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Administrative Review
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June 17, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Results of the 2018-2019 Administrative Review of the Antidumping Duty Order on Low Melt Polyester Staple Fiber from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on low melt polyester staple fiber (low melt PSF) from the Republic of Korea (Korea). The period of review (POR) is February 1, 2018 through July 31, 2019. The review covers Toray Advanced Materials Korea, Inc. (TAK), the only producer and/or exporter of the subject merchandise to request an administrative review.¹ We preliminarily determine that sales of the subject merchandise have been made at prices below normal value (NV).

II. BACKGROUND

On August 16, 2018, Commerce published in the *Federal Register* an AD order on low melt PSF from Korea.² Subsequently, on August 2, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on low melt PSF from Korea for the period February 1, 2018 through July 31, 2019.³

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(2), on August 29, 2019, Commerce received a request to conduct an administrative

¹ On August 28, 2019, Commerce determined that TAK is the successor-in-interest to Toray Chemical Korea, Inc. See *Low Melt Polyester Staple Fiber from the Republic of Korea: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 45129 (August 28, 2019).

² See *Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Antidumping Duty Orders*, 83 FR 40752 (August 16, 2018).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 37834, 37835 (August 2, 2019).



review of the AD order on low melt PSF from Korea from TAK.⁴ On October 7, 2019, based on this timely request, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the AD order on low melt PSF from Korea.⁵

In October 2019, we issued the AD questionnaire to TAK.⁶ In November 2019, we received a timely response to section A (*i.e.*, the section relating to general information) of the questionnaire.⁷ In December 2019, we received timely responses from TAK to the remaining sections of the questionnaire (*i.e.*, sections B, C, and D, the sections covering comparison market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively).⁸ From January through April 2020, we issued supplemental sections A through D questionnaires to TAK.⁹ We received timely responses to these supplemental questionnaires from February through May 2020.¹⁰

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 22, 2020.¹¹

III. SCOPE OF THE ORDER

The merchandise subject to this order is synthetic staple fibers, not carded or combed, specifically bi-component polyester fibers having a polyester fiber component that melts at a lower temperature than the other polyester fiber component (low melt PSF). The scope includes bi-component polyester staple fibers of any denier or cut length. The subject merchandise may be coated, usually with a finish or dye, or not coated.

Low melt PSF is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 5503.20.0015. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

⁴ See TAK's Letter, "Low Melt Polyester Staple Fiber from the Republic of Korea: Administrative Review Request," dated August 29, 2019.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53411, 53415 (October 7, 2019).

⁶ See Commerce's Letter, "Antidumping Duty Administrative Review Questionnaire," dated October 8, 2019.

⁷ See TAK's November 12, 2019 Section A Questionnaire Response (TAK November 12, 2019 AQR).

⁸ See TAK's December 5, 2019 Sections B, C, and D Questionnaire Response (TAK December 5, 2019 BCDQR).

⁹ See Commerce's Letters, "First Supplemental Questionnaire for Sections A, B, and C," dated January 31, 2020, "First Supplemental Questionnaire for Section D," dated February 28, 2020, "Second Supplemental Questionnaire for Sections B and C," dated March 16, 2020, and "Second Supplemental Questionnaire for Section D," dated April 30, 2020.

¹⁰ See TAK's February 21, 2020 Sections A, B, and C Supplemental Questionnaire Response (TAK February 21, 2020 ABCSQR); *see also* TAK's March 23, 2020 Section B and C Second Supplemental Questionnaire Response; TAK's March 27, 2020 Section D Supplemental Questionnaire Response; and TAK's May 21, 2020 Section D Second Supplemental Questionnaire Response.

¹¹ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

IV. DISCUSSION OF THE METHODOLOGY

Date of Sale

Section 351.401(i) of Commerce's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if Commerce is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹² Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹³

TAK reported the date of sale in the home market as the earlier of the invoice date or date of shipment from the Gumi plant.¹⁴ In addition, TAK reported the U.S. date of sale as the shipment date from the Gumi plant.¹⁵ We preliminarily followed Commerce's long-standing practice of basing the date of sale for all of TAK's home market and U.S. sales on the earlier of the invoice date or the shipment date.¹⁶

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

A) Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EP (or constructed export price (CEP)) (*i.e.*, the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of

¹² See 19 CFR 351.401(i); *see also* *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

¹³ *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) (*Shrimp from Thailand*), and accompanying Issues and Decision Memorandum (IDM) at Comment 10; *see also* *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

¹⁴ *See* TAK November 12, 2019 AQR at 19; and TAK December 5, 2019 BCDQR at B-17 - B-18.

¹⁵ *See* TAK November 12, 2019 AQR at 19-21; and TAK December 5, 2019 BCDQR at C-14.

¹⁶ *See, e.g., Shrimp from Thailand* IDM at Comment 10; and *Steel Beams from Germany* IDM at Comment 2.

administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.¹⁷

In recent investigations, Commerce 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.¹⁸ Commerce finds that the differential pricing analysis used in 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 Eps (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all U.S. export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the

¹⁷ See, *e.g.*, *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int’l Trade 2014); and *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) (“{T}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties.”) (citations omitted).

¹⁸ 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).

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

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

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

B) Results of the Differential Pricing Analysis

For TAK, based on the results of the differential pricing analysis, Commerce preliminarily finds that 51.67 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for TAK.

C) Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by the respondent, TAK, covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR to be foreign like products for purposes of determining NV for the merchandise sold in the United States. Pursuant to 19 CFR 351.414(f), we compared the respondent's U.S. sales of low melt PSF to their sales of low melt PSF made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

In making the product comparisons, we matched foreign like products based on the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are as follows: fiber melt point temperature, fiber color, specialty fiber, fiber type, denier range, additives, and cut length.

D) Export Price

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

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

¹⁹ See Memorandum, "Calculations for Toray Advanced Materials Korea, Inc. for the Preliminary Results," dated concurrently with this memorandum (TAK Preliminary Calculation Memo).

Duty Drawback

Section 772(c)(1)(B) of the Act states that EP shall be increased by “the amount of any import duties imposed by the country of exportation... which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether a respondent is entitled to duty drawback, Commerce traditionally uses (and the United States Court of Appeals for the Federal Circuit (CAFC) has sustained)²⁰ the following two-prong test:²¹ first, that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and second, that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.²²

In this case, TAK provided information to satisfy each of the two prongs.²³ Because the respondent has satisfied the criteria described above, we have preliminarily granted duty drawback adjustments to TAK, consistent with our practice.²⁴ Under this methodology, Commerce will make an upward adjustment to U.S. price based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POR.²⁵ This ensures that the amount added to both sides of the dumping calculations is equal, *i.e.*, duty neutral, meeting the purpose of the adjustment as affirmed in *Saha Thai*.²⁶

Based on the facts of this review, Commerce finds that the import duty costs, based on the consumption of imported inputs during the POR, properly accounts for the amount of duties

²⁰ See, *e.g.*, *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F. 3d 1335, 1340-41 (Fed. Cir. 2011).

²¹ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006) (citing *Wheatland Tube Company v. United States*, 414 F. Supp. 2d 1271, 1287 (CIT 2006); see also *Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d 1257, 1261 (CIT 2005); *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1093 (CIT 2001); *Far East Machinery Co., Ltd v. United States*, 699 F. Supp. 309, 311 (CIT 1988); and *Carlisle Tire & Rubber Co. v. United States*, 657 F. Supp. 1287, 1289-90 (CIT 1987)).

²² See, *e.g.*, *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 IDM at Comment 2; see also *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review*, 70 FR 73447 (December 12, 2005), and accompanying IDM at Comment 7; and *FederalMogul Corp. v. United States*, 862 F. Supp. 384, 410 (CIT 1994).

²³ See TAK December 5, 2019 BCDQR at C-29-30 and Exhibits C-12-13; see also TAK February 21, 2020 ABCSQR at S-18-20 and Exhibits S-33-35.

²⁴ See, *e.g.*, *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 82 FR 23192 (May 22, 2017), and accompanying IDM at Comment 1.

²⁵ See *Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016), and accompanying Preliminary Decision Memorandum at 15.

²⁶ The CAFC stated in the *Saha Thai* litigation that “it is clear that Commerce only added imputed import duty costs to COP in an amount appropriate to offset Saha’s actual import duty exemption under the bonded warehouse program. This did not result in double counting because Commerce merely added the cost of import duties that Saha would have paid on the inputs in category C if Saha had sold the subject merchandise in Thailand rather than exporting it to the United States. Commerce thus calculated an appropriate average COP.” See *Saha Thai*, 635 F. 3d. at 1344.

imposed, as required by section 772(c)(1)(B) of the Act. We have added this per unit amount to the U.S. price.²⁷

E) Normal Value

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 five percent or more of the aggregate volume of U.S. sales), we compare the volume of home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a)(1)(A) and (B)(i) of the Act. If we determine that no viable home market exists, we may, if appropriate, use the respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

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

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).²⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁹ In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed 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,³⁰ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³¹

²⁷ See TAK Preliminary Calculation Memo.

²⁸ See 19 CFR 351.412(c)(2).

²⁹ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

³⁰ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

³¹ See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment was possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³²

In this administrative review, we obtained information from TAK regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution.³³ Our LOT findings are summarized, as follows. Selling activities can be generally grouped into five selling function categories for analysis: (1) provision of sales support; (2) provision of training services; (3) provision of technical support; (4) provision of logistical services; and (5) performance of sales related administrative activities.³⁴

In the home market, TAK reported that it made sales through one channel of distribution, *i.e.*, direct sales to unaffiliated end users and distributors.³⁵ According to TAK, it performed the following selling functions for sales to all home market customers: sales forecasting, strategic and economic planning, sales promotion, inventory maintenance, freight and delivery services, packing, order input/processing, direct sales personnel, credit risk management, and warranty services.³⁶

As noted above, selling activities can be generally grouped into five selling function categories. Based on these selling function categories, we find that TAK performed sales support, logistical services, and sales related administrative activities for all of its reported home market sales. Because we find that there were no differences in selling activities performed by TAK to sell to its home market customers, we determine that there is one LOT in the home market for TAK.

With respect to the U.S. market, TAK reported that it made sales through two channels of distribution, *i.e.*, direct sales to unaffiliated end-users or distributors, and direct sales to unaffiliated Korean trading companies.³⁷ TAK reported that it performed the following selling functions for sales in both distribution channels: sales forecasting, strategic and economic planning, sales promotion, inventory maintenance, freight and delivery, packing, order input/processing, direct sales personnel, credit risk management, and warranty services.³⁸ In

³² See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

³³ See TAK November 12, 2019 AQR at 11-17 and Exhibits A-8 - A-11.

³⁴ *Id.* at Exhibit A-7.

³⁵ *Id.* at 12-13; and TAK December 5, 2019 BCDQR at B-16 – B-17.

³⁶ See TAK November 12, 2019 AQR at 13-17 and Exhibits A-7- A-11.

³⁷ *Id.* at 12; and TAK December 5, 2019 BCDQR at C-13.

³⁸ See TAK November 12, 2019 AQR at 13-17 and Exhibit A-7.

addition, TAK reported commission expenses for certain U.S. sales.³⁹ However, TAK did not document what additional functions it performed, if any, for these sales.

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

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

Cost of Production Analysis

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. We examined TAK's cost data and preliminarily 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 COP data submitted by TAK, except as follows:⁴⁰

- We increased TAK's reported total cost of manufacturing for input purchases from an affiliate in accordance with the transactions disregarded rule at section 773(f)(2) of the Act; and
- We reallocated TAK's PSF conversion costs among products that only differ in fiber color.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to

³⁹ See TAK December 5, 2019 BCDQR at C-30-31. We note that TAK did not report "pay commissions" as a selling function in its selling functions chart.

⁴⁰ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Toray Advanced Materials Korea, Inc.," dated concurrently with this memorandum.

determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

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

We found that, for certain products, less than 20 percent of TAK's home market sales during the POR were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We 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.

Calculation of Normal Value Based on Comparison Market Prices

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

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

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁴¹

V. CURRENCY CONVERSION

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

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

Agree

☐

Disagree

6/17/2020

X  _____

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁴¹ See 19 CFR 351.411(b).