



A-580-908
Investigation
Public Document
E&C/OVII: EB/JZ

December 29, 2020

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

FROM: Melissa G. Skinner *mgsk*
Senior Director, Office VII
AD/CVD Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Passenger Vehicle and Light Truck Tires from the Republic of
Korea

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that passenger vehicle and light truck tires (passenger tires) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On May 13, 2020, Commerce received an antidumping duty (AD) petition concerning imports of passenger tires from Korea, filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (petitioner).¹ On June 22, 2020, Commerce initiated the LTFV investigation on passenger tires from Korea.²

¹ See Petitioner’s Letter, “Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand and Vietnam - Petition for the Imposition of Antidumping and Countervailing Duties pursuant to Sections 701 and 731 of the Tariff Act of 1930, as amended,” dated May 13, 2020 (Petition).

² See *Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 38854 (June 29, 2020) (*Initiation Notice*).



In the *Initiation Notice*, Commerce notified the public that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. entries under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the “Scope of the Investigations,” in the appendix.³ The Petition identified the producers and/or exporters of the subject merchandise in Korea.⁴

On July 22, 2020, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of passenger tires from Korea.⁵

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of passenger tires to be reported in response to Commerce’s AD questionnaire.⁶ From July through December 2020, we received timely-filed comments from certain interested parties on the scope of this investigation as it appeared in the *Initiation Notice*.⁷ We issued the Preliminary Scope Decision Memorandum concurrently with this memorandum.⁸

On July 22, 2020, Commerce selected Hankook Tire Mfg Co. Ltd. (Hankook)⁹ and Nexen Tire Corporation (Nexen) for individual examination as mandatory respondents in this investigation. Hankook and Nexen are the two producers and/or exporters accounting for the largest volume of subject merchandise during the period of investigation (POI) based on the CBP entry data.¹⁰

³ *Id.*, 85 FR at 38857.

⁴ See the Petition, Volume I at 14 and Exhibit I-8.

⁵ See *Passenger Vehicle and Light Truck Tires from Korea*, Investigation Nos. 701–TA–647 and 731–TA–1517–1520 (Preliminary), 85 FR 44322 (June 22, 2020).

⁶ See *Initiation Notice*, 85 FR at 38855.

⁷ See Atturo Tire Corp.’s Letter, “Comments on Scope,” dated July 20, 2020; Brand, Inc.’s Letter, “Comments on Scope of the Investigation: Mud-Terrain Tire,” dated July 20, 2020; Cheng Shin Rubber Ind. Co. Ltd., Maxxis International (Thailand) Co., Ltd., and Cheng Shin Rubber USA Inc., dba Maxxis International – USA’s (collectively, Cheng Shin) Letter, “Scope Comments,” dated July 20, 2020; and Deestone Corporation’s (Deestone) Letter, “Comments on Scope,” dated July 20, 2020; Petitioner’s Letter, “Petitioner’s Rebuttal Scope Comments,” dated July 30, 2020; Deestone’s Letter, “Additional Comments on Scope,” dated September 21, 2020; Petitioner’s Letter, “Petitioner’s Response on Light Truck Spare Tires,” dated September 25, 2020; Petitioner’s Letter, “Petitioner’s Response on Deestone’s Additional Scope Comments,” dated September 30, 2020; Cheng Shin’s Letter, “Scope Exclusion Language and Request for Clerical Error Revision,” dated December 10, 2020; Petitioner’s Letter, “Petitioner’s Response on Cheng Shin’s Scope Request,” dated December 11, 2020; Cheng Shin’s Letter, “Errata to Scope Exclusion Language and Request for Clerical Error Revision Letter,” dated December 15, 2020; and Memorandum, “Phone Call with Counsel to the Petitioner,” dated December 17, 2020.

⁸ See Memorandum, “Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Preliminary Scope Comments Decision Memorandum,” dated concurrently with this memorandum (Preliminary Scope Decision Memorandum).

⁹ In its Section A questionnaire response, Hankook stated that in March 1999, the name Hankook Tire Mfg. Co., Ltd. was changed to Hankook Tire Co., Ltd. In May 2019, the name of Hankook Tire Co. Ltd. was changed to Hankook Tire & Technology Co. Ltd. Hankook Tire America Corp. and Hankook Tire Manufacturing Tennessee, LP, are directly and indirectly wholly-owned subsidiary of Hankook Tire & Technology Co. Ltd. See Hankook’s September 14, 2020 Section A Questionnaire Response (Hankook September 14, 2020 AQR).

¹⁰ See Memorandum, “Less-Than-Fair-Value Investigation of Passenger Vehicle and Light Truck Tires from the Republic of Korea: Selection of Respondents for Individual Examination,” dated July 22, 2020.

Accordingly, we issued the AD questionnaire to Hankook and Nexen.¹¹ We received Hankook's and Nexen's responses to the initial questionnaire from September 14 through October 5, 2020.¹²

On September 1, 2020, Hankook filed a request with Commerce to excuse it from reporting downstream home market sales made by "Capitalized Distributors" and "Franchisees."¹³ On September 4, 2020, the petitioner objected to Hankook's request.¹⁴ On November 6, 2020, we sent a supplemental questionnaire to Hankook with regard to its sales to the "Capitalized Distributors" and "Franchisees."¹⁵ On November 20, 2020, Hankook timely submitted its response.¹⁶

On September 1, 2020, Nexen filed a request for clarification of reporting requirements and notified Commerce of potential reporting difficulties relating to Nexen's sales to certain contractual resellers and distributors in the home market. On September 4, 2020, the petitioner requested that Commerce reject Nexen's exemption request urging Commerce to seek full information about these home market sales, including their volumes and the actual time the sale is concluded before deciding how these sales should be reported and treated in this investigation.¹⁷ After an in-depth analysis of all the arguments and concerns presented by Nexen and the petitioner, Commerce preliminarily determined to exempt Nexen from reporting its contractual distributors' POI home market sales.¹⁸

¹¹ See Commerce's Letter, "Antidumping Duty Questionnaire," dated August 14, 2020.

¹² See Hankook's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Initial Section A Questionnaire Response," dated September 14, 2020; Hankook's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Initial Section B Response," dated October 5, 2020 (Hankook October 5, 2020 BCDQR); Nexen's Letter, "Passenger Vehicle and Light Truck Tires From South Korea: Section A Response," dated September 14, 2020 (Nexen September 14, 2020 AQR); Nexen's Letter, "Passenger Vehicle and Light Truck Tires From South Korea: Question 3 of Section A Response," dated September 21, 2020 (Nexen September 21, 2020 AQ3QR); Nexen's Letter, "Passenger Vehicle and Light truck Tires From south Korea: Section B Response," dated October 2, 2020 (Nexen October 2, 2020 BQR); Nexen's Letter, "Passenger Vehicle and Light truck tires From South Korea: Section C Response," dated October 5, 2020 (Nexen October 5, 2020 CQR); and Nexen's Letter, "Passenger Vehicle and Light truck tires From south Korea: Section D Response," dated September 28, 2020 (Nexen September 28, 2020 DQR).

¹³ See Hankook's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Notification of Difficulties and Request for Confirmation of Reporting Requirements," dated September 1, 2020.

¹⁴ See Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea: Comments on Hankook's Reporting Requirement's Request," dated September 4, 2020 (Petitioner September 4, 2020 Letter on Hankook).

¹⁵ See Commerce's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Hankook Tire Mfg. Co. Ltd. – Section A Supplemental Questionnaire," dated November 6, 2020 (Commerce's November 6, 2020 SAQ).

¹⁶ See Hankook's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Section A Supplemental Questionnaire Response," dated November 20, 2020 (Hankook's November 20, 2020 ASQR).

¹⁷ See Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea: Comments on Nexen's Reporting Requirement's Request," dated September 4, 2020 (Petitioner's September 4, 2020 Letter) at 3.

¹⁸ See Commerce's Letter, "Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from South Korea – Request to Modify Question 6 of the Second Supplemental Section A and First Supplemental Section B and C Questionnaire for Nexen Tire Corporation," dated November 17, 2020.

On October 16, 2020, Commerce postponed the preliminary determination of this investigation by 50 days, to December 29, 2020, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).¹⁹

From October through December 2020, we sent supplemental questionnaires to both Hankook²⁰ and Nexen.²¹ We received responses to these supplemental questionnaires in November and December 2020.²² The petitioner submitted comments on Hankook's and Nexen's questionnaire responses from September through November 2020.²³

¹⁹ See *Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 65791 (October 16, 2020); see also Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Petitioner's Request for Extension of Preliminary Determination," dated October 1, 2020.

²⁰ See Commerce's Letters; "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Hankook Tire Mfg. Co. Ltd. – Section D Supplemental Questionnaire," dated November 20, 2020; and "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Hankook Tire Mfg. Co. Ltd. – Sections B and C Supplemental Questionnaire," dated November 24, 2020.

²¹ See Commerce's Letters, "Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from the Republic of Korea: First Supplemental Section A Questionnaire for Nexen Tire Corporation," dated October 28, 2020 (Commerce October 28, 2020 Letter); "Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from South Korea – Second Supplemental Section A Questionnaire and First Supplemental Section B and C Questionnaire for Nexen Tire Company," dated November 4, 2020 (Commerce November 4, 2020 Letter); "Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from South Korea," dated November 18, 2020 (Commerce November 18, 2020 Letter); and "Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from South Korea – Third Supplemental Section A Questionnaire for Nexen Tire Company," dated November 30, 2020 (Commerce November 30, 2020 Letter).

²² See Hankook's November 20, 2020 ASR; Hankook's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Section B and C Supplemental Questionnaire Response," dated December 15, 2020 (Hankook December 15, 2020 BCSQR); Hankook's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Section D Supplemental Questionnaire Response," dated December 4, 2020; Nexen's Letter, "Passenger Vehicle and Light Truck Tires From South Korea: First Supplemental Questionnaire to Section A," dated November 9, 2020; Nexen's Letter, "Passenger Vehicle and Light Truck Tires From South Korea: Second Supplemental Questionnaire to Section A and First Supplemental Questionnaire to Sections B and C," dated November 18, 2020; Nexen's Letter, "Passenger Vehicle and Light Truck Tires From South Korea: Response to Certain Questions from the Second Supplemental A Questionnaire and First Sections B & C Supplemental Questionnaire," dated November 25, 2020; Nexen's Letter, "Passenger Vehicle and Light Truck Tires From South Korea: Response to Certain Questions from the First Sections B & C Supplemental Questionnaire," dated November 30, 2020; Nexen's Letter, "Passenger Vehicle and Light Truck Tires From South Korea: Response to the Third Supplemental Section A Questionnaire," dated December 4, 2020; Nexen's Letter, "Passenger Vehicle and Light Truck Tires From South Korea: Response to the Remaining Portion of Third Supplemental Section A Questionnaire," dated December 7, 2020 (Nexen December 7, 2020 AQR3SQR3); and Nexen's Letter, "Passenger Vehicle and Light Truck Tires From South Korea: Response to the First Supplemental Section D Questionnaire," dated December 7, 2020 (Nexen December 7, 2020 DSQR1).

²³ See Petitioner's Letters, "Passenger Vehicle and Light Truck Tires from the Republic of Korea: Comments on Hankook's Section A Response," dated September 25, 2020; "Passenger Vehicle and Light Truck Tires from the Republic of Korea: Comments on Hankook's Section B, C and D Responses," dated October 26, 2020; "Passenger Vehicle and Light Truck Tires from the Republic of Korea: Comments on Nexen's Section B, C and D Responses," dated October 22, 2020; Petitioner's November 17, 2020 Letter; and "Passenger Vehicle and Light Truck Tires from the Republic of Korea: Comments on Nexen's Supplemental Section A," dated November 19, 2020.

On December 1, 2020, the petitioner requested that, in the event of a negative preliminary determination in this investigation, Commerce postpone its final determination in accordance with 19 CFR 351.210(b)(2)(i).²⁴ On December 2 and 9, 2020, Hankook and Nexen, respectively, requested that, in the event of an affirmative preliminary determination in this investigation, Commerce postpone its final determination in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month to a six-month period.²⁵

On December 18 and 20, 2020, the petitioner submitted comments with respect to Hankook and Nexen, respectively, for consideration in the preliminary determination.²⁶ Nexen also submitted comments for consideration in the preliminary determination.²⁷ On December 22, 2020, Hankook replied to the petitioner's comments.²⁸ On December 22, 2020, Nexen submitted comments, and replied to the petitioner's comments.²⁹

III. PERIOD OF INVESTIGATION

The POI is April 1, 2019 through March 31, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was May 2020.³⁰

V. SCOPE OF THE INVESTIGATION

The products covered by this investigation are passenger tires from Vietnam. For a full description of the scope of the investigation, *see* the accompanying preliminary determination *Federal Register* notice at Appendix I.

VI. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³¹ in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.*,

²⁴ See Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Request to Extend the Final Determination," dated December 1, 2020 .

²⁵ See Hankook's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Request to Extend the Final Determination and Provisional Measures," dated December 2, 2020; and Nexen's Letters, "Passenger Vehicle and Light Truck Tires From South Korea: Request for Postponement of the Final Determination," dated December 9, 2020.

²⁶ See Petitioner's Letters, "Passenger Vehicle and Light Truck Tires from the Republic of Korea: Preliminary Comments Regarding Hankook," dated December 18, 2020; "Passenger Vehicle and Light Truck Tires from the Republic of Korea: Preliminary Comments Regarding Nexen," dated December 18, 2020.

²⁷ See Nexen's Letter, "Passenger Vehicle and Light truck Tires from South Korea: Pre-Preliminary Determination Comments," dated December 18, 2020.

²⁸ See Hankook's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea (A-580-908): Response to Petitioner's Pre-Preliminary Comments," dated December 22, 2020.

²⁹ See Nexen's Letter, "Passenger Vehicle and Light Truck Tires from South Korea: Rebuttal to Petitioner's Pre-Preliminary Comments," dated December 23, 2020.

³⁰ See 19 CFR 351.204(b)(1).

³¹ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

scope).³² As noted above, certain interested parties commented on the scope of this investigation, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttals and our accompanying analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the revised scope in Appendix I of the accompanying *Federal Register* notice.

VII. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

A. Statutory Framework

Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Use of Adverse Inference

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.³³ In addition, the Statement of Administrative Action (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁴ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁵ It is Commerce’s practice to consider, in employing adverse facts available, the extent to which a party may benefit from its own lack of cooperation.³⁶ Section 776(b)(2) of the Act states that an adverse inference may

³² *See Initiation Notice*, 85 FR at 38855.

³³ *See* 19 CFR 351.308(a).

³⁴ *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 870 (SAA); *see also Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

³⁵ *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *see also Preamble*, 62 FR at 27340; and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003) (*Nippon Steel*).

³⁶ *See* SAA at 870; *see also Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying IDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales*

include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.

When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficient "to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."³⁷ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³⁸

B. Use of Facts Available

As noted further below, Hankook did not provide certain requested information necessary for Commerce to calculate certain individual dumping margins for Hankook in this investigation. Specifically, Hankook did not submit the downstream sales for its affiliated "Capitalized Distributors" where Hankook's sales to those "Capitalized Distributors" failed the arm's-length test. As such, necessary information is not on the record of this review. In addition, Hankook withheld information requested by Commerce, failed to provide such information by the deadlines for submission of the information or in the form and manner requested by Commerce, and significantly impeded this proceeding. Accordingly, the use of partial facts available is warranted pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act.

C. Use of Adverse Inference

In the initial and supplemental questionnaires, Commerce requested that where sales between Hankook and its home market affiliated resellers were not made at arm's length, Hankook also report the downstream sales of such affiliates.³⁹ Hankook reported that its sales to its affiliated customers accounted for more than five percent of its total sales of foreign like product in the home market;⁴⁰ therefore, Hankook is required to report each affiliated customer's downstream sales where Hankook's sales to that affiliated customer failed the arm's-length test.⁴¹ In its supplemental questionnaire response, Hankook stated that it was unable to obtain the downstream sales from these "Capitalized Distributors," although it expended a significant amount of time and resources attempting to collect all downstream sale data.⁴² Hankook also stated that it had made multiple rounds of requests and put the correspondence in which it

at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, 79 FR 14476, 14477 (March 14, 2014).

³⁷ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

³⁸ See section 776(b)(1)(B) of the Act.

³⁹ See Commerce's August 14, 2020 IQ, and Commerce's November 6, 2020 SAQ.

⁴⁰ See Hankook's November 20, 2020 ASQR at Exhibit A-54.

⁴¹ See 19 CFR 351.403(c) and (d).

⁴² See Hankook's November 20, 2020 ASQR at A-4.

requested the resale information from these “Capitalized Distributors” on the record.⁴³ Hankook reported that these “Capitalized Distributors” have refused to provide all the requested information necessary to respond to Commerce’s requests.⁴⁴

Notwithstanding Hankook’s efforts, necessary home market price data are missing from the record. The home market sale information is fundamental data, without which Commerce cannot perform the dumping calculation as required by the statute.⁴⁵ Additionally, a uniform application of the requirement that respondents report downstream sales in situations where the sale between the respondent and the affiliated party are not made at arm’s length mitigates the potential and incentive for manipulation of the margin calculations by respondent parties..⁴⁶ Respondents have the ability to cease selling to, or continuing to do business with, an affiliate if that party declines to provide the necessary information requested by Commerce. Further, it is Hankook’s own business decisions that determine whether the requirement to report downstream sales applies, as it is the one that establishes the prices to its affiliated customers and is thus in a position to make them at arm’s-length prices or not. We have preliminarily determined that Hankook is in a position to induce these companies to report their downstream sales. As such, Hankook has failed to cooperate to the best of its ability in obtaining these companies’ downstream sales. Pursuant to 776(b) of the Act, we are using an adverse inference in applying the facts otherwise available, because Hankook has failed to cooperate to the best of its ability to comply with our request for information. As adverse facts available, we have preliminarily applied the highest unaffiliated home market price of the same CONNUMs to the unreported downstream sales at issue.⁴⁷

VIII. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

To determine whether sales of passenger tires from Korea to the United States were made at LFTV, we compared the export prices (EPs) or constructed export prices (CEPs) to the normal value (NV), as described in the “U.S. Price” and “Normal Value” sections of this memorandum, below.

1. Determination of Comparison Method

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

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See sections 773(a)(1)(A) and (B) of the Act.

⁴⁶ See 19 CFR 351.403(c) and (d).

⁴⁷ See Memorandum, “Analysis for the Preliminary Determination of the Less-Than-Fair Value Investigation of Passenger Vehicles and Light Truck Tires from Korea: Preliminary Margin Calculation for Hankook Tire & Technology Co. Ltd.,” dated December 29, 2020 (Hankook Preliminary Calculation Memorandum).

NVs with the EPs or CEPs of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁴⁸ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

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

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of

⁴⁸ 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); see also *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).

three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁴⁹

⁴⁹ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (CAFC July 12, 2017) affirmed much of Commerce's differential pricing methodology. We ask interested parties to present only arguments on issues which have not already been decided by the CAFC.

2. Results of the Differential Pricing Analysis

For Hankook, based on the results of the differential pricing analysis, Commerce preliminarily finds that 49.15 percent of the value of U.S. sales pass the Cohen's *d* test,⁵⁰ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Hankook.

For Nexen, based on the results of the differential pricing analysis, Commerce preliminarily finds that 59.81 percent of the value of U.S. sales pass the Cohen's *d* test,⁵¹ 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 there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for 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 Nexen.

B. Product Comparisons

As stated above, Commerce gave parties an opportunity to comment on the appropriate hierarchy of physical characteristics used to define each product, including for defining identical and similar merchandise, within a certain deadline.⁵² We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining the product control numbers of passenger tires in this LTFV investigation. Commerce identified thirteen physical characteristics of the subject merchandise: (1) tire service type; (2) tire construction; (3) rim diameter; (4) nominal section width; (5) nominal aspect ratio; (6) outer diameter for flotation tires; (7) section width for flotation tires; (8) load range; (9) speed rating; (10) body ply fabric; (11) tread depth; (12) cap ply count; and (13) cap ply fabric.⁵³ We

⁵⁰ See Hankook Preliminary Calculation Memorandum.

⁵¹ See Memorandum, "Analysis for the Preliminary Determination of the Less-Than-Fair Value Investigation of Passenger Vehicles and Light Truck Tires from Korea: Preliminary Margin Calculation for Nexen Tire Corporation," dated December 29, 2020 (Nexen Preliminary Calculation Memorandum).

⁵² See *Initiation Notice*, 85 FR at 38855.

⁵³ See Memorandum, "Passenger Vehicle and Light Truck Tires from Korea, Taiwan, Thailand and Vietnam: Product Characteristics (Product Characteristics Memorandum), dated August 18, 2020.

instructed the respondents to use these product characteristics in their responses to the AD questionnaire issued in this investigation.⁵⁴

C. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁵ Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁵⁶

Hankook

Hankook reported the earlier of the invoice date or the shipment date as the date of sale for its home market sales and its U.S. sales.⁵⁷ Information on the record shows that for its home market sales, Hankook generates its invoice the same date when the merchandise is shipped. The date of shipment is either the date the merchandise is released from a production facility or warehouse or the date the merchandise is picked-up by the customer.⁵⁸ Information on the record for the U.S. market shows that Hankook issues its invoice on either the same date as the passenger tires are shipped or upon delivery of the merchandise; in either cases, Hankook reported the earlier of the shipment date or the invoice date as the date of sale.⁵⁹ Therefore, consistent with 19 CFR 351.401(i) and Commerce's practice, we used the earlier of Hankook's shipment date or invoice date as the date of sale, as applicable.

Nexen

For HM Channel 1 (sales to original equipment manufacturers (OEM)), HM Channel 2 (large distributors), and HM Channel 3 (small resellers, distributors and end-users), Nexen reported shipment date as the date of sale.⁶⁰ For its HM Channel 4 (*ad hoc* business-to-customer (B2C) sales) and HM Channel 5 (B2C sales through its retail locations), Nexen reported the earlier of invoice date or installation date (when the passenger tire is installed on the customer's vehicle).⁶¹

⁵⁴ *Id.*

⁵⁵ 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)).

⁵⁶ See, e.g., *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

⁵⁷ See Hankook October 5, 2020 BCDQR at B-29, C-29 to C-30.

⁵⁸ See Hankook October 5, 2020 BCDQR at B-29, C-29 to C-30.

⁵⁹ *Id.*

⁶⁰ See Nexen October 2, 2020 BQR at B-28; and Nexen September 21, 2020 AQ3QR at AQ3-3

⁶¹ See Nexen September 14, 2020 AQR at A-31.

We have examined the information on the record and preliminarily find that the material terms of sale were set on shipment date, which precedes invoice date, for HM Channels 1-3, and on the earlier of invoice or installation date for HM Channels 4 and 5. Therefore, consistent with 19 CFR 351.401(i) and Commerce's practice, we have used shipment date for Nexen's HM Channel 1-3 sales and the earlier of invoice date or installation date for its HM Channel 4 and 5 sales.

For sales through U.S. Channel 1 (Nexen's U.S. affiliate, Nexen Tire America (NTA) delivered the passenger tires to the OEM customer's location), Nexen reported the date of shipment as the date of sale.⁶² For U.S. Channel 2 (CEP sales from NTA inventory), U.S. Channel 3 (CEP back-to-back direct sales from Nexen through NTA to the unaffiliated customer), and U.S. Channel 4 (CEP back-to-back direct sales from Nexen to NTA to the unaffiliated customer-FOB Korea sales term), Nexen reported the shipment date as the date of sale, because those customers can only modify or cancel the orders until the time of shipment.⁶³ For its U.S. Channel 5 (EP sales), Nexen also reported the shipment date, as it is the earliest date by which the material terms of sale are established.⁶⁴ We have examined the information on the record and preliminarily find that for all U.S. sales, shipment date generally precedes invoice date. Therefore, consistent with 19 CFR 351.401(i) and Commerce's practice, we have used the earlier of invoice date or shipment date for all U.S. sales.

D. Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under subsection 772(c) of the Act. Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." In accordance with section 772(a) of the Act, we calculated EP for certain of Hankook's U.S. sales and for certain of Nexen's U.S. sales where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation.

We calculated EP based on the packed prices that Hankook and Nexen charged to the first unaffiliated purchaser in the United States. We made deductions, where appropriate, from the starting price for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling, international freight, inland and marine insurance, U.S. warehousing, U.S. inland freight, and other U.S. transportation expenses (*i.e.*, U.S. brokerage and handling, U.S. customs processing fees, and U.S. harbor maintenance fees), in accordance with section 772(c)(2)(A) of the Act.

⁶² See Nexen December 7, 2020 AQR3SQR3 at 3.

⁶³ See Nexen September 14, 2020 AQR at A-32-33.

⁶⁴ See Nexen September 14, 2020 AQR at A-34.

E. Constructed Export Price

Pursuant to section 772(b) of the Act, the CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,” as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for U.S. sales made by Hankook’s U.S. affiliate, Hankook Tire America Corp. and Nexen’s U.S. sales affiliate, NTA.

For these sales, we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made additions to the starting price for packing, in accordance with section 772(c)(1)(A) of the Act. We made deductions from the U.S. sales price for movement expenses, in accordance with section 772(c)(2) of the Act. These adjustments included, where applicable, foreign inland freight from plant to port of exportation, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight from the warehouse to the unaffiliated customer, and U.S. warehousing.⁶⁵

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses, bank charges, and warranty expenses) and indirect selling expenses (U.S. inventory carrying costs).⁶⁶ In addition, we made an adjustment to price for the cost of any further manufacturing or assembly for sales used in the calculations, in accordance with section 772(d)(2) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses each incurred by Hankook or Nexen and each of their U.S. affiliate(s) on their sales of the subject merchandise in the United States and the profit associated with those sales.⁶⁷

F. 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 CAFC has sustained)⁶⁸ the following two-prong test:⁶⁹ First, that the import duty paid and the rebate

⁶⁵ See Nexen October 5, 2020 CQR at C-35-48.

⁶⁶ *Id.* at C-52-61.

⁶⁷ *Id.*

⁶⁸ See, e.g., *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F. 3d 1335, 1340-41 (Fed. Cir. 2011).

⁶⁹ 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)).

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.⁷⁰

In this investigation, Hankook and Nexen both provided information with respect to each of the two prongs.⁷¹ Because each respondent has satisfied the criteria described above, we have preliminarily granted duty drawback adjustments to Hankook and Nexen, consistent with our practice.⁷² Under this methodology, Commerce will make an upward adjustment to U.S. price based on the amount of the import duty imposed on the input and rebated or not collected as a result of the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.⁷³

Based on the facts of this investigation, Commerce finds that the import duty costs, based on the consumption of imported inputs during the POR, properly accounts for the amount of duties imposed, as required by section 772(c)(1)(B) of the Act. We have added this per-unit amount of import duties to the U.S. price.⁷⁴

G. Normal Value

1. Comparison Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

⁷⁰ 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 *Federal Mogul Corp. v. United States*, 862 F. Supp. 384, 410 (CIT 1994).

⁷¹ See Hankook October 5, 2020 BCDQR at C-63 and Exhibit C-27; Nexen October 5, 2020 CQR at C-48-50 and Exhibit C-30; Nexen December 7, 2020 DSQR1 at S1-D16-18 and Exhibits S1-D16-18.

⁷² 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.

⁷³ 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.

⁷⁴ See Hankook Preliminary Calculation Memorandum; see also Nexen Preliminary Calculation Memorandum.

In this investigation, we preliminarily determined that the aggregate volume of home market sales of the foreign like product each from Hankook and Nexen were more than five percent of the aggregate volume of each company's U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that Hankook's and Nexen's home market of Korea is viable. Therefore, we used home market sale prices as the basis for NV for Hankook and Nexen in accordance with section 773(a)(1)(A) and (B) of the Act.

2. 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).⁷⁵ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁷⁶ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,⁷⁷ 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.⁷⁸

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁷⁹

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

⁷⁵ See 19 CFR 351.412(c)(2).

⁷⁶ See 19 CFR 351.412(c)(2); *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.

⁷⁷ 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).

⁷⁸ See *Micron Tech, Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁷⁹ See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

the selling activities performed for each channel of distribution.⁸⁰ Our LOT findings are summarized below.

Hankook

In the home market (HM), Hankook reported that it made sales through six channels of distribution: HM Channel 1 (sales to OEM); HM Channel 2 (sales to large distributors); HM Channel 3 (sales to small retailers, distributors and end-users); HM Channel 4 (*ad-hoc* business-to-customer sales); and HM Channel 5 (*ad hoc* sales through its retail locations).⁸¹ Hankook's customers in the home market are OEM, distributors, and end users.⁸² Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) performance of sales related administrative activities. Based on Hankook's selling functions chart, we find that Hankook performed most selling activities for all home market sales. Of those five selling functions, provision of logistical services like plant warehouse inventory maintenance, repacking and freight and delivery were performed at the same or at a similar level of intensity in all six HM Channels, whereas sales support, training services and sales related administrative activities were performed at a lower intensity in HM Channel 1 (sales to OEM customers) than in HM Channels 2 through 6 (sales to replacement market customers), for which Hankook reported the same or similar level of intensity.⁸³

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. Hankook performed similar sales support, training services, technical services, logistical services, and sales related administrative activities with similar intensity for its customers in HM Channels 2 through 6 (sales to small resellers, distributors, and end users *i.e.*, replacement market).⁸⁴ However, Hankook performed fewer sales support, training services, technical services, logistical services, and sales related administrative activities with less intensity for HM Channel 1 (sales to OEM customers) than it did for HM Channels 2 through 6 (replacement market).⁸⁵ Because we determine that substantial differences in Hankook's selling activities to customers in HM channel 1 and its sales in HM channels 2 through 6, we preliminarily determine that Hankook's sales in the home market during the POI were made at two distinct levels of trade (HMLOT1 and HMLOT2).

⁸⁰ See Hankook September 14, 2020 AQR at A-26-46; Hankook October 5, 2020 BCDQR at B-28; Nexen September 14, 2020 AQR at A-10-14 and A-29-47 and Exhibits A-11-12; Nexen September 21, 2020 AQ3QR at AQ3-1-7 and Exhibits AQ-28-29; Nexen October 2, 2020 BQR B-26-27, and Nexen October 5, 2020 CQR at C-22-23.

⁸¹ See Hankook September 14, 2020 AQR at A-26-46, and Hankook October 5, 2020 BCDQR at B-28.

⁸² *Id.* at B-28.

⁸³ See Hankook September 14, 2020 AQR at Exhibit A-53.

⁸⁴ *Id.*

⁸⁵ Hankook performed similar sales support, training services, technical services, logistical services, and sales related administrative activities with similar intensity for its customers in HM Channels 2 through 6. See Hankook September 14, 2020 AQR at Exhibit A-53.

With respect to the U.S. market, Hankook reported that it made sales through several different channels of distribution, *i.e.*, CEP sales to OEM customers (U.S. Channel 1); CEP sales to wholesalers/distributors and retailers through warehouse or direct shipment (U.S. Channels 2 and 3); EP and CEP retail sales through Hankook's U.S. affiliates (U.S. Channels 4, 5 and 6), and sales to Hankook's employees (U.S. Channel 7).⁸⁶ Hankook provided information on all five selling function categories for analysis, *i.e.*, sales support, training services, technical support, logistical services, and performance of sales related administrative activities, in these U.S. sales channels.⁸⁷ Information on the record indicated that Hankook performed similar sales support, training services, technical services, logistical services, and sales related administrative activities with similar intensity U.S. Channels 2 through 7 (sales to retailers, wholesalers/distributors, and sales to Hankook's employees, *i.e.*, the replacement market). The record also shows that Hankook provided fewer sales support, training services, technical services, logistical services, and sales related administrative activities with less intensity for its U.S. Channel 1 customers (OEM market) than its (U.S. Channels 2 through 7 customers (replacement market). Thus, we preliminarily determine that U.S. Channel 1 sales and U.S. Channels 2-7 sales were made at two distinct levels of trade (USLOT1 and USLOT2).

Finally, we compared the U.S. LOTs to the HM LOTs, and found that the selling functions Hankook performed for its U.S. and home market customers for OEM customers and replacement market customers are at the same or similar levels of intensity, respectively.⁸⁸ Specifically, Hankook performed very similar selling functions in the home market and U.S. market for OEM customers (HMLOT1 and USLOT1) and replacement market customers (HMLOT2 and USLOT2). Therefore, we preliminarily determine that Hankook's sales at the home market and sales to the United States are both made at two LOTs, and we are preliminarily calculating normal value based on sales at the same level of trade as the U.S. sales. In addition, we are preliminarily making a level of trade adjustment pursuant to section 773(a)(7)(A) of the Act where we are unable to match sales of the foreign like product in the home market at the same level of trade as the U.S. sales.

Nexen

In the home market, Nexen reported that it made sales through five channels of distribution, *i.e.*, sales to OEM from delivered inventory to the customers location and sales made upon the customer's withdrawal from the consignment inventory (HM Channel 1); sales shipped to large distributors (HM Channel 2); sales made by Nexen branches to small resellers, distributors, and end users (HM Channel 3); *ad hoc* sales made by Nexen branches to consumers (Channel 4); and sales to consumers through retail locations (HM Channel 5).⁸⁹ Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) performance

⁸⁶ See Hankook October 5, 2020 BCDQR at C-28.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Nexen September 21, 2020 AQ3QR at AQ3-3.

of sales related administrative activities. Nexen identified HM Channels 1 to 3 as HMLOT1 and HM Channels 3 to 4 as HMLOT2.⁹⁰

Based on our analysis of Nexen's selling functions information, we find that Nexen performed some elements of all five selling function categories for all home market sales.⁹¹ However, Nexen's response to providing a quantitative analysis of the selling functions performed does not differentiate or allocate the expenses among the five HM channels to support and document the selling activities performed and levels of intensity claimed by channel of distribution in the selling functions chart.⁹² Nexen explained that it makes HM Channel 1 and HM Channel 2 sales to large customers with annual contracts for supply of large purchase volumes for which Nexen provides with discounts and incentives.⁹³ Information on the record also indicates that Nexen provided similar sales support, training services, technical services, logistical services, and sales related administrative activities with the same intensity for its customers in HM Channels 1 & 2. In contrast, Nexen sells passenger tires to HM Channels 3, 4, and 5 customers through regional branch locations or tire shop locations. The customer base in those HM channels are small resellers, distributors, and end-users.⁹⁴ Based on our analysis of the information on the record, we conclude that Nexen provided similar sales support, training services, technical services, logistical services, and sales related administrative activities with similar intensity for customers in HM Channels 3, 4 and 5.

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. Nexen reported differences in the selling functions performed as well as performing those selling functions at different levels of intensity for sales HM Channels 1 and 2 (OEM and large distributors) when compared to its sales to HM Channels 3, 4 and 5 customers (small distributors, consumers and employees). Because we determine that substantial differences in Nexen's selling activities exist between Nexen's HM Channels 1 & 2 sales when compared to those it performed for HM Channels 3, 4 and 5, we determine that Nexen's sales in the home market during the POI were made at two levels of trade (HMLOT1 and HMLOT2).

With respect to the U.S. market, Nexen reported that it has five channels of distribution, four CEP sales channels through NTA and one EP channel. For CEP sales, NTA delivered consignment inventory to OEM's locations (U.S. Channel 1); NTA's shipments from its U.S. warehouses to the U.S. customer (U.S. Channel 2); back-to-back sales through NTA with shipment made by Nexen to the U.S. customer location (U.S. Channel 3); back-to-back sales through NTA with shipment made by Nexen to the Korean port on an FOB basis (U.S. Channel

⁹⁰ See Nexen October 2, 2020 BQR at B-39.

⁹¹ Nexen grouped HM Channels 2 and 3 together, and HM Channels 4 and 5 in its selling functions chart. It did not provide an explanation as to why it did so. See Nexen September 21, 2020 AQ3QR at Exhibit AQ3-28.

⁹² See Nexen September 21, 2020 AQ3QR at AQ3-5-7.

⁹³ See Nexen September 14, 2020 AQR at 34-37.

⁹⁴ See Nexen September 14, 2020 AQR at 37-39; Nexen September 21, 2020 AQ3QR at AQ3-3.

4); and EP sales by Nexen directly to the U.S. customer's location (U.S. Channel 5).⁹⁵ In its selling functions chart and responses, Nexen condensed its CEP sales made through U.S. Channels 1-4 and reported them to be a single LOT and its EP sales through U.S. channel 5 as a second LOT.⁹⁶

For CEP sales through U.S. Channels 1-4, information on the record indicates that Nexen performed sales support, technical support, logistical services, and sales related administrative activities at similar levels of intensity. Moreover, the record also indicates that for EP sales made through U.S. Channel 2, Nexen performed sales support, provision of training, logistical services, and sales related administrative activities. Nexen performed the sales support, logistical services, and sales related administrative activities functions at the same level or similar level of intensity for its CEP and EP sales.⁹⁷ Therefore, we determine that Nexen's CEP sales and EP sales to the U.S. market during the POI were made at one LOT (USLOT1).

Finally, we compared the selling function categories in the USLOT1 to the selling function categories in the HMLOT1 and the HMLOT2. For HMLOT1 and USLOT1, Nexen performed the same selling functions categories, and most of the same selling activities within the categories at the same or similar level of intensity.⁹⁸ Therefore, we find that Nexen's sales through HMLOT1 and USLOT1 were made at the same level of trade. However, Nexen provided substantially more selling activities within the selling function categories for HMLOT2 customers than for USLOT1. Further, Nexen performed all of those selling activities at a significantly higher level of intensity than those performed at HMLOT1 and USLOT1.⁹⁹ Therefore, we determine that the sales made through HMLOT2 were made at a more advanced LOT than Nexen's U.S. sales.¹⁰⁰ Therefore, to the extent that U.S. sales do not match to home market sales made at the corresponding HMLOT2, an LOT adjustment is warranted.

3. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested CV and COP information from Hankook and Nexen. We examined the cost data and determined that our quarterly cost methodology is not warranted for either Hankook or Nexen, and, therefore, we are applying our standard methodology of using period-wide average costs based on Hankook's and Nexen's reported data.

⁹⁵ See Nexen September 21, 2020 AQ3QR at AQ3-2-3 and Exhibit AQ3-28.

⁹⁶ See Nexen October 5, 2020 CQR at C-35.

⁹⁷ See Nexen September 21, 2020 AQ3QR at Exhibit AQ3-28.

⁹⁸ See Nexen September 21, 2020 AQ3QR at Exhibit AQ3-28.

⁹⁹ See Nexen September 21, 2020 AQ3QR at Exhibit AQ3-28.

¹⁰⁰ *Id.*

a. 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 expenses and financial expenses, as reported by the respondents.

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the weighted-average COPs to the home market sale prices of the foreign like product, in order to determine whether the sale prices were below the COP of the foreign like product. 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.

c. Results of the COP Test

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

We found that, for certain products, more than 20 percent of both Hankook's and Nexen's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

H. Calculation of NV Based on Comparison Market Prices

We calculated NV for Hankook and Nexen based on home market sale prices made in the ordinary course of trade. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments and rebates, where appropriate. We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, foreign inland freight and insurance. For EP sales, we made adjustments for

differences in circumstance of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses (*i.e.*, bank charges and imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, imputed credit expenses), where appropriate.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the “commission offset.” Specifically, where commissions were incurred in only one market, we limit the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sale prices with a normal value based on HM sale prices of similar merchandise, we also made adjustments for differences in cost attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(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.¹⁰¹

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.

I. Calculation of NV Based on CV

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Hankook’s and Nexen’s material and fabrication costs, G&A expenses, selling expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses and profit on the amounts incurred and realized by Hankook and Nexen in connection with the production and sale of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market.

For EP sales, we made adjustments for differences in circumstance of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses (*i.e.*, bank charges and imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, imputed credit expenses), where appropriate.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the “commission offset.” Specifically, where commissions were incurred in only one market, we limit the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

¹⁰¹ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

IX. CURRENCY CONVERSION

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

X. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒

Agree

☐

Disagree

 X

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations