



A-557-813  
Administrative Review  
POR: 8/1/17-7/31/18  
**Public Document**  
E&C/OIII: KAC

October 9, 2019

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of the  
Antidumping Duty Administrative Review: Polyethylene  
Retail Carrier Bags: 2017-2018

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order<sup>1</sup> on polyethylene retail carrier bags (PRCBs) from Malaysia, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is August 1, 2017 through July 31, 2018. This review covers one mandatory respondent: Euro SME Sdn Bhd (Euro SME). We preliminarily determine that Euro SME did not make sales of subject merchandise at prices below normal value (NV) during the POR.

## II. BACKGROUND

On August 7, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the Order.<sup>2</sup> Commerce received a timely request to conduct an administrative review of one company, Euro SME, from Hilex Poly Co., LLC and Superbag Corp (the petitioners).<sup>3</sup> On October 4, 2018, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review covering Euro SME.<sup>4</sup>

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<sup>1</sup> See *Antidumping Duty Order: Polyethylene Retail Carrier Bags from Malaysia*, 69 FR 48203 (August 9, 2004) (Order).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 38682 (August 7, 2018).

<sup>3</sup> See Petitioners' Letter, "Polyethylene Retail Carrier Bags From Malaysia: Request for Administrative Review," dated August 31, 2018.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077 (October 4, 2018) (Initiation Notice).



On October 10, 2018, we issued the initial AD questionnaire to Euro SME.<sup>5</sup> Euro SME provided timely responses to the relevant sections of the initial AD questionnaire.<sup>6</sup> Subsequently, we issued several supplemental questionnaires to Euro SME, and between April 3, 2019, and September 24, 2019, Euro SME provided timely responses, as requested.<sup>7</sup>

The petitioners provided deficiency comments regarding Euro SME's submissions on December 5, 2018, and April 19, 2019.<sup>8</sup> On September 18, 2019, the petitioners submitted pre-preliminary comments arguing that Euro SME failed to cooperate by not acting to the best of its ability to provide usable cost information.<sup>9</sup>

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumptions of operations on January 29, 2019.<sup>10</sup> The revised deadline for the preliminary results was originally June 12, 2019. On May 6, 2019, we extended the deadline for the preliminary results in this review to no later than October 10, 2019.<sup>11</sup>

### **III. SCOPE OF THE ORDER**

The merchandise covered by this order is polyethylene retail carrier bags (PRCBs), which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches (15.24 cm) but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, e.g., grocery, drug, convenience, department, specialty retail, discount stores, and

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<sup>5</sup> See Commerce's Letter, "Antidumping Duty Questionnaire," dated October 10, 2018.

<sup>6</sup> See Euro SME's Letters, "Polyethylene Retail Carrier Bags from Malaysia; Section A Response," dated October 31, 2018 (Euro SME AQR); and "Polyethylene Retail Carrier Bags from Malaysia; Sections B-D Response," dated November 16, 2018 (Euro SME BCDQR).

<sup>7</sup> See Euro SME's Letters, "Polyethylene Retail Carrier Bags from Malaysia; First Supplemental Response," dated April 3, 2019 (Euro SME's First SQR); "Polyethylene Retail Carrier Bags from Malaysia; Supplemental Section D Response," dated June 28, 2019 (Euro SME's Second SQR); and "Polyethylene Retail Carrier Bags from Malaysia; Third and Fourth Supplemental Questionnaire Responses," dated September 24, 2019 (Euro SME's Third and Fourth SQR).

<sup>8</sup> See Petitioners' Letters, "Polyethylene Retail Carrier Bags from Malaysia: Petitioners' Comments On Euro SME's Initial Questionnaire Responses," dated December 5, 2018; and "Polyethylene Retail Carrier Bags from Malaysia: Petitioners' Comments On Euro SME's Supplemental Questionnaire Response," dated April 19, 2019.

<sup>9</sup> See Petitioners' Letter, "Polyethylene Retail Carrier Bags from Malaysia: Petitioners' Pre-Preliminary Comments Regarding Euro SME," dated September 18, 2019.

<sup>10</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>11</sup> See Memorandum, "Polyethylene Retail Carrier Bags from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated May 6, 2019.

restaurants, to their customers to package and carry their purchased products. The scope of this antidumping duty order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners.

Imports of subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this antidumping duty order. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this antidumping duty order is dispositive.

#### **IV. DISCUSSION OF THE METHODOLOGY**

We are conducting this administrative review of the order in accordance with section 751(a) of the Act and 19 CFR 351.213.

##### *A. Comparisons to Normal Value*

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Euro SME made sales of subject merchandise from Malaysia to the United States at less than NV, Commerce compared the applicable export price (EP) to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

##### *B. Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEP) (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>12</sup>

In numerous investigations, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation

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<sup>12</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1293 (CIT 2014).

pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>13</sup> Commerce finds that the differential pricing analysis used in certain investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all 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 POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

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

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<sup>13</sup> 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).

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 under the “mixed method.” If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this segment of the proceeding.<sup>14</sup>

### C. *Results of the Differential Pricing Analysis*

For Euro SME, based on the results of the differential pricing analysis, we preliminarily find that 9.93 percent of the value of U.S. sales pass the Cohen’s *d* test,<sup>15</sup> and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time

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<sup>14</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. July 12, 2017) affirmed much of Commerce’s differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

<sup>15</sup> See Memorandum, “Analysis for the Preliminary Results of the Administrative Review of Polyethylene Retail Carrier Bags from Malaysia,” dated concurrently with this memorandum (Euro SME’s Preliminary Analysis Memorandum).

periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, we preliminarily determine to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Euro SME.

## **V. 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. 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.

For its home market and U.S. sales, Euro SME reported the date of sale (SALINDTH and SALEDATU) based on its invoice date.<sup>16</sup> Euro SME provided documentation confirming its selling price to the customer in the form of an invoice and purchase order.<sup>17</sup> We noted that in Euro SME's section B response, there are instances where the shipment date is prior to the invoice date in their home market sales database.<sup>18</sup> Euro SME confirmed that in instances when the shipment date is prior to the invoice date, it is not possible for the terms of sale to change after the shipment date.<sup>19</sup> As our examination of the record reveals that the date of shipment was either the same as or earlier than the date of invoice for U.S. sales,<sup>20</sup> we preliminarily determine to use Euro SME's reported date of shipment as the date of sale for Euro SME's U.S. sales transactions. In the home market, the record indicates there are instances where the shipment date preceded the invoice date. Thus, we selected the earlier of the shipment date or the invoice date as the home market date of sale.

## **VI. PRODUCT COMPARISONS**

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

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<sup>16</sup> See Euro SME AQR at 13.

<sup>17</sup> See Euro SME's First SQR at 2 and Exhibit 1.

<sup>18</sup> See Euro SME's Third and Fourth SQR at B-1.

<sup>19</sup> *Id.*

<sup>20</sup> See Euro SME's First SQR, U.S. and Home Market sales databases.

In making product comparisons, we matched subject merchandise and foreign like product based on whether the products were prime or non-prime and the physical characteristics reported by Euro SME in the following order of importance: bag type, length, width, gusset depth, bag thickness, mixing ratios (percentage of high density polyethylene resin, low density polyethylene resin, and low linear density polyethylene), percentage of color concentrate, ink coverage, number of colors, and number of sides of the bag that are printed.<sup>21</sup> For Euro SME's sales of PRCBs in the United States, the reported control number (CONNUMU) identifies the characteristics of PRCBs, as exported by Euro SME.<sup>22</sup>

## **VII. U.S. PRICE**

### **A. Export Price**

Section 772(a) of the Act defines EP as “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the 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 section 772(c) of the Act. Euro SME reported that there were no CEP sales during the POR.<sup>23</sup> In accordance with section 772(a) of the Act, we calculated EP for all of Euro SME's U.S. sales.

We calculated EP for Euro SME based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses, *i.e.*, inland freight to the port of exportation, and brokerage and handling in country of manufacture, in accordance with section 772(c)(2)(A) of the Act.<sup>24</sup> As Euro SME reported that all the sales to United States were made on an FOB port-of-export basis (except for one CIF sale, where international shipping costs were charged by the freight company and thus reported with the domestic freight expenses), no further movement expenses were reported (*e.g.*, international freight, marine insurance, *etc.*).

## **VIII. NORMAL VALUE**

### **A. Home Market Viability**

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of its 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.

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<sup>21</sup> See Euro SME's BCDQR at 29; *see also* Euro SME's Second SQR at pages 10-12.

<sup>22</sup> See Euro SME's BCDQR at 29.

<sup>23</sup> *Id.* at 48.

<sup>24</sup> See Euro SME's Preliminary Analysis Memorandum.

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Euro SME's volume of home-market sales of the foreign like product to the respective volume of its U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. We found that Euro SME's individual aggregate sales volume of foreign like product in the home market was greater than five percent of its sales of subject merchandise to the United States. Therefore, in accordance with section 773(a)(1)(C) of the Act, Malaysia constitutes a viable home market for Euro SME. Accordingly, we used Malaysia as the comparison market for purposes of analysis in this review.

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

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices. Commerce excludes home-market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "{Commerce} may calculate normal value based on {sales to affiliates} only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller."

During the POR, Euro SME did not make sales of PRCBs in the home market to affiliated parties, as defined in section 771(33) of the Act.<sup>25</sup> Consequently, we did not perform an arm's-length test for Euro SME, in accordance with 19 CFR 351.403(c), as part of our margin calculations.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, we will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>26</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>27</sup> To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether home market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. When we are unable to match U.S. sales to sales of foreign like product in the comparison market at the same LOT, we may compare the U.S. sales to sales at a different LOT in the comparison market. When this occurs and the difference in LOT is demonstrated to affect price comparability based on a pattern of consistent

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<sup>25</sup> See Euro SME's AQR at 2.

<sup>26</sup> See 19 CFR 351.412(c)(2).

<sup>27</sup> *Id.*



price differences between sales at different LOTs in the market in which NV is determined, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Euro SME reported that, for both home market and U.S. sales, Euro SME produces to order based on purchase orders placed by the customer, and that it only had one channel of distribution in each market.<sup>28</sup> After receiving a purchase order, Euro SME manufactures the bags, packs them, and arranges for delivery to the customer or pickup by the customer, depending on the terms of sale.<sup>29</sup> Home market and U.S. sales are made in this manner, regardless of the type of customer involved (whether a trading company or retailer).<sup>30</sup> The main difference between home market and U.S. sales is that home market sales are made by Euro SME while U.S. sales, like all export sales, are made through Euro Nature Green.<sup>31</sup> Malaysian customers are either retailers (who consume the bag by providing their own customers with the bags for use in carrying goods out of their stores) or trading companies (who sell the bags to retailers), whereas U.S. customers are traders and distributors.<sup>32</sup> Euro SME provided the requested chart identifying all selling functions in each channel of distribution in each market, stating that the activities were performed to the same degree on all sales to a market (*e.g.*, the home market or the U.S. market).<sup>33</sup> Euro SME does not claim a level of trade offset in this review.<sup>34</sup>

Based on these selling function categories, we find that Euro SME performed the same selling functions at the same level of intensity for both of its U.S. market channels of distribution, and, thus, we determine that all U.S. market sales are at the same LOT. We compared the selling functions in the home market distribution channel to the selling functions in the U.S. distribution channel and preliminarily find that the selling functions Euro SME performed for the home market customers are similar to the ones performed for U.S. customers at a similar level of intensity. Therefore, based on the totality of the facts and circumstances, we preliminarily determine that Euro SME's sales to the home market during the POR were made at the same LOT as Euro SME's EP sales to the U.S. market. Consequently, we matched all EP sales to home market sales, and no LOT adjustment was warranted.

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<sup>28</sup> See Euro SME's AQR at 10 and Exhibit 4.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 12 and Exhibit 5.

<sup>34</sup> See Euro SME's BQR at 17 and CQR at 42.

#### D. Cost of Production Analysis

Pursuant to section 773(b)(2)(A)(ii) of the Act, Commerce required that Euro SME provide constructed value (CV) and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

##### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by Euro SME, without any adjustments.<sup>35</sup>

We examined Euro SME's cost data and determined that our quarterly cost methodology is not warranted.<sup>36</sup> Therefore, we have applied our standard methodology of using annual average costs based on Euro SME's reported data.<sup>37</sup>

##### 2. Test of Comparison Market Sales Prices

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

##### 3. Results of the COP Test

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

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<sup>35</sup> See Euro SME's Third SQR at Attachment A page 5; see also Euro SME's COP database, dated September 24, 2019.

<sup>36</sup> *Id.*

<sup>37</sup> See Euro SME's Preliminary Analysis Memorandum.

average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Where we find that more than 20 percent of a company's home market sales for a given product were made 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 excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Our cost test for Euro SME indicates that less than 20 percent of the respondent's comparison market sales of PRCBs were at prices less than the COP. Thus, in accordance with sections 773(b)(2)(B) and (C) of the Act, we did not disregard any below-cost sales because we determined that the below-cost sales were not made within an extended period of time and in "substantial quantities."<sup>38</sup>

#### E. Calculation of Normal Value Based on Comparison Market Prices

For Euro SME, we based NV on delivered prices to unaffiliated customers. We made deductions from the starting price for movement expenses, including inland freight from plant/warehouse to the customer<sup>39</sup> under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and inventory carrying costs), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.<sup>40</sup>

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.<sup>41</sup>

### 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. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

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

<sup>39</sup> See Euro SME's BCDQR. at pages 43-50.

<sup>40</sup> See Euro SME's Preliminary Analysis Memorandum.

<sup>41</sup> See 19 CFR 351.411(b).

**X. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

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Agree

\_\_\_\_\_  
Disagree

10/9/2019

**X** 

\_\_\_\_\_  
Signed by: JEFFREY KESSLER  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance