

*States*, 201 F. Supp.2d 1267, 1277 (CIT 2002) (noting that “the goal of accuracy cannot be achieved if Commerce relies upon dumped third country prices to calculate NV”). Accordingly, because the European Union has made a finding of dumping concerning PSF from Korea which includes the PSF currently subject to an order in the United States and to which East Young is subject, we are rejecting the use of the United Kingdom as a third-country comparison market for purposes of determining NV. Instead, for purposes of determining NV, we are relying on East Young’s sales to its next largest third-country market for which no finding of dumping exists and which meets the criteria of section 773(a)(1)(B)(ii) of the Act, *i.e.*, Morocco.

#### B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (“LOT”) as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the “chain of distribution”),<sup>1</sup> including selling functions,<sup>2</sup> 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 levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices<sup>3</sup>), we consider the

starting prices before any adjustments. See *Micron Technology, Inc. v. United States*, et. al., 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

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, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Huvis reported that it made direct sales to distributors and end users in both the home market and in the United States, and also to the United States through a trading company. East Young made direct sales to an end user in the comparison market and to distributors and end users in the United States. Each respondent has reported a single channel of distribution and a single level of trade in each market, and has not requested a level of trade adjustment. We examined the information reported by each respondent regarding its marketing process for making the reported comparison market and U.S. sales, including the type and level of selling activities performed and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) within each market and across the markets. Based on our analyses, we found a single level of trade in the United States, and a single, identical level of trade in the comparison market for both respondents. Thus, it was unnecessary to make a LOT adjustment for East Young or Huvis in comparing EP and comparison market prices.

#### C. Sales to Affiliated Customers

Huvis made sales in the home market to an affiliated customer. To test whether these sales were made at arm’s length, we compared the starting prices of sales to the affiliated customer to those of unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Where the price to the affiliated customer was on average 99.5

percent or more of the price to Huvis’ unaffiliated customers, we determined that the sales made to the affiliated customer were at arm’s length and included those sales in our calculation of NV pursuant to 19 CFR 351.403(c).<sup>4</sup> Where prices to Huvis’ affiliated customer were, on average, less than 99.5 percent of the prices to unaffiliated customers, we determined that these sales were not at arm’s length and excluded them from our analysis.

#### D. Cost of Production Analysis

As discussed in the “Background” section above, there were reasonable grounds to believe or suspect that Huvis made sales of the subject merchandise in its comparison market at prices below the COP in accordance with section 773(b) of the Act.

##### 1. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of Huvis’ costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (“SG&A”) expenses, including interest expenses, and the costs of all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted by Huvis in its cost questionnaire responses, except for the following adjustments. First, we adjusted Huvis’ reported cost of manufacturing to account for purchases of terephthalic acid and ethylene glycol from affiliated parties at non-arm’s length prices. See Memorandum from Robert Greger to Neal Halper, Director, Office of Accounting, “*Cost Adjustments*,” dated June 2, 2003 (“*Huvis Cost Memorandum*”), which is on file in the CRU. Second, we adjusted Huvis’ submitted G&A expenses to exclude foreign exchange gains and losses, revenue from the sale of test materials, revenue on further processing and revenue on the sale of raw materials. See *Huvis Cost Memorandum*. Third, we adjusted Huvis’ submitted financial expense ratio to include the total net foreign exchange gains and losses from the financial statements. See *Huvis Cost Memorandum*.

<sup>4</sup> We note that the Department recently adopted a new arm’s length test whereby sales to affiliates will be determined to be at arm’s length if the prices are, on average, within a range of 98 percent to 102 percent of prices to unaffiliated customers. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). The Department’s new arm’s length test is only applicable to investigations and reviews initiated on or after November 23, 2002, which is subsequent to the initiation of this review.

<sup>1</sup> The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents’ sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale appears to occur.

<sup>2</sup> Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Other selling functions unique to specific companies were considered, as appropriate.

<sup>3</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we

derive selling expenses, general and administrative (“G&A”) expenses, and profit for CV, where possible.