




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Investigation
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April 27, 2018

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

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

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

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that polyethylene terephthalate resin (PET resin) from the Republic of 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). The estimated weighted-average dumping margins are shown in the Preliminary Determination section of the accompanying *Federal Register* notice.

II. BACKGROUND

On September 26, 2017, Commerce received an antidumping duty (AD) petition concerning imports of PET resin from the Republic of Korea that was properly filed with Commerce by DAK Americas LLC, Indorama Ventures USA, Inc., M&G Polymers USA, and Nan Ya Plastics Corporation (collectively, the petitioners).¹ On September 29, 2017 Commerce issued supplemental questionnaires to the petitioners.² On October 3, 2017, the petitioners filed supplemental

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

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



questionnaire responses regarding the Petition.³ Commerce initiated this investigation on October 23, 2017.⁴

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

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

On November 13, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PET resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan.¹¹

On November 27, 2017, Commerce limited the number of mandatory respondents selected for individual examination to the four largest publicly-identifiable producers or exporters of the subject merchandise by volume. Accordingly, we selected Lotte Chemical Corp., Regd. (Lotte

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

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

⁵ *Id.* at 48980.

⁶ See Memorandum, "Antidumping Duty Investigation on Polyethylene Terephthalate Resin from the Republic of Korea: Release of Customs and Border Protection Entry Data," dated October 18, 2017 (Customs Data Memorandum).

⁷ See *Initiation Notice*, 82 FR at 48977-48978.

⁸ See Letter from Petitioners, "Petitioners' Comments on Product Matching Criteria and Hierarchy of Physical Characteristics," dated November 6, 2017, and Letter from Far Eastern New Century Corporation, "Correction to Product-Matching Comments," dated November 7, 2017.

⁹ See Letter from Novatex, "Novatex's Rebuttal Comments on Product Characteristics and Scope," dated November 16, 2017; see also SK Chemicals' Letter, "Rebuttal Comments Regarding Product Characteristics," dated November 16, 2017.

¹⁰ See, e.g., Commerce's Letter, "Antidumping Duty Questionnaire" dated November 28, 2017 at 2.

¹¹ See *Polyethylene Terephthalate (PET) Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan: Determinations, Investigation Nos. 731-TA-1387-1391 (Preliminary)*, 82 FR 53523 (November 16, 2017).

Chemical), SK Chemicals Co., Ltd. (SK Chemicals), SKC Co., Ltd. (SKC) and TK Chemical Corp. (TK Chemical) as mandatory respondents for this investigation.¹²

On November 28, 2017, Commerce issued the AD questionnaire to Lotte Chemical, SK Chemicals, SKC, and TK Chemical. SKC submitted a timely no-shipment certification on December 15, 2017, stating that it did not export, import, or sell subject merchandise into the United States during the period of investigation (POI).¹³ On December 28, 2017, SK Chemicals submitted a timely response to section A of Commerce's AD questionnaire (*i.e.*, the section relating to general information).¹⁴ Lotte Chemical and TK Chemical did not respond to our questionnaire.

On January 16, 2018, SK Chemicals responded to section B, C, and D of Commerce's AD questionnaire (*i.e.*, the sections relating to home market and U.S. sales, and cost of production (COP) information).¹⁵

On January 23, 2018, Commerce issued a memorandum tolling all deadlines for this investigation by three days due to the shutdown of the federal government.¹⁶ On January 29, 2018, the petitioners filed a request to fully postpone the preliminary determination.¹⁷ On February 22, 2018, Commerce fully postponed the deadline for this preliminary determination.¹⁸ From February through April 2018, Commerce issued supplemental questionnaires to SK Chemicals, and we received timely responses to each of these supplemental questionnaires.

On March 27, 2018, the petitioners filed a critical circumstances allegation and, subsequently, Commerce issued a request for parties to submit quantity and value information.¹⁹ SK Chemicals submitted quantity and value information related to the critical circumstances allegation on April 3 and 13, 2018.²⁰ We analyzed the information on the record and

¹² See Memorandum, "Respondent Selection for the Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from the Republic of Korea," dated November 27, 2017.

¹³ See SKC's December 15, 2017 No-Shipment Certification.

¹⁴ See SK Chemicals' December 28, 2017 Section A Questionnaire Response.

¹⁵ See SK Chemicals' January 16, 2017 Sections B-D Questionnaire Response.

¹⁶ 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" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

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

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

¹⁹ See Letter from Petitioners, "Polyethylene Terephthalate (PET) Resin from Indonesia, Korea, and Taiwan - Critical Circumstances Allegation," dated March 27, 2018 (Critical Circumstances Allegation); *see also e.g.*, Commerce's Letter, "Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Taiwan: Request for Quantity and Value Shipment Data," dated March 27, 2018.

²⁰ See SK Chemicals' Letter, "Critical Circumstances Quantity and Value Data," dated April 3, 2018; *see also* SK Chemicals' Letter, "Critical Circumstances Quantity and Value Data for March 2018," April 13, 2018.

preliminarily determined that critical circumstances exist with respect to imports of subject merchandise shipped by Lotte Chemical, TK Chemical, and all other producers/exporters.²¹

SK Chemicals filed comments in advance of this preliminary determination on April 10, 2018.²² The petitioners filed comments on April 11, 2018, and SK Chemicals filed rebuttal comments on April 18, 2018.²³ To the extent possible, we have considered these comments in making this determination.

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

III. PERIOD OF INVESTIGATION

The POI is July 1, 2016 through June 30, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was September 2017.²⁴

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On April 11, 2018, SK Chemicals requested, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination, and that provisional measures be extended to a period not to exceed six months.²⁵ On April 12, 2018, the petitioners requested, pursuant to 19 CFR 351.210(b)(2)(i) and (ii), that Commerce postpone the final determination.²⁶ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

²¹ See *Antidumping Duty Investigations on Polyethylene Terephthalate Resin from Indonesia, the Republic of Korea, and Taiwan; Preliminary Determinations of Critical Circumstances*, 83 FR 17791 (April 24, 2018); see also respective preliminary critical circumstances calculation memoranda for each proceeding, dated concurrently with this *Federal Register* notice.

²² See SK Chemicals' Letter, "SK Chemicals' Pre-Preliminary Determination Comments," dated April 10, 2018.

²³ See Petitioners' Letter, "Petitioners' Pre-Preliminary Determination and Deficiency Comments," dated April 11, 2018; see also SK Chemicals' Letter, "Response to Petitioners' Pre-Preliminary Determination and Deficiency Comments," dated April 18, 2018.

²⁴ See 19 CFR 351.204(b)(1); see also *Initiation Notice*, 82 FR at 48977.

²⁵ See SK Chemicals' Letter, "Request for Postponement of Final Determination and Extension of Provisional Measures," dated April 11, 2018.

²⁶ See Letter from petitioners, "Polyethylene Terephthalate Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Request to Extend the Antidumping Duty Final Determination," dated April 12, 2018.

V. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,²⁷ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).²⁸ We received comments from the Government of Indonesia (GOI) and SK Chemicals.²⁹ We received rebuttal comments from the petitioners and Novatex.³⁰

The GOI argued that Commerce should exclude from its investigation producers of PET resin manufactured solely from recycled material.³¹ SK Chemicals argued that Commerce should clarify that the scope of the investigation is identical to the scope of previous PET resin investigations and to the now "retired" HTSUS subheading 3907.60.0030, regardless of the use of new and different HTSUS codes in the description of the scope of the current investigation.³² In particular, Commerce should clarify that the scope is limited to "packaging grade (bottle grade and other)" PET resins and does not include chemically modified PET resins, especially PET resins modified via the addition of cyclohexanedimethanol (CHDM), which results in PET-glycol resins (sometimes referred to as "PETG") and "PET-BR resins."³³ Novatex stated its support for SK Chemicals' arguments in its rebuttal comments.³⁴ In their rebuttal comments, the petitioners stated there was currently no language in the scope description suggesting an intent to exclude all PET resins modified by the addition of CHDM,³⁵ but that they would consider proposing a possible exclusion of certain modified PET resins, encompassing PET-glycol resins, but not PET-BR resins.³⁶ The petitioners also rejected arguments that the scope of the investigation should be considered coterminous with CBP's subheading description or that the language of the scope description should be reduced to "generic" terms such as "packaging grade" or "bottle grade," although acknowledging that "packaging end uses comprise a significant majority of end uses for covered PET resin."³⁷

On January 5, 2018, the petitioners submitted their exclusion language, proposing to exclude PET-glycol resins, created through the addition of at least 10 percent, by weight, of CHDM or one of four other modifiers.³⁸ In the same submission, the petitioners argued that PET-BR resins should not be excluded, as such products contain only one to five percent CHDM.³⁹ On January

²⁷ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997)(*Preamble*).

²⁸ See *Initiation Notice*.

²⁹ See Letter from SK Chemicals, "Comments on the Scope of Investigation," dated November 6, 2017 (SK Chemicals' Scope Comments); see also Letter from the Government of Indonesia, "Comments on Scope of the Investigation," dated November 6, 2017 (GOI Scope Comments), placed on the record of this investigation on March 29, 2018.

³⁰ See Letter from Petitioners, "Petitioners' Rebuttal Scope Comments to SK Chemicals," dated November 16, 2017 (Petitioners Rebuttal Scope Comments), and Letter from Novatex Limited, "Novatex's Rebuttal Comments on Product Characteristics and Scope," dated November 16, 2017 (Novatex Rebuttal Scope Comments).

³¹ See GOI Scope Comments at 1.

³² See SK Chemicals Scope Comments at 5-6.

³³ *Id.* at 3 and 9.

³⁴ See Novatex Rebuttal Scope Comments at 4-5.

³⁵ See Petitioners Rebuttal Scope Comments at 2-3,

³⁶ *Id.* at 7.

³⁷ See Petitioners' Rebuttal Scope Comments at 3-6.

³⁸ See Letter from Petitioners, "Petitioners' Proposed Scope Exclusion for PET-Glycol," dated January 5, 2018 (Petitioners Proposed Scope Exclusion).

³⁹ See Petitioners Proposed Scope Exclusion at 5.

10, 2018, SK Chemicals responded to the petitioners' proposal, stating its agreement with the exclusion language.⁴⁰

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

Regarding the comments of SK Chemicals, supported by Novatex, as all parties acknowledge,⁴¹ the use of HTSUS subheadings by Commerce is for reference purposes only and the language of the scope description remains dispositive. Therefore, we are not "clarifying" that the scope of this investigation is identical to the description of 3907.60.0030 given by CBP. Furthermore, while we are adopting the petitioners' proposed exclusion language for PET-glycol resins, we are not excluding other PET resins, such as PET-BR resins, made through the addition of any amount of chemical modifiers. The scope language included in the Petition contains no ambiguity suggesting that such an exclusion was intended.

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

VI. DISCUSSION OF THE METHODOLOGY

A. Application of Adverse Facts Available (AFA)

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the

⁴⁰ See Letter from SK Chemicals, "Response to Petitioners' Scope Exclusion Letter," dated January 10, 2018.

⁴¹ See, e.g., SK Chemicals Comments at 2.

addition of section 776(d) of the Act.⁴² The amendments to the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this investigation.⁴³

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁴⁴ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.⁴⁵ The SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁶ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁴⁷

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁴⁸ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁴⁹ Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁵⁰

Finally, under section 776(d) of the Act, Commerce may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.⁵¹ When selecting facts available with an adverse inference, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁵²

⁴² See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). See also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

⁴³ See *Applicability Notice*, 80 FR at 46794-95.

⁴⁴ See section 776(b)(1)(B) of the Act.

⁴⁵ See also 19 CFR 351.308(c).

⁴⁶ See Statement of Administrative Action (SAA), H.R. Doc. 103-316, 103d Cong., 2d Session, vol 1 (1994) at 870.

⁴⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340; and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

⁴⁸ See also 19 CFR 351.308(d).

⁴⁹ See SAA at 870.

⁵⁰ See section 776(c)(2) of the Act.

⁵¹ See section 776(d)(1)(B) and 776(d)(2) of the Act.

⁵² See section 776(d)(3)(B) of the Act.

Lotte Chemical and TK Chemical did not respond to Commerce’s AD questionnaire or otherwise participate in the proceeding. As a consequence, we preliminarily find that necessary information is not available on the record and that these two companies withheld information requested by Commerce, failed to provide information by the specified deadlines, and significantly impeded the proceeding.⁵³ Moreover, because Lotte Chemical and TK Chemical failed to provide any information, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available for the preliminary dumping margins of both Lotte Chemical and TK Chemical.

Next, we considered whether it is appropriate to use an adverse inference in applying the facts otherwise available based on a failure of Lotte Chemical and TK Chemical to act to the best of their abilities to comply with a request for information. The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the meaning of failure to act to “the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that “ability” refers to “the quality or state of being able.”⁵⁴ Thus, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum that it is able to do.⁵⁵ The CAFC acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.⁵⁶ Hence, compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.⁵⁷

The failure of Lotte Chemical and TK Chemical to respond to Commerce’s questionnaire or otherwise participate in the proceeding indicates that these companies have not put forth their maximum effort to provide Commerce with full and complete answers to the inquiries made in this investigation. Accordingly, Commerce preliminarily concludes that Lotte Chemical and TK Chemical failed to cooperate to the best of their ability to comply with a request for information by Commerce, in accordance with section 776(b) of the Act and 19 CFR 351.308(a). Therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.⁵⁸ As noted above, section 776(b) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁵⁹ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁶⁰ In this investigation, we have applied the Petition

⁵³ See sections 776(a)(2)(A), (B), and (C) of the Act.

⁵⁴ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

⁵⁵ *Id.*

⁵⁶ *Id.* at 1380.

⁵⁷ *Id.* at 1382.

⁵⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁵⁹ See also 19 CFR 351.308(c).

⁶⁰ See SAA at 870.

dumping margin of 101.41 percent as the AFA rate applicable to Lotte Chemical and TK Chemical.⁶¹

B. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.⁶² Secondary information is defined as “information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.”⁶³ Thus, because the 101.41 percent AFA rate applied to Lotte Chemical and TK Chemical is derived from the Petition and, consequently, is based upon secondary information, Commerce must corroborate it to the extent practicable.

The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.⁶⁴ The SAA and Commerce’s regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁶⁵ To corroborate secondary information, Commerce will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.⁶⁶

We determine that the Petition dumping margin of 101.41 percent is reliable because, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.⁶⁷ During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations used in the Petition to derive estimated dumping margins. Specifically, we examined information (to the extent that such information was reasonably available) from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborated elements of the EP and NV calculations used in the Petition to derive estimated dumping margins.

As discussed in detail in the Initiation Checklist, we considered the EP and NV calculations in the Petition to be reliable. Because we obtained no other information that would make us question the validity of the information supporting the U.S. price or NV calculations provided in

⁶¹ See Antidumping Duty Investigation Initiation Checklist: Polyethylene Terephthalate (PET) Resin from the Republic of Korea (Initiation Checklist).

⁶² See also 19 CFR 351.308(d).

⁶³ See SAA at 870; see also 19 CFR 351.308(c)(1).

⁶⁴ See SAA at 870; see also 19 CFR 351.308(d).

⁶⁵ See SAA at 870; see also 19 CFR 351.308(d).

⁶⁶ See *Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 82 FR 55574 (Nov. 22, 2017) and accompanying Preliminary Decision Memorandum at “Corroboration of the AFA Rate.”

⁶⁷ See Initiation Checklist.

the Petition, we preliminarily consider the EP and NV calculations from the Petition, and thus the dumping margins in the Petition, to be reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.⁶⁸

To corroborate the 101.41 percent AFA rate that we selected, we compared the 101.41 percent margin to the transaction-specific dumping margins that we calculated for SK Chemicals. We found that the dumping margin of 101.41 percent is within the range of the transaction-specific dumping margins calculated for SK Chemicals and, therefore, is relevant and has probative value.⁶⁹ Accordingly, we find that the rate of 101.41 percent is corroborated within the meaning of section 776(c) of the Act.

C. All-Others Rate

Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.” However, when the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act permits Commerce to “use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.” In this investigation, we assigned a dumping margin based entirely on AFA to two non-responsive companies, Lotte Chemical and TK Chemical, and calculated a company-specific dumping margin for the only cooperative mandatory respondent, SK Chemicals. Therefore, pursuant to section 735(c)(5)(B) of the Act and according to Commerce’s practice, we preliminarily determine that it is reasonable to use SK Chemicals’ estimated weighted-average dumping margin as the all-others rate because it is the only exporter and producer examined in this investigation.

As noted above in the “Background” section, SKC submitted a timely no-shipment certification stating that it did not export, import, or sell subject merchandise into the United States during the POI. On March 5, 2018, Commerce issued a no shipments inquiry and instructed U.S. Customs and Border Protection (CBP) to report any entries on exports of subject merchandise made by SKC.⁷⁰ We received no comments from interested parties and no evidence from CBP that SKC

⁶⁸ See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

⁶⁹ See Memorandum to the File, “Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from the Republic of Korea: SK Chemicals Preliminary Determination Analysis,” (SK Chemicals Preliminary Analysis Memorandum), dated concurrently with this memorandum.

⁷⁰ See Commerce’s customs instructions, “No shipments inquiry for polyethylene terephthalate (PET) resin from the Republic of Korea exported by SKC (A-580-896), dated March 5, 2018. SKC was selected as a mandatory respondent because it was identified as a producer/exporter of PET resin in the CBP data used for respondent selection. However, SKC’s shipments of PET resin to the United States were all of a viscosity outside the scope of this investigation, and it therefore had no shipments of subject merchandise during the POI.

had exports of subject merchandise during the POI. As a result, and because the record contains no evidence to the contrary, we preliminarily find that SKC made no shipments during the POI and therefore, we have not calculated a separate margin for SKC, and shipments of SKC in the future (if any) will be subject to suspension of liquidation at the all-others rate.

D. 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 SK Chemicals' sales of subject merchandise were made at less than NV, Commerce compared the constructed export prices (CEP), as appropriate, to the NV, 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 weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method or A-to-T method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, Commerce has applied a "differential pricing" (DP) analysis for determining whether application of the A-to-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁷¹ Commerce finds that the DP analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-to-A method in calculating a respondent's weighted-average dumping margin.

The DP analysis used in this preliminary determination examines whether there exists a pattern of constructed export prices (CEP) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The DP analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. For SK Chemicals, purchasers are based on the reported consolidated customer codes.⁷² Regions are defined using the reported destination

⁷¹ 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).

⁷² See SK Chemicals' January 17, 2018 Section C response at 10.

codes (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between CEP and NV for the individual dumping margins.

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

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

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

dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

2. Results of the Differential Pricing Analysis

Based on the results of the DP analysis, Commerce preliminarily finds that 71.77 percent of SK Chemicals' U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differs significantly among purchasers, regions or time periods.

Further, Commerce finds that the A-to-A method cannot appropriately account for such differences because there is a meaningful difference in the weighted-average dumping margins calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to all U.S. sales. Specifically, the Department determines that the average-to-average method cannot appropriately account for such differences because the relative change in the margin when comparing the A-to-A method to the A-T alternative method is 71.49 percent higher. Accordingly, the Department preliminarily determines that there is a meaningful difference in the weighed-average dumping margins calculated for SK Chemicals when calculated using the A-to-A method and the A-to-T method applied to all U.S. sales. Accordingly, Commerce has preliminarily determined to use the A-to-T method for all U.S. sales to calculate the preliminary weighted-average dumping margin for SK Chemicals.⁷³

VII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁷⁴ Further, 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.⁷⁵

⁷³ See SK Chemicals Preliminary Analysis Memorandum.

⁷⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sales are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date").

⁷⁵ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision

For home market sales, SK Chemicals reported the date of its billing document as the date of sale because it represents the first documentation of the final price, quantity, and destination for home-market transactions, noting that this document is entered into SK Chemicals' accounting system on the same day as the merchandise is shipped.⁷⁶ SK Chemicals explained that for its U.S. sales, the date of sale was based on the earlier of the date of shipment or the invoice date, as that is the date the material terms of sale are fixed and binding.⁷⁷ Therefore, we used SK Chemicals' reported date of sale for our margin analysis.

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the Republic of Korea during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: intrinsic viscosity, blend, copolymer/homopolymer, additives, and acetaldehyde content. For SK Chemicals' sales of subject merchandise in the United States, the reported control number identifies the characteristics of the subject merchandise, as exported by SK Chemicals.

SK Chemicals reported sales of PET resin, PET-glycol resin, and PET-BR in the home market, but only reported sales of PET-glycol resin and PET-BR to the United States.⁷⁸ As noted above in the "Scope Comments" section, we are adopting the petitioners' proposed exclusion language for PET-glycol resins but are not excluding other PET resins, such as PET-BR. Accordingly, SK Chemicals' only relevant sales of subject merchandise to the United States made during the POI consisted only of PET-BR. In order to distinguish in-scope PET-BR from out-of-scope PET-glycol resin, we used SK Chemicals' reported product category field in its home market and U.S. sales databases because at least one reported control number included both PET-BR and PET-glycol resin.⁷⁹

IX. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." Section 772(b) of

Memorandum, at Comment 2.

⁷⁶ See SK Chemicals' January 16, 2018 Section B Questionnaire Response at B-13 to B-14.

⁷⁷ See SK Chemicals' January 16, 2018 Section C Questionnaire Response at 12.

⁷⁸ See SK Chemicals' December 28, 2017 Section A Questionnaire Response at Appendix A-1.

⁷⁹ See SK Chemicals' January 16, 2018 Section B response at 3; *see also* SK Chemicals' January 16, 2017 Section C Questionnaire Response at 2.

the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).”

SK Chemicals reported having only CEP sales during the POI. Specifically, SK Chemicals reported that it sold all its subject merchandise to the United States through its affiliated reseller of subject merchandise, SK Chemicals America, Inc. (SKCA).⁸⁰ Thus, in accordance with section 772(b) of the Act, we based the U.S. price on the CEP for SK Chemicals.

We calculated the CEP based on a packed price delivered to customers in the United States. We made deductions from the starting price (adjusted for billing adjustments and deductions for discounts and rebates, where applicable, in accordance with 19 CFR 351.401(c)) for any movement expenses (*e.g.*, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. customs duties, and U.S. inland freight to and from the U.S. warehouse), in accordance with section 772(c)(2)(A) of the Act. Regarding U.S. customs duties, SK Chemicals reported that it received certain “drawback” amounts related to U.S. sales to unaffiliated purchasers. We have preliminarily disallowed the reported offset to U.S. duties for rebates received from the re-exports of that subject merchandise, but plan to gather more information regarding the re-export, the U.S. duty rebate mechanism, and SK Chemical’s knowledge as to the ultimate destination of that subject merchandise at the time of sale to an unaffiliated purchaser. We intend to revisit this issue for the final determination.

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (*e.g.*, imputed credit expenses, bank charges, foreign and U.S. inventory carrying costs, and U.S. packing expenses) and indirect selling expenses.⁸¹ Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by SK Chemicals and its U.S. affiliate, SKCA, on their sales of the subject merchandise in the United States, based on the sales price to unaffiliated purchasers in the United States and the profit associated with those sales.⁸²

We granted an adjustment for Korean duty drawback received on imported materials, pursuant to section 772(c)(1)(B) of the Act, because SK Chemicals established that (1) the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); and (2) there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product. Because the duty drawback adjustment is intended to offset duties reflected in the home market prices that are not similarly reflected in U.S. prices, we are limiting the adjustment to the percent of the POI cost attributable to imports of that input, as reported in SK Chemicals’ adjustments to

⁸⁰ See SK Chemicals’ December 28, 2017 Section A Questionnaire Response at 30-32.

⁸¹ See SK Chemicals’ January 16, 2017 Section C Questionnaire Response at 38-44.

⁸² See SK Chemicals’ Preliminary Analysis Memorandum.

cost of production for subject merchandise. Applying a duty drawback adjustment based solely on SK Chemicals' claimed adjustment, without consideration of import duties included in respondent's cost of materials and reflected in home market sales prices, may result in an imbalance in the comparison of CEP with NV.⁸³ Therefore, this limit on the amount of duty drawback claimed on SK Chemicals' U.S. export sales is consistent with our practice of ensuring that the comparison of CEP with NV is undertaken on a duty neutral basis.⁸⁴

X. NORMAL VALUE

Section 773(a)(1)(B)(i) of the Act defines NV as "the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the {EP} or {CEP}." Alternatively, section 773(a)(1)(B)(ii) of the Act provides that NV may be based on "the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States." Section 773(a)(4) of the Act provides that if Commerce determines that NV cannot be determined under section 773(a)(1)(B)(i), "then, notwithstanding section 773(a)(1)(B)(ii)," NV may be based on CV under section 773(e) of the Act.

A. 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, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

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

B. Affiliated-Party Transactions and Arm's-Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁸⁵

⁸³ See *Carbon and Alloy Steel Wire Rod from Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 13249 (March 28, 2018), and accompanying Issues and Decision Memorandum, at Comment 1.

⁸⁴ See *Saha Thai Steel Pipe (Public) Co. v United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

⁸⁵ See 19 CFR 351.403(c).

Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "{Commerce} may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁸⁶

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

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁸⁷ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁸⁸ 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),⁸⁹ we consider the starting prices to be the gross unit prices less all discounts and rebates. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁹⁰

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT

⁸⁶ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

⁸⁷ See 19 CFR 351.412(c)(2).

⁸⁸ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

⁸⁹ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁹⁰ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁹¹

In the home market, SK Chemicals reported that it made sales through one channel of distribution (*i.e.*, direct shipments to its “end users” or distributors).⁹² SK Chemicals reported that it performed the following selling activities for sales to all home market customers: sales forecasting; strategic planning; sales negotiation and invoicing; receipt of customer payment; engineering services; packing; inventory maintenance; order input and processing; direct sales personnel; sales promotion and marketing research; marketing support; warranty service; provide guarantees; and, freight and delivery arrangements.⁹³

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) warranty and technical support; and 4) inventory maintenance and warehousing. Based on these selling function categories, we find that SK Chemicals performed all four selling function categories for its reported sales to unaffiliated customers in the home market. Because SK Chemicals performed the same selling functions at the same relative level of intensity for all of its home market sales, we determine that all home market sales are at the same LOT.

Further, SK Chemicals reported that it did not have sales in the home market of any merchandise at a level of trade similar to those made to its U.S. affiliate, SKCA.⁹⁴ Nearly all of SK Chemicals’ sales to its U.S. affiliate, SKCA, were through one channel of distribution that consisted of shipments to SKCA’s designated warehouse in the United States that were eventually resold out of inventory.⁹⁵ SK Chemicals reported the following selling activities for its CEP LOT sales to SKCA that are at the same relative level of intensity as those performed in the home market: engineering services; packing; inventory maintenance; order input and processing; and, freight and delivery arrangements.⁹⁶ Accordingly, we find that only two of the four selling function categories were performed for its reported sales to SKCA: freight and delivery services, and inventory maintenance and warehousing.

In the United States, SK Chemicals reported that SKCA made sales through one channel of distribution (*i.e.*, direct shipments to its “end users” or distributors).⁹⁷ SK Chemicals reported that SKCA performed the following selling activities for its U.S. sales: sales forecasting; strategic planning; sales negotiation and invoicing; receipt of customer payment; dealer training; inventory maintenance; warehouse operation; order input and processing; direct sales personnel; sales promotion and marketing research; technical assistance; rebates; cash discounts; repacking; and freight and delivery arrangements.⁹⁸ Accordingly, we find that SKCA performed all four selling function categories of sales and marketing, freight and delivery services, warranty and

⁹¹ See, *e.g.*, *OJ from Brazil* at Comment 7.

⁹² See SK Chemicals’ January 16, 2017 Section B Questionnaire Response at 25 and Appendix B-1.

⁹³ See SK Chemicals’ December 28, 2017 Section A Questionnaire Response at Appendix A-5.

⁹⁴ *Id.* at 28-29.

⁹⁵ *Id.* at 24.

⁹⁶ *Id.* at Appendix A-5.

⁹⁷ *Id.* at 25.

⁹⁸ *Id.* at Appendix A-5.

technical support, and inventory maintenance and warehousing, for its reported sales to unaffiliated customers in the United States.

Based on the selling function categories noted above, we find that SKCA, for its U.S. sales to the unaffiliated customer, performed services in all four of the same selling functions categories as SK Chemicals' home market sales, whereas SK Chemicals only performed services in two of the four categories (freight and delivery services, and inventory maintenance and warehousing) at the CEP LOT. Moreover, there is a broader range and number of selling functions performed by SK Chemicals for home market sales than for CEP sales. In addition, the actual selling activities performed at the same relative level of intensity by SK Chemicals at the CEP LOT are only a fourth of the selling activities performed for the home market LOT, which renders the level of activity minor in relation to the home market LOT.⁹⁹ Therefore, we determine that the home market LOT is at a more advanced stage of distribution than SK Chemicals' CEP LOT in the United States.

Therefore, based on the totality of the facts and circumstances, we preliminarily determine that home market sales during the POI were made at a different LOT than CEP sales. Because SK Chemicals' home market LOT is at a more advanced stage of distribution than its CEP LOT, and no LOT adjustment is possible, a CEP offset is warranted. Accordingly, we granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

D. Calculation of NV Based on Comparison Market Prices

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

When comparing U.S. sales with home market sales of merchandise similar to that sold in the U.S. market, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.¹⁰⁰

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

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of SK Chemicals' material and fabrication costs, selling general, and administrative (SG&A) expenses, profit and U.S. packing costs, as adjusted. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and

⁹⁹ We note that for CEP sales, Commerce deducts all expenses from the U.S. gross-unit price to arrive at the FOB U.S. price.

¹⁰⁰ See 19 CFR 351.411(b).

realized by SK Chemicals in connection with the production and sale of the foreign like product at the most similar LOT as the U.S. sale, as discussed above, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

F. Cost of Production (COP) Analysis

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses. We examined SK Chemicals' cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual average costs based on the reported data except as follows. We relied on the COP data submitted by SK Chemicals in its section and supplemental section D questionnaire responses. In addition, we have included total fiscal year 2016 research and development costs in SK Chemicals' general and administrative (G&A) expenses. We note that SK Chemicals' revised cost dataset already includes the revised G&A rate applied to per-unit cost of manufacturing of each produced CONNUM, therefore no adjustment was needed.¹⁰¹

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, movement charges, actual direct and indirect selling expenses, and packing expenses

3. Results of the COP Test

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

¹⁰¹ For additional details, *see* Memorandum to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – SK Chemicals Co., Ltd.," dated concurrently with this memorandum.

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 SK Chemicals’ 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.

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 date of the U.S. sales as certified by the Federal Reserve Bank.

XII. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify SK Chemicals’ and SKCA’s information relied upon in making our final determination.

XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

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Agree

Disagree

4/27/2018

X

James Maeder

Signed by: JAMES MAEDER

James Maeder

Associate Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

performing the duties of Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations