



A-557-813
Administrative Review
POR: 8/1/18-7/31/19
Public Document
E&C/OIII: KAC

December 15, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Results of the
Antidumping Duty Administrative Review: Polyethylene
Retail Carrier Bags from Malaysia: 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on polyethylene retail carrier bags (PRCBs) from Malaysia. This review covers Euro SME Sdn Bhd (Euro SME). The period of review (POR) is August 1, 2018 through July 31, 2019. We preliminarily determine that Euro SME did not sell subject merchandise in the United States at prices below normal value (NV) during the POR.

II. BACKGROUND

On August 9, 2004, Commerce published in the *Federal Register* the AD order on PRCBs from Malaysia.¹ On August 2, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.² Commerce received timely requests to conduct an administrative review of Euro SME, from Hilex Poly Co., LLC and Superbag Corp (the petitioners), and Euro SME.³ On October 7, 2019, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review covering Euro SME.⁴

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

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

³ See Petitioners' Letter, "Polyethylene Retail Carrier Bags From Malaysia: Request for Administrative Review," dated August 30, 2019; see also Euro SME's Letter, "Polyethylene Retail Carrier Bags from Malaysia; Administrative Review Request," dated September 3, 2019.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53411 (October 7, 2019) (*Initiation Notice*).



On December 31, 2019, we issued the initial AD questionnaire to Euro SME.⁵ On January 14, 2020, the petitioners submitted a request for verification.⁶ Euro SME provided timely responses to the relevant sections of the initial AD questionnaire.⁷ The petitioners provided rebuttal factual information and deficiency comments regarding Euro SME's submissions on March 5, 2020.⁸ Subsequently, we issued two supplemental questionnaires to Euro SME.⁹ Euro SME provided timely responses.¹⁰ On July 1, 2020, the petitioners withdrew their request for verification.¹¹ No party submitted pre-preliminary comments.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.¹² On June 9, 2020, we extended the preliminary results from June 22, 2020 to October 16, 2020.¹³ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.¹⁴ The deadline for the preliminary results of this review is now December 15, 2020.

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 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 restaurants, to their customers to package and carry their purchased products. The scope of this

⁵ See Commerce's Letter, "Antidumping Duty Questionnaire," dated December 31, 2019.

⁶ See Petitioners' Letter, "Polyethylene Retail Carrier Bags from Malaysia: Request for Verification," dated January 14, 2020.

⁷ See Euro SME's Letters, "Polyethylene Retail Carrier Bags from Malaysia; Section A Response," dated January 28, 2020 (Euro SME's AQR); and "Polyethylene Retail Carrier Bags from Malaysia; Sections B-D Response," dated February 13, 2020 (Euro SME's BCDQR).

⁸ See Petitioners' Letter, "Polyethylene Retail Carrier Bags from Malaysia: Petitioner's Submission of Rebuttal Factual Information and Comments on Euro SME's Initial Questionnaire Responses," dated March 5, 2020.

⁹ See Commerce's Letters, "Polyethylene Retail Carrier Bags from Malaysia: First Supplemental Questionnaire," dated June 5, 2020; and "Polyethylene Retail Carrier Bags from Malaysia: Second Supplemental Questionnaire," dated November 4, 2020.

¹⁰ See Euro SME's Letters, "Polyethylene Retail Carrier Bags from Malaysia; First Supplemental Response," dated June 26, 2020 (Euro SME's SQR); and "Polyethylene Retail Carrier Bags from Malaysia; Second Supplemental Response," dated November 9, 2020 (Euro SME's 2SQR).

¹¹ See Petitioners' Letter, "Polyethylene Retail Carrier Bags From Malaysia: Withdrawal of Request for Verification," dated July 1, 2020.

¹² See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

¹³ See Memorandum, "Polyethylene Retail Carrier Bags from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 9, 2020.

¹⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

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 Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213.

A. Collapsing of Affiliated Companies

Section 771(33) of the Act identifies persons that shall be considered “affiliated” or “affiliated persons,” if: (A) members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. Commerce’s regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.¹⁵

Section 351.401(f) of Commerce’s regulations outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings:

- 1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- 2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - i. The level of common ownership;

¹⁵ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27298 (May 19, 1997).

- ii. The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- iii. Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.¹⁶

Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.¹⁷ While section 19 CFR 351.401(f) explicitly applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, Commerce has treated exporting companies as a single entity,¹⁸ as well as producers and exporters as a single entity.¹⁹ Furthermore, the Court of International Trade (CIT) has upheld Commerce's practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities were not both producers.²⁰

We preliminarily determine that Euro SME and Euro Nature Green Sdn Bhd (Euro Nature Green) are affiliated, pursuant to section 771(33)(E) of the Act, because the record demonstrates that Euro Nature Green is a wholly-owned subsidiary of Euro SME.²¹ Further, we preliminarily determine that Euro SME and Euro Nature Green should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f). Specifically, we find, in accordance with our practice, that the criterion in 19 CFR 351.401(f)(1) is met. Although Euro SME produces the subject merchandise, Euro Nature Green sells and exports the merchandise produced by Euro SME in the United States and third countries.²² We also find that the criterion in 19 CFR 351.401(f)(2), significant potential for manipulation, is met as Euro Nature Green is a wholly owned subsidiary of Euro SME, the companies share an intertwined organization structure, Euro Nature Green makes all of Euro SME's export sales to the U.S. market, and both companies operate out of the

¹⁶ See 19 CFR 351.401(f).

¹⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004) (*Shrimp from Brazil*), and accompanying Issues and Decision Memorandum (IDM) at Comment 5; see also *Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 68111 (December 13, 2019), and accompanying Preliminary Decision Memorandum at 5-7, unchanged in *Certain Quartz Surface Products from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 85 FR 25389 (May 1, 2020).

¹⁸ See *Shrimp from Brazil*, and accompanying IDM at Comment 5.

¹⁹ See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010).

²⁰ See *United States Steel Corp. v. United States*, 179 F. Supp 3d 1114, 1135 (CIT 2016) ("Although Commerce's collapsing regulation speaks of treating two or more affiliated producers as a single entity, Commerce has developed a practice of collapsing exporters with affiliated producers of subject merchandise under certain circumstances.")

²¹ See Euro SME's AQR at 7 and Exhibit 3.

²² *Id.* at 6; see also Euro SME's SQR at 4-5.

same location.²³ Therefore, we are preliminarily treating the two companies as a single entity for purposes of these preliminary results.

B. 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.

1. 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 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 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.²⁴

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 pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁵ 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.

²³ See Euro SME’s AQR at 4-7.

²⁴ 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 IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1293 (CIT 2014); and *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

²⁵ 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).

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.

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.

2. Results of the Differential Pricing Analysis

For Euro SME, based on the results of the differential pricing analysis, Commerce preliminarily finds that 54.97 percent of the value of U.S. sales pass the Cohen's *d* test,²⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Further, we preliminarily determine 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.²⁷ Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Euro SME.

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

²⁶ 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).

²⁷ For further discussion, see Euro SME's Preliminary Analysis Memorandum.

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.

Euro SME reported the earlier of the date of shipment from the factory or the invoice date as date of sale for both home market sales and U.S. sales.²⁸ Accordingly, we preliminarily followed Commerce's longstanding practice of basing the date of sale for all of Euro SME's comparison market and U.S. sales on the earlier of the invoice or shipment date.

D. 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.

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.²⁹ For Euro SME's sales of PRCBs in the United States, the reported control number identifies the characteristics of PRCBs, as exported by Euro SME.³⁰

E. 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.³¹ 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.³² As Euro SME reported that all the sales to United States

²⁸ See Euro SME's BCDQR at 11 and 33.

²⁹ See Euro SME's BCDQR at 4-5 and 61-63.

³⁰ *Id.* at 26.

³¹ *Id.* at 48.

³² See Euro SME's Preliminary Analysis Memorandum.

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.*).

F. Normal Value

1. 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.

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 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.

2. 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.³³ Under section 773(a)(5) of the Act, Commerce has considerable discretion in deciding whether to include affiliated party sales when calculating normal value.³⁴ 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 if the agency is satisfied that the transactions were made at arm's length."³⁵

³³ See 19 CFR 351.403(c).

³⁴ See section 773(a)(5) of the Act; *see also NTN Corp. v. United States*, 306 F. Supp. 2d 1319, 1332 (CIT 2004) (affirming Commerce's discretion to apply the arm's-length test to determine whether to exclude certain home market sales to affiliated parties in the normal value calculation.).

³⁵ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003) (emphasis in original).

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.³⁶ 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.

3. 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 U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³⁷ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁸ 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.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, where NV is based on either home market or third country prices),³⁹ 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.⁴⁰

When Commerce is unable to match U.S. sales to sales in the comparison market at the same LOT, Commerce may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing U.S. 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 to determine 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.⁴¹

We obtained information from Euro SME regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by Euro SME for each channel of distribution.⁴² Euro SME reported one channel of distribution,

³⁶ See Euro SME's AQR at 3.

³⁷ See 19 CFR 351.412(c)(2).

³⁸ *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

³⁹ Where NV is based on constructed value (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).

⁴⁰ See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

⁴¹ See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7.

⁴² See Euro SME's AQR at 11-12.

direct from factory sales, in the U.S. and comparison markets.⁴³ In addition, Euro SME reported that certain sales exported to the U.S. market were shipped through an unaffiliated service agent.⁴⁴ Euro SME's selling function chart indicates that the selling activities performed for sales in both markets are similar, with no significant variation across the broader categories of sales support, training services, technical support, logistical services or performance of sales related administrative activities.⁴⁵ Consequently, for Euro SME, we preliminarily determine that there is one LOT that is the same for sales in both the home market and the U.S. market and, therefore, we find no difference in the LOT in the comparison of U.S. prices with normal values.

G. Cost of Production (COP) Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP information from Euro SME. We examined Euro SME's cost data and determined that our quarterly cost methodology is not warranted; therefore, we are applying our standard methodology of using annual costs based on the reported data.

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.⁴⁶

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

⁴³ *Id.* at 14.

⁴⁴ *Id.*

⁴⁵ *Id.* at Exhibit 4.

⁴⁶ *See* Euro SME's 2SQR.

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-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 indicated that for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales in our analysis as outside of the ordinary course of trade and used the remaining sales to determine NV.⁴⁷

G. Calculation of Normal Value Based on Comparison Market Prices

For Euro SME, we based NV on delivered prices to unaffiliated customers in the home market. We made deductions from the starting price for movement expenses, including inland freight from plant/warehouse to the customer⁴⁸ 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 351.410.⁴⁹

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.⁵⁰

H. 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>.

⁴⁷ See Euro SME’s Preliminary Analysis Memorandum at Attachment 3.

⁴⁸ See Euro SME’s BCDQR at pages 43-50.

⁴⁹ See Euro SME’s Preliminary Analysis Memorandum.

⁵⁰ See 19 CFR 351.411(b).

V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

☐

Agree

Disagree

12/15/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance