

COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Nippon Gohsei's home market sales were 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, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D. Level of Trade

In accordance with section 773(a)(1)(B)(i), to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 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 (Nov. 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. 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. See *Micron Technology, Inc. v. United States*, Court Nos. 00-1058, -1060 (Fed. Cir. 2001).

When the Department is unable to find 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 at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. 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 (Nov. 19, 1997).

We obtained information from Nippon Gohsei regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Nippon Gohsei for each channel of distribution. See page A-11 and exhibit 9 of Nippon Gohsei's November 22 section A response; see also pages 9 through 17 and exhibit 7 of Nippon Gohsei's January 13 response to the Department's supplemental questionnaire.

Nippon Gohsei reported sales through twelve channels of distribution in the home market, including: 1) sales through affiliated distributors to the unaffiliated distributors or end-users; and 2) direct sales to unaffiliated distributors and affiliated and unaffiliated end-users. Nippon Gohsei stated that it performed the following selling functions/services in the home market with respect to these channels of distribution: market research, price negotiations with customers, order processing, interactions with customers, forward inventory maintenance, technical advice, warranty services, freight arrangements, advertising, and

just-in-time delivery. In addition, Nippon Gohsei provided information indicating that its affiliated resellers perform an additional layer of selling functions to customers in the home market.

We first noted that sales by Nippon Gohsei through affiliated distributors pass through two companies before reaching the customer, whereas sales in the other chains of distribution pass directly to the customer. We then examined whether any differences existed with respect to the selling functions performed by Nippon Gohsei in making sales within each of these broad channels of distribution (*i.e.*, through affiliates and direct to the customer). For the sales through Nippon Gohsei's affiliated distributors, we conducted our LOT analysis based on: 1) the selling activities performed by Nippon Gohsei to sell to the affiliated sellers; and 2) the selling activities performed by the affiliated reseller to sell to its unaffiliated customers. The information on the record indicates that the selling functions performed by both Nippon Gohsei and by its affiliated resellers in connection with sales through affiliated resellers are almost identical. Therefore, we find that sales through affiliated parties in the home market constitute one LOT.

Nippon Gohsei also made sales to affiliated and unaffiliated home market end-users and unaffiliated home market distributors. The information on the record also indicates that the selling functions performed in selling directly to end-users and selling to unaffiliated distributors were also substantially the same. Accordingly, we do not find the differences in selling functions so significant as to warrant finding a distinct LOT for sales through these channels. However, when these functions are compared to those for sales through affiliated resellers, we find that Nippon Gohsei and its affiliates provide an additional layer of selling functions that is substantially greater than the selling functions provided for direct sales. Consequently, we preliminarily find that Nippon Gohsei made sales at two LOTs in the home market: 1) sales through affiliated parties, and 2) direct sales to affiliated and unaffiliated customers.

For its sales to the United States, Nippon Gohsei reported two channels of distribution, including sales to unaffiliated trading companies and direct sales to end-users. Nippon Gohsei stated that it performed the following selling functions/services in the U.S. market: market research, price negotiations with customers, order processing, interactions with customers,

<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 consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the 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 this preliminary determination, we have organized the PVA selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services, where applicable

<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, G&A and profit for CV, where possible.