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

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

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Emulsion Styrene-
Butadiene Rubber from the Republic of Korea; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on emulsion styrene-butadiene rubber (ESB rubber) from the Republic of Korea (Korea).¹ Commerce preliminary finds that LG Chem, Ltd. (LG Chem) sold merchandise below normal value during the period of review (POR) February 24, 2017 through August 31, 2018.

The estimated weighted-average dumping margins are shown in the “Preliminary Results of Review” section of the accompanying *Federal Register* notice. We are conducting this administrative review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

II. BACKGROUND

On September 12, 2017, Commerce published in the *Federal Register* the antidumping duty order on ESB rubber from Korea.² On September 11, 2018, Commerce published the opportunity to request an administrative review on ESB rubber from Korea.³ Lion Elastomers LLC (the petitioner) timely requested an administrative review of seven exporters of subject

¹ See *Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Antidumping Duty Orders*, 82 FR 42790 (September 12, 2017).

² *Id.*

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 45888 (September 11, 2018).



merchandise,⁴ and LG Chem, a producer and exporter of subject merchandise, timely requested an administrative review of itself.⁵ On November 15, 2018, Commerce initiated the administrative review of ESB rubber with respect to seven companies.⁶ In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that, if necessary, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of ESB rubber from Korea during the POR.⁷ On December 3, 2018, relying on CBP data, Commerce selected LG Chem as the mandatory respondent for this review.⁸

We issued the standard AD questionnaire to LG Chem.⁹ Between December 31, 2018 and October 18, 2019, LG Chem submitted timely responses to Commerce’s original and supplemental questionnaires.¹⁰

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations January 28, 2019.¹¹ On June 20, 2019, Commerce extended the deadline of the preliminary results of this review to no later than November 7, 2019.¹²

III. SCOPE OF THE ORDER

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

⁴ See Petitioner’s Letter, “Antidumping Duty Order on Emulsion Styrene Butadiene Rubber from Korea (A-580-890): Request for First Administrative Review,” dated September 28, 2018.

⁵ See LG Chem’s Letter, “LG Chem’s Request for AD Administrative Review Emulsion Styrene-Butadiene Rubber (ESBR) from Korea,” dated September 28, 2018.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 57411 (November 15, 2018) (*Initiation Notice*).

⁷ See *Initiation Notice*, 83 FR at 57411.

⁸ See Memorandum, “Administrative Review of Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Respondent Selection,” dated December 3, 2018.

⁹ See Commerce’s questionnaire to LG Chem, dated December 3, 2018.

¹⁰ See LG Chem’s Letters, “LG Chem’s Section A Response,” dated December 31, 2018 (LG Chem’s Section A Response); “LG Chem’s Section B Response,” dated January 16, 2019; “LG Chem’s Section C Response,” dated January 16, 2019; “LG Chem’s Section D Response,” dated January 17, 2018; “LG Chem’s Supplemental Section A Response,” dated February 22, 2019; “LG Chem’s Supplemental Section B Response,” dated May 20, 2019; “LG Chem’s Supplemental Section C and D Response,” dated August 26, 2019; “LG Chem’s 2nd Supplemental Section D Response,” dated September 26, 2019 (LG Chem’s 2nd Supplemental Section D Response); and “LG Chem’s 3rd Supplemental Section D Response,” dated October 18, 2019.

¹¹ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

¹² See Memorandum, “Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2017-2018,” dated June 20, 2019.

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

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

The subject merchandise is classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber.

Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

This review covers six companies that were not selected for individual examination: (1) Daewoo International Corporation; (2) Kumho Petrochemical Co. Ltd.; (3) Sungsan International Co., Ltd.; (4) WE International Co., Ltd.; (5) Kukje Trading Corp.; and (6) Hyundai Glovis Co., Ltd. None of these six companies: (1) were the subject of a withdrawal of a request for review; (2) requested to participate as a mandatory or voluntary respondent; or (3) submitted a claim of no shipments.

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in market economy proceedings, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. 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 or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.”

Accordingly, in this review, we have preliminarily assigned to the six companies not individually examined in this review a margin of 2.83 percent, which is the weighted-average dumping margin calculated for LG Chem.

V. COMPARISONS TO NORMAL VALUE

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether LG Chem's sales of the subject merchandise from Korea to the United States were made at less than normal value (NV), Commerce compared the constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Product Comparisons

When making this comparison in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Order" section of this notice, above (*i.e.*, the foreign like product), that were in the ordinary course of trade for purposes of determining an appropriate normal value for comparison to the CEP. In order to define products sold in the home and U.S. markets, we relied on the physical characteristic reported by LG Chem: IISRP grade. If contemporaneous home market sales were reported for merchandise which was identical to subject merchandise sold in the U.S. market, then we calculated NV based on the monthly weighted-average home market prices of all such sales. If there were no contemporaneous home market sales of identical merchandise, then we identified home market sales of the most similar merchandise that were contemporaneous with the U.S. sales in accordance with 19 CFR 351.414(e), and calculated NV based on the monthly weighted-average home market prices of all such sales. Where there were no sales of identical or similar merchandise made in the ordinary course of trade in the comparison market, we calculated NV based on constructed value (CV). For LG Chem's sales of ESB Rubber to the United States, the reported control number identifies the characteristics of ESB rubber, as exported by LG Chem.

B. 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 method) unless the Secretary determines that another method is appropriate in a particular situation. In AD 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 AD 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.¹³

¹³ See, *e.g.*, *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27,

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 administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or constructed 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 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 period of investigation 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 export price (or constructed export price) and normal value for the individual dumping margins.

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

2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

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 these preliminary results, including arguments for modifying the group definitions used in this proceeding.¹⁴

C. Results of the Differential Pricing Analysis

For LG Chem, based on the results of the differential pricing analysis, Commerce preliminarily finds that 88.31 percent of the value of U.S. sales pass the Cohen’s *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.¹⁵ Further, we preliminarily find that there is a meaningful difference between the

¹⁴ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce’s differential pricing methodology. *See, e.g., Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

¹⁵ *See* Memorandum, “Administrative Review of the Antidumping Duty of Emulsion Styrene Butadiene Rubber from the Republic of Korea: Preliminary Results Analysis Memorandum for LG Chem, Ltd. and LG Chem America, Inc.,” dated concurrently with this memorandum (Preliminary Analysis Memorandum) at 2.

weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, we are applying the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for LG Chem.

VI. DATE OF SALE

According to 19 CFR 351.401(i), Commerce will normally use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that Commerce may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.

For both its home market and U.S. sales, LG Chem reported the invoice date as its date of sale.¹⁶ LG Chem stated that it selected the invoice date as the date of sale because that is the point in the sales process at which the material terms of sale are no longer subject to change.¹⁷ For select home market sales, Commerce used the shipping date as the date of sale.¹⁸ Accordingly, we used the invoice date as the date of sale in both the U.S. and home markets for these preliminary results, except when the shipment date precedes invoice date.

VII. U.S. PRICE

A. Constructed Export Price

Commerce based the price of sale of U.S. sales of subject merchandise based on CEP, as defined in section 772(b) of the Act, because the first sale to an unaffiliated purchaser occurred after importation of subject merchandise into the United States, or the U.S. affiliate made the U.S. sale to the first unaffiliated purchaser. We calculated CEP based on prices to unaffiliated purchasers in the United States. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. 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 includes direct selling expenses, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. There was no cost associated with further manufacturing within the meaning of section 772(d)(2) of the Act, and therefore we made no such adjustment.

LG Chem claimed a duty drawback adjustment to U.S. price. 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

¹⁶ See LG Chem's Section A Response at 26 and 29; see also LG Chem's Section B Response at 16; LG Chem's Section C Response dated January 16, 2019 at 15; and LG Chem Supplemental C and D Response at 6-7.

¹⁷ *Id.*

¹⁸ See Preliminary Analysis Memorandum.

determining whether an adjustment for duty drawback should be made, 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 traditionally use (and the United States Court of International Trade (CIT) sustained)¹⁹ the following two-prong test.²⁰ The first prong of the test is that the import duty paid and the rebate payment or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation of subject merchandise). The second prong is that the company must demonstrate that there were sufficient imports of the imported raw materials to account for the duty drawback or exemption granted received upon the exportation of subject merchandise.²¹

LG Chem demonstrated the linkage between imports of raw materials used in the production of the merchandise sold for a specific invoice.²² LG Chem identified the raw materials on which it paid an import duty and provided worksheets: (1) detailing how they calculated the duty drawback on a transaction-specific basis; (2) linking raw materials to production of subject merchandise; and (3) demonstrating that they imported sufficient volumes of raw materials to account for the duty drawback received on U.S. sales. Accordingly, Commerce will preliminarily grant LG Chem a duty drawback adjustment using the duty neutral approach. Under this methodology, Commerce will make an upward adjustment to CEP based on the amount of the duty imposed on the input and rebated or not collected upon the exportation 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 POR.²³ This ensures that the amount added to both sides of the comparison of CEP with NV is equitable, *i.e.*, duty neutral, meeting the purpose of the adjustment as affirmed in *Saha Thai*.²⁴ Based on the facts of this review, Commerce finds that the import duty costs, based on the consumption of imported inputs during the POR, including imputed duty costs for imported inputs, properly accounts for the amount of duties imposed, as required by section 772(c)(1)(B) of the Act.

¹⁹ See, e.g., *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F. 3d 1335, 1340-41 (Fed Cir. 2011) (*Saha Thai*).

²⁰ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006); see also *Saha Thai*, 635 F. 3d at 1340-41.

²¹ See *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 (IDM) at Comment 2.

²² See LG Chem's Section C Response at 39-41 and Exhibit C-43; see also LG Chem Supplemental C and D Response at 36-38, and Exhibit SC-24 and SC-29.

²³ See Preliminary Analysis Memorandum.

²⁴ The CAFC stated in *Saha Thai* 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 exemptions 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.

VIII. NORMAL VALUE

A. Home Market Viability

In order to determine whether there was 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 five percent or more of the aggregate volume of U.S. sales), Commerce compared the volume of LG Chem's respective home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act.²⁵ Based on this comparison, we determined that LG Chem had a viable home market during the POR. Consequently, we based NV on home market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade.

B. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act,²⁶ to the extent practicable, Commerce determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1)(iii), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value (CV), the starting price of the sales from which we derive the adjustments to CV for selling expenses and profit.

To determine whether comparison market sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.²⁷ If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In this administrative review, we obtained information from LG Chem regarding the selling activities performed for both home market and U.S. sales, for each channel of distribution.²⁸ In the home market, LG Chem reported that all of its sales were through only one channel of distribution (*i.e.*, to unaffiliated end users or unaffiliated retailers).²⁹ 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 there were no significant differences in selling activities performed by LG Chem. Accordingly, we preliminarily determine that all home market sales are at the same LOT.

²⁵ See LG Chem's Section A Response at 2 and Exhibit A-1.

²⁶ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 829-31.

²⁷ See 19 CFR 351.412(c)(2).

²⁸ See LG Chem's Section A Response at 13, 26-28; see also LG Chem's letter, "LG Chem's Supplemental Section B Response," dated May 17, 2019 at 37-39 and Exhibit SB-30.

²⁹ See LG Chem's Section A Response at 13.

With respect to the U.S. market, LG Chem made only CEP sales.³⁰ LG Chem sold subject merchandise through two channels of distribution: (1) LG Chem sold merchandise to its U.S. affiliate, LG Chem America, Inc. (LGCAI), who then warehoused the merchandise before selling it to unaffiliated end users; and (2) LG Chem sold merchandise through LGCAI to U.S. unaffiliated end users and unaffiliated distributors by direct shipment.³¹ For both channels, LG Chem reported that it performed the following selling functions at the same level: strategic/economic planning, sales forecasting, marketing, packing, and inventory maintenance at the same level of intensity.³² For channel 2 sales, LG Chem performed order input, processing, and freight and delivery arrangement, but these activities were nonexistent for channel 1 sales.³³

Commerce considers the role played by LG Chem's affiliate, LGCAI, to be relevant in its decision concerning LOT.³⁴ In prior cases, Commerce found that evidence showing that the U.S. affiliate performs significant selling activities in the U.S. market supports the conclusion that the foreign producer's sales in the comparison market are made at a more advanced LOT than CEP sales.³⁵ Commerce's reasoning, as explained in past cases, is that if the U.S. affiliate performs significant selling activities in the U.S. market that are handled by the foreign producer in the comparison market, then the home market LOT is necessarily more advanced than the CEP LOT, which excludes the activities performed by the U.S. affiliate from the price, pursuant to section 772(d) of the Act.³⁶

Commerce compared the U.S. LOTs to the home market LOT, and we preliminarily find that the selling functions performed for the U.S. and home market customers differ significantly. Commerce preliminarily finds that sales to the home market during the POR were made at a more advanced LOT than sales in the U.S. LOT. We did not make a LOT adjustment under 19 CFR 351.412(e), because LG Chem did not sell the subject merchandise at a common LOT in

³⁰ *Id.* at 26.

³¹ *Id.* at 13 and Exhibit A-12; *see also* LG Chem's Section B Response at 25 and Exhibit B-10.

³² *See* LG Chem's Section A Response 16-18.

³³ *Id.*

³⁴ *See Emulsion Styrene Butadiene Rubber from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 11536 (February 24, 2017) and accompanying Preliminary Decision Memorandum (PDM) at 10, unchanged in *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 33045 (July 19, 2017).

³⁵ *See, e.g., Certain Corrosion-Resistant Steel Flat Products from Italy*, 81 FR 69 (January 4, 2016), and accompanying PDM at 16-17, unchanged in *Certain Corrosion-Resistant Steel Flat Products from Italy; Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016); and *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024, 45029 (August 6, 2006) (finding that in the home market the respondent made sales "further down the chain of distribution by providing certain downstream selling functions that are normally performed by the affiliated resellers in the U.S. market") unchanged in *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 74897 (December 13, 2006).

³⁶ *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009), and accompanying IDM at Comment 8.

the home market and U.S. markets and, thus, we were unable to identify a pattern of consistent price differences attributable to differences in LOTS.

With respect to the CEP LOT, the selling functions LG Chem performed for its home market customers are at a more advanced stage of distribution than those performed for its U.S. customers. Specifically, LG Chem reported that LGCAI performs significant selling activities in the U.S. market for its CEP sales that LG Chem handles in the home market.³⁷ Therefore, based on the totality of the facts and circumstances, we preliminarily determine that home market sales during the POR were made at a different LOT than CEP sales. Because LG Chem's 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 and 19 CFR 351.412(f).

C. Cost of Production (COP) Analysis

Section 773(b)(2)(A)(ii) of the Act³⁸ requires Commerce to request CV and COP information from respondent companies in all antidumping duty proceedings.³⁹ Accordingly, Commerce requested this information from LG Chem.

1. Cost Averaging Methodology

Commerce's normal practice is to calculate an annual weighted-average cost for the POR. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence by examining two primary criteria: (1) the change in the cost of manufacturing (COM) incurred by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.⁴⁰

a. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between high-and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.⁴¹ In the instant case, record evidence shows that LG Chem experienced significant cost changes (*i.e.*, changes that exceeded 25 percent) between the

³⁷ See LG Chem's Section A Response at 13-27.

³⁸ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

³⁹ *Id.*

⁴⁰ See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (SSSSC Mexico), and accompanying IDM at Comment 6; see also *Stainless-Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (SSPC Belgium), and accompanying IDM at Comment 4.

⁴¹ See SSPC Belgium IDM at Comment 4.

high and low quarterly COM during the POR.⁴² This change in COM is attributable primarily to the price volatility for a major input used in the production of ESB rubber.⁴³

b. Linkage Between Sales and Cost Information

Consistent with past precedent, because we found the changes in cost to be significant, we evaluated whether there is evidence of linkage between cost changes and sales prices during the POR. Absent a surcharge or other pricing mechanism, Commerce may alternatively look for evidence of a pattern showing that changes in selling prices reasonably correlate to changes in unit costs.⁴⁴ To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POR, we compared weighted average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales in the comparison market. Our comparison revealed that sales and costs showed a reasonable correlation for LG Chem.⁴⁵

After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between LG Chem's changing sales prices and costs during the POR.⁴⁶ Thus, we preliminarily determine that a shorter cost-averaging period approach, based on a quarterly-average COP, is appropriate for LG Chem because we found significant changes in COM, as well as a reasonable linkage between costs and sales prices.

2. 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 selling, general and administrative (SG&A) expenses and packing.⁴⁷ We relied on the COP data submitted by LG Chem.⁴⁸

3. 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. In particular, in determining whether to disregard home market sales made at prices below their COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with

⁴² See LG Chem's Section D Response at Exhibit D-4.

⁴³ See Preliminary Analysis Memorandum at 3-4.

⁴⁴ See *SSPC Belgium Final IDM* at Comment 4.

⁴⁵ See LG Chem's Letter, "Second Supplemental Section D Response," at Exhibit SD 2-5.1; see also Preliminary Analysis Memorandum.

⁴⁶ *Id.*; see also *SSSSC Mexico IDM* at Comment 6; and *SSPC Belgium IDM* at Comment 4.

⁴⁷ This discussion involves business proprietary information. For further discussion, see the Preliminary Analysis Memorandum.

⁴⁸ See LG Chem's 2nd Supplemental Section D Response.

sections 773(b)(2)(B), (C), and (D) of the Act. We determined the net comparison market prices for the below-cost test by adjusting the gross unit price for all applicable billing adjustments, discounts and rebates, movement charges, direct and indirect selling expenses, and packing expenses excluding all adjustments for imputed expenses.

4. Results of the COP Test

Section 773(b)(1) of the Act provides that, where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time,” Commerce may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales.”⁴⁹ Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁵⁰

D. Calculation of NV Based on Comparison-Market Prices

We calculated NV based on the prices reported for home market sales to unaffiliated customers that we determined were made within the ordinary course of trade. We also made deductions from NV, consistent with section 773(a)(6)(B)(ii) of the Act, for movement expenses. In addition, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses to NV. Direct selling expenses consisted of commission expenses, late payment expenses, credit expenses, and bank charges. We also made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act.⁵¹

When comparing U.S. sale prices with NVs based on comparison market sale prices of similar, but not identical, merchandise, we also made adjustments for physical differences in 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 products and the subject merchandise.⁵²

⁴⁹ See section 773(b)(2)(C)(ii) of the Act.

⁵⁰ See section 773(b)(2)(D) of the Act.

⁵¹ See Preliminary Analysis Memorandum.

⁵² See 19 CFR 351.411(b).

IX. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

X. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

11/6/2019

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance