuttal Model Match Comments, dated April 15, 2017.

<sup>10</sup> See the petitioner's Letter re: Petitioner's Comments on Potential Scope Overlap, dated October 5, 2017 (the Petitioner's Scope Comments).

<sup>11</sup> See *Low Melt Polyester Staple Fiber from Korea and Taiwan*, 82 FR 39131 (August 17, 2017) (*ITC Preliminary Determination*). See also the petitioner's Letter re: Submission of ITC Preliminary Report, dated October 26, 2017 (placing the ITC's Preliminary Report on the record of this investigation).

<sup>12</sup> See Huvis' September 7, 2017 Section A Questionnaire Response (Huvis' September 7, 2017 AQR); Huvis' September 28, 2017 Sections B-D Response (Huvis' September 28, 2017 BCDQR); TCK's September 7, 2017 Section A Questionnaire Response (TCK's September 7, 2017 AQR); and TCK's September 28, 2017 Sections B-D Response (TCK's September 28, 2017 BCDQR).

through December 2017, we issued supplemental questionnaires to Huvis and TCK and received responses to these supplemental questionnaires during the same time period.<sup>13</sup>

On November 16, 2017, the petitioner filed a timely allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.<sup>14</sup> In this same month, Commerce requested shipment data from Huvis and TCK with respect to the critical circumstances allegation.<sup>15</sup> Huvis and TCK responded to Commerce's request for shipment data from November 2017 through January 2018.<sup>16</sup>

On November 20, 2017, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.<sup>17</sup> Based on the request, Commerce published a postponement of the preliminary determination until no later than January 23, 2018.<sup>18</sup> Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will

---

<sup>13</sup> See Huvis' October 16, 2017 Supplemental Section A Questionnaire Response (Huvis' October 16, 2017 SAQR); Huvis' November 27, 2017 Supplemental Sections B and C Questionnaire Response (Huvis' November 27, 2017 SBCQR); Huvis' November 17, 2017 Supplemental Section D Questionnaire Response (Huvis' November 17, 2017 SDQR); Huvis' December 21, 2017 Second Supplemental Sections B and C Questionnaire Response Part One (Huvis' December 21, 2017 SSBCQR1); Huvis' December 28, 2017 Supplemental Sections B and C Questionnaire Response Part Two (Huvis' December 28, 2017 SSBCQR2); and Huvis' January 5, 2018 Second Supplemental Section D Questionnaire Response (Huvis' January 5, 2018 SSDQR); TCK's October 13, 2017 Supplemental Section A Questionnaire Response (TCK's October 13, 2017 SAQR); TCK's November 22, 2017 Supplemental Sections B and C Questionnaire Response (TCK's November 22, 2017 SBCQR); TCK's November 21, Supplemental Section D Questionnaire Response (TCK's November 21, 2017 SDQR); TCK's December 1, Clarification of Universe of Reporting for U.S. Sales (TCK's December 1, 2017 SCQR); and TCK's December 8, Second Supplemental Sections B and C Questionnaire Response (TCK's December 8, 2017 SBCQR).

<sup>14</sup> See the petitioner's Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea - Critical Circumstances Allegation, dated November 16, 2017 (Critical Circumstances Allegation).

<sup>15</sup> See Commerce's Letters to Huvis and TCK re: Less-Than-Fair-Value Investigation on Low Melt Polyester Staple Fiber from the Republic of Korea: Request for Monthly Quantity and Value Shipment, dated November 20, 2017.

<sup>16</sup> See Huvis' Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Huvis' Monthly Quantity and Value Shipment data, dated November 27, 2017 (Huvis' November 27, 2017 Critical Circumstances Data); TCK's Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Response to Request for Monthly Shipment Quantity and Value Data, Inclusive of December 2016 Through October 2017, dated November 28, 2017 (TCK's November 28, 2017 Critical Circumstances Data); Huvis' Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Huvis' Updated Monthly Quantity and Value Shipment Data, dated December 15, 2017 (Huvis' December 15, 2017 Critical Circumstances Data); Huvis' Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Huvis' Updated Monthly Quantity and Value Shipment Data, dated January 12, 2018 (Huvis' January 12, 2018 Critical Circumstances Data); TCK's Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Response to Request for Monthly Shipment Quantity and Value Data, Inclusive of December 2016 Through November 2017, dated December 8, 2017 (TCK's December 8, 2017 Critical Circumstances Data); and TCK's Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Response to Request for Monthly Shipment Quantity and Value Data, Inclusive of December 2016 Through December 2017, dated January 16, 2018 (TCK's January 16, 2018 Critical Circumstances Data).

<sup>17</sup> See the petitioner's Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan – Petitioners' Request to Postpone the Antidumping Duty Preliminary Determinations, dated November 7, 2017.

<sup>18</sup> See *Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 55091 (November 20, 2017).

become the next business day. The revised deadline for the preliminary determination of this investigation is now January 26, 2018.<sup>19</sup>

In December 2017, Huvis and TCK requested that Commerce postpone the final determination, and that provisional measures be extended.<sup>20</sup> In January 2018, the petitioner also requested that Commerce postpone the final determination.<sup>21</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 April 1, 2016, through March 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was June 2017.<sup>22</sup>

### IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,<sup>23</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope, and we stated that all such comments must be filed within 20 calendar days of publication of the *Initiation Notice*.<sup>24</sup> During this period, no interested party commented on the scope of this investigation.

Moreover, in the *Initiation Notice*, we noted that the proposed scope of this investigation overlapped in certain respects with the scope language of the existing AD order on PSF from Korea.<sup>25</sup> Specifically, the scope of this investigation covers all bi-component polyester fiber, where one component melts at a lower temperature than the other component; the scope does not limit the two fiber components to any specific configuration. However, at the time of the *Initiation Notice*, the scope of the existing PSF Korean AD order only excluded low melt PSF in a "sheath-and-core" configuration.<sup>26</sup> As a result, low melt PSF in other configurations (such as "side-by-side") was covered by the scopes of both proceedings.

---

<sup>19</sup> See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

<sup>20</sup> See Huvis' Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Request to Extend the Deadline for the Final Determination, dated December 5, 2017; and TCK's Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea: Request to Postpone the Final Determination, dated December 1, 2017.

<sup>21</sup> See the petitioner's Letter re: Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Petitioner's Request Regarding Extension of the Final Determination Deadline, dated January 8, 2018.

<sup>22</sup> See 19 CFR 351.204(b)(1).

<sup>23</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>24</sup> See *Initiation Notice*, 82 FR at 34277-78.

<sup>25</sup> At the time of the *Initiation Notice*, the scope of this LTFV investigation also overlapped with the scope of an ongoing LTFV investigation on fine denier from Korea. Because this overlap was subsequently eliminated, it is not necessary to discuss it further here. For further discussion, see *Fine Denier Polyester Staple Fiber from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 668 (January 5, 2018).

<sup>26</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber*

On December 8, 2017, the petitioner requested that Commerce conduct a changed circumstances review (CCR) of the existing PSF Korean AD order to exclude all low melt PSF (irrespective of configuration) from the scope.<sup>27</sup> Because Commerce has not yet completed this CCR, we are preliminarily modifying the scope language as it appeared in the *Initiation Notice* to eliminate the overlap in product coverage with the existing PSF Korean AD order.<sup>28</sup> See the revised scope in Appendix I of the accompanying *Federal Register* notice.

## V. DISCUSSION OF THE METHODOLOGY

### 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 Huvis' and TCK's sales of subject merchandise from Korea to the United States were made at LTFV, Commerce compared the export price (EP) to the normal value (NV), as described in the "Export Price," and "Normal Value" sections of this memorandum.

#### A) Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with 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.

In numerous investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction 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>29</sup> Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

---

*from the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000).

<sup>27</sup> See Memorandum, "Placing the Request for Changed Circumstances Reviews on the Record," dated January 17, 2018.

<sup>28</sup> We intend to remove this language from the scope if Commerce completes the pending CCR before the date of the final determination in this case.

<sup>29</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).

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the 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 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 account 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 this preliminary determination, including arguments for modifying the group definitions used in this proceeding.<sup>30</sup>

#### B) Results of the Differential Pricing Analysis

##### Huvis

For Huvis, based on the results of the differential pricing analysis, Commerce preliminarily finds that 52.27 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>31</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department 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 those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Huvis.

##### TCK

---

<sup>30</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) recently 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.

<sup>31</sup> See Memorandum, "Preliminary Determination Calculations for Huvis Corporation," dated January 26, 2018 (Huvis Preliminary Calculation Memo) at 2.

For TCK, based on the results of the differential pricing analysis, Commerce preliminarily finds that 79.07 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>32</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 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 this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for TCK.

## **VI. DATE OF SALE**

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>33</sup> Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.<sup>34</sup>

Regarding home market sales, Huvis and TCK reported the earlier of invoice date or factory shipment date as the date of sale for all home market sales.<sup>35</sup> For U.S. sales, Huvis and TCK reported the factory shipment date as the date of sale for all U.S. sales.<sup>36</sup> We preliminarily followed Commerce's long-standing practice of basing the date of sale for all of Huvis' and TCK's home market and U.S. sales on the earlier of the invoice date or the shipment date.<sup>37</sup>

## **VII. PRODUCT COMPARISONS**

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents, Huvis and TCK, in Korea during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products

---

<sup>32</sup> See Memorandum, "Preliminary Determination Calculations for Toray Chemical Inc.," dated January 26, 2018 (TCK Preliminary Calculation Memo) at 3.

<sup>33</sup> 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)).

<sup>34</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) (*Shrimp from Thailand*), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

<sup>35</sup> See Huvis' September 28, 2017 BCDQR, at B-18 and TCK's September 28, 2017 BCDQR, at B-14.

<sup>36</sup> *Id.* at C-15 and C-14, respectively.

<sup>37</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 (IDM) at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.



for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by Huvis and TCK in the following order of importance: fiber melt point temperature, fiber color, specialty fiber, fiber type, denier range, additives, and cut length.

## **VIII. EXPORT PRICE**

For all sales made by Huvis and TCK, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted.

### Huvis

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for bank charges. We also made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight and foreign brokerage and handling, in accordance with section 772(c)(2)(A) of the Act.

### TCK

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling, international freight, U.S. brokerage and handling, U.S. duties, and U.S. inland freight expenses, in accordance with section 772(c)(2)(A) of the Act.

### Duty Drawback

Section 772(c)(1)(B) of the Act states that the price used to establish EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or 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, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to U.S. prices.<sup>38</sup> The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation). The second prong of the test is that the company must demonstrate that there were sufficient imports of materials to account for the duty

---

<sup>38</sup> See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*).

drawback or exemption granted for the export of the manufactured product.<sup>39</sup>

In this case, both Huvis and TCK have provided information to satisfy each of the two prongs.<sup>40</sup> Because the respondents have satisfied the criteria described above, we have preliminarily granted duty drawback adjustments to both Huvis and TCK consistent with our practice.<sup>41</sup> Under this methodology, Commerce will make an upward adjustment to U.S. price based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.<sup>42</sup> This ensures that the amount added to both sides of the dumping calculations is equal, *i.e.*, duty neutral, meeting the purpose of the adjustment as affirmed in *Saha Thai*.<sup>43</sup>

Based on the facts of this investigation, Commerce finds that the import duty costs, based on the consumption of imported inputs during the POI, properly accounts for the amount of duties imposed, as required by section 772(c)(1)(B) of the Act. We have added this per unit amount to the U.S. price.<sup>44</sup>

## IX. NORMAL VALUE

### A) Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of 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,

---

<sup>39</sup> *Id.*; Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>40</sup> See Huvis' September 28, 2017 BCDQR, at C-29-C-30 and Exhibits C-8-A and C-8-B; Huvis' November 27, 2017 SBCQR, at SBC-11-SBC-14 and Exhibits SBC-16, SBC-17, SBC-18, SBC-19, and SBC-20; Huvis' December 21, 2017 SSBCQR1, at SBC2-10; TCK's September 28, 2017 BCDQR, at C-29-C-31 and Exhibits C-13 and C-14; and TCK's November 22, 2017 SBCQR, at S-13-S-18 and Exhibits SC-10, SC-11, SC-12, and SC-13.

<sup>41</sup> See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>42</sup> See *Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016), and accompanying Preliminary Decision Memorandum at 15.

<sup>43</sup> The CAFC stated in the *Saha Thai* litigation that "it is clear that Commerce only added imputed import duty costs to COP in an amount appropriate to offset Saha's actual import duty exemption under the bonded warehouse program. This did not result in double counting because Commerce merely added the cost of import duties that Saha would have paid on the inputs in category C if Saha had sold the subject merchandise in Thailand rather than exporting it to the United States. Commerce thus calculated an appropriate average COP." See *Saha Thai*, 635 F.3d, at 1344.

<sup>44</sup> See Huvis Preliminary Calculation Memo and TCK Preliminary Calculation Memo. See also Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Huvis Corporation" (Huvis Preliminary Cost Calculation Memorandum), dated January 26, 2018.

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 investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Huvis and TCK, in accordance with section 773(a)(1)(B) of the Act.

## B) 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>45</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>46</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>47</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>48</sup>

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to 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>49</sup>

In this investigation, we obtained information from Huvis and TCK regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the

---

<sup>45</sup> See 19 CFR 351.412(c)(2).

<sup>46</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) (*OJ from Brazil*), and accompanying IDM at Comment 7.

<sup>47</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 expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>48</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>49</sup> See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

selling activities performed for each channel of distribution.<sup>50</sup> Our LOT findings are summarized below.

### Huvis

In the home market, Huvis reported that it made sales through one channel of distribution, *i.e.*, sales to distributors or end users.<sup>51</sup> According to Huvis, it performed the following selling functions for sales to all home market customers: sales forecasting, strategic/economic planning, advertising, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, and freight and delivery services.<sup>52</sup>

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that Huvis performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and provided technical support for all of its reported home market sales. Because we find that there were no differences in selling activities performed by Huvis to sell to its home market customers, we preliminarily determine that there is one LOT in the home market for Huvis.

With respect to the U.S. market, Huvis reported that it made sales through two channels of distribution, *i.e.*, sales to distributors and sales to end-users.<sup>53</sup> Huvis reported that it performed the following selling functions for sales in both distribution channels: sales forecasting, strategic/economic planning, advertising, packing, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, market research, technical assistance, and freight and delivery services.<sup>54</sup>

Based on the selling function categories noted above, we find that Huvis performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and provided technical support for all of its reported U.S. sales. According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Huvis stated there were no differences between the two channels of distribution for its U.S. sales<sup>55</sup>, and we do not find any differences that are significant enough to warrant finding that the two U.S. channels constitute different LOTs. Because we determine that substantial differences in Huvis' selling activities do not exist between its U.S. channels, we determine that sales to the U.S. market during the POI were made at the same LOT.

---

<sup>50</sup> See Huvis' September 7, 2017 AQR, at A-13 – A-16 and Exhibit A-12.

<sup>51</sup> See Huvis' September 25, 2017 BCQR, at B-17.

<sup>52</sup> See Huvis' September 7, 2017 AQR, at Exhibit A-12.

<sup>53</sup> See Huvis' September 28, 2017 BCQR, at C-14.

<sup>54</sup> See Huvis' September 7, 2017 AQR, at Exhibit A-12.

<sup>55</sup> *Id.* at A-15.

Finally, we compared the U.S. LOT to the home market LOT, and we preliminarily find that the selling functions performed for the U.S. and home market customers do not differ significantly. Therefore, Commerce preliminarily finds that sales to the home market during the POI were made at the same LOT as sales to the United States, and, thus, an LOT adjustment is not warranted.

## TCK

In the home market, TCK reported that it made sales through one channel of distribution, *i.e.*, direct sales to end users and distributors.<sup>56</sup> According to TCK, it performed the following selling functions for sales to all home market customers: sales forecasting, sales promotion, inventory maintenance, order input/processing, direct sales personnel, credit risk management, warranty services, freight and delivery services, and packing.<sup>57</sup>

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that TCK performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and provided warranty and technical support for all of its reported home market sales. Because we find that there were no differences in selling activities performed by TCK to sell to its home market customers, we determine that there is one LOT in the home market for TCK.

With respect to the U.S. market, TCK reported that it made sales through two channels of distribution, *i.e.*, direct sales to end-users or distributors, and direct sales to Korean trading companies.<sup>58</sup> TCK reported that it performed the following selling functions for sales in both distribution channels: sales forecasting, sales promotion, inventory maintenance, order input/processing, direct sales personnel, credit risk management, warranty services, freight and delivery services, and packing.<sup>59</sup> In addition, TCK reported commission expenses for certain U.S. sales.<sup>60</sup> However, TCK did not document what additional functions it performed, if any, for these sales.

Based on the selling function categories noted above, we find that TCK performed sales and marketing, inventory maintenance and warehousing, freight and delivery services, and provided warranty and technical support for all of its reported U.S. sales. According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. TCK stated there were no differences between the two channels of distribution for its U.S. sales, and we do not find any differences that are significant enough to warrant finding that the two U.S. channels constitute different LOTs. Because we determine that substantial

---

<sup>56</sup> See TCK's September 28, 2017 BCDQR, at B-13.

<sup>57</sup> See TCK's September 7, 2017 AQR, at A-14 through A-17, and Exhibit A-9.

<sup>58</sup> See TCK's September 28, 2017 BCDQR, at C-13.

<sup>59</sup> See TCK's September 7, 2017 AQR, at A-14 through A-17, and Exhibit A-9.

<sup>60</sup> See TCK's September 28, 2017 BCDQR at C-31. We note that TCK did not report "pay commissions" as a selling function in its selling functions chart.

differences in TCK's selling activities do not exist between its U.S. channels, we determine that sales to the U.S. market during the POI were made at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and we preliminarily find that the selling functions performed for the U.S. and home market customers do not differ significantly. Therefore, Commerce preliminarily finds that sales to the home market during the POI were made at the same LOT as sales to the United States, and, thus, an LOT adjustment is not warranted.

### C) Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP information from Huvis and TCK. We examined Huvis' and TCK's cost data and determine that our quarterly cost methodology is not warranted, and therefore, we are applying our standard methodology of using annual costs based on the reported data.

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.

We relied on the COP data submitted by Huvis, except as follows:<sup>61</sup>

- We reclassified the gains and losses on derivatives reported as a component of HUVIS' general and administrative (G&A) expenses to HUVIS' net interest expense.
- We increased HUVIS' reported total cost of manufacturing for inputs purchased from affiliates in accordance with the major input rule at section 773(f)(3) of the Act.

We relied on the COP data submitted by TCK, except as follows:<sup>62</sup>

- We increased TCK's reported total cost of manufacturing for inputs purchased from affiliates in accordance with the transactions disregarded rule at section 773(f)(2) of the Act.

#### 2. Test of Comparison Market Sales Prices

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

---

<sup>61</sup> See Huvis Preliminary Cost Calculation Memorandum.

<sup>62</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Toray Chemical Korea, Inc." (TCK Preliminary Cost Calculation Memorandum), dated January 26, 2018.

applicable billing adjustments, discounts and rebates, where applicable, 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 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.

We found that, for certain products, more than 20 percent of Huvis' and TCK'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, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D) Calculation of NV Based on Comparison Market Prices

##### Huvis

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act.<sup>63</sup>

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses and bank charges, and added U.S. direct selling expenses, *i.e.*, credit expenses and bank charges.

---

<sup>63</sup> Huvis reported freight expenses in the home market based on contract rates established with its freight suppliers. Because Huvis provided source documentation demonstrating that it generally paid freight costs that were higher than the reported per-unit amounts, *i.e.*, Huvis' reporting was conservative, we have accepted the reported freight expenses for this preliminary determination. See Huvis' November 27, 2017 SBCQR, at SBC-5-SBC-6 and Exhibits SBC-7 and SBC-8; and Huvis' December 21, 2017 SSBCQR1, at Exhibit SBC2-5.

When comparing U.S. sales with home market sales of similar merchandise, we also 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>64</sup>

## TCK

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act.

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses and bank charges, and added U.S. direct selling expenses, *i.e.*, commissions, credit expenses, and bank charges.

When comparing U.S. sales with home market sales of similar merchandise, we also 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>65</sup>

## **X. CRITICAL CIRCUMSTANCES**

On November 16, 2016, the petitioner filed an allegation that critical circumstances exist with respect to imports of subject merchandise.<sup>66</sup> Pursuant to 19 CFR 351.206(c)(2), the petitioner requested that Commerce issue a preliminary affirmative determination of critical circumstances on an expedited basis.<sup>67</sup> On November 20, 2017, Commerce requested shipment data from Huvis and TCK concerning the critical circumstances allegation. Huvis and TCK responded to Commerce's request for shipment data from November 2017 through January 2018.<sup>68</sup> In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must

---

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> See Critical Circumstances Allegation.

<sup>67</sup> *Id.*

<sup>68</sup> See Huvis' November 27, 2017 Critical Circumstances Data; TCK's November 28, 2017 Critical Circumstances Data; Huvis' December 15, 2017 Critical Circumstances Data; TCK's December 8, 2017 Critical Circumstances Data; Huvis' January 12, 2018 Critical Circumstances Data; and TCK's January 16, 2018, Critical Circumstances Data.



issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

#### A) *Legal Framework*

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been “massive imports” of the subject merchandise over a relatively short period. Further, 19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise have been “massive,” Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports.

In addition, 19 CFR 351.206(h)(2) provides that, in determining whether imports of the subject merchandise have been “massive,” Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” Under 19 CFR 351.206(i), Commerce defines “relatively short period” generally as the period starting on the date the proceeding begins *i.e.*, the date the petition is filed and ending at least three months later.<sup>69</sup> This section of the regulations further provides that, if Commerce “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then Commerce may consider a period of not less than three months from that earlier time.<sup>70</sup>

---

<sup>69</sup> See 19 CFR 351.206(i); *see also* *Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, Policy Bulletin 98.4, 63 FR 55364 (Oct. 15, 1998) (“Commerce has traditionally compared the three-month period immediately after initiation with the three-month period immediately preceding initiation to determine whether there has been at least a 15 percent increase in imports of the subject merchandise”).

<sup>70</sup> See 19 CFR 351.206(i).

## B) *Critical Circumstances Allegation*

The petitioner alleges that section 733(e)(1)(A) of the Act is met by virtue of the dumping margins alleged in the Petition, which range from 39.24 to 52.23 percent.<sup>71</sup> Thus, the petitioner asserts that certain dumping margins alleged in the Petition, which were up to 52.23 percent, exceed the 15 percent threshold used by Commerce to impute knowledge of dumping in CEP transactions and the 25 percent threshold in EP transactions.<sup>72</sup> The petitioner further argues that importers of low melt PSF from Korea have been on notice that dumped imports are likely to cause injury since the ITC's August 17, 2017, preliminary affirmative injury finding.<sup>73</sup>

The petitioner further maintains that there is a pattern of dumping of similar merchandise by companies that are subject to existing AD orders or current AD investigations which further indicates that importers knew or should have known that Korean exporters were selling low melt PSF at less than fair value. Specifically, the petitioner points to the AD order on PSF from Korea of three denier or greater and the antidumping investigation that has been initiated on fine denier PSF from Korea.<sup>74</sup>

The petitioner argues that, regarding section 733(e)(1)(B) of the Act, which examines whether there have been "massive imports of the subject merchandise over a relatively short period," Commerce should use the minimum three-month base and comparison periods for shipment data, as provided under 19 CFR 351.206(i). This would result in a base period from April 2017 through June 2017 and a comparison period from July 2017 through September 2017.<sup>75</sup> The petitioner alleges that import statistics released by Commerce indicate shipments of merchandise under consideration during the comparison period increased significantly in terms of volume (45.64 percent) between the base period and the comparison period, and as a result, exceeded the threshold for "massive" imports of low melt PSF from Korea, as provided under 19 CFR 351.206(h) and (i).<sup>76</sup>

## C) *Analysis*

Commerce's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to Commerce, such as: (1) the evidence presented in the petitioner's critical circumstances

---

<sup>71</sup> See Critical Circumstances Allegation at 5-6.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 6 (citing *ITC Preliminary Determination*).

<sup>74</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000)(PSF Order); *Certain Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of Expedited Sunset Review of the Antidumping Duty Orders*, 81 FR 92783 (December 20, 2016)(Continuation of PSF Order); and *Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 29023 (June 27, 2017).

<sup>75</sup> See Critical Circumstances Allegation at 8-9.

<sup>76</sup> *Id.* at 9 and Attachment 1.

allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to Commerce by the respondents selected for individual examination.<sup>77</sup>

In determining whether a history of dumping and material injury exists, pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.<sup>78</sup> There was a previous AD order on PSF from Korea in the United States<sup>79</sup> that continues to be active<sup>80</sup> as well an order on PSF from Korea in Turkey. As a result, Commerce finds that there is a history of injurious dumping of PSF from Korea pursuant to section 733(e)(1)(A)(i) of the Act.

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise were “massive,” Commerce normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ ... have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins, *i.e.*, the date the petition is filed, and ending at least three months later, *i.e.*, the comparison period. This section of the regulations further provides that, if Commerce “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then Commerce may consider a period of not less than three months from that earlier time. The comparison period is

---

<sup>77</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China*, 73 FR 31970, 31972-73 (June 5, 2008) (*Carbon Steel Pipe Final Determination*); see also *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 2049, 2052-53 (January 14, 2009) (*SDGE Final Determination*).

<sup>78</sup> See, e.g., *Certain Oil Country Tubular Goods from the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010); *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People’s Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504, 68505-68506 (November 5, 2015), unchanged in *Certain Corrosion-Resistance Steel Products From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35313, 35314 (June 2, 2016); and *Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250, 4252 (January 27, 2015), unchanged in *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893, 34896 (June 18, 2015).

<sup>79</sup> See *PSF Order*.

<sup>80</sup> See *Continuation of PSF Order*.

normally compared to a corresponding period prior to the filing of the petition, *i.e.*, the base period.

Accordingly, because the statutory criteria of section 733(e)(1)(A) of the Act have been satisfied, we examined whether imports from TCK were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). It is Commerce's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months.<sup>81</sup> Based on these practices, Commerce compared import data for the period July 2017 through December 2017 (the last month for which import data is currently available) with the preceding six-month period of January 2017 through June 2017.<sup>82</sup> We found that imports based on TCK's reported shipments of merchandise under consideration during the comparison period increased by more than 15 percent over their respective imports in the base period, while imports from Huvis did not.<sup>83</sup> Therefore, we preliminarily determine that critical circumstances exist for TCK, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h).<sup>84</sup>

For the companies subject to the "all others" rate, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period February 2017 through November 2017, using shipment data from Global Trade Atlas, adjusted to remove shipments reported by Huvis and TCK.<sup>85</sup> As a result, we determine that there was a massive increase in shipments from these remaining companies, as defined by 19 CFR 351.206(h).<sup>86</sup>

Based on the above analysis, we are preliminarily making a negative finding of critical circumstances for Huvis and an affirmative finding of critical circumstances for TCK and all other

---

<sup>81</sup> See *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 3.

<sup>82</sup> These base and comparison periods satisfy the regulatory provisions that the comparison period be at least three months long and the base period have a comparable duration.

<sup>83</sup> See Memorandum, "Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from the Republic of Korea: Critical Circumstances Analysis," dated concurrently with this memorandum (Critical Circumstances Memorandum).

<sup>84</sup> For Commerce's analysis, which involves business proprietary information, see Critical Circumstances Memorandum.

<sup>85</sup> See, *e.g.*, *Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances*, 77 FR 73430, 73432 (December 10, 2012), unchanged in *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973, 75974 (December 26, 2012); see also *Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47212 (September 15, 2009), unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination*, 74 FR 64045, 64047 (December 7, 2009).

<sup>86</sup> See Critical Circumstances Memorandum.

producers/exporters of low melt PSF in Korea. We will make a final determination concerning critical circumstances when we issue our final determination of sales at LTFV for this investigation.

## **XI. CURRENCY CONVERSION**

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

## **XII. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

1/26/2018

X   
\_\_\_\_\_

Signed by: PRENTISS SMITH

\_\_\_\_\_  
P. Lee Smith  
Deputy Assistant Secretary  
for Policy and Negotiations