



A-557-823
Investigation
POI: 10/01/2019 – 09/30/2020
Public Document
E&C/OVII: DSA

May 26, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Polyester Textured Yarn
from Malaysia

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that polyester textured yarn from Malaysia is being, or is 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 October 28, 2020, Commerce received an antidumping duty (AD) petition covering imports of polyester textured yarn from Malaysia, filed properly by Unifi Manufacturing, Inc. (Unifi), and Nan Ya Plastics Corporation, America (Nan Ya) (collectively, the petitioners), domestic producers of polyester textured yarn.¹ Commerce initiated the investigation on November 17, 2020.²

The Petition identified the producers and/or exporters of the subject merchandise in Malaysia.³ 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) entry data for U.S.

¹ See Petitioners’ Letter, “Petition for the Imposition of Antidumping Duties on Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and Vietnam,” dated October 28, 2020 (Petition).

² See *Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 74680 (November 23, 2020) (*Initiation Notice*).

³ See Petition, Volume I at Exhibit GEN-6.



imports under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the “Scope of the Investigations,” in the appendix.⁴ Accordingly, on November 12, 2020,⁵ Commerce released to all interested parties under an administrative protective order (APO), and requested comments regarding the CBP data and respondent selection.⁶ Commerce notified the public that, where appropriate, it intended to select respondents based on the CBP entry data.⁷

On December 14, 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 polyester textured yarn from Malaysia.⁸

On December 18, 2020, Commerce selected one respondent for individual examination that accounted for the largest volume of entries of subject merchandise into the United States during the period of investigation (POI), Recron (Malaysia) Sdn. Bhd. (Recron).⁹ Accordingly, we issued the AD questionnaire individually to Recron.¹⁰

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of this and the companion investigations of polyester textured yarn, as well as on the appropriate physical characteristics of polyester textured yarn to be reported in response to Commerce’s AD questionnaire.¹¹ On December 7, 2020, we received timely comments from interested parties on physical characteristics.¹² On December 18, 2020, Commerce determined the product characteristics applicable to this investigation.¹³ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.¹⁴

⁴ See *Initiation Notice*, 85 FR at 74680.

⁵ See Memorandum, “Antidumping Duty Petition on Polyester Textured Yarn from Malaysia: Release of U.S. Customs and Border Protection Data,” dated November 12, 2020.

⁶ See Memorandum, “Antidumping Duty Petition on Polyester Textured Yarn from Malaysia: Release of U.S. Customs and Border Protection Data,” dated November 12, 2020.

⁷ See *Initiation Notice*, 85 FR 74680

⁸ See *Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and Vietnam; Determinations*, Investigation Nos. 731-TA-1550-1553 (Preliminary), 85 FR 82514 (December 18, 2020).

⁹ See Memorandum, “Less-Than-Fair-Value Investigation of Polyester Textured Yarn from Malaysia: Selection of Respondents for Individual Examination,” dated December 18, 2020.

¹⁰ See Commerce’s Letter, dated December 22, 2020; *see also* Memorandum, “Polyester Textured Yarn from Malaysia: Questionnaire Delivery Confirmation,” dated January 4, 2020.

¹¹ See *Initiation Notice*, 85 FR 74680.

¹² See Petitioners’ Letter, “Polyester Textured yarn from Indonesia, Malaysia, Thailand, and Vietnam – Petitioners’ Comments on the Hierarchy of Product Matching Characteristics,” dated December 7, 2020.

¹³ See Memorandum, “Polyester Textured Yarn from Indonesia and Thailand: Product Characteristics,” dated December 18, 2020.

¹⁴ The deadline for interested parties to submit comments on the scope of this investigation was December 7, 2020. See *Initiation Notice*, 85 FR 74680.

From January 2021 through May 2021, Recron submitted timely responses to Commerce's questionnaire and supplemental questionnaires¹⁵ and the petitioners submitted comments on these responses.¹⁶

On March 9, 2021, the petitioners submitted a request to extend the preliminary determination in this investigation,¹⁷ and on April 2, 2021, Commerce postponed the preliminary determination in this investigation by 50 days until May 26, 2021, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).¹⁸

On May 18, 2021, Recron 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.¹⁹

¹⁵ See Recron's Letter, "Polyester Textured Yarn from Malaysia: Recron (Malaysia) Sdn. Bhd. Section A Questionnaire Response," dated January 25, 2021 (Recron's AQR); Recron's Letter, "Polyester Textured Yarn from Malaysia: Recron (Malaysia) Sdn. Bhd. Sections B and C Questionnaire Response," dated February 8, 2021; Recron's Letter, "Polyester Textured Yarn from Malaysia: Recron (Malaysia) Sdn. Bhd. Section D Questionnaire Response," dated February 16, 2021; Recron's Letter, "Polyester Textured Yarn from Malaysia: Recron (Malaysia) Sdn. Bhd. Section A Supplemental Questionnaire Response," dated March 15, 2021 (Recron's SAQR); Recron's Letter, "Polyester Textured Yarn from Malaysia: Recron (Malaysia) Sdn. Bhd. Sections B-C Supplemental Questionnaire Narrative Response," dated March 29, 2021 (Recron's SBCQR); Recron's Letter, "Polyester Textured Yarn from Malaysia: Recron (Malaysia) Sdn. Bhd. Section D Supplemental Questionnaire Response," dated April 26, 2021; Recron's Letter, "Polyester Textured Yarn from Malaysia: Recron (Malaysia) Sdn. Bhd. Sections A-C Second Supplemental Questionnaire Response," dated May 6, 2021 (Recron's SACQR).

¹⁶ See Petitioners' Letter, "Polyester Textured Yarn from Malaysia – Petitioners' Comments Concerning The Response Of Recron (Malaysia) Sendirian Berhad to Section A of the Antidumping Questionnaire," dated February 11, 2021; Petitioners' Letter, "Polyester Textured Yarn from Malaysia – Petitioners' Comments Concerning The Response Of Recron (Malaysia) Sendirian Berhad to Sections B and C of the Antidumping Questionnaire," dated February 22, 2021; Petitioners' Letter, "Polyester Textured Yarn from Malaysia – Petitioners' Comments Concerning The Response Of Recron (Malaysia) Sendirian Berhad to Section D of the Antidumping Questionnaire," dated February 25, 2021; Petitioners' Letter, "Polyester Textured Yarn from Malaysia – Petitioners' Comments Concerning The Response Of Recron (Malaysia) Sendirian Berhad to the Supplemental Section A Questionnaire," dated March 24, 2021 (Petitioner's March 24, 2021 Comments); Petitioners' Letter, "Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam – Petitioners' Submission of Comments and Factual Information Regarding Intermingled Textured Yarn ("ITY")," dated April 9, 2021; Petitioners' Letter, "Polyester Textured Yarn from Malaysia – Petitioners' Comments Concerning The Response Of Recron (Malaysia) Sendirian Berhad to the Supplemental Section B and C Questionnaire," dated April 16, 2021.

¹⁷ See Petitioners' Letter, "Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam – Petitioners' Request to Postpone the Preliminary Determinations," dated March 9, 2021.

¹⁸ See *Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 86 FR 17362 (April 2, 2021).

¹⁹ See Recron's Letter, "Polyester Textured Yarn from Malaysia: Request to Extend the Final Determination," dated May 18, 2021.

III. PERIOD OF INVESTIGATION

The POI is October 1, 2019, through September 30, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was filed on October 28, 2020.²⁰

IV. SCOPE OF INVESTIGATION

The product covered by this investigation is polyester textured yarn from Malaysia. For a full description of the scope of this investigation, *see* the accompanying *Federal Register* notice for the preliminary determination of this investigation at Appendix I.

V. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations, the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).²¹ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*. The Preliminary Scope Decision Memorandum establishes the deadline to submit scope case briefs.²² There will be no further opportunity for comments on scope-related issues.

Recron excluded sales of polyester high twisted yarn (PHTY) from its response to the initial questionnaire.²³ The company claimed that PHTY is outside the scope of the investigation because the merchandise under investigation is manufactured using a "texturizing" process, while PHTY is manufactured using a "twisting" process.²⁴ The petitioners argued, however, that PHTY products have undergone both the texturizing and the twisting processes, and that the scope includes "all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packaging method (such as spindles, tubes, or beams)."²⁵ After considering the respondent's reasoning for excluding PHTY from its questionnaire response and the comments provided by the petitioners in response, Commerce requested that the respondent report all sales and costs of PHTY in a supplemental questionnaire response. Because the petitioners' request for the imposition of AD and/or CVD

²⁰ See 19 CFR 351.204(b)(1).

²¹ See Memorandum, "Antidumping duty investigations of Polyester Textured Yarn from Indonesia, Malaysia, Thailand and Vietnam: Preliminary Scope Decision Memorandum," dated concurrently with this notice (Preliminary Scope Decision Memorandum).

²² Case briefs, other written comments, and rebuttal briefs submitted by in response to this preliminary LTFV determination should not include scope-related issues. See Preliminary Scope Decision Memorandum, and "Public Comment" section of this notice.

²³ See Recron's SAQR at 19.

²⁴ See Recron's SAQR at 7-8.

²⁵ See Petitioner's March 24, 2021 Comments at 4-7.

duties includes “all forms of polyester textured yarn” subject to this investigation,²⁶ and makes no exceptions for the degree of twist in the final product, we preliminarily find that PHTY is included as one type of PTY that is subject to the scope of the investigations. As the information concerning PHTY is solely on the record of the Malaysia investigation, we intend to request that Recron and the petitioners place public versions of their comments and factual information concerning PHTY on the records of each of the companion PTY investigations. We also intend to allow all interested parties an opportunity to provide rebuttal factual information and comments on this information prior to submission of the scope case briefs.

VII. ALL-OTHERS RATE

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act.

Commerce has preliminarily determined that the estimated weighted-average dumping margin for Recron is 17.35 percent. Therefore, pursuant to section 735(c)(5)(A) of the Act, we determine that it is reasonable to determine the all-others rate based on Recron’s estimated weighted-average dumping margin because Recron’s estimated weighted-average dumping margin is the only individually calculated rate, and that rate is not zero, *de minimis*, or based entirely on facts otherwise available.

VIII. DISCUSSION OF THE METHODOLOGY

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 sales of polyester textured yarn from Malaysia to the United States were made at LTFV, Commerce compared the export price (EP) or constructed export prices (CEP) to the normal value (NV), as described in the “U.S. Price” and “Normal Value” sections of this memorandum.

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 (A-to-A) 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 NVs with EPs or CEPs of individual sales, *i.e.*, the average-to-transaction (A-to-T) 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 A-to-T method is appropriate in a particular situation

²⁶ See *Initiation Notice* at Appendix.

pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁷ 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 A-to-A 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 U.S. 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 A-to-A 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 codes (*i.e.*, zip codes) 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 (CONNUM)²⁸ 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 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.

²⁷ See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

²⁸ The product control number is a concatenation of the codes reported for the physical characteristics of the in-scope merchandise.

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 accounts 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 A-to-T method to all sales as an alternative to the A-to-A 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 A-to-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-to-A method, and application of the A-to-A 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 A-to-A 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 DP analysis, Commerce examines whether using only the A-to-A 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 A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative 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 margin between the A-to-A 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 A-to-A 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 DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.²⁹

2. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 93.25 percent of the value of Recron’s U.S. sales pass the Cohen’s *d* test, and therefore, confirms the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Further, Commerce preliminarily determines that the A-to-A method accounts for such differences because there is not a 25 percent change between the estimated weighted-average dumping margin calculated using the A-to-A method and the estimated weighted-average dumping margin calculated using the A-to-T method applied to all U.S. sales. Thus, for this

²⁹ 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 our differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

preliminary determination, Commerce has applied the A-to-A method to all U.S. sales to calculate the estimated weighted-average dumping margin for Recron.

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 model matching purposes, within a certain deadline.³⁰ We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining the CONNUMs of polyester textured yarn in this investigation. Commerce identified 13 criteria for the physical characteristics of the subject merchandise to be used in creating the CONNUMs, in the following order from most important to least important: (1) finished type – covered; (2) specialty yarn; (3) yarn denier; (4) number of filaments; (5) ply; (6) intermingling; (7) dye type; (8) color; (9) luster; (10) finish type – twisted; (11) cross section; (12) texturing type; and (13) fiber type. We instructed the respondents to use these product characteristics in their responses to the questionnaire issued in this investigation.³¹

In accordance with section 771(16) of the Act, we considered all products produced and sold by Recron in Malaysia during the POI that fit the description in the “Scope of Investigation” section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining normal value for comparisons with U.S. sale prices.³² We compared U.S. sale prices of subject merchandise to normal values based on home market sale prices of the foreign like product based on the 13 product characteristics identified. Where there were no POI home market sales in the ordinary course of trade of foreign like products that were identical or similar to subject merchandise sold in the United States during the POI, we made comparisons of U.S. prices to normal values based on the constructed value (CV).

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 will normally use the date of invoice, as recorded in the respondent’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.³³ Finally, Commerce has a long-standing practice of finding that, where the shipment date

³⁰ See *Initiation Notice*, 85 FR 74680

³¹ See Product Characteristics Letter.

³² See accompanying *Federal Register* notice at Appendix I.

³³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (quoting 19 CFR 351.401(i)).

precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.³⁴

Recron reported the commercial invoice date as the date of sale for both its home market and U.S. sales.³⁵ Recron reports that changes in the *pro forma* invoice can and do occur. The *pro forma* invoice serves as an initial confirmation of intent to sell, and is only considered a preliminary invoice, where the details of the sale parameters are not yet complete, and typically occurs several days to weeks before the commercial invoice.³⁶ Recron states that the commercial invoice establishes the point wherein the material terms of sale are set.³⁷ Commerce requested in a supplemental questionnaire that Recron provide additional examples that demonstrate changes to material terms of sale between the *pro forma* and commercial invoice within the POI, which was subsequently provided by Recron.³⁸ The examples confirm changes to quantity and delivery location. The record indicates no further changes to the material terms of sale after the issuance of the commercial invoice. Commerce is utilizing the date of the commercial invoice as the date of sale because this is the regulatory preference and no record information indicates that a more appropriate date exists to define when the material terms of sale are set. When a sale was shipped before the issuance of the commercial invoice, Commerce is relying on the shipment date as the date of sale in accordance with its long-standing practice.

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.

In accordance with section 772(a) of the Act, we calculated EP for all of Recron’s U.S. sales because the subject merchandise was first sold directly to the first unaffiliated U.S. purchaser prior to importation into the United States, and the CEP methodology was not otherwise warranted based on the facts of the record. We calculated EP for Recron based on the ex-factory or delivered prices charged to the first unaffiliated U.S. customer. We made deductions, where appropriate, for movement expenses (*i.e.*, inland freight from the factory or warehouse to the port of exportation, various brokerage and handling fees, international freight, and marine insurance), in accordance with section 772(c)(2)(A) of the Act.

³⁴ 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); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 10.

³⁵ See Recron’s SAQR at 5-6.

³⁶ *Id.* at 5; see also Recron’s SACQR at Exhibit 2SA-1.1-2.

³⁷ *Id.* at 5-6.

³⁸ See Recron’s SACQR at Exhibit 2SA-1.1-2

E. 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, we compared the volume of Recron's home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. We preliminarily found the aggregate volume of Recron's home market sales of the foreign like product to be more than five percent of the aggregate volume of their U.S. sales of subject merchandise. Therefore, we preliminarily determine that Recron has a viable home market and have based NV on their home market sale prices of the foreign like product 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. sale price. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁰ 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, 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 the LOTs for U.S. and comparison market sales,⁴¹ we consider the starting prices before any adjustments.

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 price to a normal value at a different LOT in the comparison market. In comparing EP or CEP sale prices at a different LOT than the normal value in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In this investigation, we obtained information from Recron regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.⁴² Our LOT findings are summarized below.

³⁹ See 19 CFR 351.412(c)(2).

⁴⁰ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7.

⁴¹ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁴² See Recron's AQR.

Recron has indicated two channels of distribution in the home market as either sales to “actual users” (*i.e.*, consumers) (HM Channel 1) or sales to trading companies (HM Channel 2).⁴³ Actual users are those customers who purchase the materials for their own consumption. Recron noted that there are no home market sales through selling agents. Recron has indicated three channels of distribution in the U.S. market. Sales to actual users have been coded under 1 (US Channel 1), sales to trading companies have been coded under 2 (US Channel 2), and sales through selling agents have been coded under 3 (US Channel 3).⁴⁴

Information provided by Recron that has been analyzed by Commerce indicates that the selling functions are performed with the same level of intensity across all channels of distribution in both markets, thus confirming Recron’s claim that there is only one LOT in both markets and that the LOT is the same in both markets.⁴⁵

F. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, we obtained cost of production (COP) information from Recron. We examined the respondent’s COP data and determined that our quarterly cost methodology is not warranted. Therefore, we are applying our standard methodology of using annual costs based on Recron’s reported POI cost data in calculating COP.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and financial expenses. We relied on the information submitted by Recron except for “major input” and “transactions disregarded” adjustments to certain purchased inputs from an affiliated supplier, and by adding back to general and administrative expenses and financial expenses certain items that were excluded from each category.

In responding to the section D questionnaire and subsequent supplemental questionnaires, Recron failed to submit the contemporaneous cost of production for a major input supplied by an affiliated producer. Consequently, we have relied on partial adverse facts available to account of the cost of production for this input and to apply the major input rule. For a detailed analysis of the adjustments, *see* the Preliminary Cost Memorandum.⁴⁶

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the CONNUM-specific 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 COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were

⁴³ *Id.* at 13.

⁴⁴ *Id.* at 13.

⁴⁵ *Id.* at Exhibit 3(a)(iv).

⁴⁶ *See* Commerce’s Letter, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Recron Sdn. Bhd.,” dated May 26, 2021 (Preliminary Cost Memorandum).

exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of 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.

For this preliminary determination, we have found that certain home market sales by Recron were at prices below the COP, were made within an extended period of time, and did not permit the recovery of all costs within a reasonable period of time. As such, we have determined that these home market sales are outside the ordinary course of trade, disregarded these home market sales when calculating normal value, and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

G. Calculation of NV Based on Comparison Market Prices

We calculated NV for Recron based on home market prices to unaffiliated customers. We made adjustments to the starting price for billing adjustments and made deductions for early payment discounts, promotion discounts, other discounts and rebates in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including, where appropriate, foreign inland freight and insurance, under section 773(a)(6)(B)(ii) of the Act.

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

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 limited 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.

We also added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act, respectively.

When comparing EP with a NV based on home market sale prices of similar, but not identical, merchandise, Commerce 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 product and subject merchandise.⁴⁷

H. Calculation of NV Based on CV

In accordance with section 773(e) of the Act, if there is no NV based on home market sale prices of identical or similar merchandise in the ordinary course of trade, then we use CV as the basis for NV. We calculate CV based on the sum of the cost of materials and fabrication, G&A and financial expenses as described above in the section titled “Calculation of Cost Of Production.” Further, in accordance with section 773(e)(2)(A) of the Act and 19 CFR 351.405(b)(1), we add amounts for selling expenses and profit based on the amounts incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade in the home market.

We make adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and 19 CFR 351.410. We make adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act, where appropriate, by deducting home market direct selling expenses (*i.e.*, imputed credit expenses) and added U.S. market direct selling expenses (*i.e.*, imputed credit expenses, bank charges, and commissions).

We also make adjustments, if applicable, 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.

We also add U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act.

I. Prime vs. Non-Prime Merchandise

In submitting its home and U.S. market sales data, Recron classified the merchandise being sold as either prime or non-prime (or “metered” or “non-metered”). In response to further questioning, Recron claimed that among its internal grade categories, only one is considered prime merchandise;⁴⁸ however, Recron failed to report its internal grade

⁴⁷ See 19 CFR 351.411(b).

⁴⁸ See Recron’s SBCQR.

categories in its home and U.S. market sales data. Further, Recron's description of its internal grade categories raises further questions. The petitioners also raise concerns regarding Recron's internal grade categories and its reporting of certain home and U.S. market sales as involving non-prime merchandise.

Thus, for this preliminary determination, Commerce finds that Recron has not supported its reporting of certain home and U.S. market sales as involving non-prime merchandise, and we have revised the product quality of all home and U.S. market sales as prime-quality merchandise. Further, we will examine the issue further after this preliminary determination.

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 date of the U.S. sales as certified by the Federal Reserve Bank.

X. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

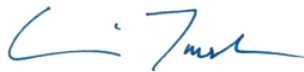
☒
☐

Agree

Disagree

5/26/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance