



A-533-885

Investigation

POI: 10/1/2017-9/30/2018

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November 13, 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:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of  
Polyester Textured Yarn from India

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## I. SUMMARY

The Department of Commerce (Commerce) finds 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 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2017 through September 30, 2018.

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

### Issues:

### Reliance

Comment 1: Whether Adverse Facts Available (AFA) is Warranted for Reliance  
Comment 2: Affiliated Party Purchases  
Comment 3: Technical Services Adjustment  
Comment 4: Level of Trade (LOT) Adjustment  
Comment 5: Sales Made Outside the Ordinary Course of Trade

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<sup>1</sup> See *Polyester Textured Yarn from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 31301 (July 1, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



## JBF

Comment 6: Whether AFA is Warranted for JBF

Comment 7: AFA Rate for JBF

Comment 8: Adjustment to Cash Deposit Rates for Export Subsidies

## **II. BACKGROUND**

On July 1, 2019, Commerce published in the *Federal Register* its preliminary affirmative determination in the LTFV investigation of yarn from India. We invited parties to comment on the *Preliminary Determination*. In July and August 2019, we conducted verification of the sales and cost information submitted by Reliance Industries Limited (Reliance).<sup>2</sup> On September 23, 2019, Unifi Manufacturing, Inc. and Nan Ya Plastics Corporation, America (collectively, the petitioners), Reliance, and JBF Industries Limited, India (JBF) filed case briefs.<sup>3</sup> On September 24, 2019, the petitioners alleged that Reliance's case brief contained new factual information that should be rejected from the record.<sup>4</sup> Reliance refiled its case brief on September 30, 2019 in response to Commerce's request that it redact and refile the case brief.<sup>5</sup> On October 1, 2019, the petitioners, Reliance, and JBF filed rebuttal briefs.<sup>6</sup> Commerce held a public hearing on October 10, 2019, based on timely hearing requests filed by JBF and Reliance.

## **III. CHANGES FROM THE PRELIMINARY DETERMINATION**

1. For Reliance, we reclassified REBATE6H (a non-performance charge) as income, as opposed to an expense, and added it to the home market price for the final determination.<sup>7</sup>

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<sup>2</sup> See "Verification of the Cost Response of Reliance Industries Limited, (RIL) in the Antidumping Duty Investigation of Polyester Textured Yarn from India," dated September 9, 2019 (Reliance Cost Verification Report); and "Verification of the Sales Response of Reliance Industries Limited in the Antidumping Investigation of Polyester Textured Yarn from India," dated September 16, 2019.

<sup>3</sup> See Petitioners' Case Brief, "Polyester Textured Yarn from India – Petitioners' Case Brief Regarding Reliance Industries Limited," dated September 23, 2019 (Petitioners' Case Brief-Reliance); Petitioners' Case Brief, "Polyester Textured Yarn from India – Petitioners' Case Brief Regarding JBF Industries Limited," dated September 23, 2019 (Petitioners' Case Brief-JBF); Reliance Case Brief, "Antidumping Investigation of Polyester Textured Yarn from India: Reliance Industries Limited's Case Brief," dated September 23, 2019; and JBF Case Brief, "Antidumping Investigation of Polyester Textured Yarn from India (Case No. A-533-885) – Submission of 'Case Brief' by JBF Industries Limited," dated September 23, 2019 (JBF Case Brief).

<sup>4</sup> See Petitioners' Letter, "Petitioners' Request to Reject Untimely and Unsolicited New Factual Information Contained in Reliance's Administrative Case Brief," dated September 24, 2019; see also Commerce's Letter, "Rejection of New Factual Information," dated September 26, 2019.

<sup>5</sup> See Reliance's Case Brief, "Antidumping Investigation of Polyester Textured Yarn from India: Resubmission of Reliance Industries Limited's Case Brief," dated September 30, 2019 (Reliance Case Brief).

<sup>6</sup> See Petitioners' Rebuttal Brief, "Polyester Textured Yarn from India – Petitioners' Rebuttal Brief Regarding Reliance Industries Limited," dated October 1, 2019 (Petitioners' Rebuttal Brief-Reliance); Petitioners' Rebuttal Brief, "Polyester Textured Yarn from India – Petitioners' Rebuttal Brief Regarding JBF Industries Limited," dated October 1, 2019 (Petitioners' Rebuttal Brief-JBF); Reliance Rebuttal Brief, "Reliance Industries Limited's Rebuttal Brief," dated October 1, 2019 (Reliance Rebuttal Brief); and JBF Rebuttal Brief, "Antidumping Investigation of Polyester Textured Yarn from India (Case No. A-533-885) – Submission of 'Rebuttal Brief to Petitioners' Case Brief' by JBF Industries Limited," dated October 1, 2019 (JBF Rebuttal Brief).

<sup>7</sup> See Memorandum, "Final Determination Margin Calculation for Reliance Industries Limited," dated November 13, 2019.

2. For Reliance, we did not apply a U.S. dollar exchange rate to inventory carrying costs incurred in the country of exportation (DINVCARU) because the cost is reported in U.S. dollars.<sup>8</sup>
3. For Reliance, we revised the transactions disregarded adjustment for purchases from affiliates to reflect market prices paid by Reliance.<sup>9</sup>
4. For JBF, we revised its AFA rate based on the highest transaction-specific dumping margin for Reliance. We revised the CVD export subsidy offset rates based on the CVD final determination.<sup>10</sup>

## IV. DISCUSSION OF THE ISSUES

### Reliance

#### **Comment 1: Whether Adverse Facts Available (AFA) is Warranted for Reliance**

##### *Petitioner's Case Brief*<sup>11</sup>

- Commerce should apply total AFA to Reliance because its reported cost information is unusable. Reliance's upstream production of inputs used to produce subject merchandise (e.g., purified terephthalic acid (PTA) and partially oriented yarn (POY) profit centers) yielded a product with greater volume output than the total volume input, and less value per unit produced than the average unit value of its inputs.
- Despite numerous opportunities to report accurate cost data, Reliance has significantly impeded Commerce's investigation.
- Specifically, Reliance's reporting failure is best exemplified by its reported costs of production of PTA used as an input into the production of subject merchandise.
- To create PTA, Reliance's reported data demonstrates how production begins with the raw materials paraxylene (PX) and acetic acid. However, Reliance's reported PTA costs cannot be accurate because there is an extreme disparity between input volumes consumed and output volume produced.
- While Reliance claims that the reported chain costs for each intermediate product leading to the production of yarn is accurate, the fact that Reliance reported more output than inputs consumed for PTA results in a per-unit price that defies commercial reality.
- The worksheet for the production of PTA shows that the cost for PTA had a lower cost per metric ton than its primary input, PX.
- These fundamental reporting errors appear to stem from the physically impossible consumption rates reported by Reliance. The worksheets Reliance submitted reveal a constant pattern of greater quantities of PTA being made than the total quantities of inputs consumed.
- Commerce should find in the final determination that it is precluded from accurately assessing Reliance's reported costs of production of subject merchandise because Reliance's reporting methodology for its cost calculation is fundamentally flawed.

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<sup>8</sup> *Id.*

<sup>9</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Reliance Industries Limited," dated November 13, 2019.

<sup>10</sup> See Memorandum, "Calculation of Export Subsidy Adjustments for the Final Determination," dated November 13, 2019.

<sup>11</sup> See Petitioners' Case Brief-Reliance at 2-23.

- Commerce should assign Reliance a margin based on total AFA and apply the highest margin alleged in the petition.
- If Commerce declines to apply total AFA, partial facts available should be applied to account for the incorrectly-reported costs where the output exceeds the inputs consumed to produce subject merchandise.

*Reliance's Rebuttal Brief*<sup>12</sup>

- Reliance has fully cooperated with Commerce to the best of its ability in this proceeding and, therefore, there is no reason or cause for Commerce to apply AFA.
- The petitioners' argument for total AFA is primarily based on the claim that it is not mathematically possible for Reliance to report more output of its intermediate products than the inputs used to produce the intermediate products. However, Reliance did not report more output than input for its PTA production. Reliance reported more PTA output than PX input which is only one of the raw materials used in producing PTA.
- Reliance has accurately reported its input and output quantities for all captively-produced intermediate raw materials.
- Reliance has accurately reported its actual cost of manufacturing (COM) with traceable links for its production of intermediate products and subject merchandise.
- Reliance has reported its costs in accordance with Commerce's instructions, and those costs were found during the cost verification to reconcile to Reliance's financial statements, SAP system, and to the general ledger.

**Commerce's Position:**

Consistent with the *Preliminary Determination*, we continue to find that AFA is not warranted with respect to Reliance's reported cost data in the final determination. Contrary to the petitioners' claim, we find that Reliance acted to the best of its ability in timely complying with all of Commerce's requests for information. Moreover, we do not find that Reliance inaccurately reported its cost of production (COP) for intermediate inputs and for the subject merchandise.

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (2) fails to provide information within the established deadlines or in the form or manner requested, subject to section 782(c)(1) and section 782(e) of the Act; (3) significantly impedes a proceeding; or (4) provides information but the information cannot be verified, then Commerce shall use, subject to section 782(d) of the Act, facts otherwise available (FA) in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if Commerce finds that an interested party 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 the facts otherwise available. In reviewing the evidence on the record of this investigation as it relates to Reliance's cost reporting for intermediate inputs used to produce yarn, we do not find that the statutory requirements for the application of FA or AFA have been met.

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<sup>12</sup> See Reliance's Rebuttal Brief at 3-9.

Reliance is a fully integrated petrochemical manufacturing facility which produces intermediate input products, including ethylene, PX, PTA, monoethylene glycol (MEG) and POY, used to produce yarn.<sup>13</sup> Reliance considers each of these intermediate products to be a profit center within its accounting system. Therefore, when one intermediate product is transferred to a downstream profit center where it is consumed, Reliance uses an internal transfer price to record the cost of the product consumed at that profit center. Because the intermediate products are consumed in the downstream profit centers at transfer prices rather than at COM, for reporting purposes Reliance replaced the transfer prices at each profit center with the COM to eliminate the profit or loss that occurs at each profit center. Accordingly, at Commerce's request, Reliance provided explanations, bridge worksheets and calculations that show how the cost of each intermediate product flows into the cost for the downstream production (*e.g.*, how the cost of PX flows into the production of PTA).<sup>14</sup>

According to the petitioners, Reliance's reporting errors stem from allegedly impossible yield rates, which result in a per-unit cost for finished PTA (an upstream input into the subject yarn) which is below that of the constituent inputs used to produce it. At verification, Commerce examined Reliance's bridge worksheets, reported production quantities and costs at each profit center and traced the corresponding amounts to Reliance's accounting and production systems. In doing so, Commerce confirmed that the company had fully captured all relevant PX and acetic acid material input costs incurred during the production of PTA, which itself is an upstream input into the subject yarn.<sup>15</sup> Further, Commerce reviewed record evidence which demonstrates that during the production of PTA, additional materials<sup>16</sup> are added along with the PX and acetic acid and these material inputs undergo certain chemical reactions, resulting in a finished product weight that is greater than the weight of the PX and acetic acid consumed. Moreover, additional evidence on the record shows, for example, that it only takes 0.66 tons of PX to produce one ton of PTA. Therefore, record evidence reasonably demonstrates that the petitioners' yield analysis is flawed, in that it does not account for the additional weight resulting from the additional materials and chemical reactions that the PX and acetic acid undergo to produce the downstream product. Based on our verification procedures, we found that Reliance accurately and fully reported the input costs for PX, and acetic acid used to produce PTA, as well as the corresponding output quantity of PTA. As such, contrary to the petitioner's assertions, we find that the resulting per-unit chain costs for PTA along with the resulting downstream costs for producing yarn are reliable.

In summary, record evidence supports Reliance's argument that its chain cost reporting is complete and accurate and provides a reasonable explanation for the alleged flaws identified by the petitioners. Further, Reliance has fully complied with our requests for cost information throughout this investigation and has, as required, reported those costs consistent with how they are maintained in the company's normal Indian GAAP-compliant records, and only deviated where necessary based on Commerce's reporting requirements. Therefore, we find that the application of AFA is not warranted for the final determination, and we have continued to rely on Reliance's submitted costs (as adjusted to reflect the market value of certain inputs purchased from affiliates) in our margin calculations.

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<sup>13</sup> See Reliance's March 4, 2019 Section D Questionnaire Response (Reliance's Section D Questionnaire Response) at 4.

<sup>14</sup> See Reliance's June 12, 2019 2<sup>nd</sup> Supplemental Section D Questionnaire Response, at 5-8.

<sup>15</sup> See Reliance Cost Verification Report.

<sup>16</sup> *Id.* at Cost Verification Exhibit 13.

## **Comment 2: Affiliated Party Purchases**

Commerce determined in the *Preliminary Determination* that the price of crude oil paid by Reliance to its affiliated trading company was lower than the published market price of crude oil on the record from a public source (*i.e.*, IndexMundi), and adjusted the reported crude oil cost to reflect the higher market price in accordance with section 773(f)(2) of the Act (*i.e.*, transactions disregarded). In calculating the adjustment, Commerce considered crude oil to represent 100 percent of the COM of yarn as partial AFA, because Reliance failed to provide the percentage that crude oil represented of the COM.

### *Reliance's Case Brief*<sup>17</sup>

- Commerce should reverse its preliminary decision to adjust Reliance's reported cost of its crude oil input purchased from affiliated parties or, alternatively, revise the adjustment to eliminate the application of partial AFA regarding the percentage of the COM of yarn that crude oil represents.
- Reliance reported that its affiliated supplier was a trading company and not a producer of crude oil. Therefore, it was unambiguous to Commerce that crude oil purchased through its affiliated supplier was sourced from unaffiliated suppliers at market prices, and no adjustment was necessary.
- Commerce made an error in comparing crude oil prices without considering the difference in the American Petroleum Institute (API) standards because crude oil is not one homogenous commodity without any grades.
- During the cost verification, Commerce confirmed that crude oil purchased through Reliance's affiliated supplier was sourced from unaffiliated suppliers at market prices (*i.e.*, Reliance paid market prices plus a markup charged by its affiliated supplier).
- Although Reliance did not provide the percentage of total COM of yarn that the crude oil represented, the value of crude oil cannot logically be more than direct materials (DIRMAT) or the portion of DIRMAT representing captively-sourced POY.

### *Petitioner's Rebuttal Brief*<sup>18</sup>

- Commerce should revise the transactions disregarded adjustment made to crude oil in the *Preliminary Determination* to reflect the purchases made by Reliance from unaffiliated suppliers.
- Commerce should continue to apply partial AFA in calculating the percentage of the COM of yarn that crude oil represents because Reliance failed to provide the information as requested.

## **Commerce's Position:**

We agree with the petitioners that we should revise the transactions disregarded adjustment for affiliated party purchases of crude oil to reflect purchases made by Reliance from unaffiliated suppliers. Further, in calculating the transactions disregarded adjustment, we disagree with Reliance, and continue to apply partial AFA regarding the percentage that crude oil represents of the total COM of yarn.

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<sup>17</sup> See Reliance Case Brief at 11-16.

<sup>18</sup> See Petitioners' Rebuttal Brief-Reliance at 29-38.

Commerce's initial questionnaire instructed Reliance to provide information regarding affiliated party purchases of inputs used to produce subject merchandise and Reliance did not at that time disclose its purchases of crude oil from affiliated parties.<sup>19</sup> In a supplemental questionnaire, Commerce instructed Reliance to provide market price data associated with crude oil purchases and the percentage that crude oil represents of the cost of manufacture.<sup>20</sup> Reliance did not provide the requested information; therefore, for the *Preliminary Determination* Commerce adjusted the crude oil cost sourced from affiliated parties to reflect publicly-sourced crude oil market prices placed on the record by the petitioners. Additionally, because Reliance failed to provide the percentage that crude oil represents of the COM, in calculating the adjustment, as partial AFA, Commerce considered crude oil to represent 100 percent of the COM of yarn, which we find is appropriate to address and deter the behavior at issue – *i.e.*, Reliance's failure to provide the percentage of total COM of yarn that the crude oil represented, despite our requests for this information. We disagree with Reliance that this partial AFA adjustment cannot be relied upon because it would not be logical – section 776(b)(1) provides that, in applying an adverse inference, Commerce is not required to make adjustments based on any assumption about information the party would have provided had it complied with the request for information.

Lastly, at verification, we obtained data that show the market price Reliance paid to an unaffiliated supplier for crude oil.<sup>21</sup> Because this information reflects market prices paid by Reliance for crude oil, for the final determination, we revised our preliminary transactions disregarded adjustment to reflect those market prices. Regarding the percentage that crude oil represents of the COM, we continue to apply partial AFA, consistent with the *Preliminary Determination*, because Reliance failed to provide the requested data.

### **Comment 3: Technical Services Adjustment**

#### *Reliance's Case Brief*<sup>22</sup>

- Commerce should adjust the prices for sales to a particular home market customer for the additional technical services costs (TECHSERH) attributed to those sales.
- Reliance provided extra services for sales to this customer in the home market that it does not provide for other customers, either in the home market or in the United States. These extra services included research and development, identifying target fabric, supporting analysis of fabric samples, providing metered bobbins, guiding fabric processing, and providing shorter lead times.
- While Reliance provides some technical support to other home market customers purchasing yarn (*i.e.*, evaluating claimed product defects), it provides much greater technical support to this customer to help it develop a new market in India.
- The provision of these extra technical services and the figures used to quantify these extra services were verified by Commerce.
- The allocation methodology used to calculate the per-unit expense will not distort a potential margin pursuant to 19 CFR 401.301(g)(1).

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<sup>19</sup> See Reliance's Section D Questionnaire Response at 7.

<sup>20</sup> See Reliance's April 24, 2019 1<sup>st</sup> Supplemental Section D Questionnaire Response at 4-5.

<sup>21</sup> See Reliance Cost Verification Report at 17.

<sup>22</sup> See Reliance Case Brief at 1-2.

- If Commerce does not make an adjustment for technical services expenses or alternatively, make a LOT adjustment to account for these services provided only in the home market, Reliance requests that Commerce continue to include these technical services costs in the calculation of indirect selling expenses.

#### *Petitioners' Rebuttal Brief*<sup>23</sup>

- The Department should not attribute technical services expenses only to certain home market sales because Reliance has failed to provide sufficient evidence regarding the nature of the technical services.
- Commerce did not confirm or verify affirmative evidence provided by Reliance regarding the precise nature of the technical services because no such evidence is on the record of the proceeding or was reviewed by Commerce during verification.
- Commerce's sales verification report only states that it found no evidence to contradict Reliance's statement that it did not provide technical services to U.S. yarn customers during the POI.
- In its initial questionnaire response Reliance stated that it did not incur any expenses related to the provision of technical services.
- Reliance had another opportunity in a supplemental questionnaire to demonstrate the provision of technical services, yet it failed to provide the requested documentation.
- The letter provided by Reliance as evidence fails to support its claim. It was created specifically for this proceeding (*i.e.*, not in the normal course of business) and does not specify the alleged technical services.
- Reliance has not provided any contracts, agreements, emails, other technical material or descriptive accounting records regarding the nature of the technical services offered.
- Reliance has not linked the alleged technical services expenses to any specific sales. During verification, Reliance presented a revised technical service expense calculation, however the expenses were still not tied to any specific sales of the product. Moreover, Reliance provided no evidence that the figures used in the calculation were accurate. The only document on the record regarding this adjustment was prepared by Reliance for the purposes of this investigation.
- Commerce found in the *Preliminary Determination* that an adjustment for technical service expenses was not warranted due to lack of support on the record, and the record has not changed since the preliminary determination with respect to this issue.

#### **Commerce's Position:**

As in the *Preliminary Determination*, we find there is insufficient evidence on the record to support treating Reliance's reported technical service expenses as direct selling expenses. We only treat technical services as direct selling expenses when the respondent is able to demonstrate that the services would not have been provided but for the sales at issue.<sup>24</sup> For example, travel expenses can be considered directly related to sales if the technicians are visiting customers to assist with particular sales. On the other hand, we generally consider salaries to be

<sup>23</sup> See Petitioners' Rebuttal Brief-Reliance at 23-29.

<sup>24</sup> See *Color Picture Tubes from Japan; Final Results of Antidumping Administrative Review*, 62 FR 34201, 34203 (June 25, 1997); see also *Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan; Final Results of Antidumping Duty Administrative Review*, 57 FR 29283, 29286 (July 1, 1992).



fixed costs because they would have been incurred whether or not sales were made.<sup>25</sup> In this investigation, Reliance's reported technical service expenses were comprised solely of salaries for certain individuals. Moreover, all of the individuals did not devote 100 percent of their time to the provision of technical services. Established longstanding Commerce practice considers salaries, rent, benefits paid to salesmen, utilities and other administrative overhead expenses as indirect expenses.<sup>26</sup> Such expenses meet Commerce's definition of indirect selling expenses, *i.e.*, as expenses "the seller would incur regardless of whether particular sales were made but that may reasonably be attributed, on whole or part, to such sales."<sup>27</sup> In *AFBs*, Commerce concluded that NSK's home market technical service expense (such as the salaries and benefits of technical service employees) is a fixed expense and does not vary with sales volumes, thus concluding that it is indirect in nature.<sup>28</sup> Therefore, for the final determination, we continue to treat Reliance's technical service expenses incurred on sales of yarn used in the production of luxury mattresses to the home market customer at issue as indirect selling expenses.

#### **Comment 4: LOT Adjustment**

##### *Reliance's Case Brief*<sup>29</sup>

- Commerce should consider Reliance's sales to the luxury mattress market to constitute a different LOT because Reliance performed substantially different selling activities for those sales as compared to other home market sales.<sup>30</sup>
- The luxury mattress market was a completely new market in India.
- These products are considered "medium grade" in Europe and the United States.
- Customers in this market are provided higher levels of customer service, technical service, logistical services, sales support, and training services than other home market customers.
- Reliance provides jumbo packing with these sales that is generally reserved for export sales or the sales of specialty products such as this product. This service requires more material, care, attention, and logistical planning than sales made with non-jumbo packing, that consists of a standard small box that is handled manually and is not wrapped.

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<sup>25</sup> *Id.*

<sup>26</sup> See *Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015), and accompanying Issues and Decision Memorandum (IDM) at Comment 7 (office supplies, rent, travel fees, wages and salaries, PR fees, pension, employee welfare, overtime, advertising and bad debt are indirect in nature).

<sup>27</sup> See Commerce's Letter, "Antidumping Duty Questionnaire," dated December 13, 2018 (Initial Questionnaire), at Appendix I, Glossary of Terms, I-7.

<sup>28</sup> See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of AD Duty Administrative Reviews*, 62 FR 2081, 2097 (January 15, 1997) (*AFBs*); see also *Notice of Final Results of AD Duty Administrative Review: Furfuryl Alcohol from Thailand*, 70 FR 71085 (November 25, 2005), and accompanying IDM at Comment 5 (it is not the Department's practice to consider certain expenses as a technical services adjustment when record evidence indicates that IRCT would incur these expenses regardless of whether the technical services were performed).

<sup>29</sup> See Reliance Case Brief at 2-5.

<sup>30</sup> *Id.* at 5 (citing *Carbon and Certain Alloy Steel Wire Rod from Mexico*, 83 FR 56800 (November 14, 2018), and accompanying PDM at 17 (*Wire Rod from Mexico*); and *Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria*, 82 FR 16366 (April 4, 2017), and accompanying IDM at Comment 3 (*Cut-to-Length Plate from Austria*)).

*Petitioners' Rebuttal Brief*<sup>31</sup>

- Reliance focuses solely on Commerce's preliminary determination that its home market sales were made at the same LOT. It does not address Commerce's preliminary analysis and conclusion that Reliance's U.S. sales are also sold at the same LOT and that the differences between home market and U.S. selling functions are insignificant. Reliance's argument depends entirely on Commerce reaching a different conclusion with respect to the LOT of its home market sales.
- With respect to home market sales, Reliance identifies only three alleged differences in selling activities for sales of the product at issue, *i.e.*, a higher level of technical support and additional customer service; higher levels of logistical services, sales support and training services; and the use of jumbo packaging, none of which demonstrate a different marketing stage between the home market and U.S. market to warrant finding a different LOT.
- The record does not support Reliance's claim that it offered a significantly higher level of technical support to this customer than to other home market or U.S. customers.
- Reliance fails to explain how a technical service expense reported for certain sales of the product in question is evidence that all sales of that product have a higher level of intensity regarding the technical support selling function. The same conclusion applies to Reliance's claim that it provided higher levels of logistical services, sales support, and training services for sales of this product. The information in the selling functions chart does not support Reliance's claims.
- Reliance's argument that the fact that it uses jumbo packaging for this product is indicative of a distinct marketing stage is contradicted by its use of this packaging for all export sales, regardless of the product exported.
- Commerce should continue to deny Reliance's request for an LOT adjustment. It has not demonstrated, and the record does not support, a finding of substantial differences in home market selling activities, let alone the required additional indicia of different stages in the marketing process that would support an LOT adjustment.

**Commerce's Position:**

Consistent with the *Preliminary Determination*, we continue to find one LOT for all of Reliance's home market sales. We also continue to find that the selling functions performed by Reliance for its customers offering high-value end products are not significantly different than those performed for all other home market customers, such that they would constitute a different marketing stage. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>32</sup> In order to determine whether the home market sales are at different stages in the marketing process, we considered the distribution system for each sales channel, *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.

Reliance maintains that an important difference between the two home market sales channels reported in its selling functions chart is that it provides technical services only for sales to the luxury mattress market. However, the chart does not indicate that these services were provided at a significantly higher level of intensity to this market. Because we continue to find that substantial differences in Reliance's selling activities do not exist between the home market sales

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<sup>31</sup> See Petitioners' Rebuttal Brief-Reliance at 16-23.

<sup>32</sup> See 19 CFR 351.412 (c)(2).

channels, we determine that all of Reliance's sales in the home market were made at the same LOT. Moreover, all home market sales in the database were reported with the same sales channel designation. With respect to the U.S. market, based on our analysis of the selling activities, chain of distribution and customer categories, we concluded that these sales were also made at one LOT. Finally, we compared the U.S. LOT to the home market LOT and found the selling functions do not differ significantly. Therefore, we found that all sales were made at the same LOT and concluded that no LOT adjustment was warranted.

In support of its argument that Commerce should find two home market LOTs, Reliance cites to *Wire Rod from Mexico*<sup>33</sup> and *Cut-to-Length Plate from Austria*.<sup>34</sup> In both of these cases, Commerce found there was evidence on the record of different distribution channels that warranted finding different LOTs. Here, however, Reliance makes all of its home market sales through the same distribution channel—through a selling agent. Therefore, these cases are inapposite.

#### **Comment 5: Sales Made Outside the Ordinary Course of Trade**

##### *Reliance's Case Brief*<sup>35</sup>

- Commerce should disregard the sales made to the luxury mattress market because they were made outside of the ordinary course of trade.
- Pursuant to *Cemex*,<sup>36</sup> Commerce must evaluate all the circumstances particular to the sales in question and not just one factor when evaluating whether sales were made in the ordinary course of trade.
- As in *Cemex*, these sales were made according to unusual terms of sale. Reliance provided significantly more logistics and technical support services related to sales of this product than it did for other home market sales. In addition, Reliance uses jumbo packing for these sales in the home market.
- These sales were made at aberrational prices and low volumes because this product is an ultra-luxury product.
- As in *Cemex*, these sales were made for a niche market and represent a small percentage of Reliance's sales. These sales were made predominantly to one customer to produce high-value-added mattresses, not common in India.
- During verification Commerce observed samples of this yarn used for the specialty mattresses and noted the differences between this product and others.

##### *Petitioners' Rebuttal Brief*:<sup>37</sup>

- The law and precedent on which Reliance relies illustrate that the facts on the record do not support the classification of these sales as outside the ordinary course of trade.
- Reliance's sales were not made according to unusual terms of sale. Any potential differences in packing between the two markets are captured in the variable PACKH and, therefore, accounted for in the dumping analysis.

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<sup>33</sup> See Reliance Case Brief at 5 (citing *Wire Rod from Mexico*).

<sup>34</sup> See Reliance Case Brief at 5 (citing *Cut-to-Length Plate from Austria*).

<sup>35</sup> See Reliance Case Brief at 6-10.

<sup>36</sup> See Reliance Case Brief at 6 (citing *Cemex, S.A. v. United States*, 133 F.3d 897, 900 (Federal Circuit 1998) (*Cemex*) (citing *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 607 (CIT 1993)).

<sup>37</sup> See Petitioners' Rebuttal Brief-Reliance at 3-16.

- Contrary to Reliance’s claim, jumbo packaging does not differentiate sales of this product from all other home market sales. The majority of the home market sales packed using jumbo packaging were of products other than the product Reliance maintains is outside the ordinary course of trade.
- The sales at issue were not aberrational in terms of pricing, profit margin, or sales volume when compared to other home market sales.
- Reliance’s argument that the product at issue is extraordinary (because sales were made to a niche market and represent a small percentage of its sales; the product is sold at lower volumes and at higher prices than in the United States; the product is sold via unique and specialized channels; and Commerce noted differences in the texture of the product), is not supported by record evidence and/or irrelevant in determining whether the sales in question were made outside the ordinary course of trade. Reliance provided no evidence in the form of technical specification documents, production documents, or any other type of material that would indicate that the product is produced according to unusual product specifications.
- The control number (CONNUM) for the product in question does not appear to be significantly different from that of many other products sold in the home market during the POI.
- Reliance did not cooperate during the investigation to provide the information requested to support its claim that sales of the product are made outside the ordinary course of trade.
- The record has not changed since the *Preliminary Determination*. Accordingly, Commerce should not treat the sales at issue as having been made outside the ordinary course of trade.

### **Commerce’s Position:**

We continue to find that Reliance’s sales of yarn to a luxury mattress producer in the home market were not made outside of the ordinary course of trade. Section 771(15) of the Act defines “ordinary course of trade” as “the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.” The statute provides a non-exhaustive list of sales or transactions to be outside of the ordinary course of trade (*i.e.*, sales disregarded under section 773(b)(1) of the Act, transactions disregarded under section 773(f)(2) of the Act, and situations in which Commerce determines that a particular market situation prevents a proper comparison with the export price or constructed export price). Commerce’s regulations further specify that sales or transactions may be considered outside the ordinary course of trade when, “based on an evaluation of all the circumstances particular to the sales in question, such sales or transactions have characteristics that are extraordinary for the market in question.”<sup>38</sup> The regulation also provides examples of sales that may be considered outside the ordinary course of trade, including sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm’s length price.<sup>39</sup>

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<sup>38</sup> See 19 CFR 351.102(b)(35).

<sup>39</sup> *Id.*

Here, the product at issue was reported as prime merchandise, not off-quality merchandise, and was made to similar specifications as other products sold in the home market.<sup>40</sup> When compared with other sales, the sales of this product to this customer were not made at aberrational prices or with abnormally high profits. Additionally, Commerce finds these sales were not made to an affiliated party or under unusual terms of sale.<sup>41</sup>

Moreover, Reliance's claims of higher logistical support are not supported by record evidence; and we do not find that the provision of technical support and the use of different packing materials constitute unusual terms of sale. In *Cemex*, which Reliance cites in support of its argument, Commerce found certain sales to be outside the ordinary course of trade because they constituted a miniscule percentage of sales, were made under unusual terms of sale (due to much longer shipping routes than the industry norm) and were promotional in nature. Conversely, the sales at issue here do not constitute a miniscule percentage of Reliance's sales, were not made under any unusual term of sale and the sales were not promotional in nature. Therefore, *Cemex* does not apply here. Accordingly, we continue to find that Reliance's sales of yarn to a luxury mattress producer in the home market were not made outside the ordinary course of trade.

## **JBF**

### **Comment 6: Whether AFA is Warranted for JBF**

*JBF's Case Brief*.<sup>42</sup>

- JBF had no role in the determination of the physical characteristics used to construct the control numbers (CONNUMs). The physical characteristics are based only on the information provided by the other mandatory respondent.<sup>43</sup>
- Commerce required JBF to provide cost information for each CONNUM based on the thirteen physical characteristics identified by it. JBF does not account for cost differences for all thirteen characteristics and requiring it to provide such cost information imposes an unreasonable burden.<sup>44</sup>
- JBF reported its costs based on the product characteristics Denier and Color, as well as four other product characteristics (Finish Type-Covered, Finish Type-Twisted, Texturing Type and Fiber Type) which fall under a single type in JBF's records. Therefore, JBF effectively reported costs for six product characteristics out of thirteen identified by Commerce.<sup>45</sup>
- JBF is under no legal obligation under Indian law to account for costs as detailed as the thirteen product characteristics identified by Commerce. It fully reported the COP for each CONNUM to the extent accounted for by JBF in its accounting system. JBF has

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<sup>40</sup> See Reliance's May 24, 2019, Second Supplemental Section ABC Questionnaire Response at Exhibit SQB-3.

<sup>41</sup> See *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 19 2014), and accompanying IDM at Comment 14 ("the fact that the sales process was similar to Jindal SAW's normal sales process, leads us to conclude that this sale is in the ordinary course of trade.").

<sup>42</sup> See 19 CFR 351.102(b)(35).

<sup>43</sup> See JBF Case Brief at 5-23.

<sup>44</sup> *Id.* at 6-7.

<sup>45</sup> *Id.* at 21 (citing Article VI of the General Agreement on Tariffs and Trade 1994).

<sup>46</sup> *Id.* at 7.

maintained and reported costs as per the generally accepted accounting principles (GAAP) of the exporting country.

- JBF is not familiar with the rules and regulations that Commerce employs in its AD proceedings and it is also not aware of the substantive and procedural part of the law. Commerce failed to comply with Section 782(c)(2) of the Act, which states the Commerce should consider the difficulties faced by a respondent, particularly small companies, in supplying information and provide it with assistance.
- Commerce should have issued another supplemental questionnaire for any deficiencies in JBF's response. Commerce also could have applied partial AFA by using relative CONNUM cost differences from Reliance's questionnaire response to calculate JBF's dumping margin.<sup>46</sup>
- Commerce arbitrarily cancelled the cost verification even though JBF was ready for the verification.
- Commerce should not reject JBF's reported sales information and assign a rate based on AFA because JBF has cooperated to the best of its ability to comply with requested information and did not refuse access to, or fail to provide, necessary information within a reasonable time period or significantly impede the investigation.
- The purpose of the AFA rule is to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In this instance, JBF had nothing to gain by not fully cooperating.
- As provided by 19 U.S.C. 1677m, Commerce is under an obligation to use the information provided by JBF, as information provided by JBF complies with all the subsections mentioned in subsection (e), *i.e.*, the information is timely, can be verified, and is not so incomplete that it cannot serve as a reliable bases for reaching the applicable determination.

*Petitioners' Rebuttal Brief*<sup>47</sup>

- JBF was on notice of its ability to submit comments on product matching characteristics because Commerce solicited comments in the *Notice of Initiation*, which was published in the *Federal Register*.<sup>48</sup> It is a well-established principle that publications in the *Federal Register* provide sufficient notice to the public.<sup>49</sup>
- A respondent's obligation to accurately report CONNUM-specific costs is one of the most basic and fundamental requirements in Commerce's investigation. Commerce's regulation contemplates that if a respondent experiences difficulty in responding to the questionnaire, it may notify Commerce within 14 days of the issuance of the questionnaire. JBF did not notify Commerce of any difficulty in reporting until after the *Preliminary Determination*.<sup>50</sup>

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<sup>46</sup> *Id.* at 12.

<sup>47</sup> See Petitioners' Rebuttal Brief-JBF at 2-27.

<sup>48</sup> *Id.* at 3, see also *Polyester Textured Yarn from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 58223, 58224 (November 19, 2018) (*Notice of Initiation*).

<sup>49</sup> *Id.* at 4-5 (citing, *e.g.*, *Sumecht NA, Inc. v. United States*, 923 F. 3d 1340, 1344-45 (CIT 2019) (discussing Timken notices in the *Federal Register* placing the public on notice)).

<sup>50</sup> *Id.* at 26.

- JBF admits that it only reported costs using six out of 13 CONNUM characteristics identified by Commerce. JBF, therefore, admits misreporting key information critical to the calculation of a dumping margin.<sup>51</sup>
- Commerce does not expect respondents to necessarily track costs in their accounting system using all the physical characteristics that Commerce selected for model matching. Accordingly, the initial Section D questionnaire asks respondents to calculate appropriate cost differences for physical characteristics not tracked by the respondent or explain why the cost differences related to differences in the physical characteristics, in the view of the respondent, is so insignificant that it is considered inconsequential.<sup>52</sup>
- JBF initially reported that all the physical characteristics defined by Commerce are accounted for in the reported cost. When asked again in the first supplemental questionnaire, JBF for the first time reported that it calculated product costs only using two physical characteristics out of thirteen. In its second supplemental questionnaire response, JBF had another opportunity to revise its cost file to meet Commerce's requirement but it failed again to comply with the requested information.<sup>53</sup>
- JBF claims that the physical characteristics SPECIAL, FILAMENT, PLY, INTMING and LUSTER are not available in its inventory records.<sup>54</sup> JBF, however, submitted a key to its finished goods internal product codes ("Finished Goods Codes"), which demonstrates that JBF's production control and accounting records (*e.g.*, sales and inventory) distinguish between products based on these physical characteristics in the normal course of business. JBF ignored these physical characteristics when constructing its costs.<sup>55</sup>
- While JBF acknowledges that one of the reasons Commerce applied AFA is because of its failure to reconcile its reported COP, it did not provide any defense for its cost reconciliation or claim that its costs reconcile.<sup>56</sup>
- Despite being given multiple opportunities by Commerce to remedy its cost reconciliation, JBF failed to reconcile the significant cost difference between its COP database and its cost reconciliation.<sup>57</sup>
- Commerce applied AFA to JBF not because of the limitations of its accounting system but because it failed to respond to the Commerce's "request for explanations and clarifications."<sup>58</sup>
- Commerce applied AFA to JBF because it found that the record lacked the information necessary to calculate a dumping margin.<sup>59</sup> Once Commerce determined that the information on the record was not usable, there was no reliable data that could be verified.<sup>60</sup> Commerce and the courts have repeatedly found that it is appropriate to

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<sup>51</sup> *Id.* at 3.

<sup>52</sup> *Id.* at 8; *see also* Initial Questionnaire at D-11.

<sup>53</sup> *Id.* at 9-10; *see also* Commerce's Letters, "First Supplemental D Questionnaire," dated April 8, 2019 (SQ1), at 7; and "Second Supplemental Questionnaire," dated May 29, 2019 (SQ2), at 4-5.

<sup>54</sup> *See* SQ2 at 4-5 (citing JBF's Case Brief at 7).

<sup>55</sup> *Id.* at 11-12 (citing JBF's March 18, 2019, Section D questionnaire response (JBF's March 18, 2019 DQR), at D-4).

<sup>56</sup> *Id.* at 12.

<sup>57</sup> *Id.* at 13-14.

<sup>58</sup> *See Preliminary Determination PDM* at 6-7.

<sup>59</sup> *Id.* at 5.

<sup>60</sup> *See* Petitioners' Rebuttal Brief-JBF at 24.

cancel verification where key information is missing from the record, as is the case here.<sup>61</sup>

- JBF failed to provide complete worksheets and supporting documents to explain how it derived the product-specific costs it reported even when repeatedly requested by Commerce.<sup>62</sup>
- Commerce timely notified JBF of its reporting failures and allowed multiple opportunities to remedy those failures. In addition, for nearly every questionnaire issued, Commerce granted JBF at least one extension of time to respond.<sup>63</sup>
- JBF is a sophisticated producer that has participated in previous proceedings.<sup>64</sup> JBF's insistence that it was somehow unable to participate to the fullest extent in this investigation is belied by the record.<sup>65</sup>

### **Commerce's Position:**

Consistent with the *Preliminary Determination*, we continue to find that JBF failed to provide Commerce with critical information needed to calculate a reliable and accurate antidumping margin, despite having multiple opportunities to do so.<sup>66</sup> 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 COP. In accordance with sections 776(a) and (b) of the Act, we continue to determine that the use of facts otherwise available with an adverse inference is appropriate for the final determination with respect to JBF.

As detailed in the *Preliminary Determination*, at the outset of this investigation, Commerce identified the physical characteristics deemed most significant in differentiating between products. JBF, as well as all interested parties, were notified through the *Notice of Initiation* of the filing requirements and given 20 calendar days to provide factual information and comment on the appropriate physical characteristics of yarn to be reported in response to Commerce's antidumping questionnaire.<sup>67</sup> JBF did not submit any factual information or comments regarding the physical characteristics, although it had an opportunity to do so, and therefore, we disagree with JBF that the product characteristics were decided without input from JBF. The choice of physical characteristics is important for model matching purposes and focuses primarily on meaningful commercial differences that impact a product's market price. These are the physical characteristics that define unique products which are assigned a 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."<sup>68</sup> CONNUM-specific costs are required for performing the cost test, calculating constructed value (CV) and the difference-in-merchandise adjustment.

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 15-16.

<sup>63</sup> *Id.* at 23.

<sup>64</sup> *Id.* at 24-25.

<sup>65</sup> *Id.* at 25.

<sup>66</sup> See *Preliminary Determination* PDM at 5.

<sup>67</sup> See *Notice of Initiation*.

<sup>68</sup> See *Mukand, Ltd. v. United States*, 767 F. 3d 1300, 1307 (Fed. Cir. 2014).



In responding to Commerce's initial Section D questionnaire, issued on December 13, 2018, JBF's answers 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 antidumping questionnaire that were used to construct CONNUMs. It was incumbent upon JBF to notify Commerce of difficulties in responding to Section D of the antidumping questionnaire within 14 days of the issuance of the questionnaire.<sup>69</sup> JBF did not notify Commerce of any difficulties in reporting within this deadline. In its initial response to our questions at II.C.1.d and III.A.3 of the Section D questionnaire, JBF stated that its reported costs accounted for all physical characteristics identified by Commerce.<sup>70</sup> However, based on our analysis of the reported costs, we found discrepancies in that 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). As such, we 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 cost differences associated with each physical characteristic.<sup>71</sup> In its response, JBF stated that its reported costs captured cost differences for only two of the thirteen physical characteristics identified by Commerce (denier and color).<sup>72</sup>

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.<sup>73</sup> 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.<sup>74</sup> JBF further stated that the reported costs are manually derived based on only two physical characteristics (denier and color).<sup>75</sup> JBF did not provide any response to our questions where we asked them to describe the required 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.<sup>76</sup> JBF did not 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.

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<sup>69</sup> See Initial Questionnaire.

<sup>70</sup> See JBF's March 18, 2019 DQR at 12 and 21.

<sup>71</sup> See SQ1 at 7.

<sup>72</sup> See JBF's May 1, 2019, Supplemental Section D Questionnaire Response (JBF's Supp D1) at 13.

<sup>73</sup> See SQ2 at 4-5.

<sup>74</sup> See JBF's June 7, 2019, Second Supplemental Section D Questionnaire (JBF's Supp D2) at 4-5.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 5.

It was JBF's responsibility to answer Commerce's questions and provide the information that Commerce requested. 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 accurate antidumping margin; and the submitted cost data are so incomplete that they cannot be used without undue difficulty. We disagree with JBF that Commerce was obliged to issue a third supplemental questionnaire, notifying JBF of the same deficiencies that had been identified in the previous questionnaires. We also disagree that Commerce arbitrarily cancelled the cost verification because once we determined the data JBF provided was unusable there was no accurate data on the record to verify.

Further, aside from the fact that JBF failed to respond to our requests to provide CONNUM-specific costs or explain how it accounts for product-specific costs in its normal books and records, JBF provided a cost reconciliation that contains 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.<sup>77</sup> 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.<sup>78</sup> JBF further explained that the 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.<sup>79</sup> A complete cost reconciliation is necessary to demonstrate that all costs are appropriately included or excluded from the reported COP for the subject merchandise.<sup>80</sup> 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 accurate and reliable weighted-average dumping margin for JBF in the final determination.

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.<sup>81</sup> Even though we specifically asked for explanations and supporting documents, JBF's second section D

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<sup>77</sup> See JBF's Supp D1 at Exhibit SD1-27c.

<sup>78</sup> See JBF's Supp D2 at 6-7.

<sup>79</sup> *Id.*

<sup>80</sup> See *Certain Steel Nails from Taiwan: Final Results of AD Duty Administrative Review and Partial Rescission of Administrative Review*; 2015-2016, 83 FR 6163 (February 13, 2018), and accompanying IDM at Comment 2.

<sup>81</sup> See JBF's March 18, 2019 DQR at 24 and Exhibit D.III.C1-COP.

supplemental questionnaire response included no details, supporting documents, or calculation worksheets demonstrating how JBF derived the extended costs for each cost category.<sup>82</sup> JBF, therefore, failed to demonstrate how it derived from its normal books and records its cost 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 still 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 the final determination.

Further, we continue to 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."<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup>

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 product-specific costs in its normal books and records. JBF provided a cost reconciliation with 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

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<sup>82</sup> See JBF's Supp D2 at 7-9 and Exhibits SD2-10c.1-SD2-10e.

<sup>83</sup> See *Nippon Steel*, 337 F. 3d at 1382.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 1380.

<sup>86</sup> *Id.* at 1382.

*Nippon Steel* also stated that the standard “does not condone inattentiveness, carelessness, or inadequate record keeping.”<sup>87</sup> Accordingly, because we determine that JBF did not act to the best of its ability, we have determined JBF’s dumping margin for the final determination based on AFA, pursuant to section 776(b) of the Act.

JBF’s argument that it reported its cost information based on its normal books and records which follows Indian GAAP is without merit. Commerce’s long-standing practice, codified at section 773(f)(1)(A) of the Act, is to rely on data from a respondent’s normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing the merchandise. However, the costs reported by JBF do not reasonably reflect the cost of producing yarn because the reported costs fail to take into account differences in costs related to Commerce’s defined physical characteristics. Further, even when JBF was asked to 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, it failed to provide a sufficient response. We also disagree with JBF’s argument that it should not be penalized because it was not familiar with Commerce rules and regulations. JBF was familiar with Commerce rules and regulations as they actively participated in this investigation by filing original questionnaire responses, responding to supplemental questionnaires, and submitting timely briefs and rebuttals according to Commerce filing requirements.

For the reasons discussed above, and as discussed further below in Comment 7, we continue to find that the application of AFA with an adverse inference is warranted with respect to JBF, pursuant to sections 776(a)(1), 776(a)(2)(B)-(C), and 776(b) of the Act.

#### **Comment 7: Selection of the Appropriate AFA Rate for JBF**

*JBF’s Case Brief:*<sup>88</sup>

- The law requires that where Commerce has received less than full and complete facts, Commerce can fill the gaps by using facts otherwise available. To apply an adverse inference, Commerce needs to further ascertain that a respondent failed to cooperate by not acting to the best of its ability, which is not the case here.<sup>89</sup>
- Commerce’s application of AFA because some information is missing, is unsupported by the facts on the record and not justifiable.<sup>90</sup> Commerce is required to corroborate its selection of an AFA rate with substantial evidence.
- Commerce’s application of AFA is punitive and, hence, inappropriate for what amounts to a very minor error.
- On June 14, 2019, the Federal Circuit expressly rejected<sup>91</sup> Commerce’s practice of relying on the highest rate as the total AFA rate.

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<sup>87</sup> *Id.*

<sup>88</sup> See JBF Case Brief at 13-17.

<sup>89</sup> *Id.* at 14 (citing *Xiping Opeck Food Co. v. United States*, 34 F. Supp. 3d 1331, 1346-47 (CIT 2014) (*Xiping Opeck*)).

<sup>90</sup> *Id.* at 15 and 16 (citing *Gerber Food (Yunnan) Co., Ltd. v. United States* (1290) 387 F. Supp. 2d 1270, 1272-73 (CIT 2005); and *POSCO v. United States*, 296 F. Supp. 3d 1320, 1349 (CIT 2018)).

<sup>91</sup> See JBF Case Brief at 15 (citing *BMW of North America LLC v. U.S.*, 926 F. 3d at 1301).

### *Petitioner's Rebuttal Brief*<sup>92</sup>

- JBF withheld information that was requested, failed to provide information in the form and manner requested, significantly impeded the proceeding by refusing to supply critical information and provided information that could not be verified.<sup>93</sup>
- JBF failed to act to the best of its ability in responding to information requested by Commerce.<sup>94</sup>
- JBF's argument that Commerce cannot use the information submitted by the respondent against its own interest misses the point in two important ways. Commerce is not using the information provided by the respondent because the information provided is incomplete, inaccurate, unsupported, and therefore, unusable. In applying AFA, Commerce selects from among the facts otherwise available and utilizes an adverse inference in selecting from among those record facts. Commerce applied AFA in a manner entirely consistent with the law.<sup>95</sup>
- JBF's reliance on *Xiping Opeck* for application of partial facts available is misplaced. In *Xiping Opeck*, the court remanded for further explanation Commerce's application of AFA to a cooperative respondent based on the lack of cooperation of a separate, unaffiliated company.<sup>96</sup> Here, JBF, not an unaffiliated firm, failed to cooperate with Commerce.<sup>97</sup>
- Commerce should find that the highest dumping margin alleged in the petition (202.93 percent) is corroborated by the adequacy and accuracy of the information in the petition and apply this rate to JBF because there are no other cooperative respondents on whose data Commerce could base a rate for JBF.
- If Commerce declines to apply an AFA rate to Reliance and continues to find that the highest rate in the petition cannot be corroborated, Commerce should select Reliance's highest average-to-transaction (A-T) dumping margin as the AFA rate for JBF, as opposed to the highest average-to-average (A-A) dumping margin of 35.92 percent, to ensure that JBF does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.
- In addition, Commerce should not select an A-A dumping margin because it cannot conduct its differential pricing analysis for JBF to show that the A-A comparison method is appropriate. To do so would advantage JBF as a result of its own lack of cooperation.

### **Commerce's Position:**

We disagree with 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.<sup>98</sup> Further, section 776(b)(1)(B) of the Act states that Commerce "is not required to determine, or make any adjustments ... based on any assumptions about information the

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<sup>92</sup> See Petitioners' Rebuttal Brief-JBF at 24-27.

<sup>93</sup> *Id.* at 6.

<sup>94</sup> *Id.* at 18-19.

<sup>95</sup> *Id.* at 19.

<sup>96</sup> *Id.* at 21 (citing *Xiping Opeck* at 1342).

<sup>97</sup> *Id.*

<sup>98</sup> See 19 CFR 351.308(c).

interested party would have provided if the interested party had complied with the request for information.” Additionally, section 776(d)(3) provides that, if Commerce relies on adverse inferences in selecting from among the facts otherwise available, it is not required to estimate what the dumping margin would have been had the company cooperated, or to demonstrate that the dumping margin selected reflects an alleged commercial reality of the company. When selecting an AFA rate in an LTFV investigation, Commerce’s practice is to select the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated dumping margin for any respondent in the investigation.<sup>99</sup>

As discussed in the preceding comment, JBF failed to provide the requested cost information, including a completed cost reconciliation. Accurate reporting of costs of production are a critical component of Commerce’s dumping analysis in that it is the foundation for determining whether a respondent’s comparison market sale prices are within the ordinary course of trade, thus establishing a fair comparison of normal value (NV) with U.S. price. A respondent’s costs of production may also be required as a basis of constructed value and NV. Further, a respondent’s costs of production serve as the basis for several adjustments to both NV and/or U.S. price, such as the adjustment for differences-in-merchandise when the NV is based on comparison market sale prices for the foreign like product which is similar, but not identical, to the subject merchandise. Thus, JBF’s refusal to appropriately report its costs of production has precluded Commerce from completing its dumping analysis and, as such, Commerce finds that selection of the highest dumping margin from amongst the available sources is warranted.

In this investigation, the highest dumping margin alleged in the petition is 202.93 percent.<sup>100</sup> 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.<sup>101</sup> 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.”<sup>102</sup> The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.<sup>103</sup> 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.<sup>104</sup> 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 interested party failing to cooperate had cooperated or to

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<sup>99</sup> 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.

<sup>100</sup> See Petitioners’ Letter, “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), at Exhibit AD-IND-6.

<sup>101</sup> See 19 CFR 351.308(d).

<sup>102</sup> See SAA at 870.

<sup>103</sup> See SAA at 870; see also 19 CFR 351.308(d).

<sup>104</sup> See SAA at 870; see also 19 CFR 351.308(d).

demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>105</sup>

In attempting to corroborate the highest dumping margin alleged in the petition, we found the petition rate of 202.93 percent to be significantly higher than Reliance’s highest calculated transaction-specific dumping margin (*i.e.*, 47.51 percent based on the A-T comparison methodology).<sup>106</sup> Because we were unable to corroborate the 202.93 percent rate alleged in the petition with individual transaction-specific margins from Reliance, we next applied a component approach and compared the NV and net U.S. price underlying the 202.93 percent rate alleged in the petition to the range of NVs and net U.S. prices calculated for Reliance. We found, however, that we were also unable to corroborate the NV and net U.S. price underlying the 202.93 percent rate alleged in the petition. Specifically, we find that the NV and net U.S. price in the petition is not within the range of NVs and net U.S. prices, respectively, calculated for Reliance for this final determination. Accordingly, we have not been able to corroborate the relevance and reliability of the highest dumping margin alleged in the petition.

When Commerce finds that the highest dumping margin alleged in the petition does not have probative value based on record information, Commerce’s practice is to select the highest individual dumping margin calculated for a cooperating respondent, if available. For the *Preliminary Determination*, we selected as the AFA rate the highest individual dumping margin calculated for Reliance based on an average U.S. price (*i.e.*, based on an A-to-A comparison) which was used to calculate Reliance’s estimated weighted-average dumping margin. However, upon further consideration in light of the record and party arguments, Commerce has decided for the final determination to select as JBF’s AFA rate the highest individual dumping margin based on a transaction-specific U.S. price (*i.e.*, based on an A-to-T comparison) and not on an A-to-A comparison, which is based on a product-specific average U.S. price.

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.<sup>107</sup> As noted above, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an alleged commercial reality of the interested party.<sup>108</sup> We find that, given JBF’s failure to cooperate in this investigation, we cannot presume that its rate would have been based on the same A-to-A comparison method used to determine the estimated weighted-average dumping margin of Reliance, a cooperative company. Specifically, we agree with the petitioners that it is appropriate to rely on the highest calculated rate available, which is based on an A-to-T comparison, because we are unable to conduct a differential pricing analysis for JBF, and we cannot presume that JBF’s estimated weighted-average dumping margin would have been calculated using the same A-to-A comparison method.

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<sup>105</sup> See section 776(d)(3) of the Act.

<sup>106</sup> See Memorandum, “Final Determination Margin Calculation for Reliance Industries Limited,” dated concurrently with this memorandum.

<sup>107</sup> See SAA at 870.

<sup>108</sup> See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, Final Affirmative Determination of Critical Circumstances*, 83 FR 16319 (April 16, 2018), and accompanying IDM at 7.

In light of the above, we find that a presumption that JBF's dumping margin would have been based on the A-to-A comparison method (which results in a 35.69 percent AFA rate) as opposed to the A-to-T comparison method (which results in a 47.51 percent AFA rate) would provide JBF with a more favorable result than if it had cooperated fully.

As discussed above, JBF obstructed Commerce's ability to conduct its dumping analysis and, as such, the application of the highest individual dumping margin is appropriate. Accordingly, for the final determination, we based the AFA rate for JBF on Reliance's A-to-T dumping margin of 47.51 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.

### **Comment 8: Adjustment to Cash Deposit Rates for Export Subsidies**

#### *JBF's Case Brief*<sup>109</sup>

- In the *Preliminary Determination*, to determine JBF's cash deposit rate, Commerce incorrectly adjusted JBF's estimated weighted-average dumping margin by the export subsidy rate determined for the other mandatory respondent, Reliance, in the companion countervailing duty (CVD) investigation.
- For the final determination, Commerce should make this export subsidy offset to determine JBF's AD cash deposit rate using the export subsidy rate found for JBF in the companion CVD investigation.

#### *Petitioners' Rebuttal Brief*<sup>110</sup>

- In the *Preliminary Determination*, Commerce correctly adjusted JBF's estimated weighted-average dumping margin by the lowest export subsidy rate that was calculated in the preliminary determination of the companion CVD investigation, *i.e.*, 6.95 percent for Reliance.
- Nothing in the statute or regulations instructs Commerce how to calculate a company's cash deposit rate for estimated antidumping duties; Commerce, therefore, has considerable discretion in how it calculates this rate.
- The statute makes clear that when a rate is based on AFA, Commerce is under no obligation to demonstrate that the rate reflects commercial reality. Accordingly, Commerce is under no obligation to offset JBF's estimated antidumping duties by the full amount of export subsidies found in the companion CVD investigation.
- Commerce's decision to apply the lowest export subsidy offset to JBF's estimated weighted-average dumping margin is within its discretion in applying an adverse inference designed to ensure that JBF does not obtain a more favorable result by failing to cooperate in the investigation.
- The concurrent *Yarn from China Prelim*<sup>111</sup> investigation supports the argument that Commerce's normal practice is to offset the estimated antidumping duties based on AFA with the lowest export subsidy rate in the companion CVD proceeding.

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<sup>109</sup> See JBF's Case Brief at 23-24.

<sup>110</sup> See Petitioners' Rebuttal Brief-JBF at 27-30.

<sup>111</sup> See Petitioners' Rebuttal Brief-JFB at 9 (citing *Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and*



- For the final determination, Commerce should continue to use the lowest export subsidy rate from the companion CVD investigation to adjust JBF's dumping margin when calculating its cash deposit rate.

### **Commerce's Position:**

Section 772(c)(1)(C) of the Act directs Commerce to increase EP or CEP by the amount of the countervailing duty imposed on the subject merchandise to offset an export subsidy. Commerce has previously explained:

The basic economic theory underlying this provision is that in parallel AD and CVD investigations, if the Department finds that a respondent received the benefits of an export subsidy program, it is presumed the subsidy contributed to lower-priced sales of subject merchandise in the United States market by the amount of any such export subsidy. Thus, the subsidy and dumping are presumed to be related, and the assessment of duties against both would in effect be "double-application" or imposing two duties against the same situation. Therefore, Congress, through section 772(c)(1)(C) of the Act, indicated that the Department should factor the subsidy into the antidumping calculations to prevent this "double-application" of duties.<sup>112</sup>

Commerce has also explained its application of section 772(c)(1)(C) of the Act in investigations:

The Department has interpreted the term "imposed" to mean "assessment" in past investigations, and the CIT has affirmed this interpretation. The Department also has recognized, however, that cash deposit rates are estimates of the AD duties which may ultimately be assessed and are applied in investigations to provide the United States with security that it will collect AD duties upon completion of a review, should it find that dumping has occurred in the period covered by the review. Cash deposit rates become final assessment rates only when administrative reviews are not requested (*See* 19 CFR 351.212(c)), are subject to modification, and as noted above, serve a different purpose than assessment rates. However, they are calculated on the basis of all of the information on the record and, in most respects, are calculated in the same manner as assessment rates determined in reviews. Therefore, the Department has recognized that although Congress in the statute is silent as to the application of subsidy offsets during an investigation, the same underlying theory of "double-application" which applies to the imposition of duties also applies to the Department's calculation of a cash deposit rate. Thus, the Department's practice to date in an investigation is to offset the AD cash deposit rate by the export subsidy cash deposit rate.<sup>113</sup>

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*Extension of Provisional Measures*, 84 FR 31297 (July 1, 2019), and accompanying PDM at 19 (*Yarn from China Prelim*)).

<sup>112</sup> *See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 34899, 34900-01 (May 16, 2002).

<sup>113</sup> *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying IDM at Comment 1 (internal citations omitted).

Neither the statute nor Commerce's regulations describe how Commerce should adjust AD cash deposit rates in an investigation to account for export subsidy rates determined in a companion CVD investigation.<sup>114</sup> Therefore, Commerce's practice in such a situation is to reduce the amount of collected antidumping duties where the remedy for the export subsidy is collected as part of the companion countervailing duties. The amount of the "subsidy offset" necessary to eliminate the double remedy included in the antidumping duties is the "lesser of" the amount (or rate) of the export subsidy embedded in the collected antidumping duties and the amount (or rate) of the export subsidy included in the collected countervailing duties. The amount of the subsidy offset represents that amount of the overlap in the collection of antidumping and countervailing duties which is due to the export subsidy.

For a given company, when that company's antidumping duties and countervailing duties are based on its own information, then the amount of an export subsidy embedded in the antidumping duties and included in the countervailing duties will be the same, and the subsidy offset is simply equal to this amount (*i.e.*, there is no relevant "lesser of" the amount of the subsidy in the antidumping duties and countervailing duties). This is the situation for Reliance in this investigation, where its estimated weighted-average dumping margin and its countervailing duty rate are both based on its own information. As such, the amount of the export subsidy included in both is the same and the subsidy offset is equal to this single value, 4.13 percent.<sup>115</sup>

When a company's antidumping duties are not based on its own information, but its countervailing duties are based on its own information, such as with JBF in this investigation, then the amount of an export subsidy may be different between the antidumping and countervailing remedies. Specifically, for JBF, Commerce found in the final determination of the companion CVD investigation that it benefited from an export subsidy in the amount of 21.06 percent.<sup>116</sup> In the final determination of this LTFV investigation, Commerce has applied total AFA to JBF and determined JBF's estimated weighted-average dumping margin based on the highest individual dumping margin found for Reliance. In the companion CVD investigation, Commerce found that Reliance benefited from an export subsidy in the amount of 4.13 percent, which is the amount of the export subsidy embedded in the antidumping duties determined for JBF.<sup>117</sup> Accordingly, to eliminate the double remedy for the export subsidy paid by an importer of subject merchandise attributed to JBF, the amount of the subsidy offset in the AD cash deposit rate should be the lesser of the amount of the export subsidy paid by the importer as part of the countervailing duties and the amount of the export subsidy paid as part of the antidumping duties.

When a company's antidumping duties and countervailing duties are based on different sets of data, the use of the smaller amount of the export subsidy is the logical approach to eliminate the double remedy. For example, if \$2 is collected for an export subsidy as part of the countervailing duties, and \$1 for an export subsidy is collected as part of the antidumping duties, to offset the antidumping duties by \$2 would be excessive because there is only \$1 embedded in and collected as part of the antidumping duties. Likewise, if \$1 is collected for an export subsidy as part of the countervailing duties, and \$2 for an export subsidy is collected as part of the

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<sup>114</sup> See *Jinko Solar Co. v. United States*, 229 F. Supp. 3d 1333, 1359 (Ct. Int'l Trade 2017).

<sup>115</sup> See Memorandum, "Calculation of Export Subsidy Adjustments for the Final Determination," dated November 13, 2019.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

antidumping duties, to offset the antidumping duties by \$2 would also be excessive because only \$1 was collected as part of the countervailing duties. Thus, the overlap is limited to \$1 and the subsidy offset is logically capped at the lesser of the amount of the export subsidy included in either the countervailing duties or embedded in the antidumping duties.

In the *Preliminary Determination* we incorrectly stated that we adjusted JBF's antidumping cash deposit rate by the lowest export subsidy rate for any respondent in the companion CVD investigation as an extension of adverse inferences. In this investigation, there is no missing information to address with facts available as the amounts of the export subsidy included in the countervailing duties and the antidumping duties is known, and these amounts are based on the final determinations in Commerce's LTFV and CVD investigations, each of which establish an amount of remedial duties to be collected from an importer. Only when the amount of an export subsidy is not known (*e.g.*, perhaps it is business proprietary information, and therefore not publicly known) would the application of facts available be warranted. Further, the application of an adverse inference would be dependent on the specifics under a facts-available situation. However, facts available is not appropriate to determine the amount of the export subsidy embedded in the applied AFA rate for JBF as this rate is determined based on the dumping analysis for Reliance, and the amount of Reliance's export subsidy benefit is known.

Accordingly, for this final determination, Commerce has determined that the amount of the subsidy offset, applied to JBF's estimated weighted-average dumping margin to calculate JBF's cash deposit rate, is equal to the lesser of the export subsidy rate found for JBF or the export subsidy rate found for Reliance in the final determination of the companion CVD investigation. The amount of this subsidy offset is 4.13 percent.

## V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final estimated weighted-average dumping margins in the *Federal Register*.

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\_\_\_\_\_  
Agree

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\_\_\_\_\_  
Disagree

X



Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance