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DATE: October 6, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Polyethylene Terephthalate Resin From the Sultanate of
Oman: Decision Memorandum for the Preliminary Determination
in the Antidumping Duty Investigation

SUMMARY

The Department of Commerce (“the Department”) preliminarily determines that certain polyethylene terephthalate resin (“PET resin”) from the Sultanate of Oman (“Oman”) 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.

BACKGROUND

On March 10, 2015, the Department received an antidumping duty (“AD”) petition concerning imports of PET resin from Oman,¹ which was filed in proper form by DAK Americas LLC, M&G Chemicals, and Nan Ya Plastics Corporation, America (“Petitioners”). In March 2015, the Department requested information and clarification of certain areas of the Petition. Petitioner filed timely responses to these requests. On April 15, 2015, the Department published the notice of the initiation of the AD investigation of PET resin from Oman in the *Federal Register*.²

¹ See Petition for the Imposition of Antidumping Duties on Imports of Certain Polyethylene Terephthalate Resin from Canada, the People’s Republic of China, India, and the Sultanate of Oman and the Imposition of Countervailing Duties on Imports of Certain Polyethylene Terephthalate Resin from the People’s Republic of China, India, and the Sultanate of Oman, dated March 10, 2015 (“Petition”).

² See *Certain Polyethylene Terephthalate Resin From Canada, the People’s Republic of China India, and the Sultanate of Oman: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 18376 (April 6, 2015) (“Initiation Notice”).



In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, the scope of the investigation), and instructed all parties to submit comments by April 20, 2015, and to submit rebuttal comments by April 30, 2015. In addition, we set aside time for parties to submit comments regarding product characteristics, and instructed all parties to submit comments by April 20, 2015, and to submit rebuttal comments by April 27, 2015.

Moreover, in the *Initiation Notice*, the Department stated that Petitioners identified only one company as a producer/exporter of PET resin in Oman and that we currently know of no additional producers/exporters of merchandise under consideration from Oman.³ Accordingly, on April 27, 2015, the Department issued the AD questionnaire to the only known producer/exporter in Oman, OCTAL SAOC FZC (“OCTAL”). OCTAL submitted timely responses to the Department’s AD questionnaire (sections A, B, C, and D) and corresponding supplemental questionnaires between May 26, 2015, and September 18, 2015. Petitioners submitted comments on the OCTAL’s responses between June 6, 2015, and August 26, 2015.

On April 30, 2015, 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 PET resin from Oman.⁴ On March 10, 2015, pursuant to section 773(b) of the Act, Petitioners made a country-wide allegation that sales in the home market of Oman were made at or below the cost of production.⁵ On July 21, 2015, Petitioners requested a postponement of the preliminary determination.⁶ Also, on September 16, 2015, Petitioners filed comments for the Department to consider in its preliminary determination.⁷

PERIOD OF INVESTIGATION

³ *Id* at 18381.

⁴ See *Certain Polyethylene Terephthalate Resin from Canada, China, India, and Oman*, 80 FR 24276 (April 30, 2015).

⁵ On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 773(b)(2) of the Act, regarding the Department’s requests for information on sales at less than cost of production. See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production information from respondent companies in all AD proceedings. *Id.*, 80 FR at 46794-95. Here, the complete initial questionnaire was issued prior to the applicability date, and the Department requested this information from OCTAL. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

⁶ See Letter from Petitioners to the Secretary of Commerce “Investigation of Certain Polyethylene Terephthalate Resin from Canada, China, India, and Oman - Petitioners’ Request to Postpone Preliminary Determinations,” dated July 21, 2015.

⁷ See Letter from Petitioners to the Secretary of Commerce “Investigation of Certain Polyethylene Terephthalate Resin from the Sultanate of Oman – Petitioners’ Pre-Preliminary Determination Comments,” dated September 16, 2015 (“Petitioners” Comments”).

The period of investigation (“POI”) is January 1, 2014, through December 31, 2014. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2015.⁸

POSTPONEMENT OF PRELIMINARY DETERMINATION

On July 31, 2015, pursuant to section 733(c)(1)(A) of the Act, the Department determined that it was appropriate to postpone the preliminary determination based on a timely request for such postponement by Petitioners. Specifically, the Department postponed the deadline for issuing the preliminary determination by 50 days.⁹

POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On September 16, 2015, Petitioners requested that the Department postpone the final determination in the event that the Department makes a negative preliminary determination.¹⁰ Additionally, OCTAL requested that the Department postpone its final determination pursuant to 19 CFR 351.210(e)(2), and requested that the Department 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 period to a period not to exceed six months.¹¹ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) our preliminary determination is affirmative, (2) the requesting exporter, OCTAL, accounts for a significant proportion of exports of the subject merchandise,¹² and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the accompanying preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months pursuant to section 733(d) of the Act and 19 CFR 351.210(e)(2). Suspension of liquidation described in the accompanying preliminary determination notice will be extended accordingly.

SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is polyethylene terephthalate (“PET”) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing predominantly virgin PET resin content, provided such blends meet the intrinsic viscosity requirements above.

⁸ See 19 CFR 351.204(b)(1).

⁹ See *Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 80 FR 45640 (July 31, 2015).

¹⁰ See Letter from Petitioners to the Secretary of Commerce “Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman,” dated September 16, 2015.

¹¹ See Letter from OCTAL to the Secretary of Commerce “OCTAL’s Request for Extension of Final Determination and Provisional Measures Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman,” dated September 24, 2015.

¹² Petitioners identified only one company as a producer/exporter of PET resin and that we currently know of no additional producers/exporters of merchandise under consideration from Oman. See *Initiation Notice*.

The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process.

The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

SCOPE COMMENTS

In accordance with the preamble to the Department’s regulations, we set aside a period of time for interested parties to raise issues regarding product coverage.¹³ The Department specified that any such comments were due April 20, 2015, which was 21 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by April 30, 2015.¹⁴ However, no interested party submitted scope comments.

DISCUSSION OF METHODOLOGY

Fair Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of PET resin from Oman to the United States were made at LTFV, we compared the export prices (“EP”) and the 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 the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs to the EPs or CEPs of individual transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.¹⁵

In order to determine which comparison method to apply, in recent proceedings, the Department has applied a “differential pricing” analysis to determine whether application of the average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹⁶ The Department finds that the differential pricing analysis used in recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this

¹³ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997).

¹⁴ See *Initiation Notice*, 80 FR at 18376 - 18377.

¹⁵ See 19 CFR 351.414(b)(3).

¹⁶ See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by the respondent.¹⁷ Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarters 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 considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least 5 percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net 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. 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 was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs and CEPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction

¹⁷ See OCTAL's Section C Response dated June 17, 2015, at 8 and Exhibit C-5.

method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of CEPs and EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department 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 average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average 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 average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

2) *Results of the Differential Pricing Analysis*

Based on the results of the differential pricing analysis, the Department finds that between 33 and 66 percent of OCTAL's export sales confirm the existence of a pattern of EPs and CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.¹⁸ Therefore, the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test (mixed alternative method). However, when comparing the weighted-average dumping margins calculated using the average-to-average method for all U.S. sales with those calculated using the alternative average-to-transaction comparison method for those sales identified as passing the Cohen's *d* test, there is not a meaningful difference in the.¹⁹ Accordingly, the Department used the average-to-average method in making comparisons of EP/CEP and NV for OCTAL for this preliminary determination.

¹⁸ See Memorandum from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office IV to Howard Smith, Program Manager, AD/CVD Operations, Office IV "Analysis Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: OCTAL SAOC FZC," dated concurrently with this memorandum ("Analysis Memorandum").

¹⁹ See Analysis Memorandum.

Product Comparisons

In the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product characteristics and model matching. On April 23, 2015, Petitioners, OCTAL, Far Eastern Industries (Shanghai) Ltd., and Oriental Industries (Suzhou) Ltd. submitted comments on product characteristics.²⁰ On April 30, 2015, Petitioners, OCTAL, and Dhunseri Petrochem Limited (“Dhunseri”) submitted rebuttal comments on the product characteristics.²¹ However, on May 7, 2015, the Department rejected Dhunseri’s April 30, 2015 submission as untimely filed affirmative comments on product characteristics and not rebuttal comments.

After considering the comments that were submitted, the Department established product characteristics to use as a basis for defining models of the merchandise under consideration sold in the United States. The Department identified the following five criteria for matching U.S. sales of subject merchandise to home market sales of the foreign like product: (1) intrinsic viscosity; (2) blend; (3) copolymer/homopolymer; (4) additives; and (5) acetaldehyde content. These criteria were included in the questionnaire issued to OCTAL.

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), use as the date of sale the date of the sales invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. In *Allied Tube*, the United States Court of International Trade (“CIT”) held that a “party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to ‘satisfy’ the Department that ‘a different date better reflects the date on which the exporter or producer establishes the material terms of sale.’”²² Additionally, the Department may use a date other than the date of the 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.²³ This

²⁰ See Letter from Petitioners to the Department, “Certain Polyethylene Terephthalate Resin from Canada, the People’s Republic of China, India, and the Sultanate of Oman - Product Matching Comments,” dated April 23, 2015; Letter from OCTAL to the Department, “OCTAL’s Comments on Product Characteristics for Model-Matching Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman, Canada, India and China,” dated April 23, 2015; Letter from Far Eastern Industries (Shanghai) Ltd. and Oriental Industries (Suzhou) Ltd. to the Department, “Certain Polyethylene Terephthalate Resin From Canada, the People’s Republic of China, India, and the Sultanate of Oman: Comments on Product Characteristics,” dated April 23, 2015.

²¹ See Letter from Petitioners to the Department, “Certain Polyethylene Terephthalate Resin from Canada, the People’s Republic of China, India, and the Sultanate of Oman - Product Matching Rebuttal Comments,” dated April 30, 2015; Letter from OCTAL to the Department, “OCTAL’s Comments on Product Characteristics for Model-Matching Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman, Canada, India and China,” dated April 30, 2015; Letter from Dhunseri Petrochem Limited to the Department, “Certain Polyethylene Terephthalate Resin from Canada, China, Oman, and India - Dhunseri Rebuttal Comments on Product Characteristics,” dated April 30, 2015.

²² See *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (“*Allied Tube*”).

²³ See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

normally includes the price, quantity, delivery terms and payment terms.²⁴ OCTAL reported the sales invoice date as the date of sale for its U.S. and home market sales because it stated that all material terms are set at the time of invoice.²⁵ Accordingly, we preliminarily determine that the invoice date is the appropriate date of sale for OCTAL.²⁶

U.S. 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).” In accordance with section 772(a) of the Act, we used the EP methodology for certain OCTAL sales because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States.

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 ...” OCTAL contends that all of its U.S. sales of subject merchandise are EP sales.²⁷ However, OCTAL reported that it sold some subject merchandise out of an unaffiliated warehouse in the United States. OCTAL reported that it sold subject merchandise from the U.S. warehouse and that title never transferred to its U.S. affiliate, OCTAL Inc. (U.S.).²⁸ OCTAL argues that the Department calculates EP if the sale to the unaffiliated purchaser is made outside of the United States by the

²⁴ See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Issue 2 “Date of Sale,” Comment 1.

²⁵ See OCTAL’s Section C Response dated June 17, 2015 at 10; see also OCTAL’s Section B Response dated June 17, 2015 at 11.

²⁶ The Department’s practice is to use shipment date as the date of sale where shipment date precedes invoice date. See, e.g., *Purified Carboxymethylcellulose From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 49494 (August 21, 2014) and accompanying Preliminary Decision Memorandum at 6, unchanged in *Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78395 (December 30, 2014); *Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 16360 (April 10, 2009); *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 at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002) and accompanying Issues and Decision Memorandum at Comment 2. However, OCTAL claimed that even for sales where the shipment date precedes invoice date, the material terms of sale were not set until the invoice date. As noted above, the Department has based sale date on invoice date for all sales but intends to further examine this matter during the course of the investigation.

²⁷ See OCTAL’s Section A Supplemental Questionnaire Response dated July 2, 2015 at 15.

²⁸ See OCTAL’s Section A Response dated May 26, 2015 at 18.

producer or exporter.²⁹ Furthermore, OCTAL claims that the Department considers the sales activities of the U.S. affiliate before determining whether sales are EP or CEP transactions³⁰ and states that, in this case, OCTAL in Oman handles virtually all of the sales activities (including invoicing) for sales of subject merchandise from the U.S. warehouse.³¹

Petitioners contend that the U.S. sales in question are CEP sales and the Department should require OCTAL to report all expenses associated with such sales.³² Furthermore, Petitioners note that OCTAL reported that OCTAL Inc. (U.S.) is “involved in sales of PET resin to the United States”³³ and performs sales activities such as serving as the official importer of record and supporting “sales and marketing efforts.”³⁴

As stated above, 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 the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States...” (emphasis added). Although OCTAL claims that all of the sales activities for the warehouse sales were handled in Oman, it did report that certain employees of OCTAL Inc. (U.S.) were involved in certain activities related to sales of PET resin such as entering purchase orders into the accounting system and ensuring receipt of purchase orders by customers.³⁵ Furthermore, we find that the material terms of sale for the U.S. warehouse sales were not established until after importation when the merchandise was released from the U.S. warehouse. Specifically, the price and quantity for these sales were not established until the merchandise was released from the U.S. warehouse.³⁶ Thus, as the sales occurred after importation, the sales do not fall within the statutory definition of EP sales. As such we preliminary find that these sales are CEP sales.³⁷

We based the starting prices for EP and CEP on the prices of sales to unaffiliated purchasers in, or for exportation to, the United States. We calculated net prices for EP and CEP sales by deducting movement expenses from the starting price, where appropriate, in accordance with section 772(c)(2)(A) of the Act.³⁸ In accordance with section 772(d)(1) of the Act, we also deducted from the starting price of CEP sales selling expenses associated with economic activities occurring in the United States, which include direct selling expenses and indirect selling expenses. Finally, for CEP sales, we made an adjustment for profit allocated to these selling expenses in accordance with section 772(d)(3) of the Act.

²⁹ See OCTAL’s Sections A, B, and C Supplemental Questionnaire Response dated August 25, 2015, at 2.

³⁰ *Id.*

³¹ See OCTAL’s Section A Supplemental Questionnaire Response dated July 2, 2015 at 15.

³² See Letter from Petitioners to the Secretary of Commerce “Certain Polyethylene Terephthalate Resin from the Sultanate of Oman - Petitioners’ Comments on OCTAL’s Section D Questionnaire Response and Supplemental Section A Questionnaire Response,” dated July 14, 2014.

³³ *Id.*

³⁴ *Id.*

³⁵ See OCTAL’s Sections A, B, and C Supplemental Questionnaire Response dated August 25, 2015, at Exhibit SR3-2.

³⁶ See OCTAL’s Section A Response dated May 26, 2015, at 15, and Exhibit A-1.

³⁷ See *Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 75789 (December 19, 2014) (where the Department treated similar sales (*i.e.*, sales made after importation from an unaffiliated warehouse to the ultimate U.S. customer) as CEP sales).

³⁸ *Id.*

Petitioners contend that OCTAL understated its reported U.S. indirect selling expenses. Specifically, Petitioners claim that certain transactions, the nature of which are proprietary, indicate that indirect CEP selling expenses were higher than reported, that certain expenses incurred by affiliated companies should be deemed related to economic activity in the United States and included in U.S. indirect selling expenses, and that OCTAL Inc.'s 2013 tax return provides a basis for concluding that U.S. indirect selling expenses during the POI (calendar year 2014) were higher than reported. Petitioners maintain that the U.S. indirect selling expense ratio should be increased to account for the unreported expenses.

We preliminarily find that there is no evidence supporting Petitioners' claims that certain transactions are evidence of unreported U.S. indirect selling expenses or that certain expenses incurred by an affiliated party relate to sales of subject merchandise.³⁹ Moreover, OCTAL Inc.'s 2013 tax return reflects expenses incurred in 2013, and thus do not reflect expenses incurred during the POI.⁴⁰ Based on the above analysis, the Department has not adjusted OCTAL's indirect selling expense ratio to account for the above mentioned expenses.

Normal Value

1. Comparison-Market Viability

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

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for OCTAL was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for OCTAL, in accordance with section 773(a)(1)(B) of the Act.

2. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP.⁴¹ The LOT for NV is based on the starting prices of sales in the home market.⁴² For EP, the LOT

³⁹ See Analysis Memorandum.

⁴⁰ See OCTAL's Section A Supplemental Questionnaire Response dated July 2, 2015 at Exhibit SA-15.

⁴¹ See also section 773(a)(7)(A) of the Act.

⁴² See 19 CFR 351.412(c)(1)(iii).

is based on the starting price, which is usually the price from the exporter to the importer.⁴³ For CEP, the LOT is based on the starting price as adjusted under section 772(d) of the Act. In this investigation, the Department determined that OCTAL made both EP and CEP sales to the United States.

Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁵ To determine if the home-market sales are made at a different LOT than EP or CEP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between the producer and the unaffiliated customer.⁴⁶ If home-market sales are at a different LOT, as manifested in a pattern of consistent price differences between the sales on which NV is based and home-market sales made at the LOT of the export transaction, and the difference affects price comparability, then we make a LOT adjustment to NV under section 773(a)(7)(A) of the Act and 19 CFR 351.412.⁴⁷

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department 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 an 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 was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴⁸

OCTAL reported the following information regarding stages in the marketing process and the selling functions performed along the chain of distribution between the producer and the unaffiliated customer. With respect to home-market sales, OCTAL reported that it sold the merchandise under consideration to unaffiliated distributors or end-users in Oman.⁴⁹ Specifically, OCTAL reported that it made home market sales through the following channels of distribution: (1) customer pick-up from OCTAL facility in Salalah; (2) OCTAL delivery to customer's location; (3) OCTAL delivery to large national trading company.⁵⁰

Regarding U.S. sales, OCTAL reported that it sold subject merchandise to U.S. distributors and end-users through the following channels of distribution: (1) direct sales to unaffiliated U.S.

⁴³ See 19 CFR 351.412(c)(1)(i).

⁴⁴ See 19 CFR 351.412(c)(2).

⁴⁵ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (“*Plate from South Africa*”).

⁴⁶ See 19 CFR 351.412(c)(2).

⁴⁷ See, e.g., *Plate from South Africa*, 62 FR 61731, 61732-61733.

⁴⁸ See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination*, 75 FR 50999, 51001 (August 18, 2010).

⁴⁹ See OCTAL's Section A Response dated May 26, 2015, at 15, and Exhibit A-6.

⁵⁰ *Id.*

customers (customers takes possession at port); (2) direct sales to unaffiliated U.S. customers (delivered to customers' location); (3) direct sales to unaffiliated U.S. customers (customers take possession at unaffiliated U.S. warehouse); (4) direct sales to unaffiliated U.S. customers (delivered to customers from inventory at unaffiliated warehouse); and (5) direct sales to unaffiliated U.S. customers (repacked and delivered to customers from inventory at the unaffiliated warehouse). The Department determined that the last three U.S. channels of distribution that are listed above involve CEP sales.

We examined the selling activities performed in each channel of distribution and the levels of intensity at which these activities were performed.⁵¹ Based on our analysis, which involves proprietary information, we preliminarily determine that there is one LOT in the home market, one LOT for EP sales, and one LOT for CEP sales.⁵²

Having determined that all reported U.S. EP sales were made at one LOT, and that all U.S. CEP sales were made at one LOT, we then compared these two LOTs to determine whether there was a significant difference between them. After reviewing OCTAL's selling functions, we preliminarily determine that its EP and CEP sales channels involve the same or similar selling activities performed at the same or a similar level of intensity for all customers and terms of delivery. Therefore, based on the totality of selling activities reported for U.S. sales, we preliminarily find that OCTAL's U.S. sales are made at the same LOT.⁵³

Lastly, we compared the single home market LOT and the single U.S. sales LOT and determined that each LOT involves the same or similar selling activities performed at the same or similar levels of intensity.⁵⁴ Accordingly, a CEP offset pursuant to section 773(a)(7)(B) of the Act is not warranted.

3. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV for OCTAL based on the reported packed, ex-factory or delivered prices to its comparison market customers. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit expenses). We 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.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise for OCTAL, we also made adjustments for physical differences in 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.⁵⁵ For detailed information on the calculation of NV, *see* the Analysis Memorandum.

⁵¹ *Id.* at Exhibit A-7.

⁵² *See* Analysis Memorandum.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See* 19 CFR 351.411(b).

Cost of Production

As noted in the Background section above, we received a country-wide allegation from Petitioners that sales of PET resin in the Omani market were made at prices below the cost of production (“COP”) during the POI. Based on our analysis of these allegations, we found that there were reasonable grounds to believe or suspect that sales of PET resin in the home market were made at prices below their COPs. Accordingly, on April 6, 2015, the Department initiated a sales-below-COP investigation of OCTAL’s sales.⁵⁶

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and comparison market packing costs.⁵⁷ We examined the cost data and preliminarily determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data, as adjusted below.⁵⁸ We relied on OCTAL’s COP data as submitted except as follows:⁵⁹ We revised the reported POI production quantity and the associated manufacturing cost to reflect the amounts in the overall reconciliation worksheet. As a result, the reported per-unit manufacturing costs in the cost database increased. We revised the numerator of the reported general and administrative (“G&A”) expense ratio calculation to include the “gain on asset disposal.” In addition, for a particular affiliated party transaction, OCTAL recognized the management fees below the contracted amount. We included the additional management fees to reflect the contracted amount in the numerator of the reported G&A expense ratio calculation. As a result, the reported G&A expense ratio increased. For a particular affiliated party loan, OCTAL recognized the interest expense below the stated interest rate. For this loan, we calculated the interest expense at the stated interest rate and included the additional interest expense in the numerator of the reported net financial expense ratio calculation. As a result, the net financial expense ratio increased.

Petitioners contend that numerous OCTAL affiliates remain unreported and thus the Department should make an adverse inference by increasing certain reported expenses. Specifically, Petitioners maintain that various affiliate-related expenses, the nature of which is proprietary, should be added to OCTAL’s G&A expenses. We preliminarily did not resort to partial adverse facts available, as advocated by Petitioners, because we were able to quantify the affiliated party transaction adjustment amounts (as discussed above). Furthermore, some of the fees referred to

⁵⁶ See *Initiation Notice at 18379*.

⁵⁷ See “Test of Comparison Market Sales Prices” section, below, for treatment of comparison market selling expenses.

⁵⁸ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013) and accompanying Preliminary Decision Memorandum at Section D “Cost of Production.”

⁵⁹ For further discussion, see Memorandum to Neal Halper, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – OCTAL SAOC – FZC.” dated October 6, 2015, (OCTAL’s Cost Memorandum).

by Petitioners were included in the reported costs (*i.e.*, direct U.S. selling expenses)⁶⁰ while others were incurred by OCTAL prior to the POI through the assumption of loans.⁶¹

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b)(1)(B) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices used in the comparison were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.⁶²

3. Results of the COP Test

In determining whether to disregard comparison 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 permit recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with section 773(b)(2)(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 within an extended period of time within the meaning of section 773(b)(2)(B) of the Act, 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."⁶³ Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP within an extended period of time, we disregard the below-cost sales when, 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. Because we are applying our standard annual-average cost test in this preliminary determination, we also applied our standard cost recovery test with no adjustments.

We found that, for certain products, more than 20 percent of OCTAL's comparison market sales were made within an extended period of time at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁶⁴

⁶⁰ See OCTAL's Section C Response dated June 17, 2015, at 36 and Exhibit C-13.

⁶¹ See OCTAL's Section A Supplemental Questionnaire Response dated July 2, 2015 at 12.

⁶² See Analysis Memorandum.

⁶³ See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013) and accompanying Preliminary Decision Memorandum at Section D "Cost of Production."

⁶⁴ See Analysis Memorandum.

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.

VERIFICATION

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

RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

6 OCTOBER 2015
(Date)