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Investigation
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June 25, 2019

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 Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Polyester Textured Yarn from India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that polyester textured yarn (yarn) from India 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 October 18, 2018, Commerce received an antidumping duty (AD) petition concerning imports of yarn from India, filed in proper form on behalf of Unifi Manufacturing, Inc. and Nan Ya Plastics Corporation, America (the petitioners).¹ Commerce initiated this LTFV investigation on November 7, 2018.²

In the *Initiation Notice*, Commerce notified the public that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ Accordingly, Commerce released the CBP entry data to all interested parties

¹ See Letter to the Secretary of Commerce, “Polyester Textured Yarn from the People’s Republic of China and India—Petition for the Imposition of Antidumping and Countervailing Duties,” dated October 18, 2018 (Petition).

² See *Polyester Textured Yarn from India and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 58223 (November 19, 2018) (*Initiation Notice*).

³ *Id.* at 58227.

under an administrative protective order, and requested comments regarding the data and respondent selection.⁴ We received comments from the petitioners⁵ and from Sanathan Textiles PVT Limited (Sanathan),⁶ and rebuttal comments from the petitioners.⁷

We subsequently found that it was not practicable to individually examine all known exporters or producers of yarn from India and, pursuant to section 777A(c)(2) of the Act, recommended selecting JBF Industries Limited (JBF) and Reliance Industries Limited (Reliance), the two largest exporters and/or producers of the subject merchandise by volume, based on the CBP data, for individual examination as mandatory respondents in this investigation.⁸ Accordingly, we issued the AD questionnaire to JBF and Reliance.⁹ We also stated that we would consider whether to examine voluntary respondents if any voluntary responses are submitted in accordance with the deadlines and other criteria set forth in section 782(a) of the Act and 19 CFR 351.204(d).¹⁰

On December 10, 2018, 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 yarn from India.¹¹ Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.¹² If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary decision was May 6, 2019. On March 29, 2019, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days.¹³ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on April 23, 2019, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than June 25, 2019.¹⁴

⁴ See Memorandum, "Polyester Textured Yarn from India: Customs Data for Respondent Selection," dated November 19, 2018.

⁵ See Petitioners' Letter, "Polyester Textured Yarn from India- Petitioners' Comments on CBP Data and Respondent Selection," dated November 26, 2018.

⁶ See Sanathan's Letter, "Certain Polyester Textured Yarn from India (C-533-886 and A-533-885), Comments on Respondent Selection," dated November 28, 2018.

⁷ See Petitioners' Letter, "Polyester Textured Yarn from India – Petitioners' Rebuttal Comments on Respondent Selection," dated December 6, 2018.

⁸ See Memorandum, "Less-Than-Fair-Value Investigation of Polyester Textured Yarn from India: Respondent Selection," dated December 11, 2018 (Respondent Selection Memo).

⁹ See Commerce's Antidumping Duty Questionnaire, dated December 13, 2018.

¹⁰ See Respondent Selection Memo at 5-6.

¹¹ See *Polyester Textured Yarn from China and India*, Investigation Nos. 701-TA-612-613 and 731-1429-1430 (Preliminary), 83 FR 63532 (December 10, 2018).

¹² See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

¹³ See Letter from the petitioners, "Request to Extend the Preliminary Antidumping Duty Determinations," dated March 29, 2019.

¹⁴ See *Polyester Textured Yarn from India and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 16843 (April 23, 2019).

Reliance and JBF submitted timely responses to Section A of Commerce’s AD questionnaire, *i.e.*, the section relating to general information, in January and March, 2019, respectively.¹⁵ In March 2019, Reliance and JBF responded to sections B, C, and D of Commerce’s AD questionnaire, *i.e.*, the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.¹⁶ From February 2019 through May 2019, we issued supplemental questionnaires to both respondents. We received responses to these supplemental questionnaires between March and June 2019. The petitioners submitted comments on Reliance’s and JBF’s questionnaire responses from February to June 2019. From February through March, we received, and subsequently rejected, untimely filed voluntary responses from two companies (*i.e.*, Sanathan and Wellknown Polyesters Limited (Wellknown)) that requested to be voluntary respondents.¹⁷

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is October 1, 2017 through September 30, 2018. This period corresponds to the four most recently completed fiscal quarters prior to the month of the filing of the Petition, which was October 2018.¹⁸

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On June 13, 2019, pursuant to 19 CFR 351.210(e)(1), Reliance requested that Commerce postpone its final determination and extend the application of the provisional measures prescribed under section 773(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.¹⁹ On June 18, 2019, the petitioners also filed a postponement request in the event of a negative preliminary determination, acknowledging Reliance’s postponement request in the event of an affirmative preliminary determination and the extension of the provisional measures.²⁰ In accordance with section 735(a)(2)(A) of the Act and

¹⁵ See Reliance’s January 28, 2019, Section A Questionnaire Response (Reliance AQR) and JBF’s March 5, 2019, Section A Questionnaire Response (JBF AQR).

¹⁶ See Reliance’s March 4, 2019, Sections B-D Questionnaire Response (Reliance BCDQR) and JBF’s March 17, 2019, Sections B-D Questionnaire Response (JBF BCDQR).

¹⁷ See Sanathan’s February 19, 2019, Section A Questionnaire Response; *see also* Memorandum, “Rejection of Documents,” dated February 28, 2019; and Commerce’s Letter, “Antidumping Duty Investigation of Polyester Textured Yarn from India: Rejection of Response to Section A of the Antidumping Duty Questionnaire,” dated February 28, 2019. *See* Sanathan’s March 4, 2019, Section C Questionnaire Response; Sanathan’s March 5, 2019 Section D Questionnaire Response; *see also* Commerce’s Letter, “Less-Than-Fair Value Investigation of Polyester Textured Yarn from India: Rejection of Response to Section B-D of the Antidumping Duty Questionnaire,” dated March 11, 2019. *See* Wellknown’s February 27, 2019, Section A Questionnaire Response; *see also* Commerce’s Letter, “Less-Than-Fair-Value Investigation of Polyester Textured Yarn from India: Rejection of Response to Section A of the Antidumping Duty Questionnaire,” dated March 11, 2019; and Commerce’s Letter, “Less-Than-Fair-Value Investigation of Polyester Textured Yarn from India: Rejection of Responses to the Antidumping Duty Questionnaire,” dated April 1, 2019.

¹⁸ See 19 CFR 351.204(b)(1).

¹⁹ See Letter from Reliance, “Request for Postponement of Final Determination and Provisional Measures Period,” dated June 13, 2019.

²⁰ See Letter from the Petitioners, “Request to Extend the Antidumping Duty Final Determinations,” dated June 18, 2019.

19 CFR 351.210(b)(2)(ii) and (e)(2), because: 1) our preliminary determination is affirmative, 2) the requesting exporter accounts for a significant portion of the exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting Reliance's request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

V. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As noted above, Commerce selected JBF as a mandatory respondent in this investigation. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference (AFA) pursuant to sections 776(a)-(b) of the Act is appropriate for the preliminary determination with respect to JBF.

A) Legal Standard for Facts Available and Adverse Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, use facts otherwise available if necessary information is not available on the record, or if an interested party or any other person: (A) withholds information requested by the Commerce; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states further that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from the facts otherwise available. In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²¹ Further, section 776(b)(2) of the Act states that use of an adverse inference when selecting from the facts otherwise available may include reliance on information derived from the petition, the final determination from the AD investigation, a previous administrative review, or other information placed on the record.²² In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²³ Affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.²⁴ It is Commerce’s practice to consider, in employing adverse facts available, the extent to which a party may benefit from its own lack of cooperation.²⁵

B) *Application of Adverse Facts Available to JBF*

JBF failed to provide Commerce with information that would serve as a reliable basis for calculating an AD margin, despite having had multiple opportunities to do so. JBF withheld information and failed to provide such information in the form or manner requested in response to our requests for critical information related to its cost of production (COP). In accordance with sections 776(a) and (b) of the Act, we determine that the use of facts otherwise available with an adverse inference is appropriate for this preliminary determination with respect to JBF.

At the outset of this investigation, Commerce identified the physical characteristics deemed most significant in differentiating between products.²⁶ Commerce’s procedures allow the parties to comment on the physical characteristics of products subject to the investigation and, by extension, model matching for the proceeding. JBF did not submit comments regarding the physical characteristics in this investigation. The choice of physical characteristics is important for model matching purposes and focuses primarily on commercially meaningful differences that

²¹ See section 776(b)(1)(B) of the Act.

²² See also 19 CFR 351.308(c).

²³ See SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

²⁴ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

²⁵ See SAA at 870; see also *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum (IDM) at 4; unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).

²⁶ See Commerce Letter to Interested Parties dated December 20, 2018.

impact a product's market price. These are the physical characteristics that define unique products which are assigned a control number (CONNUM), for sales comparison purposes, and reflect the importance Commerce places on comparing the most similar products in a price-to-price comparison. "Product-specific information is a fundamental element in the dumping analysis, and it is standard procedure for Commerce to request product-specific data in antidumping investigations."²⁷ CONNUM-specific costs are required for performing the cost test, calculating CV and the difference-in-merchandise adjustment.

In answering Commerce's initial Section D questionnaire, issued on December 13, 2018, JBF's responses were vague and did little to explain its product-specific cost calculations. Specifically, JBF failed to explain how the company accounted for cost differences associated with each of the physical characteristics identified by Commerce in the AD questionnaire that were used to construct CONNUMs. In its initial Section D response to our questions at II.C.1.d and III.A.3, JBF stated that its reported costs accounted for all physical characteristics identified by Commerce.²⁸ However, based on our analysis of the reported costs, we found discrepancies in that stated assertion (*i.e.*, it did not appear that the reported costs accounted for cost differences related to all of the physical characteristics identified by Commerce) and asked JBF additional questions regarding the issue in supplemental questionnaires.

In the first supplemental Section D questionnaire, issued on April 8, 2019, we specifically asked JBF to explain how the reported CONNUM costs reflected the costs associated with each physical characteristic.²⁹ In its response, JBF stated that its reported costs captured cost differences for only two (denier and color) of the 13 physical characteristics identified by Commerce.³⁰

In the second supplemental Section D questionnaire, issued on May 29, 2019, consistent with the instructions given in the initial Section D questionnaire, we specifically asked JBF to revise the reported CONNUM-specific costs to ensure that cost differences are reported for all physical characteristics as defined by Commerce.³¹ Further, we stated that if JBF did not track the cost differences for a given physical characteristic in its normal books and records it should develop a reasonable methodology to account for the cost differences, or explain why JBF believed that the specific physical characteristics defined by Commerce did not result in a measurable cost difference between the CONNUMs. In addition, we asked JBF to describe in detail the processing required to produce the different products within each physical characteristic category and the methodology used to account for cost differences between products. In its response, JBF confirmed that in its normal books and records it does not account for cost differences related to all of the physical characteristics identified by Commerce.³² JBF further stated that the reported costs are manually derived based on only two physical characteristics (denier and color).³³ JBF did not provide any response to our questions where we asked them to describe the required

²⁷ See *Mukand, Ltd. v. United States*, 767 F.3d 1300, 1307 (Fed. Cir. 2014).

²⁸ See JBF March 18, 2019 Section D Questionnaire Response (JBF's Initial D response) at page 12 and 21.

²⁹ See Department Letter re: First Supplemental Questionnaire for JBF, dated April 8, 2019.

³⁰ See JBF's May 1, 2019 Supplemental Section D Questionnaire Response (JBF's Supp D1) at page 13.

³¹ See Department Letter re: Second Supplemental Questionnaire for JBF, dated May 29, 2019.

³² See JBF's June 7, 2019 Second Supplemental Section D Questionnaire (JBF's Supp D2) at page 4-5.

³³ *Id.*

processing for producing the different products within each physical characteristic, and to explain if there are physical characteristics which it believed did not result in a cost difference between CONNUMs.³⁴ Nor did JBF attempt to develop a reasonable methodology to report costs that account for cost differences for all physical characteristics. The requirement to report product-specific cost data is one of the most basic and significant requirements in performing the dumping analysis and margin calculation. JBF's failure to provide CONNUM-specific costs that reasonably reflect the cost differences according to Commerce's physical characteristics leaves Commerce without critical information needed for its analyses as noted above. As a result of JBF's failure to respond to our requests for explanations and clarifications, we are unable to assess the reasonableness and reliability of the submitted cost data which is necessary to calculate an AD margin and the submitted cost data are so incomplete that they cannot be used without undue difficulty.

Further, aside from the fact that JBF failed to respond to our requests to explain how it accounts for product-specific costs in its normal books and records, JBF provided a cost reconciliation that has a significant unreconciled cost difference. Specifically, in JBF's initial section D response it provided a cost reconciliation at Exhibit D-III.B.5, which contained a significant unreconciled difference between the reported costs and the costs from its normal books and records. We asked JBF to explain the large unreconciled difference in our first supplemental Section D questionnaire. In response, JBF provided a revised cost reconciliation with a reduced, but still significant, unreconciled difference.³⁵ We asked JBF again in our second supplemental Section D questionnaire to explain the difference, and to provide a revised reconciliation. In its response, JBF attempted to explain the difference and stated that its reported cost is not based on total production quantity.³⁶ JBF further explained that the cost of manufacture (COM) in the cost reconciliation includes the general and administrative (G&A) expenses and financial expenses. Even after accounting for these differences, according to JBF's own calculation, there is still a significant unreconciled difference.³⁷ A complete cost reconciliation is necessary to demonstrate that all costs are appropriately included or excluded from the reported COP for the merchandise under consideration.³⁸ JBF's failure to explain adequately the large unreconciled difference between the reported costs and the costs from its normal books and records leaves Commerce without the ability to establish the starting point for JBF's reported costs, or to verify those costs, because we do not know from the record information whether JBF has reported all costs pertaining to subject merchandise. Without a complete, adequate cost reconciliation, Commerce is unable to understand the basis for JBF's reported COP, to verify JBF's COP and, consequently, to rely on JBF's COP in the LTFV analysis. Accordingly, Commerce is unable to calculate an estimated weighted-average dumping margin for JBF in this preliminary determination.

³⁴ *Id.* at page 5.

³⁵ See JBF's Supp D1 at Exhibit SD1-27c

³⁶ See JBF's June 7, 2019 Second Supplemental Section D Questionnaire (JBF's Supp D2) at page 6-7.

³⁷ *Id.*

³⁸ See *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2015-2016*, 83 FR 6163 (February 13, 2018), and accompanying IDM at Comment 2.

In addition to the above, JBF provided incomplete illustrative worksheets and explanations regarding how it derived the product-specific costs it did report. JBF provided worksheets that show only the final step in calculating the CONNUM-specific costs.³⁹ Even though we specifically asked for explanations and supporting documents, JBF's second section D supplemental questionnaire response included no details, supporting documents, or calculation worksheets demonstrating how JBF derived the extended costs for each cost category.⁴⁰ JBF, therefore, failed to demonstrate how it derived from its normal books and records its figures for each CONNUM in the worksheets that it did provide, and how these reported costs reasonably reflect the cost to produce yarn.

As a result, despite Commerce's issuance of the original section D questionnaire and two section D supplemental questionnaires, JBF failed to provide Commerce with the requisite explanations and documentation on how information is maintained in its normal accounting and production systems, how the reported costs were derived, the extent to which its submitted costs reasonably reflect cost differences according to Commerce's physical characteristics, a complete and accurate cost reconciliation, and other information that is necessary for Commerce to meaningfully analyze JBF's section D response. Therefore, pursuant to sections 776(a)(1) and (a)(2) of the Act, we find that necessary information is not available on the record and that JBF withheld information that has been requested, failed to provide such information in the form or manner requested, significantly impeded this investigation, and provided information that cannot be verified. Consequently, we must use facts available, pursuant to section 776(a) of the Act, with respect to JBF for this preliminary determination.

Further, we preliminarily find that the use of an adverse inference in selecting from the facts available for JBF is appropriate, because JBF did not act to the best of its ability in responding to requests for information by Commerce. The Court of Appeals for the Federal Circuit (CAFC) in *Nippon Steel* provided an explanation of the meaning of act to "the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that "ability" refers to "the quality or state of being able."⁴¹ Thus, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum that it is able to do.⁴² The CAFC acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.⁴³ Hence, compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation.⁴⁴

Here, we find that JBF did not act to the best of its ability to comply with Commerce's requests for information. As described above, even though it was afforded multiple opportunities to correct its responses, JBF failed to respond to our requests to explain how it accounts for

³⁹ See JBF's Initial D Response at page 24 and Exhibit D.III.C1-COP.

⁴⁰ See JBF's Supp D2 page 7-9 and Exhibit SD2-10c.1-SD2-10e.

⁴¹ See *Nippon Steel*, 337 F.3d at 1382.

⁴² *Id.*

⁴³ *Id.* at 1380.

⁴⁴ *Id.* at 1382.

product-specific costs in its normal books and records, JBF provided a cost reconciliation that has a significant unreconciled cost difference, and failed to respond to our requests to provide illustrative worksheets and explanations with proper supporting documents. Although “the best-of-its-ability standard requires that Commerce examine respondent’s abilities, efforts, and cooperation in responding to Commerce’s requests for information,” we note that the CAFC in *Nippon Steel* also stated that the standard “does not condone inattentiveness, carelessness, or inadequate record keeping.”⁴⁵ Accordingly, because we determine that JBF did not act to the best of its ability, we have determined JBF’s dumping margin for the preliminary determination based on AFA, pursuant to section 776(b) of the Act.

C) *Selection and Corroboration of Adverse Facts Available Rate Assigned to JBF*

Section 776(b)(2) of the Act states that Commerce, when employing AFA, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁴⁶ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴⁷ In LTFV investigations, Commerce’s practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.⁴⁸

In this investigation, the highest dumping margin alleged in the petition is 202.93 percent.⁴⁹ When using facts otherwise available, section 776(c) of the Act provides that, in general, where Commerce relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.⁵⁰ Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.”⁵¹ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.⁵² The SAA and Commerce’s regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information derived from interested parties during the particular investigation.⁵³ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the

⁴⁵ *Id.*

⁴⁶ See also 19 CFR 351.308(c).

⁴⁷ See SAA, at 870.

⁴⁸ See, e.g., *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at Comment 3.

⁴⁹ See Petition at Exhibit AD-IND-6.

⁵⁰ See also 19 CFR 351.308(d).

⁵¹ See SAA, at 870.

⁵² See SAA at 870; see also 19 CFR 351.308(d).

⁵³ See SAA at 870; see also 19 CFR 351.308(d).

interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁵⁴

In attempting to corroborate the highest petition rate, we found the petition rate of 202.93 percent to be significantly higher than Reliance’s highest calculated transaction-specific dumping margin (*i.e.*, 35.97 percent).⁵⁵ Because we were unable to corroborate the highest petition margin with individual transaction-specific margins from Reliance, we next applied a component approach and compared the NVs and net U.S. prices underlying the highest petition margin to the NVs and net U.S. prices calculated for Reliance. We found, however, that we were also unable to corroborate the highest petition margin of 202.93 percent with this component approach. Specifically, we find that the NVs and net U.S. prices calculated for Reliance are not within the range of the NVs and net U.S. prices underlying the highest margin alleged in the Petition. Consequently, we based the AFA rate for JBF on Reliance’s highest transaction-specific margin of 35.97 percent. Because this rate is not secondary information, but rather is based on information obtained in the course of this investigation, Commerce need not corroborate this rate pursuant to section 776(c) of the Act.

VI. 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 Reliance’s sales of subject merchandise from India 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 Commerce 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.⁵⁶

⁵⁴ See section 776(d)(3) of the Act.

⁵⁵ See Memorandum, “Preliminary Determination Margin Calculation for Reliance Industries Limited” (Reliance Preliminary Sales Calculation Memo), dated concurrently with this memorandum.

⁵⁶ 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 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).

Commerce finds that the differential pricing analysis used in these 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 EPs (or CEPs) 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 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 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.⁵⁷

B) *Results of the Differential Pricing Analysis*

For Reliance, based on the results of the differential pricing analysis, Commerce preliminarily finds that 64.00 percent of the value of U.S. sales pass the Cohen's *d* test,⁵⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for Reliance.

⁵⁷ The 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 interested that parties present only arguments on issues which have not already been decided by the CAFC.

⁵⁸ See Reliance Preliminary Sales Calculation Memo.

VII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or the 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.⁵⁹ Commerce has a practice of finding that, where shipment date precedes invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁶⁰ Reliance reported the invoice date as the date of sale for home market and U.S. sales.⁶¹ As we have not found that a different date better reflects the date on which the material term of sale were set for home market and U.S. sales, we have used the invoice date as the date of sale.

VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by Reliance in India during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, as appropriate.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by Reliance in the following order of importance: (1) finish type-covered, (2) specialty yarn, (3) yarn denier, (4) number of filaments, (5) ply, (6) intermingling, (7) dye type, (8) color, (9) luster, (10) finish type-twisted, (11) cross section, (12) texturing type, and (13) fiber type.

IX. EXPORT PRICE

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." In accordance with section 772(a) of the Act, we used the EP methodology for Reliance because the

⁵⁹ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁶⁰ See, e.g., *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 IDM at Comment 10.

⁶¹ See Reliance's BCQR at B-25 and C-23. Reliance's reported invoice date and shipment date are the same in this case.

first sale to an unaffiliated party was made by the foreign producer/exporter before the date of importation and the use of CEP was not otherwise warranted.

We calculated EP based on the packed price that Reliance charged to the first unaffiliated purchaser in the United States. We made adjustments, where appropriate, from the starting price for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling, international freight, and marine insurance, in accordance with section 772(c)(2)(A) of the Act. Reliance exclusively uses an affiliated party for foreign inland freight services. Pursuant to our practice, we based these expenses on the affiliate's reported costs, which exclude the affiliate's profit.⁶²

X. 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 this investigation, we preliminarily determined that the aggregate volume of home market sales of the foreign like product for Reliance was more than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that Reliance's home market of India is viable.⁶³ Therefore, we used home market sales in India as the basis for NV for Reliance in accordance with sections 773(a)(1)(A) and (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 LOTs if they are made at different marketing stages (or their equivalent).⁶⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁶⁵ 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

⁶² See *Notice of Final Determination of Sales at Less than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012), and accompanying IDM at Comment 11.

⁶³ See Reliance's AQR at A2-A3 and Exhibit A-1a.

⁶⁴ See 19 CFR 351.412(c)(2).

⁶⁵ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

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,⁶⁶ 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.⁶⁷

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.⁶⁸

In this investigation, we obtained information from Reliance regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.⁶⁹ Our LOT findings are summarized below.

In the home market, Reliance reported that it made sales through two channels of distribution, *i.e.*, sales through agents and sales to customers offering high-value end products.⁷⁰ According to Reliance's narrative response, it performed the following selling functions for sales to all home market customers: addressing trade inquiries from customers, negotiating prices and sales terms, order confirmation, movement of material to customer location, receipt of material by customer, and receipt of payments.⁷¹ However, Reliance's selling functions chart indicates that it performs additional selling activities/functions for all home market sales at slightly different levels of intensity for the two home market sales channels, as discussed below.⁷²

Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: 1) sales support; 2) training services; 3) technical support; 4) logistical services; and 5) performance of sales-related administrative activities. Based on Reliance's selling functions chart, we find that Reliance performed all of these selling functions for all its home market sales, but with slightly higher intensity for sales to the customers offering high-value end products. Although Reliance reports minor differences in selling functions between

⁶⁶ 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).

⁶⁷ *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁶⁸ *See, e.g., OJ from Brazil* IDM at Comment 7.

⁶⁹ *See* Reliance's AQR at A-20 and Exhibit A-3; *see also* Reliance's May 24, 2019, Second Supplemental Section A Questionnaire Response (Reliance SSABCQR) at Exhibit SQA-1.1.

⁷⁰ *See* Reliance SSABCQR at Exhibit SQA-1.1.

⁷¹ *See* Reliance AQR at A-20.

⁷² *See* Reliance SSABCQR at Exhibit SQA-1.1.

home market sales channels as noted above, we do not find that these differences are significant enough to warrant finding that the home market sales channels constitute different LOTs. Because we determine that substantial differences in Reliance's selling activities do not exist between the home market sales channels, we determine that Reliance's sales in the home market during the POI were made at the same LOT. We note that Reliance maintains that an important difference between the two channels of trade is that it provides technical services for sales to customers offering high-value end products. However, the selling functions chart does not indicate that Reliance provided these services at a significantly higher level of intensity to these customers. We also note that in the home market database all sales are reported with the same channel of trade designation.⁷³

With respect to the U.S. market, Reliance reported that it made EP sales through two channels of distribution, *i.e.*, direct sales to unaffiliated U.S. customers (U.S. channel 1) and sales made through agents (U.S. channel 2).⁷⁴ According to Reliance's narrative response, it performed the same selling functions in the U.S. market as it does in the home market, *i.e.*, addressing trade inquiries from customers, negotiating prices and sales terms, order confirmation, movement of material to customer location, receipt of material by customer, and receipt of payments. However, Reliance's selling functions chart indicates that it performs additional selling activities/functions for all U.S. sales, *e.g.*, technical support.⁷⁵ Yet, in its narrative response Reliance claims that it does not provide technical services for U.S. customers.⁷⁶ Moreover, in its selling functions chart, Reliance reported that for U.S. channel 2 sales it performed the same functions as it did for U.S. channel 1 sales; however, Reliance reported that it performed one selling function (*i.e.*, performance of sales-related administrative activities) at a higher level of intensity for U.S. channel 2 sales than it did for U.S. channel 1 sales.⁷⁷

Based on the selling functions chart, we find that Reliance performed sales support, technical support, logistical services and sales-related administrative activities for both U.S. sales channels. Although there was a minor difference between the two U.S. sales channels in the category of sales-related administrative activities, we do not find that this difference is significant enough to warrant finding that the two U.S. sales channels constitute different LOTs. Because we determine that substantial differences in Reliance's selling activities do not exist between the two U.S. sales channels, we determine that Reliance's sales to the U.S. market during the POI were made at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Reliance performed for its U.S. and home market customers do not differ significantly.⁷⁸ Specifically, Reliance performed the same selling functions in the home market, which are grouped in one LOT, as it performed in the U.S. market, which are also grouped in one

⁷³ Reliance argued that certain of its home market sales are outside the ordinary course of trade; however, there is no documentation on the record to support this claim. See pages B-39-B-41 of the Reliance BCDQR, and pages 1-2 of the Reliance SSABCQR; see also Reliance SSABCQR at Exhibit B-A1 (Home Market Sales Database).

⁷⁴ See Reliance BCQR at C-22; and SSABCQR at Exhibit SQA-1.1.

⁷⁵ See Reliance SSABCQR at Exhibit SQA-1.1.

⁷⁶ *Id.* at 2.

⁷⁷ *Id.* at Exhibit SQA-1.1.

⁷⁸ *Id.*

LOT, and although there are differences in intensities we do not consider them to be significant.⁷⁹ Therefore, we preliminarily determine that 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, Commerce requested CV and COP information from Reliance to determine if there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that are less than the COP of the product. We examined the cost data and determined that our quarterly cost methodology is not warranted, and therefore, we are applying our standard methodology of using annual costs based on Reliance's reported data.

1. Calculation of COP

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

We relied on the COP data submitted by Reliance, except we increased Reliance's reported per-unit COM, in accordance with section 773(f)(2), to reflect the higher market price for the raw material input crude oil purchased from affiliated parties.⁸⁰

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 home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and

⁷⁹ *Id.*

⁸⁰ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Reliance Industries Limited," dated June 25, 2019.

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, for certain products, more than 20 percent of Reliance’s home market sales during the POI 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 as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D) *Calculation of NV Based on Comparison-Market Prices*

We calculated NV for Reliance based on prices to unaffiliated customers. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments, late payment fees, discounts and rebates, where appropriate. We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, inland freight and warehousing expenses. Similar to its exclusive use of an affiliated party for foreign inland freight expenses in the U.S. market, Reliance relied on this same affiliated party for freight and warehousing services in the home market. Accordingly, we based these expenses on the affiliate’s reported costs, which exclude the affiliate’s profit.

We made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act. We made circumstance-of-sale adjustments by deducting home market direct selling expenses (*i.e.*, commissions, imputed credit expenses, and bank charges) and adding U.S. direct selling expenses (*i.e.*, commissions, imputed credit expenses, discounting charges, bank charges, and other direct selling expenses), where appropriate. We recalculated U.S. credit expenses using the final payment date as reported by Reliance.⁸¹ Also, we did not make an adjustment for the reported home market technical service expenses because, despite our request for additional information regarding these expenses,⁸² we do not have adequate support on the record for the per-unit expense calculation.

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 COM for the foreign like product and subject merchandise.⁸³ We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

⁸¹ See Reliance Preliminary Sales Calculation Memo.

⁸² See Commerce’s letter, “Antidumping Investigation of Polyester Textured Yarn from India,” dated May 17, 2019.

⁸³ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

XI. 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.

XII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

In LTFV investigations where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy."⁸⁴

Commerce determined in the preliminary determination of the companion CVD investigation that JBF and Reliance benefitted from export subsidies.⁸⁵ For Reliance, we find that an export subsidy adjustment of 6.95 percent to the AD cash deposit rate is warranted.⁸⁶ For JBF, which preliminarily received an AFA margin, as an extension of the adverse inference found pursuant to section 776(b) of the Act, Commerce has adjusted JBF's AD cash deposit rate by the lowest export subsidy rate determined for any party in the companion CVD proceeding. That rate is 6.95 percent. With respect to All Others, we find that an export subsidy adjustment of 7.10 percent to the cash deposit rate is warranted because this is the export subsidy rate included in the CVD all-others rate, to which these companies are subject in the companion CVD proceeding.⁸⁷ Therefore, consistent with our practice,⁸⁸ we will apply the applicable export subsidy offset to the cash deposit rates, as reflected in the accompanying *Federal Register* notice.

⁸⁴ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

⁸⁵ See *Polyester Textured Yarn from India: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 19036 (May 3, 2019), and accompanying Preliminary Decision Memorandum.

⁸⁶ See Memorandum, "Calculation of Export Subsidy Adjustments for the Preliminary Determination," dated June 25, 2019.

⁸⁷ *Id.*

⁸⁸ See *Glycine from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 18487 (May 1, 2019).

XIII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

6/25/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance