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Investigation
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September 30, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Ultra-High Molecular
Weight Polyethylene from the Republic of Korea

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that ultra-high molecular weight polyethylene (ultra-high polyethylene) from the Republic of Korea (Korea) 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 March 4, 2020, Commerce received an antidumping duty (AD) petition concerning imports of ultra-high polyethylene from Korea, filed in proper form on behalf of Celanese Corporation (the petitioner).¹

Commerce initiated this investigation on March 24, 2020.² In the *Initiation Notice*, Commerce stated that, although we normally rely on the number of producers/exporters identified in the

¹ See Petitioner’s Letter, “Petitioners {sic} for the Imposition of Antidumping Duties: Ultra-High Molecular Weight Polyethylene from South Korea,” dated March 3, 2020 (Petition). The Petition was filed with Commerce and the U.S. International Trade Commission (ITC) on March 3, 2020, after 12:00 noon, and pursuant to 19 CFR 207.10(a), was deemed to have been filed with the ITC on the next business day, March 4, 2020. Because section 732(b)(2) of the Act requires simultaneous filing of the Petition with Commerce and the ITC, Commerce deemed the Petition to have been filed on March 4, 2020. See Memorandum, “Decision Memorandum Concerning the Filing Date of the Petition,” dated March 9, 2020.

² See *Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation*, 85 FR 17861 (March 31, 2020) (*Initiation Notice*).



petition and/or import data from U.S. Customs and Border Protection (CBP) to determine whether to select a limited number of producers/exporters for individual examination in AD investigations, the petitioner identified only one company in Korea: Korea Petrochemical Ind. Co., Ltd.³ Because we knew of no additional producers/exporters of merchandise under consideration from Korea and because the petitioner provided information from an independent third party source as support, we stated our intention to examine all known producers/exporters in Korea.⁴ We did not receive comments from any party with regard to individual examination of the known producer/exporter of subject merchandise. On April 3, 2020, we issued section A of the AD questionnaire to KPIC.⁵

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 ultra-high polyethylene to be reported in response to Commerce's AD questionnaire.⁶ In April 2020, KPIC and the petitioner submitted comments and rebuttal comments regarding the scope and the physical characteristics of the merchandise under consideration to be used for reporting purposes.⁷

On April 20, 2020, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of ultra-high polyethylene from Korea.⁸ On April 27, 2020, we issued the remaining sections of the AD questionnaire to KPIC.⁹

From May through June 2020, KPIC submitted timely responses to sections A through D of Commerce's AD questionnaire, *i.e.*, the sections relating to general information, home market sales, U.S. sales, and cost of production (COP)/constructed value (CV).¹⁰ From May 2020

³ See *Initiation Notice*, 85 FR at 17864. Moreover, on September 2, 2020, we collapsed Korea Petrochemical Ind. Co., Ltd. and its affiliate KPIC Corporation (collectively, KPIC) and are treating these companies as a single entity for the purpose of our analysis in this investigation. See Memorandum, "Antidumping Duty Investigation of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Korea Petrochemical Ind. Co., Ltd. Preliminary Affiliation and Collapsing Memorandum," dated September 2, 2020.

⁴ *Id.*

⁵ See Commerce's Letter, Antidumping Duty Questionnaire, dated April 3, 2020.

⁶ See *Initiation Notice*, 85 FR 17861.

⁷ See KPIC's Letter, "Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Comments on the Scope of the Investigation," dated April 13, 2020 (KPIC's Scope Comments); KPIC's Letter, "Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Comments on Product Characteristics," dated April 13, 2020; and Petitioner's Letter, "Petitioners for the Imposition of Antidumping Duties on Imports of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Scope and Product Matching Comments," dated April 13, 2020 (Petitioner's Scope Comments); KPIC's Letter, "Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Rebuttal Comments on Scope and Product Characteristics," dated April 23, 2020 (KPIC's Scope Rebuttal Comments); and Petitioner's Letter, "Petitioners for the Imposition of Antidumping Duties on Imports of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Rebuttal Scope and Product Matching Comments," dated April 23, 2020.

⁸ See *Ultra-High Molecular Weight Polyethylene from Korea*, 85 FR 23063 (April 24, 2020).

⁹ See Commerce's Letter, Antidumping Duty Questionnaire, dated April 27, 2020.

¹⁰ See KPIC's May 8, 2020 Section A Questionnaire Response (KPIC's May 8, 2020 AQR); KPIC's May 15, 2020 Section A Questionnaire Response (KPIC's May 15, 2020 AQR); KPIC's May 29, 2020 Sections B and C Questionnaire Response (KPIC's May 29, 2020 BCQR); and KPIC's June 10, 2020 Section D Questionnaire Response.

through August 2020, we issued supplemental questionnaires to KPIC and received timely responses to these supplemental questionnaires from June 2020 through September 2020.¹¹

On June 24, 2020, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.¹² Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on July 20, 2020, Commerce published in the *Federal Register* a postponement of the preliminary determination until no later than September 30, 2020.¹³

On September 2, 2020, KPIC requested that Commerce postpone the final determination and that provisional measures be extended.¹⁴ On September 8, 2020, the petitioner submitted a letter supporting KPIC's request to postpone the final determination and extend provisional measures.¹⁵ Also in September 2020, we requested that the petitioner provide a revised version of the scope incorporating its timely-filed scope comments, which it submitted on September 3, 2020.¹⁶

We are conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The POI is January 1, 2019 through December 31, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2020.¹⁷

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,¹⁸ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).¹⁹ In April

¹¹ See KPIC's June 12, 2020 Supplemental Questionnaire Response (KPIC's June 12, 2020 SQR); KPIC's June 18, 2020 Supplemental Questionnaire Response (KPIC's June 18, 2020 SQR); KPIC's July 2, 2020 Supplemental Questionnaire Response; KPIC's July 16, 2020 Supplemental Questionnaire Response (KPIC's July 16, 2020 SQR); KPIC's July 27, 2020 Supplemental Questionnaire Response; KPIC's July 29, 2020 Supplemental Questionnaire Response; KPIC's September 4, 2020 Supplemental Questionnaire Response (KPIC's September 4, 2020 SQR); and KPIC's September 17, 2020 Supplemental Questionnaire Response.

¹² See Petitioner's Letter, "Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Petitioner's Request for Postponement of the Preliminary Determination," dated June 24, 2020.

¹³ See *Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 85 FR 43813 (July 20, 2020).

¹⁴ See KPIC's Letter, "Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Request to Postpone Final Determination and to Extend Provisional Measures," dated September 2, 2020.

¹⁵ See Petitioner's Letter, "Petitioners {sic} for the Imposition of Antidumping Duties on Imports of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Petitioner's Consent to Postponement of the Final Determination," dated September 8, 2020.

¹⁶ See Petitioner's Letter, "Petitioners {sic} for the Imposition of Antidumping Duties on Imports of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Clarifying Scope Comments," dated September 3, 2020 (Petitioner's Revised Scope Comments).

¹⁷ See 19 CFR 351.204(b)(1).

¹⁸ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁹ See *Initiation Notice*, 85 FR at 17862.

2020, we received comments from the petitioner on the scope as it appeared in the *Initiation Notice*.²⁰ On September 3, 2020, at Commerce’s request, the petitioner submitted revised scope language incorporating its timely-filed scope comments.²¹ The petitioner in its comments asserts that, in addition to melt mass-flow rate, the scope should also include language defining subject merchandise by its molecular weight, as defined by Margolie’s equation, of greater than 1.0×10^6 g/mol.²² In its rebuttal comments, KPIC agrees that products with this molecular weight constitute subject merchandise, but notes that including two different standards in the scope raises the question of whether products that meet only one of these standards are within the scope.²³ As a result, KPIC argues that Commerce should define subject merchandise using either the melt mass-flow rate or the molecular weight.²⁴ Based on our analysis of these comments, we preliminarily modified the scope language as it appeared in the *Initiation Notice* to also define subject merchandise by its molecular weight, in addition to the melt mass-flow rate. See Appendix I of the *Federal Register* notice accompanying this memorandum.

V. DISCUSSION OF THE METHODOLOGY

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 KPIC’s sales of subject merchandise from Korea to the United States were made at LTFV, Commerce compared the export price (EP) to the normal value (NV), as described in the “Export Price” and “Normal Value” sections of this memorandum.

A. 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 constructed export prices (CEPs), *i.e.*, the average-to-average 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 the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁵

²⁰ See Petitioner’s Scope Comments. While we also received scope comments from KPIC, we note that KPIC did not propose revisions to the language of the scope. Instead, KPIC agreed with the petitioner’s proposed definition of ultra-high polyethylene, but stated that precise measurement of the melt flow rate may not be possible for certain products that are covered by the scope of the investigation. See KPIC’s Scope Comments at 3.

²¹ See Petitioner’s Revised Scope Comments.

²² See Petitioner’s Scope Comments at 2; and Petitioner’s Revised Scope Comments at 2-4.

²³ See KPIC’s Scope Rebuttal Comments at 2.

²⁴ *Id.*

²⁵ See, *e.g.*, *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at*

Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number (CONNUM) and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

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

Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.²⁶

B. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce preliminarily finds that more than 66 percent of the value of 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.²⁷ Thus, the results of the test support consideration of an alternative to the average-to-average method based on applying the average-to-transaction method to all U.S. sales. However, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average

²⁶ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

²⁷ See Memorandum, "Antidumping Duty Investigation of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Calculations for the Preliminary Determination," dated September 30, 2020 at 2.

dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Accordingly, Commerce preliminarily determines to use the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for KPIC.

VI. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.²⁸

KPIC reported the date of sale as the earlier of the commercial invoice date or shipment date for all comparison market and U.S. sales.²⁹ 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.³⁰ Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale in both markets for KPIC, in accordance with our practice.³¹

VII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced by KPIC covered by the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice and sold in the comparison market during the POI to be foreign like products for purposes of determining NV for the merchandise sold in the United States. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared KPIC's U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: average molecular weight, density, intrinsic viscosity, average particle size, color, blending by percentage, and blending additives.

²⁸ See 19 CFR 351.401(i); and *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

²⁹ See KPIC's July 16, 2020 SQR at 4; see also KPIC's May 29, 2020 BCQR at C-16.

³⁰ 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; 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 IDM at Comment 2.

³¹ *Id.*

VIII. EXPORT PRICE

For all sales made by KPIC, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, from the starting price for billing adjustments. We also made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight expenses, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. warehousing expenses, U.S. inland freight expenses, logistic agent fees, and transportation equipment rental fees, in accordance with section 772(c)(2)(A) of the Act.

IX. NORMAL VALUE

A. Home Market Viability

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

In order to determine whether there 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 five percent or more of the aggregate volume of U.S. sales), we compared the volume of KPIC's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, 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 was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.³² Therefore, we used home market sales as the basis for NV for KPIC, in accordance with section 773(a)(1)(B) of the Act..

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different

³² See, *e.g.*, KPIC's May 8, 2020 AQR at A-2 and Exhibit A-1.

LOTs if they are made at different marketing stages (or their equivalent).³³ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁴ 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 and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,³⁵ 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.³⁶

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.³⁷

In this investigation, we obtained information from KPIC regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.³⁸ Selling activities can generally be grouped into five categories for our analysis: Provision of Sales Support,³⁹ Provision of Training Services,⁴⁰ Provision of Technical Support,⁴¹ Provision of Logistical Services,⁴² and Performance of Sales Related Administrative Activities.⁴³

³³ See 19 CFR 351.412(c)(2).

³⁴ *Id.*; and *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) (*OJ from Brazil*), and accompanying IDM at Comment 7.

³⁵ 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 expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

³⁶ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

³⁷ See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

³⁸ See KPIC's June 18, 2020 SQR at 7 and Exhibit SA-2; KPIC's May 15, 2020 AQR at AQ3-2 – AQ3-8 and Exhibit A-9; KPIC's June 12, 2020 SQR at Attachment I; and KPIC's May 8, 2020 AQR at A-16 and A-17.

³⁹ See KPIC's June 18, 2020 SQR at Exhibit SA-2. The Provision of Sales Support can include: sales forecasting, strategic/economic planning, advertising, sales promotion, sales/marketing support, market research, and other related activities.

⁴⁰ *Id.* The Provision of Training Services can include: personnel training/exchange, distributor/dealer training, and other related activities.

⁴¹ *Id.* The Provision of Technical Support can include: engineering services, technical assistance, and other related activities.

⁴² *Id.* The Provision of Logistical Services can include: inventory maintenance, post-sale warehousing, repacking, freight and delivery, and other related activities.

⁴³ *Id.* The Performance of Sales Related Administrative Activities can include: order input/processing, rebate programs, warranty service, and other related activities.

In the home market, KPIC reported that it made sales through one channel of distribution during the POI: direct sales to unaffiliated customers.⁴⁴ KPIC stated that it performed the following selling functions for all of its reported home market sales: sales forecasting; strategic/economic planning; advertising/sales promotion; market research; technical assistance; inventory maintenance; order input/processing; and personnel training/exchange; visiting with customers; communication with customers; credit assessment on customers; and support for conference participation. Accordingly, based on the selling function categories noted above, we find that KPIC performed Provision of Sales Support, Provision of Training Services, Provision of Technical Support, Provision of Logistical Services, and Performance of Sales Related Administrative Activities for all of its home market sales. Because we find that KPIC performed the same selling activities to sell to all of its home market customers, we preliminarily determine that there is one LOT in the home market for KPIC.⁴⁵

With respect to the U.S. market, KPIC reported that it made sales through two channels of distribution: (1) through an unaffiliated sales agent; and 2) direct to unaffiliated U.S. customers.⁴⁶ KPIC stated that it performed the following selling functions for all U.S. sales: sales forecasting; strategic/economic planning; personnel training/exchange; technical assistance; inventory maintenance; order input/processing; personnel training/exchange; visiting with customers; communication with customers; and support for conference participation.⁴⁷

Accordingly, based on the selling function categories noted above, we find that KPIC performed Provision of Sales Support, Provision of Training Services, Provision of Technical Support, Provision of Logistical Services, and Performance of Sales Related Administrative Activities for all of its U.S. sales. Because we find that the selling functions KPIC performed for its U.S. customers do not differ significantly, we preliminarily determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions KPIC performed for its U.S. and home market customers do not differ significantly.⁴⁸ Therefore, we preliminarily determine that KPIC's sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

C. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act,⁴⁹ Commerce requested COP information from KPIC. We examined KPIC's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we are applying our standard methodology of using annual costs based on KPIC's reported data.

⁴⁴ See KPIC's May 8, 2020 AQR at A-16; and KPIC's June 18, 2020 SQR at 5 – 8 and Exhibit SA-2.

⁴⁵ *Id.*

⁴⁶ See KPIC's May 8, 2020 AQR at A-17; and KPIC's June 18, 2020 SQR at 5 – 8 and Exhibit SA-2.

⁴⁷ *Id.*

⁴⁸ See KPIC's June 18, 2020 SQR at 5 – 8 and Exhibit SA-2.

⁴⁹ The TPEA amended section 773(b)(2)(A) of the Act. See TPEA found at <https://www.congress.gov/bill/114thcongress/>.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.

We relied on the COP data submitted by KPIC, except as follows:⁵⁰

- We revised the reported ethylene costs to reflect the differential between KPIC's actual sales prices and average Korean market sales prices of ethylene.

2. Test of Comparison Market Sales Prices

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

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 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 none of KPIC's home market sales during the POI were at prices less than COP.

D. Calculation of NV Based on Comparison Market Prices

We calculated NV for KPIC based on delivered prices to unaffiliated customers. We made deductions, where applicable, for movement expenses, *i.e.*, inland freight expenses, under section 773(a)(6)(B)(ii) of the Act.

⁵⁰ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Korea Petrochemical Ind. Co. Ltd.," dated September 30, 2020.

We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales (*i.e.*, credit expenses and guarantee fees,⁵¹ as appropriate) and added U.S. direct selling expenses (*i.e.*, commissions, credit expenses, and bank charges, as appropriate). We also made an adjustment, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market where commissions were granted on U.S. sales, also known as the “commission offset.” Specifically, where commissions were incurred on U.S. sales, we limited the commission offset allowance to the amount of home market indirect selling expenses up to the amount deducted for the U.S. commission. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the 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.⁵²

X. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

XI. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

9/30/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁵¹ See KPIC’s September 4, 2020 SQR at 6.

⁵² See 19 CFR 351.411(b).