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Investigation
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September 17, 2019

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

FROM: Scot T. Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Acetone from
the Republic of South Africa

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that acetone from South Africa 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 February 19, 2019, Commerce received an antidumping duty (AD) petition concerning imports of acetone from South Africa that was properly filed with Commerce by the Coalition for Acetone Fair Trade (the petitioner).¹ On February 22 and 28, 2019, Commerce issued supplemental questionnaires to the petitioner.² On February 26 and March 4, 2019, the petitioner filed supplemental questionnaire responses regarding the Petition.³ Also on March 4, 2019, the

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping on Imports of Acetone From Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain," dated February 19, 2019 (Petition). The members of the Coalition for Acetone Fair Trade are AdvanSix Inc., Altivia Petrochemicals, LLC, and Olin Corporation.

² See Commerce's Letter, "Petition for the Imposition of Antidumping Duties on Imports of Acetone from South Africa: Supplemental Questions Concerning Volume VI," dated February 22, 2019; *see also* Memorandum, "Petitions for the Imposition of Antidumping Duties Acetone from South Africa: Phone Call with Counsel to the Petitioner," dated February 28, 2019.

³ See Petitioner's Letters, "Acetone from South Africa/Petitioner's Responses to Supplemental Questions Regarding Volume VI," dated February 26, 2019; and, "Acetone from South Africa/Petitioner's Responses to Second Supplemental Questions Regarding Volume VI," dated March 4, 2019.



petitioner submitted certain revisions to the scope as requested by Commerce.⁴ Commerce initiated this investigation on March 11, 2019.⁵ On April 5, 2019, 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 acetone from South Africa.⁶

In the *Initiation Notice*, Commerce stated that it intended to examine all known producers in the South Africa investigation, as indicated by the supporting information included in the Petition.⁷ Sasol Limited (Sasol)'s subsidiary, Sasol South Africa Limited (SSA), is the only producer of acetone in South Africa and was identified as the sole mandatory respondent.⁸ Commerce received no comments on its intention to examine all known producers.

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of acetone to be reported in response to Commerce's AD questionnaire.⁹ On April 8, 2019, Commerce received comments from the petitioner and SSA relating to the physical characteristics of acetone to be reported in response to the AD questionnaire.¹⁰ On April 22, 2019, Commerce received rebuttal comments from the petitioner and SSA on the physical characteristics of acetone to be reported in the AD questionnaire.¹¹ Comments and rebuttal comments received concerning the scope of the investigation are discussed below under the section, "Scope Comments."

On March 21, 2019, Commerce issued the AD questionnaire to SSA.¹² On April 4, 2019, SSA notified Commerce of potential difficulties in responding to section D of the questionnaire.¹³ On April 15, 2019, in response to a question by SSA, Commerce issued a clarification to the questionnaire with respect to SSA's reporting of its corporate structure.¹⁴ On April 24, 2019, Commerce finalized the proposed product characteristics, and other information related to

⁴ See Petitioner's Letter, "Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain/Petitioner's Responses to Supplemental Questions Regarding Scope," dated March 4, 2019..

⁵ See *Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 9755 (March 18, 2019) (*Initiation Notice*).

⁶ See *Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain; Investigation Nos. 731-TA-1435-1440 (Preliminary)*, 84 FR 14673 (April 11, 2019).

⁷ See *Initiation Notice*, 84 FR at 9759.

⁸ See Petition, Volume I at Exhibit I-10; see also *Initiation Notice* 84 FR at 9759; SSA's April 25, 2019 Section A Questionnaire Response (SSA's AQR) at 5-6.

⁹ See *Initiation Notice*, 84 FR at 9756-57.

¹⁰ See Petitioner's Letter, "Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain: Petitioner's Comments on Product Characteristics," dated April 8, 2019; see also Sasol's Letter, "Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Scope and Product Characteristic Comments," dated April 8, 2019.

¹¹ See Petitioner's Letter, "Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain: Petitioner's Rebuttal Comments on Scope and Product Characteristics," dated April 22, 2019; see also Sasol's Letter, "Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Product Characteristic Rebuttal Comments," dated April 22, 2019.

¹² See Commerce's Letter re: Antidumping Duty Questionnaire, dated March 21, 2019 (Initial AD Questionnaire).

¹³ See SSA's Letter, "Acetone from South Africa: Notification of Potential Difficulty in Responding to Questionnaire," dated April 4, 2019.

¹⁴ See Memorandum, "Acetone from the Republic of South Africa: Questionnaire Section A Corporate Structure Question and Response," dated April 15, 2019.

proposed model matching, for the LTFV investigations of acetone from Belgium, Korea, South Africa, Singapore, and Spain, and issued the finalized characteristics for Sections B-D of the AD questionnaire to SSA.¹⁵

On April 25, 2019, SSA submitted its response to Section A of the Questionnaire.¹⁶ On June 5, 2019, SSA submitted its responses to Sections B and C of the Questionnaire.¹⁷ On June 12, 2019, SSA submitted its responses to Section D of the Questionnaire.¹⁸ On June 21, 2019, petitioners submitted their deficiency comments on Sections A-D of the Questionnaire.¹⁹

On July 1, 2019, the petitioner requested that Commerce postpone the preliminary determination in the investigation.²⁰ On July 15, Commerce postponed the deadline for the preliminary determination of this investigation. As a result, the revised deadline for the preliminary determination of this investigation is now September 17, 2019.²¹

Commerce issued a Supplemental Questionnaire to SSA for Sections A-C on July 8, 2019.²² On July 11, 2019, Commerce issued a Supplemental Questionnaire to SSA for Section D.²³ SSA submitted its responses to the Supplemental Questionnaire for Sections A-C on July 26, 2019.²⁴ SSA submitted timely responses to the Supplemental Questionnaire for Section D in two parts, on August 5, 2019 and August 7, 2019, respectively.²⁵

Commerce issued a Second Supplemental Questionnaire to SSA for Sections A-C on August 14, 2019.²⁶ On August 22, 2019, SSA submitted its responses to the Second Supplemental Questionnaire for Sections A-C.²⁷ Commerce a Second Supplemental Questionnaire for Section

¹⁵ See Memorandum, “Acetone from the Republic of South Africa: Product Characteristics,” dated April 24, 2019; Memorandum, “Acetone from the Republic of South Africa: Clarification of Product Characteristics,” dated April 24, 2019.

¹⁶ See SSA’s AQR.

¹⁷ See SSA’s June 5, 2019 Section B Questionnaire Response (SSA’s BQR); SSA’s June 5, 2019 Section C Questionnaire Response (SSA’s CQR).

¹⁸ See SSA’s June 12, 2019 Section D Questionnaire Response.

¹⁹ See Petitioner’s Letter, “Acetone from South Africa: Petitioner’s Deficiency Comments Regarding Sasol South Africa’s Initial Questionnaire Responses,” dated June 21, 2019.

²⁰ See Petitioner’s Letter, “Acetone from South Africa: Petitioner’s Request for Postponement of the Preliminary Determination,” dated July 1, 2019.

²¹ See *Acetone from Belgium, the Republic of Korea, and the Republic of South Africa: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 33739 (July 15, 2019).

²² See Memorandum, “Supplemental Questionnaire for Sections A-C for the Antidumping Duty Investigation of Acetone from the Republic of South Africa,” dated July 8, 2019.

²³ See Memorandum, “Supplemental Questionnaire for Section D for the Antidumping Duty Investigation of Acetone from the Republic of South Africa,” dated July 11, 2019.

²⁴ See SSA’s July 26, 2019 Supplemental Questionnaire Section A-C Response (SSA’s First SQ A-C).

²⁵ See SSA’s August 5, 2019 Supplemental Questionnaire Section D Part 1 Response; *see also* SSA’s August 7, 2019 Supplemental Questionnaire Section D Part 2 Response.

²⁶ See Memorandum, “Second Supplemental Questionnaire for Sections A-C for the Antidumping Duty Investigation of Acetone from the Republic of South Africa,” dated August 14, 2019.

²⁷ See SSA’s August 22, 2019 Second Supplemental Questionnaire Section A-C Response.

D on August 26, 2019²⁸ and added an additional question on August 27, 2019.²⁹ SSA submitted its response to the Second Supplemental Questionnaire for Section D on September 4, 2019.³⁰

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2018 through December 31, 2018. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was February 2019.³¹

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On August 21, 2019, SSA requested, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination, and that provisional measures be extended to a period not to exceed six months.³² On August 22, 2019 the petitioner consented, in the event of an affirmative preliminary determination, to a postponement of the final determination if exporters accounting for a significant proportion of exports of subject merchandise request the postponement and submit a request to extend provisional measures from a four month to a six month period, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2).³³ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: 1) the preliminary determination is affirmative; 2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and 3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).³⁵ Both SSA

²⁸ See Memorandum, "Antidumping Duty Less Than Fair Value Investigation of Acetone from the Republic of South Africa," dated August 26, 2019.

²⁹ See Memorandum, "Additional request to the 2nd Section D Supplemental Questionnaire – Sasol South Africa Limited," dated August 27, 2019.

³⁰ See SSA's Letter, "Acetone from the Republic of South Africa: Second Supplemental Questionnaire Section D Response," dated September 4, 2019.

³¹ See 19 CFR 351.204(b)(1); see also *Initiation Notice*, 84 FR at 9756.

³² See SSA's Letter, "Acetone from the Republic of South Africa: Request to Postpone Final Determination," dated August 21, 2019.

³³ See Petitioner's Letter, "Acetone from Belgium, Korea, and South Africa: Petitioner's Consent to Postponement of the Final Determinations," dated August 22, 2019.

³⁴ See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³⁵ See *Initiation Notice*, 84 FR at 9756-7.

and the petitioner commented on the scope of the acetone investigations, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, as well as an accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.³⁶ On July 31, 2019, Commerce preliminarily modified the scope of the investigation to clarify certain provisions and to include a minimum acetone component of five percent by dry weight.³⁷

VI. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, as modified in the Preliminary Scope Decision Memorandum, *see* the accompanying *Federal Register* notice at Appendix I.

VII. AFFILIATION

In its initial questionnaire response, SSA reported the following affiliates, relevant to the production and sale of acetone: Sasol Limited (Sasol), Sasol Oil Proprietary Limited (Sasol Oil), Sasol Mining Proprietary Limited (Sasol Mining), Sasol Petroleum Temane Limitada (Sasol Temane), Sasol Gas (Pty) Ltd (Sasol Gas), Sasol Chemicals (USA) LLC (SCUSA), and Sasol Chemicals North America LLC (SCNA).³⁸

Section 771(33) of the Act states that Commerce shall consider the following persons to be affiliated:

- (A) Members of a family, including brothers and sisters (whether by whole or by 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.
- (G) Any person who controls any other person and such 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

³⁶ *See* Memorandum, “Acetone from Belgium, Korea, Singapore, South Africa, and Spain: Scope Comments Preliminary Decision Memorandum,” dated July 29, 2019 (Preliminary Scope Decision Memorandum) for further discussion.

³⁷ *Id.*

³⁸ *See* SSA’s AQR at 5-6, 10-17; *see also* Sasol’s 2017 Financial Statements at Exhibit A-25.a at pp. 150-51; Sasol’s 2018 Financial Statements at Exhibit A-25.a at pp. 148-149; SSA’s 2017 Financial Statements at Exhibit A-23 at pp. 45-47; and SSA’s 2018 Financial Statements at Exhibit A-23 at pp. 54-56.

the other person.” “Actual control...is not required by the statute... Rather, a person is considered to be in a position of control if he is legally in a position to exercise restraint or direction over the other person.”³⁹ “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”⁴⁰

SSA has self-declared affiliation with the above-listed companies, all of which, like SSA itself, are directly or indirectly owned by Sasol Limited.⁴¹ We find that SSA, Sasol Mining, Sasol Oil, SCUSA, SCNA, Sasol Temane, and Sasol Gas each meet the definition of affiliated persons under section 771(33)(F) of the Act because they are all controlled by Sasol Limited through significant direct or indirect ownership.⁴²

VIII. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether SSA’s sales of subject merchandise from South Africa to the United States were made at LTFV, Commerce compared the constructed export prices (CEP) to the normal value (NV), as described in the “Export Price and Constructed Export Price” and “Normal Value” sections of this memorandum.

1. Determination of 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 CEPs) (*i.e.*, the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method or A-to-T method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, Commerce has applied a “differential pricing” (DP) analysis for determining whether application of the A-to-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁴³ Commerce finds

³⁹ See *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1293 (CIT 2005).

⁴⁰ See 19 CFR 351.102(b)(37).

⁴¹ See SSA’s AQR at 14; *see also* Preliminary Analysis Memorandum.

⁴² See SSA’s AQR at 5-7, 9, 11-13; *see also* SSA’s AQR at Exhibit A-25.a at 96-97.

⁴³ See, e.g., *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final*

that the DP analysis used in those 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 DP analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The DP analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. If such a pattern is found, then the DP 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 reported by SSA. Regions are defined using the reported destination codes (*i.e.*, states) 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 being examined 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 any 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 DP 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 means (*i.e.*, weighted-average price) of a test group and 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 (*i.e.*, 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 means 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 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

Determination, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

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. 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 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 margin moves 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.⁴⁴

2. Results of the DP Analysis

Based on the results of the DP analysis, Commerce preliminarily finds that 45.59 percent of SSA's U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. However, Commerce finds that the A-to-A method appropriately accounts for such differences because there is not a meaningful difference in the weighted-average dumping margins calculated for SSA when calculated using the A-to-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-to-T method to those U.S. sales which passed the Cohen's *d* test and the A-to-A method to those sales which did not pass the Cohen's *d* test. Accordingly, Commerce has preliminarily determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for

⁴⁴ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See, e.g., Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

SSA.⁴⁵

IX. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce will normally 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.⁴⁶ Further, 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.⁴⁷

For both home market sales and U.S. sales, SSA reported the date of sale as the invoice date, as material terms of sale are not set until that date.⁴⁸ However, for both home market sales and U.S. sales, SSA reported some sales in which the shipment date was before the invoice date but stated that "sales are generally invoiced on the day they are shipped" and, "if shipment date precedes invoice date, these dates are generally within a few days of one another."⁴⁹ As such, SSA reported the date of sale as the invoice date "per Commerce's standard practice."⁵⁰ After further examination of the record, we preliminarily determine that the sales invoice date is the correct date of sale for the majority of SSA's sales. However, information on the record indicates that in certain instances, it is more appropriate to use the date of shipment as the date of sale for SSA's sales, as it precedes the reported invoice date, and accordingly, better reflects the date when the material terms of sales are established. Therefore, we used the earlier of the date of shipment or invoice date as the date of sale for our analysis.⁵¹

X. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in South Africa during the POI that fit the description in the "Scope of Investigation" section of the accompanying notice to be foreign like products for purposes of

⁴⁵ See Sasol South Africa Preliminary Analysis Memorandum.

⁴⁶ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sales' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

⁴⁷ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum (IDM) at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

⁴⁸ See SSA's AQR at 23; SSA's BQR at 16; SSA's CQR at 14.

⁴⁹ See SSA's BQR at n. 5; SSA's CQR at n. 6.

⁵⁰ See SSA's BQR at n. 5; SSA's CQR at n. 6.

⁵¹ See SSA's BQR, and accompanying home market sales database; SSA's CQR, and accompanying U.S. sales database.

determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents: purity, benzene presence, and alcohol content. For SSA's sales of acetone in the United States, the reported control number identifies the characteristics of acetone, as exported by SSA.⁵² SSA did not report sales of non-prime acetone to the United States.⁵³

XI. EXPORT PRICE AND CONSTRUCTED 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 (c)." Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." In accordance with section 772(b) of the Act, we based the U.S. price on the CEP for SSA.

SSA reported having only CEP sales during the POI. We calculated CEP based on prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses (*e.g.*, foreign inland freight, international freight, marine insurance, U.S. brokerage and handling expenses, U.S. inland freight to the unaffiliated U.S. customer, and the U.S. and foreign warehousing expenses) in accordance with section 772(c)(2)(A) of the Act.⁵⁴

For CEP transactions, in accordance with section 772(d)(1) of the Act, we also deducted selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (imputed credit expenses and other selling expenses), and indirect selling expenses (inventory carrying costs and other indirect selling expenses). Finally, we made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by SSA and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

XII. NORMAL VALUE

Section 773(a)(1)(B)(i) of the Act defines NV as "the price at which foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in

⁵² See SSA's BQR.

⁵³ See SSA's CQR at 9.

⁵⁴ See Preliminary Analysis Memorandum.

the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as {EP} or {CEP}.” Alternatively, section 773(a)(1)(B)(ii) of the Act provides that NV may be based on “the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States.” Section 773(a)(4) of the Act provides that if Commerce determines that NV cannot be determined under section 773(a)(1)(B)(i), “then, notwithstanding section 773(a)(1)(B)(ii),” NV may be based on CV under section 773(e) of the Act.

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 U.S. sales of 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.

We have determined that the aggregate volume of SSA’s home market sales of acetone is greater than five percent of the aggregate volume of its U.S. sales of the merchandise under consideration. Therefore, we used home market sales as the basis for NV for SSA in accordance with section 773(a)(1)(B) of the Act.

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.⁵⁵ Commerce excludes home market sales to affiliated customers that are not made at arm’s-length prices from our margin calculation 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 satisfied that the transactions were made at arm’s length.”⁵⁶

During the POI, SSA reported that it made one sale of the foreign-like product in the home market to an affiliated party, as defined in section 771(33)(F) of the Act.⁵⁷ Consequently, we

⁵⁵ See 19 CFR 351.403(c).

⁵⁶ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), remand aff’d, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

⁵⁷ See SSA’s BQR at 14.

tested SSA's sales, including its reported transfer to an affiliate, to ensure they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). In addition to comparing sales at the same level of trade, the test adjusts affiliated and unaffiliated party prices for numerous differences relating to the sales. The adjustments account for, among other things, differences in packing expenses, movement expenses from the original place of shipment, discounts and rebates, and selling expenses that relate directly to the sale at issue. While Commerce's questionnaire specifically requests information pertaining to a number of adjustments, it also allows for responding companies to claim additional adjustments for other expenses relating to the sales at issue. Thus, providing that a respondent has accurately reported its claimed differences in circumstances of sale, along with other expenses and price adjustments relating to the reported sales, the arm's-length test will account for such differences between sales to affiliates and non-affiliates.

Pursuant to 19 CFR 351.403(c) and, in accordance with Commerce's practice, as the price to that affiliated party was not, on average, within a range of 98-102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sale made to the affiliated party was not at arm's length.⁵⁸ With respect to sales to affiliated resellers that failed the arm's-length test, Commerce generally uses the reported downstream sales of the affiliates in our calculations for the preliminary determination. However, SSA reported that there was no downstream sale.⁵⁹ Thus, this sale was excluded completely from our analysis.

C. Level of Trade and CEP Offset

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales.⁶⁰ Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁶¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁶² 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.

⁵⁸ See section 771(15) of the Act and 19 CFR 351.102(b).

⁵⁹ See SSA's BQR at B-14; SSA's First SQ A-C at B-1 and Exhibit SB-1.

⁶⁰ See section 773(a)(7)(A) of the Act.

⁶¹ See 19 CFR 351.412(c)(2).

⁶² *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 Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁶³ 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.⁶⁴

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁶⁵

In the home market, SSA reported that it made sales through three channels of distribution, *i.e.* sales to unaffiliated customers directly from its Secunda plant, sales to unaffiliated customers from its Durban storage facility, and a single sale to an affiliate.⁶⁶ SSA's reported breakdown of sales activities for the all home market customers are of a business proprietary nature.⁶⁷

Selling activities can generally be grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) warranty and technical support; and 4) inventory maintenance and warehousing. Based on these selling function categories, we find that SSA performed all four selling functions for all their home market sales, and we determine that all home market sales are the same LOT.

In the United States, SSA reported that it made sales through one channel of distribution.⁶⁸ In determining whether separate LOTs exist in the U.S. market, we compared the selling functions performed by SCUSA/SCNA in the U.S. market channel of distribution. SCUSA and SCNA's reported breakdown of sales activities for the U.S. market are of a business proprietary nature but can be grouped into five categories for analysis: 1) provision of sales support; 2) provision of training services; 3) provision of technical support; 4) provision of logistical services; and 5)

⁶³ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (SG&A) expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

⁶⁴ *See Micron Tech, Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁶⁵ *See, e.g., OJ from Brazil* at Comment 7.

⁶⁶ *See* SSA's BQR at 15.

⁶⁷ *See* Preliminary Calculation Memo for list of individual sales functions performed for both home market and U.S. sales; *see also* SSA's AQR at Exhibit 9.

⁶⁸ *See* SSA's CQR at 13.

performance of sales related administrative activities.⁶⁹ Based on these categories, we find that SCUSA and SCNA performed all five selling functions for their U.S. sales, and we determine that all U.S. sales are the same LOT.

We compared the U.S. LOT to the home market LOT, and found that SSA and SCUSA and SCNA performed corresponding selling activities at the same or similar levels of intensity in both the U.S. and home markets.⁷⁰ Additionally, SSA reported only a single level of trade in both its home market and U.S. sales.⁷¹ Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT. As a result, no LOT adjustment pursuant to section 773(a)(7)(A) of the Act is warranted.

To determine whether the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, which excludes economic activities occurring in the United States. We found that the selling functions performed for CEP and home market sales differ significantly. Specifically, Commerce reviewed the information provided by SSA and concludes that while export sales to the United States involve very limited selling functions related to the sale of acetone, sales of acetone within South Africa involve significant selling functions.⁷² As such, we preliminarily determine that sales to the home market during the POI were made at a more advanced LOT than sales to the United States. Accordingly, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset to SSA.

D. Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the cost of production (COP), we based NV on comparison market prices. We calculated NV based on packed, delivered or ex-works prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for discounts, in accordance with 19 CFR 351.401(c). We made a deduction from the starting price for movement expenses, including inland freight and warehousing, 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 for circumstances of sale (imputed credit expenses and other selling expenses), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with home market sales of merchandise similar to that sold in the U.S. market, we made adjustments for differences in costs attributable to differences in the

⁶⁹ See Initial AD Questionnaire at A-15.

⁷⁰ See SSA's AQR at Exhibit 9.

⁷¹ See SSA's BQR at 25; see also SSA's CQR at 23.

⁷² See SSA's AQR at Exhibit 9.

physical characteristics of the 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.⁷³

E. Calculation of NV Based on Constructed Value (CV)

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of SSA's material and fabrication costs, selling general, and administrative (SG&A) expenses, profit and U.S. packing costs, as adjusted. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by SSA in connection with the production and sale of the foreign like product at the most similar LOT as the U.S. sale, as discussed above, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

F. Cost of Production (COP) Analysis

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 expenses (G&A) and interest expenses. We examined SSA's cost data and determined that our quarterly cost methodology is not warranted, therefore, we applied our standard methodology of using annual costs based on the reported data. We relied on the COP data submitted by SSA, except for the following adjustments.⁷⁴

- We adjusted the cost of natural gas purchased by SSA from affiliated suppliers to reflect the market price of the inputs in accordance with section 773(f)(2) of the Act.
- We revised SSA's financial expense ratio based on its parent company's audited financial statements for the fiscal year ending June 30, 2018.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) 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

⁷³ See 19 CFR 351.411(b).

⁷⁴ See Memorandum, "Antidumping Duty Less Than Fair Value Investigation of Acetone from the Republic of South Africa. Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination," dated September 17, 2019.

exclusive of any applicable discounts, 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. We found that less than 20 percent of respondent's comparison market sales of each product were at prices less than COP. Therefore, we did not disregard any home market sales.

XIII. 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.

XIV. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify SSA's information relied upon in making our final determination.

XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

9/17/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance