



A-533-889
Investigation
POI: 4/1/2018 - 3/31/2019
Public Document
E&C/Office III: CD/JV

December 4, 2019

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Certain Quartz Surface
Products from India

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that certain quartz surface products (quartz surface products) from India are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice. We preliminarily determine that critical circumstances do not exist for the two mandatory respondents, Pokarna Engineered Stone Limited (Pokarna) or the Antique Group,¹ or imports of quartz surface products from India that are subject to the all-others rate.

II. BACKGROUND

On May 8, 2019, we received an antidumping duty (AD) petition covering imports of quartz surface products from India, filed in proper form on behalf of Cambria Company LLC (the petitioner).² We initiated this investigation on May 28, 2019.³

In the *Initiation Notice*, we stated that we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United

¹ The Antique Group is comprised of Antique Marbonite Private Limited, India (Antique Marbonite) and its affiliates Shivam Enterprises (Shivam) and Prism Johnson Limited (Prism Johnson).

² See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Quartz Surface Products from India and the Republic of Turkey,” dated May 8, 2019 (the Petition).

³ See *Certain Quartz Surface Products from India and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 25529 (June 3, 2019) (*Initiation Notice*).

States subheadings listed in the scope of the investigation.⁴ Accordingly, on May 22, 2019, we released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁵ On June 6, 2019, the Federation of Quartz Surface Industry of India (the Federation) and Pokarna submitted comments on the CBP data and respondent selection.⁶ On July 1, 2019, we limited the number of respondents selected for individual examination to the two exporters and producers that accounted for the largest volume of entries of the subject merchandise into the United States during the period of investigation (POI), Antique Group and Pokarna.⁷

On June 28, 2019, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of quartz surface products from India.⁸ On July 1 and July 5, 2019, we issued the Initial AD Questionnaire to the Antique Group and Pokarna.⁹

The *Initiation Notice* also notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of quartz surface products to be reported in response to the Initial AD Questionnaire.¹⁰ We received timely comments regarding the physical characteristics of the merchandise under consideration on the record of this investigation.¹¹ Based on the comments received, on July 9, 2019, we issued a memorandum revising the product characteristics field for the size of fabricated products.¹² Further, we received timely scope comments and rebuttal scope comments from interested parties.¹³ As explained below, we also addressed the scope comments placed on the record of this investigation by interested parties in the Preliminary Scope Decision Memorandum, issued concurrently with this memorandum.¹⁴

⁴ *Id.*, 84 FR at 25533.

⁵ See Memorandum, “Antidumping Duty Investigation of Certain Quartz Surface Products from India: Release of Customs Data from U.S. Customs and Border Protection,” dated May 22, 2019.

⁶ See the Federation’s Letter, “Certain Quartz Surface Products from India (A-533-889), Respondent Selection Comments,” dated June 6, 2019; see also Pokarna’s Letter, “Certain Quartz Surface Products from India: Comments on CBP Data and Respondent Selection,” dated June 6, 2019.

⁷ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the India: Respondent Selection,” dated July 1, 2019.

⁸ See *Certain Quartz Surface Products from India and Turkey: Determinations*, 84 FR 31100 (June 28, 2019); see also International Trade Commission Preliminary Report, “Quartz Surface Products from India and Turkey, Invs. 701-TA-624-625 and 731-TA-1450-1451 (Preliminary), ITC Publication 4919, July 2019.

⁹ See Commerce’s Initial Questionnaire Letter to Pokarna, dated July 1, 2019, and Commerce’s Initial Questionnaire Letter to Antique, dated July 5, 2019 (collectively, Initial AD Questionnaire).

¹⁰ *Id.*

¹¹ See Petitioner’s Letter, “Certain Quartz Surface Products from India and Turkey: Comments on Model Match Methodology,” dated June 17, 2019.

¹² See Memorandum, “Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from India: Clarification of Product Characteristics,” dated July 8, 2019.

¹³ See Antique Group’s Letter, “Certain Quartz Surface Products from India (C-533-890 and A-533-889), Comments on Scope of Investigation,” dated June 17, 2019; see also Petitioner’s Letter, “Certain Quartz Surface Products from India: Petitioner’s Rebuttal Comments Regarding Scope and Model Match Criteria,” dated June 27, 2019.

¹⁴ For further discussion of these comments, see Memorandum, “Certain Quartz Surface Products from India and Turkey: Preliminary Scope Decision Memorandum,” dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

Antique Group and Pokarna submitted timely responses to our Initial AD Questionnaire from July 22 through August 29, 2019.¹⁵ We issued supplemental questionnaires to each company and received timely responses to these supplemental questionnaires from September through November 2019.¹⁶

On September 16, 2019, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).¹⁷ Thereafter, pursuant to section 733(c)(1)(A) of the Act, we postponed the preliminary determination until no later than December 4, 2019.¹⁸

On September 17, 2019, the petitioner filed an allegation of critical circumstances with respect to quartz surface products from India pursuant to section 733(e) of the Act and 19 CFR 351.206.¹⁹ On September 18, 2019, we requested monthly quantity and value shipment data from the Antique Group and Pokarna.²⁰ From September through November 2019, both Antique Group and Pokarna reported their monthly quantity and value shipment data.²¹ On September 30, 2019,

¹⁵ See Antique Group's Letter, "Certain Quartz Surface Products from India (A-533-889): Section A questionnaire responses," dated August 3, 2019 (Antique Group's AQR); Antique Group's Letter, "Certain Quartz Surface Products from India (A-533-889), Section BCD questionnaire response - Antique Marbonite Private Limited and its affiliates," dated August 29, 2019 (Antique Group's BQR, CQR, and DQR); *see also* Pokarna's Letter, "Certain Quartz Products from India: Submission of Section A Response of Pokarna Engineered Stone Limited," dated July 22, 2019 (Pokarna's AQR); Pokarna's Letter, "Certain Quartz Surface Products from India (A-533-589): Submission of Pokarna Engineered Stone Limited's Section C & D Response," dated August 26, 2019.

¹⁶ See Antique Group's Letter, "Certain Quartz Surface Products from India (A-533-889): Section D 1st Supplemental Questionnaire Response – Antique Marbonite Private Limited and its affiliates," dated October 9, 2019; Antique Group's Letter, "Certain Quartz Surface Products from India (A-533-889), Sec. A-C of 1st Supplemental QR for Antique Marbonite," dated October 22, 2019 (Antique Group's 1st SQR); Antique Group's Letter, "Certain Quartz Surface Products from India (A-533-889): Section D 2nd Supplemental Questionnaire Response – Antique Marbonite Private Limited and its affiliates," dated November 1, 2019; *see also* Pokarna's Letter, "Quartz Surface Products from India: Submission of PESL's Section D Response," dated October 4, 2019; Pokarna's Letter, "Quartz Surface Products from India: Submission of PESL's Section A-C Response," dated October 25, 2019 (Pokarna's 1st SQR); Pokarna's Letter, "Quartz Surface Products from India: Submission of PESL's 2nd Supplemental Section D Response," dated November 25, 2016; and Pokarna's Letter, "Quartz Surface Products from India: Submission of PESL's 2nd Supplemental Section C Response," dated November 26, 2019 (Pokarna's 2nd SQR).

¹⁷ See Petitioner's Letter, "Quartz Surface Products from the Republic of Turkey: Request to Extend the Preliminary Determination," dated September 16, 2019.

¹⁸ See *Certain Quartz Surface Products from India and the Republic of Turkey: Postponement of the Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 52062 (October 1, 2019).

¹⁹ See Petitioner's Letter, "Certain Quartz Surface Products from Turkey: Allegation of the Existence of Critical Circumstances," dated September 17, 2019 (Critical Circumstances Allegation).

²⁰ See Commerce's Letters to Antique and Pokarna, "Antidumping and Countervailing Duty Investigations of Certain Quartz Surface Products from India: Request for Quantity and Value Shipment Data," dated September 18, 2019.

²¹ See Antique's Letter, "Certain Quartz Surface Products from India (A-533-889 / C-533-890), Submission of Response to Quantity & Value Shipment QR, dated September 18, 2019 – Antique Marbonite Private Limited," dated September 25, 2019; *see also* Pokarna's Letter, "Certain Quartz Surface Products from India: Submission of Monthly Quantity and Value Data," dated September 26, 2019; Antique's Letter, "Certain Quartz Surface Products from India (A533-889), Submission of Quantity & Value Shipment for September 2019 – Antique Marbonite Private Limited," dated October 12, 2019; Pokarna's Letter, "Certain Quartz Surface Products from India: Submission of Monthly Quantity and Value Data," dated October 15, 2019; and Pokarna's Letter, "Certain Quartz Surface Products from India: Submission of Monthly Quantity and Value Data," dated November 15, 2019.

Arizona Tile LLC (Arizona Tile) and MS International filed rebuttal comments regarding the petitioner's allegation of critical circumstances.²² On November 12, 2019, the petitioner filed pre-preliminary comments with respect to Antique Group and Pokarna.²³

On September 18, 2019, we received a particular market situation (PMS) allegation from the petitioner.²⁴ On October 7, 2019, we received additional information from the petitioner to support its allegation.²⁵

On November 20, 2019, the petitioner requested that Commerce postpone the final determination in this investigation for a period of 135 days from the date of publication of the preliminary determination, in the event that Commerce published a negative preliminary determination.²⁶ On November 20 and 26, 2019, Pokarna and Antique Group, respectively, requested that Commerce postpone the final determination in this investigation for a period of 135 days from the date of publication of the preliminary determination, in the event that Commerce published an affirmative preliminary determination.²⁷ Both respondents stated that, in the event that Commerce grants their request, they agree to the extension of the provisional measures from a four-month period to a period not to exceed six months.²⁸

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

III. PERIOD OF INVESTIGATION

The POI is April 1, 2018 through March 31, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was May 2019.²⁹

²² See Arizona Tile and MS International's Letter, "Certain Quartz Surface Products from India: Response to Petitioner's Allegation of the Existence of Critical Circumstances," dated September 30, 2019.

²³ See Petitioner's Letters, "Certain Quartz Surface Products from India: Pre-Preliminary Comments for Antique Marbonite," dated November 12, 2019, and "Certain Quartz Surface Products from India: Pre-Preliminary Comments Re: Pokarna Engineered Stone Limited," dated November 12, 2019.

²⁴ See Petitioner's Letter, "Quartz Surface Products from India: Particular Market Situation Allegation," dated September 18, 2019.

²⁵ See Petitioner's Letter, "Quartz Surface Products from India: New Factual Information to Clarify Particular Market Situation Allegation," dated October 7, 2019.

²⁶ See Petitioner's Letter, "Quartz Surface Products from India: Request to Extend the Final Determination," dated November 20, 2019 (Petitioner's Request to Extend the Final Determination).

²⁷ See Pokarna's Letter, "Certain Quartz Surface Products from India: Request for Postponement of Final Determination and Extension of Provisional Measures Period in the Antidumping Duty Investigation" dated November 20, 2019 (Pokarna's Request to Extend the Final Determination); *see also* Antique Group's Letter, "Certain Quartz Surface Products from India (A-533-889): Request for Postponement of Final Determination and Extension of Provisional Measures Period in the Antidumping Duty Investigation," dated November 26, 2019 (Antique Group's Request to Extend the Final Determination).

²⁸ See Pokarna's Request to Extend the Final Determination; and Antique Group's Request to Extend the Final Determination

²⁹ See 19 CFR 351.204(b)(1).

IV. SCOPE COMMENTS

In accordance with the *Preamble* to our regulations,³⁰ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).³¹ Certain interested parties commented on the scope of this investigation, as published in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum. We have evaluated the scope comments filed by the interested parties, and we are preliminarily not modifying the scope language as it appeared in the *Initiation Notice*. In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties. We will issue a final scope decision on the records of the quartz surface products investigations after considering the comments submitted in the scope case and rebuttal briefs.

V. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On November 20 and 26, 2019, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), Pokarna and Antique Group each requested that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination, and that provisional measures be extended to a period not to exceed six months.³² In addition, on November 20, 2019, the petitioner requested that Commerce fully postpone the deadline of the final determination in the instant investigation.³³ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.

VI. SINGLE ENTITY ANALYSIS

Section 771(33) of the Act identifies persons that shall be considered “affiliated” or “affiliated persons,” as follows: (A) members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. Section 771(33) of the Act further states that a person shall be considered to control another person if the

³⁰ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³¹ See *Initiation Notice*, 84 FR at 25530.

³² See Pokarna’s Request to Extend the Final Determination; and Antique Group’s Request to Extend the Final Determination.

³³ See Petitioner’s Request to Extend the Final Determination.

person is legally or operationally in a position to exercise restraint or direction over the other person. “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”³⁴ Commerce’s regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.³⁵

Section 351.401(f) of the Department’s regulations outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
 - (i) The level of common ownership;
 - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
 - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.³⁶

Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.³⁷ While section 19 CFR 351.401(f) explicitly applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, Commerce has treated exporting companies as a single entity,³⁸ as well as producers and exporters as a single entity.³⁹

³⁴ See 19 CFR 351.102(b)(37).

³⁵ See also *Preamble*, 62 FR at 27298.

³⁶ See 19 CFR 351.401(f).

³⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

³⁸ *Id.*

³⁹ See *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010).

Furthermore, the Court of International Trade (CIT) has upheld Commerce’s practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities were not both producers.⁴⁰ For example, in *Hontex II*,⁴¹ the CIT held that, once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.⁴²

Antique Marbonite / Shivam / Prism Johnson

We preliminarily determine that Antique Marbonite and Prism Johnson are affiliated pursuant to section 771(33)(E) of the Act because the record demonstrates that Prism Johnson owns five percent or more of Antique Marbonite.⁴³ With respect to Antique Marbonite and Shivam, the courts have upheld Commerce’s interpretation of “any person” in section 771(33)(F) of the Act as encompassing “family,” and the position that “family” is not limited to the roles enumerated in section 771(33)(A) of the Act, but rather is subject to Commerce’s interpretation.⁴⁴ If members of a certain family control two companies, then these companies are affiliated under section 771(33)(F) of the Act because of the family’s control of the two companies. Thus, with respect to Antique Marbonite and Shivam, we preliminarily find that Antique Marbonite and Shivam are affiliated pursuant to 771(33)(F) of the Act because they are under common control of the same family group.⁴⁵

Antique Marbonite reports that the subject merchandise manufactured by Antique Marbonite is sold to affiliates Shivam and Prism Johnson in the home market and is exported to the U.S. market by Antique Marbonite, Shivam, and Prism Johnson (*i.e.*, all three entities export to the U.S. market).⁴⁶ Prism Johnson also sells the domestic like product produced by Antique Marbonite to unaffiliated customers in the home market.⁴⁷

With respect to Prism Johnson, Antique Marbonite acknowledges that it is affiliated with Prism Johnson, which re-sells the subject merchandise in the home market and other countries including the United States.⁴⁸ Further, Antique Marbonite and Prism Johnson use an integrated accounting package for the purpose of maintaining their books of accounts⁴⁹ and Antique Marbonite is consolidated in Prism Johnson’s highest level of consolidated financial statements.⁵⁰ Further, Antique Marbonite reported common management personnel and directors between Prism Johnson and Antique Marbonite.⁵¹

⁴⁰ See *Queen’s Flowers de Colon v. United States*, 981 F. Supp. 617, 628 (CIT 1997).

⁴¹ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) (*Hontex II*).

⁴² *Id.*

⁴³ See Antique Group’s 1st SQR at Exhibit 3.1.

⁴⁴ See *Ferro Union Inc. v. United States*, 44 F. Supp. 2d 1310, 1325-1326 (CIT 1999) (“The intent of {section 771(33) of the Act} was to identify control exercised through ‘corporate’ or ‘family’ groupings. . . . By interpreting ‘family’ as a control person {the Department} was giving effect to that intent.”).

⁴⁵ See Antique Group’s 1st SQR at A-6, Exhibit 3.1, and Exhibit 5.1.

⁴⁶ *Id.* at A-2.

⁴⁷ *Id.*

⁴⁸ *Id.* at A-6 and Exhibit 3.1.

⁴⁹ *Id.* at A-17.

⁵⁰ *Id.* at A-25.

⁵¹ *Id.* at Exhibit A-5 and Exhibit A-5(a).

With respect to Shivam Enterprises, Shivam is reported to be both an affiliated supplier of raw material inputs for the production of subject merchandise, an affiliated reseller of subject merchandise, and having board members and senior executives in common with Antique Marbonite.⁵² Further, Antique states that “there is no separate division / operational structure for handling the {merchandise under consideration} in Shivam and all partners are involved in the trading operations of the company”⁵³

Further, we preliminarily determine that Antique Marbonite, Prism Johnson, and Shivam should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f). Specifically, we find, in accordance with our practice, that the criterion in 19 CFR 351.401(f)(1) is met. Although Antique Marbonite produces the subject merchandise, Prism Johnson and Shivam sell the merchandise produced by Antique Marbonite in the home market and export the merchandise to the United States and third countries. We also find that the criterion in 19 CFR 351.401(f)(2), significant potential for manipulation, is met due to common ownership (in the case of Prism Johnson), overlapping board members, partners, and/or management (in the case of Shivam), and intertwined sales operations and/or employees (in the case of both Shivam and Prism Johnson). Therefore, we are preliminarily treating the three companies as a single entity for purposes of our preliminary determination.

VII. DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Antique Group’s and Pokarna’s sales of subject merchandise from India to the United States were made at LTFV, Commerce compared the export price (EP) and constructed export price (CEP), as appropriate, to the normal value (NV), as described in the “Export Price” and “Normal Value” sections of this memorandum.

A. *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), we calculate weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs), *i.e.*, the average-to-average method, unless Commerce determines that another method is appropriate in a particular situation. In LTFV investigations, we examine whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, we applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁵⁴ We find that the differential

⁵² *Id.* at Exhibit A-3.1 and Exhibit A-5.1.

⁵³ *Id.* at A-6.

⁵⁴ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at*

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

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

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

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the

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

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁵⁵

B. *Results of the Differential Pricing Analysis*

Antique Group

For Antique Group, based on the results of the differential pricing analysis, we preliminarily find that 22.23 percent of the value of U.S. sales pass the Cohen's *d* test,⁵⁶ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, we preliminarily determine to apply

⁵⁵ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. July 12, 2017) recently affirmed much of our differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁵⁶ See Memorandum, "Analysis Memorandum for the Preliminary Results of the Antidumping Duty Investigation of Certain Quartz Surface Products from India: Antique Group Private Limited, Prism Johnson Corporation, and Shivam Enterprises," dated concurrently with this memorandum (Antique Group's Preliminary Calculation Memorandum) at Attachment 4, in the chart entitled, "The Cohen's *d* Test Overall Results."

the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Antique Group.

Pokarna

For Pokarna, based on the results of the differential pricing analysis, Commerce preliminarily finds that 72.86 percent of the value of U.S. sales pass the Cohen's *d* test,⁵⁷ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for Pokarna.

VIII. DATE OF SALE

Section 351.401(i) of our regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, we normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, we may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁸ Finally, we have a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁵⁹

Antique Group

Antique Group explained that it reported the date of tax invoice as the date of sale for its home market and U.S. sales.⁶⁰ Antique Group stated that it shipped the merchandise to its home market customers from the factory on the date when the tax invoice was generated.⁶¹ For its U.S. sales, Antique Group explained that the merchandise was loaded onto the container on the date it issued the tax invoice.⁶² Our analysis of Antique Group's home market sales database revealed that the tax invoice date always matched the shipment date. For Antique Group's U.S. sales, we found that the tax invoice date always matched the shipment date but that the tax invoice date

⁵⁷ See Memorandum, "Analysis for the Preliminary Determination in the Investigation of Certain Quartz Surface Products from India: Pokarna Engineered Stone Limited," dated concurrently with this memorandum (Pokarna's Preliminary Calculation Memorandum) at Attachment 2, in the chart entitled, "The Cohen's *d* Test Overall Results."

⁵⁸ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁵⁹ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

⁶⁰ See Antique Group's BQR at 20-21 and CQR at 19.

⁶¹ See Antique Group's BQR at 22.

⁶² See Antique Group's CQR at 20.

and shipment date did not always align with the reported date of sale. As Antique Group's response stated the date of the tax invoice to be the appropriate date of sale, and indicated that final terms of sale were set upon loading of the container, we preliminarily determine to use the tax invoice date/shipment date as the date of sale for Antique Group's home market and U.S. sales.

Pokarna

Pokarna reported commercial invoice date as the date on which the terms of the sales are definitively established for all U.S. sales.⁶³ In its sales process, Pokarna issues order confirmation notes in response to purchase orders.⁶⁴ Pokarna provided evidence that revisions take place following the issuance of order confirmation notes, or their subsequent revisions.⁶⁵ Pokarna further explains that, as an order is nearing the end of production, it will prepare a *pro forma* invoice, which may be modified if terms change before final dispatch. When the merchandise is ready for shipment, a commercial invoice is prepared. However, based on the information reported by Pokarna, the final commercial invoice, as well as any modified *pro forma* invoice, list the initial *pro forma* invoice date and are not updated to reflect the date of any modification or finalization.⁶⁶ Thus, according to Pokarna, the date of the initial *pro forma* invoice is maintained across any revisions and the final commercial invoice. It also confirms that material terms of sale may change between the initial *pro forma* invoice and the issuance of the commercial invoice and that it does not track the date a commercial invoice is developed. Pokarna provided an example on the record of the date of an initial *pro forma* invoice being carried across its revision and related commercial invoice.⁶⁷

Accordingly, we find that the date of sale reported by Pokarna (*i.e.*, invoice date) reflects only the date of creation of the initial *pro forma* invoice and does not actually reflect the date of final commercial invoicing, nor the date of any updates to material terms of sale and is, thus, not an appropriate basis for date of sale. As Pokarna reported that the final commercial invoicing (reflecting any prior modifications to sales terms) correlates to the final dispatch of the sale from the factory, we instead preliminarily determine that the shipment date reported is the most appropriate proxy for date of sale for Pokarna's U.S. sales.

As discussed further below, Pokarna did not have a sufficient volume of sales in the home market or third-country market to serve as a viable basis for calculating NV. Thus, we have not evaluated the proper date of sale for purposes of Pokarna's comparison market sales.

IX. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products that respondents produced and sold in India during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of

⁶³ See Pokarna's CQR at C-19 and C-20.

⁶⁴ See Pokarna's AQR at 19.

⁶⁵ See Pokarna's 1st SQR at 7 and Exhibit S1-5.

⁶⁶ See Pokarna's 2nd SQR at 6-7.

⁶⁷ *Id.* at Exhibit S2-4.

determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign-like product made in the ordinary course of trade.

In making product comparisons, we matched subject merchandise and foreign like product based on whether the products were prime or non-prime and the physical characteristics reported by Antique Group and Pokarna in the following order of importance: level of fabrication, thickness, slab size, size of fabricated product, design, and surface finish. For the respondents' sales of quartz surface products in the United States, the reported control number identifies the characteristics of quartz surface products, as exported by Antique Group and Pokarna, respectively.

X. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

A. *Export Price*

Section 772(a) of the Act defines EP as “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we calculated EP for all of Antique Group's and Pokarna's U.S. sales, where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record.

Antique Group

We calculated EP for Antique Group based on packed prices to unaffiliated purchasers in the United States.⁶⁸ We made deductions, where appropriate, for movement expenses, *i.e.*, inland freight from the factory to the port of exportation, domestic brokerage and handling, credit, and bank charges, in accordance with section 772(c)(2)(A) of the Act.

Pokarna

We calculated EP for Pokarna based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for billing adjustments, movement expenses, *i.e.*, inland freight to the port of exportation, domestic brokerage and handling in the country of manufacture, international freight, and marine insurance, in accordance with section 772(c)(2)(A) of the Act.

⁶⁸ See Antique Group's Preliminary Analysis Memorandum.

B. Duty Drawback

Antique Group requested a duty drawback adjustment.⁶⁹ Section 772(c)(1)(B) of the Act states that EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation... which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether an adjustment for any duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to EP.⁷⁰ The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.⁷¹

In this investigation, Antique Group provided timely responses and supporting documentation regarding its duty drawback claims, *i.e.*, a printout from the Indian customs agency to demonstrate the amount of duty drawback received and a list of imported materials sourced from foreign suppliers.⁷² Our analysis of Antique Group’s response finds that the documentation provided did not demonstrate the link between the amount of import duty paid to the duty drawback it received upon export. It is also unclear from record evidence whether the amount of imports is sufficient to account for the duty drawback Antique Group received on the exports of quartz surface products. Based on these supporting documents, we preliminarily determine that Antique Group’s duty drawback claim did not meet either of the two prongs laid out in *Saha Thai*.⁷³ Thus, consistent with our practice, we preliminarily determine to disallow Antique Group’s duty drawback claim.

XI. NORMAL VALUE

A. *Home Market Viability*

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

⁶⁹ See Antique Group’s CQR at 36-37.

⁷⁰ See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F. 3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*).

⁷¹ *Id.*; see also *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying IDM at Comment 2.

⁷² See Antique Group’s CQR at 36-37 and Exhibits C-7, C-7.1, and C-7.2; see also Antique Group’s 1st SQR at 6-7 and Exhibits D-26, D-26.1, and D-27.

⁷³ See Antique Group’s CQR at 36-37 and Exhibits C-7, C-7.1, and C-7.2; see also Antique Group’s 1st SQR at 6-7 and Exhibits D-26, D-26.1, and D-27.

comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

Based on a comparison of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, we preliminarily determine that the aggregate volume of home market sales of the foreign like product for Antique Group was more than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that Antique Group's home market is viable. Therefore, we used home market sales as the basis for NV for Antique Group, in accordance with section 773(a)(1)(B) of the Act.

For Pokarna, we preliminarily determine that the aggregate volume of home market sales of the foreign like product and the aggregate volume of sales of the foreign like product to all third-country markets were less than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Accordingly, based on our analysis of information on the record, we preliminarily determine that Pokarna does not have a viable comparison market. Therefore, we made product comparisons using constructed value (CV), as discussed in the "Calculation of Normal Value Based on Constructed Value" section of this memorandum, below.

B. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁷⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁷⁵ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁷⁶ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁷⁷

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data makes it possible, we make an LOT adjustment under

⁷⁴ See 19 CFR 351.412(c)(2).

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

⁷⁶ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁷⁷ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁷⁸

In this investigation, we obtained information from Antique Group and Pokarna regarding the marketing stages involved in making reported comparison market and U.S. sales, including a description of the selling activities performed by Antique Group and Pokarna for each channel of distribution.⁷⁹ Our LOT findings are summarized below.

Antique Group

In the home market, Antique Group explained that it made sales either through its affiliates (Channel 1) or directly to unaffiliated customers (Channel 4).⁸⁰ Antique Group reported that it performed the following selling functions for its home market customer: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; marketing (which includes advertising, sales promotion, and market research); distributor/dealer training; procurement/sourcing services; packing; inventory maintenance; order input/processing, direct sales personnel, technical assistance; as well as other various rebate, warranty and after-sale services; inventory maintenance; repacking; and freight and delivery.⁸¹

Selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support.⁸² Based on these selling function categories, we find that Antique Group performed the same selling functions at the same level of intensity for both of its home market channels of distribution, and thus, we determine that all home market sales are at the same LOT.

With respect to the U.S. market, Antique Group reported that it made sales in the U.S. market through two channels of distribution.⁸³ Specifically, Antique Group reported that it made direct sales to unaffiliated customers (Channel 2) and sales through affiliates to unaffiliated customers (Channel 3).⁸⁴ Antique Group reported that it performed the following selling functions for its U.S. customer: sales forecasting; strategic/economic planning; personnel training/exchange;

⁷⁸ See, e.g., *OJ from Brazil* IDM at Comment 7.

⁷⁹ See Antique Group's AQR at A-15 and Exhibit A-6, "Flowchart of Distribution Channels"; see also Pokarna's AQR at 16-17 and Exhibit A-5.

⁸⁰ See Antique Group's AQR at 13-14 and Exhibit A-7, "Selling Functions Chart."

⁸¹ *Id.* at Exhibit A-7.

⁸² See *OJ from Brazil* IDM at Comment 7; and *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (March 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009); see also *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016), and accompanying IDM at Comments 9 and 18.

⁸³ See Antique Group's AQR at 13-14.

⁸⁴ *Id.* at 13-14.

engineering services; marketing (which includes advertising, sales promotion, and market research); distributor/dealer training; procurement/sourcing services; packing; inventory maintenance; order input/processing, direct sales personnel, technical assistance; as well as other various rebate, warranty, and after-sale services; inventory maintenance; repacking; and freight and delivery.⁸⁵

We compared the U.S. LOT to the home market LOT. Antique Group claimed that it performed the same selling functions at the same level of intensity for both of its U.S. market channels of distribution.⁸⁶ Accordingly, we preliminarily find that sales to the home market during the POI were made at the same LOT as sales to the United States, and thus, an LOT adjustment is not warranted in accordance with section 773(a)(7)(A) and (B) of the Act.

Pokarna

Pokarna reported that it made sales through two channels of distribution in the U.S. market: sales to distributors/retailers and sales to fabricators.⁸⁷ Pokarna explained that it performed the following selling functions in the U.S. market at the same intensity for both types of customer: sales forecasting, advertising, sales promotion, technical assistance, packing, provision of freight and delivery, order processing, provision of rebates and discounts, and warranty services, with a minor difference in inventory maintenance.⁸⁸ Pokarna explained that it made all U.S. sales at the same LOT.⁸⁹

Based on the selling function categories previously described, *supra*, we find that Pokarna performed all categories in the United States. Because Pokarna only performed one of these categories with a minor difference across its reported channels, we preliminarily determine that there is one LOT in the U.S. market for Pokarna.

We compared Pokarna's U.S. LOT to Antique Group's home market LOT, and found that the selling functions Pokarna performed for its U.S. customers do not differ significantly from those Antique Group performed for its home market customers. Therefore, we preliminarily determine that Pokarna's sales to the United States and Antique Group's sales to the home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted in this respect either. Thus, an LOT adjustment is not warranted in accordance with section 773(a)(7)(A) of the Act.

C. *Cost of Production Analysis*

In accordance with Section 773(b)(2)(A)(ii) of the Act, Commerce requests CV and cost of production (COP) information from respondent companies in all AD proceedings.⁹⁰ Accordingly, Commerce requested this information from Antique Group and Pokarna in this

⁸⁵ *Id.* at Exhibit A-7.

⁸⁶ *Id.* at 14-15 and Exhibit A-7.

⁸⁷ See Pokarna's AQR at 15.

⁸⁸ *Id.* at Exhibit A-5.

⁸⁹ *Id.* at 16.

⁹⁰ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015).

investigation. We examined their cost data and determine that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported.

1. Calculation of COP

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

a. Antique Group

We relied on the COP data submitted by Antique Group except we increased Antique Group's cost of manufacturing (COM), in accordance with section 773(f)(2) of the Act (transaction disregarded), to reflect market value, and we increased Antique Group's COM to exclude the reported offset related to profits from its affiliate.⁹¹

b. Pokarna

We relied on the COP data as reported by Pokarna.⁹²

2. Test of Comparison Market Sales Prices

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

3. Results of the COP Test

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

⁹¹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for Preliminary Determination – Antique Marbonite Private Limited, India," dated concurrently with this memorandum.

⁹² See Pokarna's November 22, 2019 submission at exhibit D2-22.

773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Where we find that more than 20 percent of a company's home market sales for a given product were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. *Particular Market Situation*

The petitioner submitted an allegation that a PMS exists in India such that costs of production of quartz surface products in India are distorted, warranting an adjustment to the respondents' COP.

Section 771(15)(C) of the Act states Commerce will consider the following to be outside the ordinary course of trade: "{s}ituations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price." Further, section 773(e) of the Act provides Commerce with discretion to "use another calculation methodology under this subtitle or any other calculation methodology" when a PMS exists "such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade."⁹³ The statute does not define "particular market situation," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."⁹⁴

For the purposes of this preliminary determination, Commerce determines that there is insufficient evidence to warrant further investigation into whether a PMS exists. For a complete discussion of our decision with respect to the PMS allegation, *see* the accompanying PMS Initiation Memorandum.⁹⁵

E. *Calculation of NV Based on Comparison-Market Prices*

Antique Group

For those comparison products for which there were an appropriate number of sales at prices above the COP for Antique Group, we based NV on comparison market prices. We calculated NV based on ex-works prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for other discounts, advertising expenses, and bank charges in accordance with 19 CFR 351.401(c). We made no deductions from the starting price for

⁹³ See section 773(e) of the Act.

⁹⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 822.

⁹⁵ See Memorandum, "Allegation of a Particular Market Situation in the Antidumping Duty Investigation of Certain Quartz Surface Products from India," dated concurrently with this memorandum (PMS Initiation Memorandum).

movement expenses under section 773(a)(6)(B)(ii) of the Act because Antique Group reported that the terms of delivery for all home market sales were ex-works.

We deducted comparison-market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, imputed credit expenses, inventory carrying costs and direct selling expenses, and added U.S. direct selling expenses, *i.e.*, imputed credit expenses and direct selling expenses.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, Commerce also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. Commerce based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and subject merchandise.⁹⁶

F. *Calculation of NV Based on Constructed Value*

Pokarna

In accordance with section 773(a)(4) of the Act, we based Pokarna's NV on CV because Pokarna had no viable home or third-country markets. We calculated CV based on the sum of Pokarna's cost of materials and fabrication employed in producing the subject merchandise, plus amounts for G&A, profit, and U.S. packing costs in accordance with section 773(e) of the Act. We calculated the cost of materials and fabrication, G&A, and interest based on information submitted by Pokarna in its original and supplemental questionnaire responses.

Because Pokarna does not have a comparison market, Commerce cannot determine selling expenses and profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale in the foreign country of merchandise that is in the same general category of products as the subject merchandise; (ii) the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country; or (iii) any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.* the "profit cap").

Pokarna does not produce any merchandise other than the merchandise under consideration. Therefore, we are not able to rely on alternative (i) of section 773(e)(2)(B) of the Act and must

⁹⁶ See 19 CFR 351.411(b).

look to alternatives (ii) and (iii). Pokarna submitted information for the calculation of profit and selling expenses to be added to CV.⁹⁷ Specifically, Pokarna submitted the financial statements of five quartz producers in India (Camrola Quartz Limited, Pearl Quartz Stone Pvt. Ltd., Shiva Granito Exports Limited, Prism Johnson Limited, and Asian Granito Limited); one quartz surface product producer located in Belgium; and five Indian or foreign manufacturers of merchandise that is in the same general category as quartz surface products (*i.e.*, ceramic floor and wall tiles).

For the preliminary determination, we calculated Pokarna's CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act using Antique Group's combined CV profit and selling information. The Antique Group's combined profit and selling expense reflect the profit of an Indian quartz surface products producer, on comparison market sales of the merchandise under consideration, in the ordinary course of trade. The combined CV profit and selling expense ratio is also public information.⁹⁸

XII. NEGATIVE PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (A)(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In addition, 19 CFR 351.206(h)(2) provides that, in determining whether imports of the subject merchandise have been "massive," Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "{i}n general, unless the imports during the 'relatively short period' have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive." Under 19 CFR 351.206(i), Commerce defines "relatively short period" generally as the period starting on the date the proceeding begins, *i.e.*, the date the petition is filed and ending at least three months later.⁹⁹ This section of the regulations further provides that, if Commerce "finds that importers, or exporters or producers, had reason to believe, at some

⁹⁷ See Pokarna's Letters, "Quartz Surface Products from India: Submission of Financial Information for the Calculation of CV Profit and SG&A," dated November 1, 2019; and "Quartz Surface Products from India: Submission of Financial Information for the Calculation of CV Profit and SG&A," dated November 4, 2019.

⁹⁸ See Memorandum, "Constructed Value Selling Expenses and Profit Ratio for Pokarna," dated concurrently with this memorandum.

⁹⁹ See 19 CFR 351.206(i); see also *Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, Policy Bulletin 98.4, 63 FR 55364 (October 15, 1998) ("Commerce has traditionally compared the three-month period immediately after initiation with the three-month period immediately preceding initiation to determine whether there has been at least a 15 percent increase in imports of-the subject merchandise").

time prior to the beginning of the proceeding, that a proceeding was likely,” then Commerce may consider a period of not less than three months from that earlier time.¹⁰⁰

On September 17, 2019, the petitioner alleged that critical circumstances exist with respect to imports of subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1).¹⁰¹ In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Commerce’s normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to Commerce, such as: (1) the evidence presented in the petitioner’s critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to Commerce by the respondents selected for individual examination. For the reasons explained below, we preliminarily determine that critical circumstances do not exist for Antique Group, Pokarna, and all others.

A. History of Dumping and Material Injury

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.¹⁰² The petitioner did not address this criterion in its allegation, and we are not aware of the existence of any active AD orders on quartz surface products from India in other countries. As a result, Commerce does not find that there is a history of injurious dumping of quartz surface products from India pursuant to section 733(e)(1)(A)(i) of the Act.

B. Knowledge that Exporters Were Dumping and That There Was Likely To Be Material Injury By Reason of Such Sales

Commerce generally bases its decision with respect to knowledge on the weighted-average dumping margins calculated in the preliminary determination and the ITC’s preliminary injury determination.¹⁰³ Commerce normally considers margins of 25 percent or more for EP sales and 15 percent or more for constructed CEP sales sufficient to impute importer knowledge of sales at

¹⁰⁰ See 19 CFR 351.206(i).

¹⁰¹ See Critical Circumstances Allegation.

¹⁰² See, e.g., *Certain Oil Country Tubular Goods from the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

¹⁰³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422, 17425 (March 26, 2012).

LTFV.¹⁰⁴ We have preliminarily calculated weighted-average dumping margins on EP sales for Antique Group and Pokarna that are lower than 25 percent. As a result, for purposes of this investigation, we preliminarily determine that the knowledge standard has not been met for either company. Accordingly, because the statutory criteria of section 733(e)(1)(A)(ii) of the Act have not been satisfied,¹⁰⁵ we find that critical circumstances do not exist with respect to Antique Group and Pokarna.

Likewise, for all other producers or exporters of quartz surface products from India, we preliminarily find that the criteria under sections 773(e)(1)(A)(i) and (ii) of the Act have not been met. Accordingly, we preliminarily determine that critical circumstances do not exist for all other producers or exporters of quartz surface products from India.

XIII. CURRENCY CONVERSION

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

XIV. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES IN COMPANION COUNTERVAILING DUTY INVESTIGATION

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

Commerce determined in the preliminary determination of the companion CVD investigation that Antique Group, Pokarna, and all other exporters benefitted from export subsidies.¹⁰⁶ For Antique Group, however, because the preliminary CVD margin was *de minimis* and, thus, no CVD cash deposits are currently being collected, we are not adjusting the preliminary AD cash deposit rate to offset for export subsidies found in the companion CVD investigation.¹⁰⁷ For Pokarna and all other producers/exporters, we find that an export subsidy adjustment of 83.79 percent to the AD cash deposit rate is warranted because this reflects the amount of preliminary export subsidies found in the companion CVD proceeding for Pokarna and all others (which was

¹⁰⁴ *Id.*

¹⁰⁵ We further note that because the criteria under section 733(e)(1)(A) of the Act are not met, it is not necessary for us to examine whether imports of subject merchandise from Pokarna and Antique Group were "massive" during the comparison period, as described under section 733(e)(1)(B) of the Act.

¹⁰⁶ See *Certain Quartz Surface Products from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54838 (October 11, 2019), and accompanying Preliminary Decision Memorandum.

¹⁰⁷ *Id.*; see also Memorandum, "Calculation of Export Subsidy Adjustments for the Preliminary Determination," dated concurrently with this memorandum.

based on the Pokarna rate).¹⁰⁸ Therefore, consistent with our practice,¹⁰⁹ we will apply the applicable export subsidy offset to the cash deposit rates, as reflected in the accompanying *Federal Register* notice.

XV. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒

☐

Agree

Disagree

12/4/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁰⁸ *Id.*

¹⁰⁹ See *Glycine from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 18487 (May 1, 2019).