



A-580-903

Investigation

POI: 07/01/2018 - 06/30/2019

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July 16, 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:** Issues and Decision Memorandum for the Final Determination in  
the Antidumping Duty Investigation of Polyethylene Terephthalate  
Sheet from the Republic of Korea

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## **I. SUMMARY**

The Department of Commerce (Commerce) finds that polyethylene terephthalate sheet (PET sheet) from the Republic of Korea (Korea) is, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The petitioners are Advanced Extrusion, Inc., Ex-Tech Plastics, Inc., and Multi-Plastics Extrusions, Inc. (collectively, the petitioners). The mandatory respondents subject to this investigation are the Jin Young Group<sup>1</sup> and Plastech Col, Ltd. (Plastech). The period of investigation (POI) is July 1, 2018 through June 30, 2019.

Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether to Grant JYC's Duty Drawback Adjustment
- Comment 2: Whether to Revise JYC's Calculation of Home Market Credit
- Comment 3: Selection of the Surrogate Short-Term U.S. Market Interest Rate

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<sup>1</sup> Commerce previously determined that the mandatory respondent, Jin Young Chemical Co., Ltd. (JYC) is affiliated with Jinyoung Co. Ltd. (JYL) within the meaning of section 771(33) of the Act and also determined JYC and JYL to be a single entity (collectively, the Jin Young Group). *See* Memorandum, "Affiliation and Collapsing Memorandum for Jin Young Chemical Co., Ltd.," dated March 4, 2020 (Collapsing Memo). On June 26, 2020, the Jin Young Group consented to withdraw its request for proprietary treatment of the identity of the Korean affiliate, JYL, in the event that Commerce continues to collapse JYC and the affiliate in the final determination. Because no party commented on the decision to collapse these companies, we continue to find the companies comprise a single entity and hereby treat all record references to JYL as public information on this record. For ease of reference, we refer to the collapsed Jin Young Group entity as JYC, *infra*.

## II. BACKGROUND

On March 3, 2020, Commerce published the *Preliminary Determination* in this investigation, and invited parties to comment on the decision.<sup>2</sup> On March 4, 2020, Commerce preliminarily determined that mandatory respondent, Jin Young Chemical Co., Ltd. is affiliated with Jinyoung Co. Ltd., and that the Jin Young Group entities constitute a single collapsed entity pursuant to 19 CFR 351.401(f).<sup>3</sup> On June 23, 2020, Commerce requested that the Jin Young Group withdraw its request for proprietary treatment of the identity of the Korean affiliate,<sup>4</sup> and the Jin Young Group complied with this request on June 26, 2020.<sup>5</sup>

On April 2, 2020, JYC requested a public hearing to discuss the issues raised in this investigation.<sup>6</sup> JYC subsequently agreed to hold a teleconference in lieu of formal hearing, which was held on June 30, 2020.<sup>7</sup>

On April 7, 2020, Commerce published a memorandum stating, due to the Global Level 4 travel advisory imposed, Commerce personnel are prevented from traveling to conduct verification.<sup>8</sup> Accordingly, Commerce did not conduct a verification of JYC's responses in this investigation. Parties submitted case briefs on April 22, 2020,<sup>9</sup> and rebuttal briefs on May 11, 2020.<sup>10</sup>

## III. SCOPE COMMENTS

During the course of this investigation, Commerce received scope comments from interested parties. We issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in case and rebuttal briefs.<sup>11</sup> We did not receive

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<sup>2</sup> See *Polyethylene Terephthalate Sheet from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 12500 (March 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>3</sup> See Collapsing Memo.

<sup>4</sup> See Commerce's Letter, "Antidumping Duty Investigation of Polyethylene Terephthalate Sheet from the Republic of Korea," dated June 23, 2020.

<sup>5</sup> See JYC's Letter, "Polyethylene Terephthalate ("PET") Sheet from the Republic of Korea – Clarification of Treatment of Certain Information," dated June 26, 2020.

<sup>6</sup> See JYC's Letter, "Polyethylene Terephthalate ("PET") Sheet from the Republic of Korea – Request for Public Hearing," dated April 2, 2020.

<sup>7</sup> See JYC's Letter, "Polyethylene Terephthalate ("PET") Sheet from the Republic of Korea – Withdrawal of Hearing Request," dated June 26, 2020; see also Memorandum, "Ex Parte Meeting with Jin Young Chemical Co., Ltd.," dated July 2, 2020.

<sup>8</sup> See Memorandum, "Cancellation of Verification," dated April 7, 2020.

<sup>9</sup> See JYC's Letter, "Polyethylene Terephthalate ("PET") Sheet from the Republic of Korea – Case Brief," dated April 21, 2020 (JYC's Case Brief).

<sup>10</sup> See Petitioner's Letter, "Petitioners' Rebuttal Brief for Jin Young Chemical Co., Ltd.," dated May 8, 2020 (Petitioner's Rebuttal Brief).

<sup>11</sup> See Memorandum, "Antidumping Duty Investigations of Polyethylene Terephthalate Sheet from the Republic of Korea and the Sultanate of Oman: Preliminary Scope Decision Memorandum," dated February 25, 2020 (Preliminary Scope Memorandum).

scope case briefs from interested parties. Thus, for this final determination, we have made no changes to the scope of this investigation, as published in the *Preliminary Determination*.

#### **IV. SCOPE OF THE INVESTIGATION**

The product covered by this investigation is PET sheet. For a complete description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

#### **V. CHANGES SINCE THE PRELIMINARY DETERMINATION**

We calculated the constructed export price (CEP) and normal value (NV) using the same methodology as the *Preliminary Determination*, with the following exceptions:

- We have made a duty drawback adjustment based on JYC's per-unit duty cost embedded in the cost of production (*i.e.*, UDUTY in the cost of production database). *See* Comment 1.
- We adjusted JYC's home market credit expense to include "Note Holding Period of Note." *See* Comment 2.

#### **VI. DISCUSSION OF THE ISSUES**

##### **Comment 1: Whether to Grant JYC's Duty Drawback Adjustment**

*JYC's Case Brief*<sup>12</sup>

- Commerce erroneously rejected JYC's reported duty drawback adjustment in the *Preliminary Determination*. Commerce did not dispute that JYC satisfied both prongs of the duty drawback test in its *Preliminary Determination*, implicitly recognizing that: (1) the import duties that JYC paid on imported PET flake and the rebates paid by the Korean tax authorities at the time the PET sheet was exported were directly linked; and (2) JYC paid sufficient import duties on imported PET flake to account for the POI duty drawback reported in its U.S. sales file.
- The finding to otherwise reject the duty drawback reporting in the *Preliminary Determination* overlooks the substantial record evidence supporting the accuracy of its reported duty drawback information, including a narrative explanation, supporting calculation worksheets, and supporting documentation to demonstrate the accuracy of the per-unit calculation of import duties paid for each type of imported raw material consumed in the manufacture of merchandise under consideration during the period of investigation (POI). Additionally, Commerce does not require a respondent to separately keep track of duties in its normal books and records.
- Commerce was unable to perform on-site cost and sales verifications, during which time JYC might have been able to more specifically address the concerns Commerce had regarding the amount of duty embedded in its costs, as identified in the *Preliminary Determination*.

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<sup>12</sup> *See* JYC's Case Brief at 4-21.

- The earlier-reported duty drawback value of “0” for all observations in the most-recently-submitted U.S. sales database was a simple error of oversight, but all underlying information was provided to the record. Since substantial record evidence supports the accuracy of JYC’s reported duty drawback information, Commerce should grant a duty drawback adjustment using the information contained in JYC’s original U.S. sales file.
- JYC acknowledges that its accounting system does not separately track the import duties it paid. Nevertheless, JYC presented a reasonable methodology to calculate the per-unit amount of import duties included in its reported product-specific per-unit material costs, which was supported with detailed supporting calculations and documentation. Thus, in the alternative, JYC recommends that Commerce grant a duty drawback adjustment based on the per-unit duties on imported raw materials reported in the cost database.

#### *Petitioners’ Rebuttal Brief*<sup>13</sup>

- Commerce correctly declined to grant a duty drawback adjustment in the *Preliminary Determination*.
- JYC did not provide evidence to satisfy either component of Commerce’s two-pronged test for eligibility to receive a duty drawback adjustment.
  - JYC claimed drawback on purchases of PET flake that were not direct imports but were purchases from Korean importers.<sup>14</sup> Commerce has previously found that if a respondent did not directly import the drawback input, then the first prong of the test is not satisfied.<sup>15</sup> Therefore, JYC fails the first prong of the test because it did not import the input directly and did not bear the liability to pay duties; thus, there can be no link between import duty paid and the drawback rebate received.
  - JYC’s direct imports of PET flake comprised total duties of only a portion of the total drawback received during the POI. JYC, therefore, also fails the second

<sup>13</sup> See Petitioners’ Rebuttal Brief at 46-57.

<sup>14</sup> *Id.* at 48-49, citing JYC’s Letter, “Polyethylene Terephthalate Sheet from the Republic of Korea – Supplemental Sections A, B, and C Questionnaire Resp,” dated January 24, 2020 (JYC’s 1<sup>st</sup> SQR) at S-119–120, Ex. S-49(a), S-49(b) (containing all translated duty drawback application forms and import declarations filed during the POI), SQR at S-117 (stating that Exhibits S-49(b) and S-49(c) contain all import declarations referenced on the duty drawback applications), and JYC’s Letter, “Polyethylene Terephthalate Sheet from the Republic of Korea – Sections B, C, and D Questionnaire Responses,” dated December 3, 2019 (JYC’s BQR, CQR, and DQR)) at C-40 (stating that Exhibit C-15-B contains all duty drawback application that JYC filed during the POI).

<sup>15</sup> *Id.* at 49, citing *Phosphor Copper From the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 82 FR 12433 (March 3, 2017) (*Phosphor Copper from Korea LTFV Final*) and accompanying Issues and Decision Memorandum (IDM) at Comment 4 (“However, we could not link the import duty refund to the import duty payment due to the fact that Bongsan did not import copper directly and, therefore, did not bear any liability if it failed to adhere to the Korean fixed-rate program (*i.e.*, did not export the finished product and was responsible for import duties). In addition, Bongsan was not able to provide a complete accounting of the country of origin of its imported copper. As a result, we find that the first prong of the Department’s test is not met because: (1) Bongsan was not the importer of the input and not liable for the import duties and; (2) we lack sufficient information on the origin of Bongsan’s imports (*i.e.*, the origin of the copper). Consequently, we cannot establish the link between imported inputs and the duty refund upon export.”), and *Diethyl Terephthalate from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 28824 (June 26, 2017) (*DOTP from Korea LTFV*), and accompanying IDM at Comment 7 (where Commerce declined to make a duty drawback adjustment absent evidence that the respondent actually paid the import duties for which it is claiming drawback).

prong of the test, requiring “sufficient imports of the imported raw material to account for the drawback received upon the exports of the subject merchandise.”

- JYC’s methodology for reporting the duty cost embedded within its cost of production inflated its duty cost. Commerce’s duty neutral practice requires the duty drawback adjustment to be based on the average duty cost reported in the cost of production. Because JYC inflated this amount, however, Commerce should reject JYC’s claimed duty drawback adjustment.
- If Commerce determines that JYC should be granted a duty drawback adjustment, then the adjustment should be based on JYC’s per-unit duty cost in the cost of production database (UDUTY), instead of the per-unit drawback in its sales database (DTYDRAWU).<sup>16</sup>

**Commerce’s Position:** As an initial matter, contrary to JYC’s assertion that Commerce made an implicit finding that JYC satisfied the two-pronged test in the *Preliminary Determination*, we note that we made no such finding in that determination. Rather, pursuant to the preliminary finding that JYC’s accounting system does not separately track import duty information, and that the sales-based drawback adjustment was absent from the most recently-submitted sales database, we found that no usable drawback adjustment was present on the record and, thus, did not make a finding with respect to whether the record sufficiently demonstrated that JYC satisfied the two-pronged test.<sup>17</sup> Accordingly, we agree with the petitioners that the absence of this finding does not represent an implicit finding that JYC satisfied the two-pronged test.

Nevertheless, JYC clarifies that the failure to report the sales adjustment in the most recent database, from January 31, 2020, was simply an inadvertent error of omission, but that all relevant information was previously provided to the record in the DTYDRAWU field of the December 3, 2019 database, which JYC reports is accurate and usable.<sup>18</sup> Additionally, JYC notes it provided ample documentation and extensive explanations of its calculations to support a reconsideration of the cost adjustment provided, and, thus, for the final determination, requests that Commerce re-consider its preliminary finding on this issue.<sup>19</sup> In consideration of the explanation regarding the error of omission and the extensive discussion of the record with respect to the drawback adjustments reported, we agree that it is appropriate to re-evaluate the preliminary determination with respect to disregarding JYC’s claimed duty drawback adjustment. Because we made no determination with respect to the two-pronged test, we must necessarily evaluate whether the record information provided satisfies the two-pronged test such that an adjustment is appropriate.

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<sup>16</sup> *Id.* at 55-57, citing *Certain Oil Country Tubular Goods from Turkey: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 1240 (January 10, 2018) (*OCTG from Turkey 15-16 AR*), and accompanying IDM at 6.

<sup>17</sup> See Memorandum, “Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Polyethylene Terephthalate Sheet from the Republic of Korea: Jin Young Chemical Co., Ltd. (Jin Young Chemical) and Jinyoung Solutions, Inc. (JYS),” dated February 25, 2020 (JYC’s Preliminary Analysis Memo) at 4 and *Preliminary Determination PDM* at 13.

<sup>18</sup> See JYC’s Case Brief at 16.

<sup>19</sup> *Id.* at 9-17.

Section 772(c)(1)(B) of the Tariff Act of 1930, as amended (the Act) states that export price (EP) and CEP 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.” Commerce will grant a duty drawback adjustment to EP or CEP where a respondent party establishes 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 (*i.e.*, the “two-prong test”).<sup>20</sup>

Regarding the first prong, a review of the record demonstrates that JYC provided all relevant laws and regulations regarding the “Specific Duty Drawback” regime in Korea, as well as all complete duty drawback applications filed with the Korean Customs Service, including the import declarations.<sup>21</sup> JYC further explained how the duty drawback applications linked to the import transactions listed in the schedule of imported raw materials of its duty drawback applications and demonstrated how the total import duty claimed on each duty drawback application for imported PET flake on each imported raw material schedule matched the corresponding duty drawback amount claimed in each duty drawback application and likewise demonstrated that it imported sufficient PET flake to account for the duty drawback reported, satisfying the second prong.<sup>22</sup>

The petitioners provide an analysis demonstrating that only a portion of JYC’s duty drawback related to JYC’s own direct imports of PET flake, with the remainder related to the certificates of transfer, granting JYC the right to claim drawback, even though JYC did not directly import the PET flake.<sup>23</sup> The petitioners note that in prior cases, Commerce disregarded a drawback claim where the respondent did not directly import the drawback input, and allege that JYC does not satisfy the first prong of the test on this basis.<sup>24</sup> However, we find the cases cited to be inapposite. In *Phosphor Copper from Korea LTFV Final*, the respondent did not import any of the copper input directly, and it was unable to prove it had paid the import duties for the input. As such, Commerce was unable to establish the necessary link between the duties paid on import to the drawback received upon export in order to satisfy the first prong of the two-prong test. Additionally, the respondent was unable to provide sufficient information on the origin of the

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<sup>20</sup> See, e.g., *Phosphor Copper from Korea LTFV Final* IDM at Comment 4.

<sup>21</sup> See JYC’s BQR, CQR, and DQR at Exhibit C-15-B; see also JYC’s 1<sup>st</sup> SQR at S-119–120, Ex. S-49(a), S-49(b) (containing all translated duty drawback application forms and import declarations filed during the POI), SQR at S-117 (stating that Exhibits S-49(b) and S-49(c) contain all import declarations referenced on the duty drawback applications), and JYC’s CQR at C-40 (stating that Exhibit C-15-B contains all duty drawback application that JYC filed during the POI).

<sup>22</sup> See JYC’s 1<sup>st</sup> SQR at S-118–120.

<sup>23</sup> See Petitioners’ Rebuttal Brief at 48-49. Because the import quantities and values are proprietary, we provide a full discussion of this analysis in Memorandum, “Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Polyethylene Terephthalate Sheet from the Republic of Korea: Jin Young Chemical Co., Ltd. (Jin Young Chemical),” dated concurrently with this memorandum (JYC’s Final Analysis Memorandum).

<sup>24</sup> See Petitioners’ Rebuttal Brief at 49, citing *Phosphor Copper from Korea LTFV Final* IDM at Comment 4 and *DOTP from Korea LTFV* IDM at Comment 7.

input in question.<sup>25</sup> Further, in *DOTP from Korea LTFV Final*, the respondent did not include copies of any of its import declarations referenced in its responses and verification exhibits, and thus, failed to demonstrate that it imported the inputs and paid any related duties.<sup>26</sup> In the instant investigation, where JYC purchased the import from another company, it provided documentation to show that it paid the import duties, as recorded on a “Certificate of Transfer.”<sup>27</sup> Thus, unlike *Phosphor Copper from Korea LTFV Final*, JYC did prove that it paid the import duties for the input, though it did not import the input directly.

However, we disagree with JYC that we should use the duty drawback expenses reported in the U.S. sales listing (*i.e.*, in the field DTYDRAWU) instead of the import duty costs reported in the UDUTY field of the COP database. As the petitioners correctly note, JYC calculated its sales-based DTYDRAWU by allocating the total duty drawback it received over U.S. sales; however, this methodology has been rejected by Commerce, since – because JYC sourced PET flake from both foreign and domestic sources – a calculation of the drawback adjustment which is based only on export or U.S. volume is distortive.<sup>28</sup> Rather, Commerce’s well-established practice is to base the duty drawback adjustment on the duty cost embedded in the cost of production,<sup>29</sup> and both JYC and the petitioners agree that this methodology is appropriate.<sup>30</sup>

For the *Preliminary Determination*, Commerce found discrepancies in the record and noted that the per-unit calculation shown in the section D cost database in the field UDUTY did not match the narrative, where JYC explained as the CONNUM specific per-duty was calculated, and therefore we denied the duty drawback adjustment reported by JYC.<sup>31</sup> Accordingly, to determine whether such an adjustment is appropriate, we have re-evaluated the record and arguments briefed with respect to the cost adjustment and our preliminary finding that JYC’s accounting system does not separately tracking import duty information showing the amount of import duties embedded in its direct material costs.

While JYC acknowledges that its accounting system does not separately track the import duties, JYC presented a reasonable methodology to calculate the per-unit amount of import duties included in its reported product specific per-unit material costs in its case brief, based on information already contained on the record of the investigation. To calculate the CONNUM-specific per-unit import duty amount in the UDUTY field, JYC first allocated the import duty

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<sup>25</sup> See *Phosphor Copper from Korea LTFV Final* IDM at Comment 4.

<sup>26</sup> See *DOTP from Korea LTFV* IDM at Comment 7.

<sup>27</sup> See JYC’s 1<sup>st</sup> SQR at Exhibit S-49(c).

<sup>28</sup> See, *e.g.*, *OCTG from Turkey 15-16 AR* IDM at 6 (“The amount of the duty drawback adjustment should be determined based on the import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration. That is, we assume for dumping purposes, that imported raw material and the domestically sourced raw material are proportionally consumed in producing the merchandise, whether sold domestically or exported. The average import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration is the only amount of duty that can reasonably be reflected in the NV of the subject merchandise. The average import duty cost imbedded in the cost of producing the merchandise is the duty cost ‘reflected in NV,’ whether NV is based on home market prices or constructed value.”).

<sup>29</sup> *Id.*; see also, *e.g.*, *Low Melt Polyester Staple Fiber from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 29094 (June 22, 2018) and accompanying IDM at Comment 3, and *DOTP from Korea LTFV* IDM at Comment 6.

<sup>30</sup> See JYC’s Case Brief at 18-20; see also Petitioners’ Rebuttal Brief at 57.

<sup>31</sup> See *Preliminary Determination* PDM at 13; see also JYC’s Preliminary Analysis Memo at 4.

amounts to each product based on the corresponding raw material consumption and divided the sum of the import duty by the production quantity of finished goods. To demonstrate JYC's calculation of import duty cost embedded in its material costs, JYC provides an overview of example calculation of its submitted UDUTY, based on a specific CONNUM in the cost database. Based on the facts of this investigation, Commerce believes that the record evidence contains enough information to calculate the per-unit amount of import duties embedded in the raw material costs in the cost database. Therefore, for the final determination, we have allowed the duty drawback adjustment on the per-unit duty cost that JYC reported in UDUTY in the cost database.

Therefore, we find that JYC sufficiently demonstrated eligibility for a drawback adjustment and that, upon reconsideration of the record, a cost adjustment is supported.

## **Comment 2: Whether to Revise JYC's Calculation of Home Market Credit**

### *JYC's Case Brief*<sup>32</sup>

- In the *Preliminary Determination*, Commerce improperly revised JYC's home market credit (CREDITH) calculation to measure the credit period as the difference between the date of payment in the home market and the home market date of shipment, removing the additional time period for the "Note Holding Period" provided by JYC (*i.e.*, the time period between when a credit note is received from the customer and the date it receives the amount from the guaranteeing bank).
- Because JYC reported payment date as the date when JYC receives the note from its customer – but not the date it receives payment – JYC must separately account for the period between receipt of the note (*i.e.*, PAYDATEH) and the date it receives payment on the note from the guaranteeing bank. Such opportunity cost is not accounted for elsewhere.
- In *SSSS from Taiwan AR5*, which involved similar circumstances, Commerce treated a promissory note's maturity date as the date of payment, because the date of payment is when the money actually changes hands. It is Commerce's practice to capture home market credit expenses for the entire period between the date of sale, and the date money is actually exchanged. Commerce should therefore adjust the calculation to include the Note Holding Period.<sup>33</sup>

### *Petitioners' Rebuttal Brief*<sup>34</sup>

- Commerce correctly excluded note-related opportunity costs from the calculation of JYC's credit expenses in variable CREDITH; to do otherwise would double-count JYC's note-related opportunity costs associated with JYC's bank charges (BANKCHARH).
- Because imputed credit expenses are meant to capture JYC's opportunity cost, and JYC has already separately accounted for the opportunity cost associated with the notes in

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<sup>32</sup> See JYC's Case Brief at 27-33.

<sup>33</sup> See JYC's Case Brief at 31-32, citing *Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006) (*SSSS from Taiwan AR5*), and accompanying IDM at Comment 2 (treating the maturity date of a promissory note as date of payment because that is the date that money actually changes hands).

<sup>34</sup> See Petitioners' Rebuttal Brief at 57-59.



BANKCHARH, Commerce has correctly excluded note-related opportunity costs from the calculation of JYC's credit expenses in variable CREDITH.<sup>35</sup>

- The separate accounting of the opportunity cost in question distinguishes the instant case from *SSSS from Taiwan AR5*, since, in that case, there is no indication that the respondent separately accounted for the opportunity cost associated with its notes in other expense variables.

**Commerce's Position:** In the *Preliminary Determination*, we revised JYC's home market credit (CREDITH) calculation to measure the credit period as the difference between the date of payment in the home market and the home market date of shipment, removing the additional time period for the "Note Holding Period" provided by JYC (*i.e.*, the time period between when a credit note is received from the customer and the date it receives the amount from the guaranteeing bank) in its reporting of home market credit expenses.<sup>36</sup>

JYC argues that Commerce's calculation understates JYC's credit period because it does not recognize credit expenses incurred by JYC during the time period between receipt of a note from certain customers' guaranteeing banks in lieu of payment in full and receipt of an actual discounted cash payment on the note (*i.e.*, the "note holding period" reported by JYC). Specifically, JYC explains that it added the note holding period to the difference between the date of sale and the date of payment to capture the credit expenses incurred by JYC where it received delayed discounted cash payments in lieu of timely payment in full because the period between payment date and shipment date only captures the credit expenses incurred up to the date a note is issued to JYC from the customer for certain sales, not the credit expenses incurred up to receipt of actual cash payment from the issuing bank.<sup>37</sup> For sales where JYC did not receive timely payment in full from its customer, it reported the date it received the discounted note in the PAYDATEH field of its home market sales file, and not the date it received a discounted cash payment from the bank guaranteeing the note.<sup>38</sup> Therefore, according to JYC, the record unequivocally establishes that JYC was not paid for any of the transactions for which the customer's bank issued a note until it received a discounted cash payment on the note from the customer's guaranteeing bank. We agree, and the petitioners do not contest, that the record supports that – for the sales in question – the date of discounted cash payment, and not the date on which the customer issues the promissory credit note, accurately reflects the date on which JYC receives cash payment for these transactions where a credit note was issued by the customer and said note was later paid out at a discounted rate by the issuing bank.

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<sup>35</sup> *Id.* at 58-59, citing JYC's SQR at S-79.

<sup>36</sup> See JYC's Preliminary Analysis Memo at 3.

<sup>37</sup> See JYC's Case Brief at 28.

<sup>38</sup> *Id.*, citing JYC's BQR, CQR, and DQR at BQR B-21 (stating JYC reported the date on which JYC received notes from certain customers whose guaranteeing bank issued a note in the PAYDATEH field of the home market sales file); JYC's 1<sup>st</sup> SQR at S-61 and S-62 (stating that JYC confirms there were no instances during the POI where a customer failed to make timely payments where JYC did not receive a discounted cash payment from the guaranteeing bank); and JYC's Letter, "Polyethylene Terephthalate ("PET") Sheet from the Republic of Korea – Second and Third Supplemental Sections A, B, and C Questionnaire Responses and Revised Sales Databases," dated February 19, 2020 (JYC's 2<sup>nd</sup> and 3<sup>rd</sup> SQR) at S2-7 (stating that, where JYC did not receive timely full payment from its customer, it reported the date that it received the discounted note in the PAYDATEH field, not the date it received actual cash payment).

JYC asserts that the period between date of sale and payment date and the credit note holding period are not overlapping because the former period captures the period from shipment date until receipt of the note and the latter captures the period from receipt of the note until receipt of discounted cash payment.<sup>39</sup> As such, JYC contends that inclusion of this “note holding period” is consistent with Commerce’s practice to capture a respondent’s home market credit expenses for the entire period between date of sale and the date money actually changes hands.<sup>40</sup> Specifically, *SSSS from Taiwan AR5* states that credit expenses reported by a respondent “should capture the cost of credit extended to the customer between the time merchandise is shipped and the time the respondent receives payment for the sale,” including a period during which a promissory note is outstanding because the respondent is not actually paid until the note matures.<sup>41</sup> Further, in *SSSS from Taiwan AR5*, the respondent “calculated the average number of days a customer’s balance was outstanding using both the customer’s outstanding accounts receivable and outstanding notes receivable balances.”<sup>42</sup> JYC notes that this is precisely the methodology that it used in including the note holding period of time in the credit calculation for certain sales.

We agree that *SSSS from Taiwan* supports the general principle that credit expenses should capture the cost of credit extended to the customer between the time merchandise is shipped and the time the respondent receives payment for the sale, and the petitioners do not contest this general principle that the inclusion of a promissory credit note holding period, where applicable, may be appropriately included in the calculation of opportunity cost with respect to credit expenses. Rather, the petitioners’ argument that it is not appropriate to include this note holding period in the calculation of credit expenses for certain relevant sales at issue is based on an understanding that the record of this proceeding confirms that the opportunity cost associated with the note holding period at issue is separately accounted for in the bank charge expense variable (BANKCHARH) and, thus, the inclusion of the note holding period in the credit expense would inappropriately double-count said cost.<sup>43</sup> This understanding of the record is based on JYC’s statement in its supplemental questionnaire that what is reported in the BANKCHARH field are “discounted cash payments from the bank guaranteeing the note provided by the customer in lieu of payment, which represent opportunity costs that JYC experienced because it accepted discounted bank notes in lieu of cash payment from customers that did not pay on a timely basis.”<sup>44</sup> This presumption that this statement confirms that the opportunity cost related to the note holding period is separately accounted for in reported bank charges was shared by Commerce in the *Preliminary Determination*, and accounted for the decision to remove the note holding period from the calculation of the credit period. According to the petitioners, this distinguishes the instant case from *SSSS from Taiwan AR5*, since, in that case, there is no indication that the respondent separately accounted for the opportunity cost associated with its notes in other expense variables.<sup>45</sup>

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<sup>39</sup> See JYC’s Case Brief at 33, citing to JYC’s 2<sup>nd</sup> and 3<sup>rd</sup> SQR at Exhibit S2-3.

<sup>40</sup> See JYC’s Case Brief at 31-32, citing *SSSS Taiwan AR5* IDM at Comment 2.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> See Petitioners’ Rebuttal Brief at 58-59.

<sup>44</sup> *Id.*, citing JYC’s SQR at S-79.

<sup>45</sup> *Id.* at 59.

Accordingly, we agree with JYC that it is generally appropriate and consistent with past practice to include the note holding period in the calculation of credit, but we agree with the petitioners that such an adjustment would not be appropriate if accounted for otherwise. As such, we have re-examined the record to determine whether the presumption that such charges are indeed included in the bank charge variable is accurate and supported by the record. Upon review, we agree with JYC that the record is clear that the opportunity cost accounted for by the note holding period does not overlap with the opportunity cost separately covered by the bank charge expense, and the presumption underlying the *Preliminary Determination* and the petitioners' rebuttal comments on this issue is not accurate.

Specifically, due to ambiguity in the statement from JYC's 1st SQR that the BANKCHARH field, "which represent opportunity costs that JYC experienced because it accepted discounted bank notes in lieu of cash payment from customers that did not pay on a timely basis,"<sup>46</sup> the opportunity cost mentioned therein was interpreted by Commerce in the *Preliminary Determination*, and by the petitioners in their rebuttal case brief at present, as a reference to the opportunity cost involved between issuance of the promissory credit note from the customer and the cashing-in of that note as a discounted rate from the issuing bank before full maturity (*i.e.*, the note holding period). However, further information provided to the record makes clear that the opportunity cost referenced in that statement actually represents the opportunity cost of the unrealized gain between the amount of the note as cashed in at a discount and the full potential amount of the note were it to be held to full maturity (*i.e.*, the opportunity cost accounting for the time value of money for a period *after* the cashing in of the note at a discount rate or, put another way, the opportunity cost of the discount itself) which was included in the bank charge expense. The note holding period included in the credit expense calculation reflects a separate, prior, opportunity cost accounting for the time between the issuance of the credit note from the customer (which was recorded as payment date in JYC's internal accounting system) and the actual payment of that note at a discounted rate by the bank, thus reflecting the full amount of time before money was exchanged at a discounted rate (but not double-counting the opportunity cost of the discount itself).<sup>47</sup>

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<sup>46</sup> *Id.*, citing JYC's 1<sup>st</sup> SQR at S-79.

<sup>47</sup> See JYC's 2<sup>nd</sup> and 3<sup>rd</sup> SQR at S2-8 ("The difference between PAYDATEH and SALEDATEH (*i.e.*, expenses for which are reported in CREDITH) is meant to capture expenses attributable the time period from date of sale to the date of either: (1) payment in full; or (2) receipt of the note. In contrast, the note holding period is meant to capture the time period between receipt of the note and receipt of discounted cash payment attributable to the sale in connection with which the note was given. The two time periods are not overlapping, but rather, are meant to capture mutually exclusive periods of time in which JYC incurs credit expenses in the home market. As a result, the expenses attributable to these separate periods are reported separately in separate fields of JYC's home market sales file. Specifically, the expenses attributable to delay in payment from the date of sale (*i.e.*, SALEDATEH) to PAYDATEH (*i.e.*, receipt of the note) is captured as part of the period for which expenses are reported in the CREDITH field. In contrast, the expense incurred from losses attributable to receipt of discounted cash payment in lieu of payment in full at note maturity are reported in the BANKCHARH field. Because the periods do not overlap, neither do the expenses. Accordingly, JYC's home market credit calculation correctly captures all home market credit expenses attributable to sales for which it did not receive timely payment in full from its home market customers."); see also *id.* at Exhibit S2-3, demonstrating the timeline of opportunity cost expenses included between bank charge and credit expenses.

Therefore, upon re-examination, we find that the information on the record supports JYC's contention that the opportunity cost accounted for by inclusion of the credit note holding period does not overlap with the separate opportunity cost accounted for in the bank charge expense. Accordingly, we agree that it is appropriate and consistent with our practice<sup>48</sup> to include the note holding period in the calculation of JYC's home market credit expenses, and we have revised the programming to include the home market credit expense period as initially reported in our margin calculation for JYC in this final determination.<sup>49</sup>

### **Comment 3: Selection of the Surrogate Short-Term U.S. Market Interest Rate**

#### *JYC's Case Brief*<sup>50</sup>

- The Federal Reserve's Small Business Lending (SBL) Survey's rate of 5.74 percent used in the *Preliminary Determination* to calculate JYC's U.S. credit expenses is not an appropriate surrogate short-term interest rate because there is not sufficient record information to determine whether the short-term interest rate is reasonably reflective of interest rates actually realized by borrowers in the course of usual commercial behavior in the United States.
- The Small Business Lending Survey does not describe the terms of the loans reflected in the survey. Further, the data reflect lines of credit, and there is no evidence that these rates pertain to lines of credit that mature in less than one year. Also, the data reflect newly originated loans, with rates that are higher than those for already existing loans.
- Commerce should instead use the U.S. Federal Reserve's "1-Month AA Nonfinancial Commercial Paper Rate" of 2.29 percent as the surrogate short-term interest rate to impute JYC's U.S. credit expenses.

#### *Petitioners' Rebuttal Brief*<sup>51</sup>

- The 1-Month AA Nonfinancial Commercial Paper Rate is not reasonable to use to impute JYC U.S. credit expenses because that rate applies only to borrowers with specific credit ratings. JYC has not provided evidence to support its eligibility for receiving this favorable rate.
- The SBL Survey rate used in the *Preliminary Determination* is appropriate, as it represents borrowing rates on a variety of actual dollar loans to actual U.S. customers in the course of "usual commercial behavior" in the United States and is readily obtainable.

**Commerce's Position:** We disagree with JYC that that the short-term interest rate derived from the SBL Survey is inappropriate for calculating JYC's U.S. credit expenses, and we continue to use the rate of 5.74 percent for the final determination. Policy Bulletin 98.2, which describes our practice, states:

In cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term

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<sup>48</sup> See, e.g., *SSSS from Taiwan AR5* IDM at Comment 2.

<sup>49</sup> See JYC's Final Analysis Memorandum.

<sup>50</sup> See JYC's Case Brief at 29-35.

<sup>51</sup> See Petitioners' Rebuttal Brief at 41-55.

interest rate applicable to the currency of the transaction... For dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses. Specifically, we will use the Federal Reserve's weighted average data for commercial and industrial loans maturing between one month and one year from the time the loan is made.<sup>52</sup>

Further, as stated in Policy Bulletin 98.2,

In developing a consistent, predictable policy establishing a preferred surrogate U.S. dollar interest rate in all cases where respondents have no U.S. dollar short-term loans, we have employed three criteria: 1) the surrogate rate should be reasonable; 2) it should be readily obtainable and predictable; and 3) it should be a short-term interest rate actually realized by borrowers in the course of "usual commercial behavior" in the United States.<sup>53</sup>

As noted by both JYC and the petitioners, Policy Bulletin 98.2 states that Commerce's preferred source for surrogate short-term interest rates was line item "31 to 365 days" in the Federal Reserve's statistical release "E.2 -Survey of Terms of Business Lending" (STBL) for commercial and industrial loans made by all commercial banks because this survey satisfied the criteria outlined in Policy Bulletin 98.2.<sup>54</sup> However, the STBL was discontinued in 2017; thus, we have considered the two sources of short-term interest rate information on the record provided by JYC and the petitioners for use to impute JYC's U.S. credit expenses.

With respect to the SBL Survey, which is a survey issued by the Federal Reserve Bank of Kansas, in which small, midsize, and large banks provided information concerning their issuance of commercial and industrial (C&I) loans to small businesses on a quarterly basis, JYC argues that: (1) the survey does not describe the duration or terms of the loans or provide a methodology used to gather the various interest rates that make up the 5.74 percent rate; (2) the interest rate is derived from newly-originated loans, which have higher interest rates than already existing loans; and (3) the interest rate derived from the survey pertains to lines of credit, which are not short-term in nature.<sup>55</sup>

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<sup>52</sup> See Commerce's Policy Bulletin – "Import Administration Policy Bulletin 98.2; Imputed Credit Expenses and Interest Rate," <http://enforcement.trade.gov/policy/bull98-2.htm> (February 23, 1998) ("Policy Bulletin 98.2").

<sup>53</sup> *Id.*

<sup>54</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 34899 (May 16, 2002), and accompanying IDM at Comment 16 ("we have calculated imputed U.S. credit expense using the prevailing average short-term interest rate, as published by the Federal Reserve, in effect during the POI. See Federal Reserve Statistical Release E.2; Survey of Terms of Business Lending, dated May 1-5, 2000, August 7-11, 2000, November 6-10, 2000, and February 5-9, 2001..."). See also *Certain Oil Country Tubular Goods from the Republic of the Philippines: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41976 (July 18, 2014) and accompanying IDM at Comment 3 (supporting the use of this lending rate).

<sup>55</sup> See, e.g., *Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Final Results of Antidumping Administrative Review; 2016–2018*, 85 FR 3028 (Jan. 17, 2020) (*CTL Plate from Belgium*), and accompanying IDM at Comment 8.

While the survey does not explicitly describe the duration or terms of the loans provided in the data or provide a specific methodology, we find that the survey does satisfy the criteria laid out in Policy Bulletin 98.2 that the surrogate short-term interest rate: (1) should be reasonable; (2) be readily obtainable and predictable; and (3) should be a short-term interest rate actually realized by borrowers in the course of “usual commercial behavior” in the United States.<sup>56</sup> The SBL Survey satisfies these criteria as the study is published quarterly by the Federal Reserve Bank of Kansas City and surveyed between 121 and 133 responding banks of various sizes that provided new C&I loans to small businesses during the POI.<sup>57</sup> The specific charts from where the average interest rates are derived are for new lines of credit with fixed and variable rates, offered by small, midsize, and large banks during the POI.<sup>58</sup> Thus, we find that these are short-term interest rates realized by borrowers (small businesses with C&I loans) in the course of “usual commercial behavior” in the United States.

We disagree with JYC’s contention that we should not use the SBL Survey because the interest rate is derived from newly originated loans, which have higher interest rates than already existing loans. First, JYC provides no evidence that newly originated loans have higher interest rates than already established loans. Further, there is nothing in the Policy Bulletin 98.2 that prohibits the use of surrogate interest rates for newly originated loans. Also, as noted by the petitioners, the commercial paper rates advocated for by JYC pertain to issuance of new commercial paper.<sup>59</sup>

We further disagree with JYC’s argument that it is inappropriate to use rates for lines of credit, which JYC argues, are not short-term in nature.<sup>60</sup> In *CTL Plate from Belgium*, Commerce determined that the respondent’s lines of credit did not mature in less than one year. Therefore, based on record information specific to that respondent, Commerce found that the respondent’s revolving credit line could not be considered a short-term loan.<sup>61</sup> Record information indicates that “a line of credit is intended for the funding of short-term cash shortfalls caused by periodic (possibly seasonal) changes in a company’s ongoing cash flows.”<sup>62</sup> Further, lines of credit are “only intended to fund short-term cash shortfalls that are not expected to continue over the long term.”<sup>63</sup> Additionally, Commerce has used the interest rates associated with respondents’ own lines of credit in its imputed credit expense calculations.<sup>64</sup>

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<sup>56</sup> *Id.*

<sup>57</sup> See Petitioners’ Letter, “Polyethylene Terephthalate Sheet from the Republic of Korea – Petitioners’ Comments Regarding JYC’s Section C Questionnaire Response,” dated December 16, 2019 (Petitioners’ CQR Comments) at Attachment 4.

<sup>58</sup> *Id.*

<sup>59</sup> See Petitioners’ Rebuttal Brief at 37, citing JYC’s Case Brief at 25.

<sup>60</sup> See JYC’s Case Brief at 24, citing *CTL Plate from Belgium* IDM at Comment 8.

<sup>61</sup> See *CTL Plate from Belgium* IDM at Comment 8.

<sup>62</sup> See Petitioners’ CQR Comments at Attachment 3.

<sup>63</sup> *Id.*

<sup>64</sup> See, e.g., *Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part*, 69 FR 6255 (February 10, 2004), and accompanying IDM at Comment 37 (“there is nothing on the record to suggest that Zaffiri’s line of credit, which is associated with the bank account it uses in the normal course of business, is an inappropriate measure of its short-term home market borrowing.”); see also *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 69996 (December 16, 2003), and

While JYC argues that we should use the Federal Reserve’s AA Nonfinancial Commercial Paper Rate, we determine that it is not an appropriate source as a surrogate short-term interest rate used to impute JYC’s credit expenses. First, this rate is applicable to large corporations with excellent credit ratings and high-quality debt ratings.<sup>65</sup> There is no information on the record indicating that JYC would be eligible for this commercial paper rate. Additionally, record evidence demonstrates that commercial paper is issued in large denominations (“usually \$100,000 or more”).<sup>66</sup> As stated in *Mitsubishi*,

The imputed credit expense represents the producer’s opportunity cost of extending credit to its customers. By allowing the purchaser to make payment after the shipment date, the producer forgoes the opportunity to earn interest on an immediate payment. Thus, the imputed credit expense reflects the loss attributable to the time value of money. Commerce’s usual imputed credit calculation is based only on the cost of financing receivables between shipment date and payment date.<sup>67</sup>

Because the conditions for issuing commercial paper do not mirror JYC’s experience, we also find the commercial paper rate inapplicable. Finally, because commercial paper is issued by large corporations, not banks, and is sold on the money market,<sup>68</sup> we find that this rate does not reflect a short-term interest rate actually realized by borrowers in the course of “usual commercial behavior” in the United States.<sup>69</sup>

#### **Comment 4: Whether to Grant JYC’s Constructed Export Price Offset**

##### *JYC’s Case Brief*<sup>70</sup>

- JYC argues that it quantitatively demonstrated that it performed a greater magnitude and intensity of selling activities in the home market level of trade (LOT) than at the CEP LOT, and as such, is entitled to a CEP offset.
- Citing *Corrosion-Resistant Steel from Korea*,<sup>71</sup> JYC argues Commerce “frequently relies principally” on the selling functions chart and its narrative explanation as the basis for determining whether a claimant is eligible for a CEP offset.<sup>72</sup>

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accompanying IDM at Comment 12 (“we confirmed that loans reported to the Department as the basis for calculating TCI’s short-term cost of borrowing were in fact lines of credit used to finance accounts receivables in the United States.”).

<sup>65</sup> See Petitioners’ CQR Comments at Attachment 1.

<sup>66</sup> *Id.*

<sup>67</sup> See *Mitsubishi Heavy Indus. v. United States*, 54 F. Supp. 2d 1183, 1188 (CIT 1999) (*Mitsubishi*).

<sup>68</sup> See Petitioners’ CQR Comments at Attachment 1.

<sup>69</sup> We note that JYC states in its case brief that Commerce has accepted the “1-Month AA Nonfinancial Commercial Paper Rate” as a surrogate short-term interest rate in prior proceedings. However, JYC did not provide a citation for this assertion.

<sup>70</sup> See JYC’s Case Brief at 42-45.

<sup>71</sup> See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review*, 73 FR 14220 (March 17, 2008) (*Corrosion-Resistant Steel from Korea*) and accompanying IDM at Comment 3.

<sup>72</sup> *Id.* at 37.

- Part 3.a.iv of Commerce’s Section A questionnaire only notes that the quantitative analysis should show how the expenses assigned to sales during the POI, made at different claimed levels of trade, impact price comparability, and that these expenses should not include “direct expenses” reported in sales databases submitted.<sup>73</sup> Absent further guidance from Commerce regarding the format in which a quantitative analysis should be given, the analysis included in JYC’s Exhibit A-5, which includes a column indicating an assigned rating of one to ten based on the frequency and intensity of the labor activity performed, should reasonably satisfy Commerce’s requirement to quantitatively demonstrate how the different claimed levels of trade impacted price comparability during the POI. The more labor intensive the selling activity becomes, the higher expense JYC incurs.<sup>74</sup>
- After JYC submitted its Section A response, Commerce did not request further explanation or documentation of JYC’s selling activities or indicate that JYC’s quantitative analysis was deficient or absent prior to the *Preliminary Determination*. Commerce only requested JYC clarify which entity, JYC or JYS, had performed each selling function in the home and U.S. markets, a request with which JYC fully complied.<sup>75</sup>
- Exhibits A-8 and A-9 of JYC’s Section A response, as well as revised versions at Exhibit S-14 and S-16 of JYC’s January 24, 2020 supplemental section A-C response, show JYC’s selling functions in the U.S. market are minimal, because JYS performs the majority of activities related to making sales to customers in the U.S. market.<sup>76</sup>
- JYC argues that, in prior cases, Commerce found that, when the U.S. affiliate has shown to perform significant selling activities in the U.S. market, this supports the conclusion that the comparison market LOT is more advanced than the CEP LOT, which excludes the activities performed by the U.S. affiliate.<sup>77</sup>

#### *Petitioners’ Rebuttal Brief*<sup>78</sup>

- The substance of JYC’s argument merely claims that the selling functions chart provided (which includes numerical values assigned to each function) is itself the quantitative analysis. However, the selling functions chart alone is not sufficient evidentiary support to grant a CEP offset, and JYC’s characterization of the relative levels of intensity between markets is itself contradictory. Specifically:
  - JYC provided only brief, generic narrative descriptions of its selling activities, and otherwise failed to provide supporting documentation for each selling activity.
  - JYC did not provide data to demonstrate how labor intensities differ at the claimed levels of trade and did not provide hours worked or related payroll data to support the assigned 0 to 10 ratings assigned to its selling activities.

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 38.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 40.

<sup>77</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002), and accompanying IDM at Comment 10; see also *Certain Magnesite Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097 (August 2, 2010), and accompanying IDM at Comment 2; and *Stainless Steel Sheet and Strip in Coils from Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024, 45029 (Aug. 8, 2006), 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).

<sup>78</sup> See Petitioners’ Rebuttal Brief at 14-40.



- Supporting documentation, such as an analysis of expenses corresponding to sales during the POI, and how such expenses impact price comparability at different levels of trade, is also missing.
- Home and U.S. sample sales trace documentation and indirect selling expense documentation, contradict, rather than support, JYC's claimed level of selling activity.
- JYC incorrectly claims Commerce has not provided enough guidance regarding the form in which JYC should submit the quantitative analysis required to assess eligibility for a CEP offset, pointing to Commerce's request for an analysis of trade in Section A of Commerce's Questionnaire, and how expenses differ at various levels of trade.
- In *Ad Hoc Shrimp*, Commerce previously stated the burden of proof to prove entitlement to the CEP offset is on the claimant to procure and produce relevant evidence to Commerce.<sup>79</sup>
- JYC incorrectly claims that Commerce frequently relies on the selling functions chart and supporting narrative related to the chart, as the basis for whether a company qualifies for a CEP offset.<sup>80</sup>

**Commerce Position:** We disagree with JYC that it demonstrated that it performed a greater magnitude and intensity of selling activities in the home market LOT than at the CEP LOT, and as such, is entitled to a CEP offset. Accordingly, for this final determination, we have not granted JYC its requested CEP offset.

As explained in the *Preliminary Determination*, section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate normal value based on sales at the same LOT as the U.S. sales.<sup>81</sup> Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>82</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>83</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, Commerce examines the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, normal value based on either home market or third country prices),<sup>84</sup> Commerce considers the starting prices before any adjustments. For CEP sales, Commerce

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<sup>79</sup> See *Ad Hoc Shrimp Trade Action Committee v. United States*, 616 F. Supp. 2d 1354 (CIT 2009) (*Ad Hoc Shrimp*).

<sup>80</sup> See Petitioners' Rebuttal Brief at 14 citing *Emulsion Styrene-Butadiene Rubber from Mexico: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 33062 (July 19, 2017), and accompanying IDM at Comment 4.

<sup>81</sup> See *Preliminary Determination PDM* at 14.

<sup>82</sup> See 19 CFR 351.412(c)(2).

<sup>83</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7.

<sup>84</sup> Where normal value is based on constructed value, we determine the normal value LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for constructed value, where possible. See 19 CFR 351.412(c)(1).

considers only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>85</sup>

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 normal value LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between normal value and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>86</sup>

Furthermore, Congress has explained that:

there is no requirement for Commerce to make a level of trade or offset adjustment in every case. Indeed, the express language of the statute and Statement of Administrative Action indicate that there are circumstances where neither adjustment is appropriate or permissible. For example, Commerce may only make a level of trade adjustment where there are different levels of trade and where that difference is shown to affect price comparability. Commerce's analysis of these issues must be based on the actual circumstances involved.<sup>87</sup>

In the *Preliminary Determination*, Commerce determined that,

the record contains no basis to find that the selling functions performed by JYC for its home market customers differ significantly from those performed for the U.S. sales channel, such that they would constitute a different marketing stage. Therefore, we preliminarily determine that sales to the home market during the POI were made at the same LOT as sales to the United States. Because JYC's home market LOT is not at a more advanced stage of distribution than its U.S. LOT, we preliminarily determine that a CEP offset is not warranted.<sup>88</sup>

We also determined that, while JYC reported minor differences in the selling functions performed in the home market and in the U.S. market, it did not provide the requested quantitative analysis requested by Commerce in the initial questionnaire, and JYC's reported levels of intensity for its selling functions were unsubstantiated.<sup>89</sup>

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<sup>85</sup> See *Micron Technology, Inc. vs. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>86</sup> See, *e.g.*, *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 IDM at Comment 7.

<sup>87</sup> See Senate Remarks on the Uruguay Round Agreements Act, Congressional Record — Senate, S5516 (April 6, 1995).

<sup>88</sup> See *Preliminary Determination* PDM at 15.

<sup>89</sup> *Id.*

JYC argues that the selling functions chart it provided is the quantitative analysis supporting its eligibility for a CEP offset. However, JYC does not provide the calculations it made to support its assigned “1” to “10” level rankings, and as such, these assigned values, which supposedly reflect the frequency and intensity of the selling activities performed, cannot be considered “quantitative” analysis.<sup>90</sup>

Commerce’s requirement that respondents support LOT claims with quantitative evidence in all proceedings was implemented in 2018 to enhance Commerce’s ability to determine whether reported differences in selling functions are substantial enough to warrant a finding that sales were made at different LOTs.<sup>91</sup> For instance, in *Corrosion Resistant Steel from Korea*, Commerce considered, *inter alia*, the following quantitative information in its LOT and CEP offset analysis: (1) how expenses assigned to POR sales made at different claimed LOTs impact price comparability functions; (2) a demonstration of how indirect selling expenses vary by the different LOT claimed; and (3) an explanation of how the quantitative analysis provided by the respondent supported its claimed levels of intensity for the reported selling activities.<sup>92</sup> In *Corrosion Resistant Steel from Korea*, Commerce found that the quantitative analysis submitted by the respondent corroborated its reported level of intensity information.<sup>93</sup> Additionally, in *Warmwater Shrimp from Thailand*, in conducting its LOT/CEP offset analysis, Commerce considered a respondent’s selling expenses in combination with the analysis of selling functions in order to determine if the level of selling expenses substantiated the narrative explanation of selling functions.<sup>94</sup> Furthermore, in *ESB Rubber from Brazil*, Commerce declined to find the existence of different LOTs or grant a CEP offset when the record lacked sufficient quantitative evidence corroborating a respondent’s LOT claims.<sup>95</sup>

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<sup>90</sup> We note that, in its case brief, JYC argues that its indirect selling expense ratio (ISE) supports its claimed intensities for its sales-related administrative activities. See JYC’s Case Brief at 40. However, this assertion was not presented in JYC’s questionnaire responses to support its claimed levels of intensities for its selling functions. Further, JYC did not provide quantitative support for any of the other categories of selling functions.

<sup>91</sup> See, e.g., *Magnesium from Israel: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 32712 (July 9, 2019), and accompanying PDM at 13 (unchanged in *Magnesium from Israel: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 65781 (November 29, 2019)); and *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 34868 (July 19, 2019), and accompanying PDM at 10 (unchanged in *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 59771 (November 6, 2019)).

<sup>92</sup> See *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*Corrosion Resistant Steel from Korea*), and accompanying IDM at Comment 4.

<sup>93</sup> *Id.* (“Further, Dongkuk’s traceable expenses (e.g., wages) for home market sales are seventy times of that for U.S. sales. A ratio derived from the traceable expenses is used to allocate indirect selling expenses to home market sales and CEP sales. As result, the indirect selling expense ratio for home market sales is more than two times of that for U.S. sales. Thus, we find that the quantitative analysis corroborated the reported level of intensity.”) (Citation omitted).

<sup>94</sup> See *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) (*Warmwater Shrimp from Thailand*), and accompanying IDM at Comment 5.

<sup>95</sup> See *Emulsion Styrene-Butadiene Rubber from Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 38847 (June 29, 2020) and accompanying IDM at Comment 1.

Moreover, even though Commerce began expressly requesting that respondents support their LOT claims with quantitative evidence in 2018, respondents have long borne the burden of establishing their eligibility for a LOT adjustment or CEP offset by demonstrating that different prices and selling expenses are caused by differences in LOT and not by other factors, such as volume sold or arbitrary pricing.<sup>96</sup> While JYC argues that Commerce did not request any additional information concerning its selling activities in either market or identify any discrepancies, as required by section 782(d) of the Act, 19 CFR 351.401(b)(1) states that “{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment.”

Additionally, while JYC argues the numerical values assigned to the selling functions chart are its quantitative analysis, we find that the descriptions of the selling functions and the claimed levels of intensity<sup>97</sup> are effectively qualitative in nature. Although qualitative information is helpful and relevant to the LOT analysis, reliance on this information alone limits Commerce’s ability to analyze selling functions to determine if LOTs identified by a party are meaningful and to evaluate whether a respondent’s LOT claims are reasonable and accurate.<sup>98</sup> Indeed, reliance on qualitative evidence, such as narrative descriptions of differences in selling functions, customer correspondence, sample sales records, meeting presentations and the like, without supporting quantitative evidence frequently does not present a complete understanding of a respondent’s selling activities. Additionally, reliance on purely qualitative information may create the potential for manipulation (or inaccurate reporting) by permitting respondents to create a narrative that is not linked in any way to its verifiable financial data. Requiring quantitative evidence enhances our LOT analysis because such information allows us to determine whether differences in prices among various customer categories or differences in levels of expenses in different claimed LOTs are, in fact, attributable to differences in LOTs or to some other unrelated factor such as relative sales volumes.<sup>99</sup> Quantitative information, such as the selling expense information requested by Commerce in this investigation, permits Commerce to examine whether a respondent’s narrative explanations and qualitative evidence are supported by its books and records maintained in the ordinary course of business. Additionally, the requirement that respondents provide quantitative support for their claimed LOTs reduces subjectivity and the likelihood of inconsistency in the application of Commerce’s analytical framework that results from the analysis of purely qualitative information, which can be, by its nature, subject to different interpretations.

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<sup>96</sup> See *NSK Ltd. v. Koyo Seiko Co.*, 190 F. 3d 1321, 1330 (Fed. Cir. 1999) (“Although NTN submitted evidence that merchandise at different levels of trade had different prices and selling expenses, NTN did not provide evidence to prove that those differences were not caused by other factors, such as volume sold or arbitrary pricing practices. In other words, NTN did not present evidence to establish that the difference in the level of trade caused the differences in price and selling expenses.”).

<sup>97</sup> See, JYC’s AQR at A-12 to A-14; see also, JYC’s 1<sup>st</sup> SQR at Exhibit S-6.

<sup>98</sup> See *Pasta Zara*, 34 CIT 355, 366 (CIT 2010) (“{T}he statute indicates that two sales with substantial differences in selling activities nevertheless may be at the same level of trade, and the {Statement of Administrative Action} adds that two sales with some common selling activities nevertheless may be at different levels of trade. Rather, the Department must analyze selling functions to determine if levels of trade identified by a party are meaningful.” (emphasis added).) (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27371 (May 19, 1997)).

<sup>99</sup> See, e.g., *Timken United States Corp. v. United States*, 434 F. 3d 1345 (Fed. Cir. 2006); see also *Pakfood Pub. Co. v. United States*, 34 CIT 1122, 1138 (CIT 2010); and *Alloy Piping Prods. v. United States*, 33 CIT 349, 358-59 (CIT 2009).

With respect to the specific documentation provided by JYC to support its claim for a CEP offset, we find that the documentation does not support JYC's claimed levels of intensity for certain selling functions. JYC stated that it provided a sales/production forecast and business plan "to support the selling activities that it performed during the POI,"<sup>100</sup> but does not explain how the forecast and business plan tie to the selling activities or JYC's numerical assignment of intensity. JYC also provided sample sales documentation to "support sales-related administrative activities that JYC performed to support home market and U.S. sales to JYS at the CEP LOT,"<sup>101</sup> but again, did not explain how this documentation related to the claimed levels of intensity of the selling functions. Moreover, JYC did not provide documentation for every category of selling activity, including those in the categories of training services, technical support, and logistical services. Therefore, we find that JYC did not adequately support its contention that the home market LOT is at a more advanced stage than the CEP LOT, and thus, we have denied JYC's request for a CEP offset in the final determination.

With respect to the numerous cases cited by JYC, for which it claims Commerce granted a CEP offset, ostensibly premised on a similar underlying fact pattern where the U.S. affiliate performed key selling functions that the respondent performed in the home market,<sup>102</sup> we note that – as discussed above – this record does not contain evidence of JYC performing substantially more selling functions in the home market than it does in support of its CEP sales. Further, in conducting an analysis as to whether a CEP offset is warranted, Commerce has a well-established practice to base its decision on the facts of the specific case at issue.<sup>103</sup> As we find

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<sup>100</sup> See JYC's AQR at A-14.

<sup>101</sup> *Id.*

<sup>102</sup> See *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 83 FR 65348 (December 21, 2018) (*CTL Plate from Korea 17-18 AR Prelim*), and accompanying PDM at 8-9; *Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016) (*CRS Korea LTFV*), and accompanying IDM at Comment 9; *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) (*CRCSFP from Korea 10<sup>th</sup> AR*), and accompanying IDM at Comment 4; *Certain Magnesia Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097 (August 2, 2010) (*Bricks from Mexico LTFV*), and accompanying IDM at Comment 2; *Stainless Steel Sheet and Strip in Coils from Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024 (August 8, 2006) (*SSSS from Germany AR Prelim*) at 45029; *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) (*CRCSFP from Korea 10<sup>th</sup> AR*), and accompanying IDM at Comment 4; and *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 78417 (December 24, 2002) (*SSBW Pipe Fittings from Taiwan 00-01 AR*), and accompanying IDM at Comment 6.

<sup>103</sup> *Certain Hot-Rolled Steel Flat Products from Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016) (*HRS from Korea LTFV*), and accompanying IDM at Comment 3 (As an initial matter, POSCO's references to other cases in which the Department granted it a CEP offset are inapposite. Given that each segment of an antidumping duty case contains its own independent record and constitutes a separate, distinct proceeding, this same principle is even more true when applied across entirely separate antidumping duty cases); and *Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017-2018*, 84 FR 56179 (October 21, 2019) (*SS Bar from India 17-18 AR*), and accompanying IDM at Comment 1 ("we find that we must base our determination on the facts of the present case, not on prior proceedings; each segment of a proceeding has its own record and stands on its own.").

that the case record does not contain evidence of substantial differences in JYC's selling activities between its home market and U.S. sales, we find these citations to be inapposite.

## VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.

☒

Agree

☐

Disagree

7/16/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance