



A-533-889
Investigation
POI: 04/01/2018-03/31/2019
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April 27, 2020

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 Determination in
the Antidumping Duty Investigation of Certain Quartz Surface
Products from India

I. SUMMARY

The Department of Commerce (Commerce) 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 735 of the Tariff Act of 1930, as amended (the Act). The petitioner is Cambria Company LLC. The mandatory respondents subject to this investigation are Pokarna Engineered Stone Limited (PESL) and the Antique Group.¹ The period of investigation (POI) is April 1, 2018 through March 31, 2019.

Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether to Apply Adverse Inference Regarding PESL's Date of Sale Reporting
- Comment 2: Whether to Cap PESL's Freight, Insurance and Packing Revenue
- Comment 3: Treatment of PESL's Warranty Expenses
- Comment 4: Whether to Exclude PESL's Paid U.S. Sample Sales
- Comment 5: Whether to Rely on Antique Group's Profit Rate and Selling Expenses to Calculate Constructed Value (CV) for PESL

¹ Commerce preliminarily found Antique Marbonite Private Limited, India (Antique Marbonite or AMPL) and its affiliates Shivam Enterprises (Shivam) and Prism Johnson Limited (Prism Johnson) to be a single entity (collectively, Antique Group). See *Certain Quartz Surface Products from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 68123 (December 13, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 5-8. Because no party commented on the preliminary decision to collapse these companies, we continue to find the companies comprise a single entity

- Comment 6: Whether to Adjust PESL's General and Administrative (G&A) Expense Ratio
- Comment 7: Whether to Allocate the Costs of PESL's Non-prime Products to Prime Products
- Comment 8: Treatment of Antique Group's Reported Credit Expenses
- Comment 9: Treatment of Antique Group's Reported Quality Discounts
- Comment 10: Whether the Arms-Length Test Was Appropriately Applied with Respect to Antique Group's Collapsed Affiliate
- Comment 11: Ministerial Error Regarding Application of Antique Group's Reported Billing Adjustments
- Comment 12: Whether the Initiation of the Investigation was Contrary to Law

II. BACKGROUND

On December 13, 2019, Commerce published the *Preliminary Determination* in this investigation.² We issued supplemental questionnaires to each company and received timely responses to these supplemental questionnaires in January 2020.³

In January and February, 2020, we conducted verification of the sales and cost of production (COP) data reported by PESL and Antique Group, in accordance with section 782(i) of the Act.⁴ We invited parties to comment on our *Preliminary Determination*.⁵ Parties submitted case briefs on March 27, 2020,⁶ and rebuttal briefs on April 3, 2020.⁷

Antique Group and the Federation of Quartz Surface Industry, India (Federation), PESL, the petitioner, and importers MS International, Inc. and Arizona Tile LLC (MSI and Arizona Tile),

² See *Preliminary Determination*.

³ See Antique Group's Letter, "Certain Quartz Surface Products from India (A533-889), Submission of Response to Post Preliminary Supplementary QR, dated January 02, 2020 – Antique Marbonite Private Limited," dated January 2, 2020; see also PESL's Letter, "Quartz Surface Products from India: Submission of PESL's 3rd Supplemental Sections A & C Response," dated January 22, 2020 (PESL's 3rd SQR).

⁴ See Memoranda, "Antidumping Duty Investigation of Certain Quartz Surface Products from India: Export Price and Home Market Sales Verifications of the Antique Group Companies," dated March 13, 2020 (Antique Group's Sales Verification Report); "Verification of the Sales Response of Pokarna Engineered Stone Limited in the Antidumping Investigation of Certain Quartz Surface Products from India," dated March 13, 2020 (PESL's Sales Verification Report); "Verification of the Cost of Production and Constructed Value Response of Antique Marbonite Private Ltd. and Affiliates," dated March 13, 2020 (Antique Group's Cost Verification Report); and "Verification of the Cost Response of Pokarna Engineered Stone Limited in the Antidumping Duty Investigation of Quartz Surface Products from India," dated March 13, 2020 (PESL's Cost Verification Report).

⁵ See *Preliminary Determination*, 84 FR at 68125.

⁶ See Petitioner's Letter, "Certain Quartz Surface Products from India: Petitioner's Case Brief," dated March 27, 2020 (Petitioner's Case Brief); see also Antique Group's Letter, "Certain Quartz Surface Products from India (A-533-889): Case Brief on behalf of Antique Group," dated March 27, 2020 (Antique Group's Case Brief); PESL's Letter, "Certain Quartz Surface Products from India: Submission of Administrative Case Brief," dated March 27, 2020 (PESL's Case Brief); and MSI and Arizona Tile's Letter, "Quartz Surface Products from India: Case Brief of M S International, Inc., and Arizona Tile LLC," dated March 27, 2020 (Importers' Case Brief).

⁷ See Petitioner's Letter, "Certain Quartz Surface Products from India: Petitioner's Rebuttal Brief," dated April 3, 2020 (Petitioner's Rebuttal Brief); see also Antique Group's Letter, "Certain Quartz Surface Products from India (A-533-889): Rebuttal Brief on behalf of Antique Group," dated April 3, 2020 (Antique Group's Rebuttal Brief); and PESL's Letter, "Certain Quartz Surface Products from India: Submission of Administrative Case Brief," dated April 3, 2020 (PESL's Rebuttal Brief).

each requested a hearing be held in this investigation.⁸ The petitioner, Antique Group and Federation, PESL, and MSI and Arizona Tile each subsequently agreed to hold teleconferences in lieu of formal hearing.⁹

III. SCOPE COMMENTS

During the course of this investigation, Commerce received scope comments from interested parties. We issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in case and rebuttal briefs.¹⁰ We did not receive scope case briefs from interested parties. Thus, for this final determination, we have made no changes to the scope of this investigation, as published in the *Preliminary Determination*.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are quartz surface products. For a complete description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

V. FINAL NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

Sections 733(e)(1) and 735(a)(3) of the Act provide that Commerce determines 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 determining whether the knowledge standard pursuant to sections 733(e)(1)(A)(ii) and 735(a)(3)(A)(ii) of the Act has been met, Commerce normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.¹¹ Because our *Preliminary Determination* calculated weighted-average dumping margins on EP sales for Antique Group and PESL (and, thus, all other producers and exporters in India) lower than 25 percent, we

⁸ *See* Antique Group's Letter, "Re: Certain Quartz Surface Products from India (A-533-889), Request for a hearing," dated December 30, 2019; *see also* PESL's Letter, "Quartz Surface Products from India: Request for a Hearing," dated December 31, 2019; MSI and Arizona Tile's Letter, "Quartz Surface Products from India: Request for Hearing," dated January 8, 2020; and Petitioner's Letter, "Quartz Surface Products from India: Request for Hearing," dated January 10, 2020.

⁹ *See* Memoranda, "Teleconference with Pokarna Engineered Stone Limited Representatives," dated April 13, 2020; "Teleconference with Counsel to Cambria Company LLC," dated April 13, 2020; "Teleconference with Counsel to M S International, Inc. and Arizona Tile LLC," dated April 13, 2020; and "Teleconference with Antique Group Representatives," dated April 15, 2020.

¹⁰ *See* Memorandum, "Certain Quartz Surface Products from India and Turkey: Preliminary Scope Decision Memorandum," dated December 4, 2019 (Preliminary Scope Memorandum).

¹¹ *Id.*

preliminarily determined that the knowledge standard was not met and critical circumstances do not exist with respect to Antique Group, PESL, or all other producers and exporters in India.¹²

No parties submitted comments regarding our negative preliminary critical circumstances determination. Furthermore, we continue to calculate weighted-average dumping margins on EP sales for Antique Group and PESL that are lower than 25 percent. As such, we have no basis to reconsider our preliminary negative critical circumstances finding, and we continue to find that critical circumstances do not exist for Antique Group, PESL, and all other producers or exporters of quartz surface products from India.

VI. CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated the EP and normal value (NV) using the same methodology as the *Preliminary Determination*, with the following exceptions:

- We are capping PESL's reported freight, insurance, and packing revenues by their respective reported expenses. *See* Comment 2.
- We are making a minor adjustment to PESL's calculated warranty expense. *See* Comment 3.
- We are adjusting PESL's reported cost of grade 3 non-prime products to reflect market value consistent with PESL's normal books and records. *See* Comment 7.
- We are allowing Antique Group's adjustment to eliminate intercompany profit and losses and are reversing a prior adjustment pursuant to the transactions disregarded rule. *See* Comment 10.
- We have corrected a ministerial error to increase, rather than decrease, Antique Group's U.S. price by the amount of billing adjustments reported. *See* Comment 11.

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether to Apply Adverse Inference Regarding PESL's Date of Sale Reporting

Background: PESL reported invoice date as date of sale in its initial responses. Through supplemental questionnaires, PESL reported that the date the invoice is developed is not tracked in its system.¹³ The invoice makes use of the date of the *pro forma* invoice, and that date is not updated when revisions to the *pro forma* invoice take place. In the *Preliminary Determination*, we made use of date of shipment, which is the same or after reported invoice date, as the date of sale.¹⁴

¹² *See Preliminary Determination PDM* at 21-23.

¹³ *See* PESL's Letter, "Quartz Surface Products from India: Submission of PESL's 2nd Supplemental Section C Response," dated November 26, 2019 (PESL's 2nd SQR), at 6-7.

¹⁴ *See Preliminary Determination PDM* at 12.

*Petitioner's Case Brief*¹⁵

- When an agreement between the respondent and the U.S. customer is subject to revision, Commerce has used the initial date of agreement or the date of revised agreement as the date of sale.
- After negotiations, PESL responds to a purchase order with an order confirmation note that establishes quantity, price, and delivery terms. Order confirmations are subject to PESL's "Sales Terms & Conditions" and establish additional terms.
- In its responses, PESL demonstrated that revised order confirmation notes captured any changes to terms after initial order confirmation notes.
- At verification, PESL provided correspondence associated with revisions in order confirmations, effectively demonstrating that PESL could have reviewed its correspondence to report order confirmation or revised order confirmation date as its date of sale.
- Correctly establishing date of sale is critical as it may allow Commerce to make use of a viable comparison market.
- Commerce should apply total adverse facts available (AFA) to PESL as it had the ability to report order confirmation date as date of sale but did not do so, similar to Commerce's decision in *CTLP from Belgium*.¹⁶ Specifically, this represents undisclosed information found at verification, and PESL made misrepresentations to avoid producing this information.

*PESL's Rebuttal Brief*¹⁷

- In its first supplemental response, PESL provided examples of quantity and price changing and order cancellations after the issuance of an order confirmation note.
- PESL's sales process uses software that maintains the date of the initial order confirmation note after subsequent revisions.
- Commerce should reject the petitioner's contentions here, as PESL correctly determined that the date of shipment was the appropriate date of sale in the *Preliminary Determination*.
- The petitioner's characterization of PESL's "Sales Terms & Conditions" is incorrect as those terms specifically reference that prices are subject to change, in the instance of a decrease of quantity. In addition, they provide that delivery times may be changed, a term of sale. It is clear that PESL and its U.S. customers do not treat order confirmation notes as establishing the final terms of sale.
- The petitioner is incorrect in its description of Commerce's findings at verification. Commerce noted that the revised order confirmation notes maintained the original date.
- The petitioner is also incorrect in its assertion that PESL could easily review sales documentation to report the date of revised order confirmation notes. To report this, PESL would have to manually review emails, written correspondence, and employee phone logs for every U.S. sale to capture any revision and subsequent revision to order confirmation notes. This would provide additional burden for Commerce to reconcile this data to accounting and other records.

¹⁵ See Petitioner's Case Brief at 1-13.

¹⁶ *Id.* at 11-13 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017) (*CTLP from Belgium*), and accompanying Issues and Decision Memorandum (IDM) at 4).

¹⁷ See PESL's Rebuttal Brief at 1-12.

- The petitioner relies on cases where the terms of sale did not change after revised or amended contract dates; PESL has noted that the material terms of sale do change following order confirmations and revised order confirmations.
- *SSB from India* provides a virtually identical set of facts, namely a respondent whose software did not track the date of changes made between sales order date and commercial invoice date.¹⁸ In that case, Commerce accepted invoice date as the appropriate date of sale.
- *CTLP from Belgium* is incongruous to this case.¹⁹ PESL has cooperated fully, reported all requested information, and Commerce did not identify any issues in its verification.

Commerce’s Position: We agree with PESL. For our final determination, we are not applying AFA to PESL and continue to use PESL’s shipment date as the date of sale, reflecting when material terms of sale were definitively fixed. Pursuant to 19 CFR 351.401(i), Commerce normally uses invoice date as the date of sale, unless another date better reflects the date on which the material terms of sale are set. As the date on which PESL’s reported invoice date is developed can predate the actual date the material terms of sale are fixed, we must rely on shipment date, in accordance with our practice.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Here, Commerce finds that a determination under section 776(a) and (b) of the Act, is not warranted here because: (1) necessary information is not missing from the record; (2) PESL did not withhold information that has been requested; (3) PESL provided information within the deadlines established, and in the form and manner requested by Commerce; (4) PESL did not impede the proceeding. Consequently, the requirements under section 776(a) of the Act have not been met, and there is no justification to make a determination under section 776(b) of the Act.

As an initial matter, the petitioner is incorrect that Commerce discovered that email communications may exist between order confirmation and revised order confirmation at verification;²⁰ for example, PESL provided an example in its first supplemental response.²¹

Commerce’s decision to apply partial AFA in *CTLP from Belgium* does not mirror this situation. In that case, Commerce asked the respondent to report a shipment date, the respondent refused, and Commerce applied partial AFA after finding that the respondent’s reasoning was directly

¹⁸ *Id.* at 8 (citing *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 34337 (June 7, 2013) (*SSB from India*), and accompanying IDM at Comment 2).

¹⁹ *Id.* at 10-11 (citing *CTLP from Belgium* IDM at Comment 4).

²⁰ See Petitioner’s Case Brief at 8.

²¹ See PESL’s Letter, “Quartz Surface Products from India: Submission of PESL’s Section A-C Response,” dated October 25, 2019 (PESL’s 1st SQR), at Exhibit S1-5 Part 2.

refuted by evidence gathered at verification.²² PESL has directly responded to Commerce’s initial and supplemental questionnaires regarding date of sale.²³ It has complied with Commerce’s requests, and our verification and examination of responses have found no evasion or meaningful discrepancies. Specifically, Commerce reviewed at verification how PESL’s software maintains the date of the original drafted document upon revision, both in the case of order confirmation notes and across *pro forma* invoices and invoices.²⁴ The two main relevant sales examined showed that email correspondence confirming changes to existing order confirmations occurred a substantial amount of time after the order confirmation date. The related revisions maintained the original date.²⁵ This was consistent with PESL’s reporting from the outset.

In contrast, *SSB from India* provides an almost direct parallel to this investigation. In that case, the petitioners argued that Commerce should use the revised order date as date of sale. However, the respondent relied on invoice date, arguing successfully that “Ambica affirms that any changes from the initial negotiation are preceded by re-negotiations. However, these changes do not generate additional documents other than the Order Acknowledgement Amendments in Ambica’s NAVISION software, which Ambica has provided. These Order Acknowledgement Amendments show the date of the sales order but not the date of the amendment.”²⁶ The petitioners similarly argued for total AFA, yet Commerce rejected that request and used invoice date as the date of sale.²⁷

We preliminarily used shipment date as date of sale to best approximate the date on which the material terms of sale are fixed. PESL provided an example of changes to terms following the issuance of a *pro forma* invoice.²⁸ Subsequent correspondence documented this change, and the related revised *pro forma* invoice and invoice reflecting the changes retained the date of the original *pro forma* invoice.²⁹ Functionally, PESL’s reported invoice date is the date the initial *pro forma* invoice is developed. Based on PESL’s responses and our verification findings, the actual date a given invoice is developed in PESL’s sales process is not tracked. Thus, we continue to rely on date of shipment as the better reflection of the establishment of PESL’s material terms of sale under 19 CFR 351.401(i), and we conclude that the application of AFA is not warranted here.

Comment 2: Whether to Cap PESL’s Freight, Insurance and Packing Revenue

Background: PESL reported billing adjustments for freight charges recovered and insurance charges recovered in invoices per an agreement it has with customers. Additionally, it reported

²² See *CTLP from Belgium* IDM at Comment 4.

²³ See PESL’s 1st SQR at 7-8; see also PESL’s 2nd SQR at 4-7; and PESL’s 3rd SQR at 2-3.

²⁴ See PESL’s Sales Verification Report at 4-6

²⁵ *Id.*, at 5.

²⁶ See *SSB from India* IDM at Comment 2.

²⁷ *Id.*, where Commerce found “Ambica timely responded to our repeated requests for information and explained that it did not track in its system changes to material terms of sale between order date and invoice date in a manner that would permit us to establish a date of sale other than invoice date.”

²⁸ See PESL’s 2nd SQR at 6-7 and Exhibit S2-4.

²⁹ *Id.*

packing charges recovered due to an agreement with one customer.³⁰ In the *Preliminary Determination*, we added these to U.S. price as reported.

*Petitioner's Case Brief*³¹

- Commerce has an established practice to cap freight revenue by incurred freight expenses in order to ensure transportation service revenue is not attributed to subject merchandise.
- Commerce should apply this practice in this instance, capping PESL's freight revenue by its ocean and air freight expenses.
- Additionally, Commerce should apply the same principle and cap PESL's marine insurance revenue by its reported expenses and its packing revenue by its reported packing expenses.

*PESL's Rebuttal Brief*³²

- The petitioner's primary cited case involved the separate sale of freight services. PESL does not sell freight, insurance, or packing services separately. Instead, its freight and insurance revenue are associated with the terms of delivery, following Incoterms 2010.
- Similarly, packing revenue is determined by the nature of the packing required by the customer and is not separate from the sale of subject merchandise.
- Commerce should continue its practice from the *Preliminary Determination* and not cap PESL's freight, insurance, and packing revenue by expenses.

Commerce's Position: We agree with the petitioner that it is our practice to cap these revenues by their respective expenses and are applying that practice here. Commerce makes adjustments to account for these expenses under section 772(c)(1) of the Act, comporting with the definition of price adjustments established at 19 CFR 351.102(b)(38). These adjustments must be reasonably attributable to the subject merchandise under 19 CFR 351.401(c).

The petitioner cites to many examples where Commerce capped revenue with respect to freight.³³ *OJ from Brazil 2010-2011*, in particular, demonstrates that Commerce does not treat freight-related revenues as additions to U.S. price under section 772(c) of the Act or as price adjustments under 19 CFR 351.102(b).³⁴ Generally, Commerce's practice is not to attribute revenue over related expenses to the price of subject merchandise, as that uncapped amount represents profit on the sale of services and not profit on the sale of the merchandise.³⁵

³⁰ See PESL'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 (PESL's CDQR), at C-26 to C-28.

³¹ See Petitioner's Case Brief at 13-16.

³² See PESL's Rebuttal Brief at 21-13.

³³ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012), and accompanying IDM at Comment 3; see also *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*MWF from China*), and accompanying IDM at Comment 39.

³⁴ See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012) (*OJ from Brazil 2010-2011*), and accompanying IDM at Comment 6.

³⁵ See *MWF from China* IDM at Comment 39 ("Rather, the Department has incorporated freight-related revenues as offsets to movement expenses that are then deducted from U.S. price because they relate directly to the movement and transportation of subject merchandise under section 772(c)(2) of the Act. In addition, the Department has stated that where freight revenue earned by a respondent exceeds the freight charges incurred for the same type of activity,

PESL attempts to distinguish its revenue as integral to its terms of delivery and characterizes the petitioner's citations of Commerce precedent as separate sales of freight, insurance, and packing services.³⁶ It notably draws a distinction with *Ball Bearings from France, etc.*, where Commerce noted caps are needed when revenue items “are not included in the selling price under the applicable terms of delivery but when the respondent arranges and prepays freight and insurance for the customer.”³⁷ PESL contends that since recovered freight and insurance expenses reflect its terms of delivery, they are not separate sale of services from the subject merchandise. Similarly, since packing revenue is associated with the requirements of a customer, it argues that this revenue is also not “separate” from the sale of subject merchandise.³⁸

PESL's distinction from *Ball Bearing from France, etc.*, that Commerce used the term “service,” is not apt. Our application of a cap ensures that we are providing for an adjustment that reflects the portion of these revenues intrinsically tied to the material terms of sale.³⁹

As noted in *OJ from Brazil 2007-2008*, 19 CFR 351.401(c) directs Commerce to adjust U.S. price net of items “reasonably attributable to the subject merchandise.”⁴⁰ Additionally, 19 CFR 351.102(b)(38) defines price adjustments as “a change in the price charged for subject merchandise or the foreign like product, such as a discount, rebate, or other adjustment, including, under certain circumstances, a change that is made after the time of sale (*see* 19 CFR 351.401(c)), that is reflected in the purchaser's net outlay.” We note that freight, insurance, or packing revenues are not included in this list.⁴¹ PESL has not provided examples or justification as to why we should depart from our practice and attribute profit from these revenues to subject merchandise.

Comment 3: Treatment of PESL's Warranty Expenses

Background: PESL initially reported no warranty expenses during the POI and subsequently provided Commerce with three years of expenses, as requested.⁴² PESL also sets a provision for

the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight”).

³⁶ See PESL's Rebuttal Brief at 21-22.

³⁷ *Id.* at 22 (citing *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part*, 74 FR 44819 (August 31, 2009) (*Ball Bearings from France, etc.*), and accompanying IDM at Comment 12).

³⁸ *Id.* at 23.

³⁹ See *MWF from China* IDM at Comment 39.

⁴⁰ See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009) (*OJ from Brazil 2007-2008*), and accompanying IDM at Comment 6.

⁴¹ See *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 (August 11, 2011), and accompanying IDM at Comment 4, noting “freight revenue is not included in this list.”

⁴² See PESL's 1st SQR at 10-11 and exhibit S1-7.

warranty expenses.⁴³ In the *Preliminary Determination*, we used PESL's three-year average to reflect its historical warranty expense.⁴⁴

*Petitioner's Case and Rebuttal Briefs*⁴⁵

- At verification, Commerce collected information which shows that PESL's warranty provision is the most accurate value for its warranty expenses, which Commerce should use in its final determination.
- PESL's warranty provision is how it normally treats its warranty expenses in its own books and records, which Commerce tied to PESL's financial statements. Additionally, PESL's proprietary practices and documents as submitted to the record support selecting the warranty provision as the most accurate approximation of expected warranty expenses from sales during the POI.
- Commerce specifically uses foreseeable expenses based on historical experience and generally does not make use of a single period's warranty expenses unless they are representative of said historical experience. PESL's own record submissions and description of its provision indicate that warranty expenses from POI sales may not become known for years.

*PESL's Case and Rebuttal Briefs*⁴⁶

- As PESL had negligible warranty expenses during the POI and preceding year, Commerce's use of a three-year average for PESL's warranty expense is distortive.
- Commerce should elect to use an alternate calculation to account for unusual circumstances, namely utilizing only actual warranty expenses incurred during the POI.

Commerce's Position: We disagree with both commenting parties and continue to make use of PESL's historical average for its warranty expense. As there are not express statutory provisions regarding warranty expenses under the Act, Commerce has the ability to apply a reasonable treatment of such expenses.⁴⁷ The petitioner correctly notes Commerce's preference to examine historical warranty information, as POI information may not be reflective of warranty expenses that will eventually be tied to POI sales.⁴⁸ Commerce often relies on a respondent's historical experience, and we asked for this information in our initial questionnaire to PESL.⁴⁹

PESL argues that, as its warranty expenses for the POI and fiscal year 2017-2018 were negligible, the use of expenses from fiscal year 2016-2017 in the three-year average is distortive.

⁴³ See PESL's CDQR at C-46 to C-47.

⁴⁴ See Memorandum, "Analysis Memorandum for the Preliminary Results of the Antidumping Duty Investigation of Certain Quartz Surface Products from India: Pokarna Engineered Stone Limited," dated December 4, 2019.

⁴⁵ See Petitioner's Case Brief at 16-23; and Petitioner's Rebuttal Brief at 17-19.

⁴⁶ See PESL's Case Brief at 11-12; and PESL's Rebuttal Brief at 12-13.

⁴⁷ See *Zenith Elecs. Corp. v. United States*, 988 F. 2d 1573 (CIT 1993).

⁴⁸ See Petitioner's Case Brief at 17 (citing *Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006), and accompanying IDM at Comment 1).

⁴⁹ See Commerce's Letter, "Request for Information Antidumping Duty Investigation Pokarna Engineered Stone Limited," dated July 1, 2019, at C-26.

It thus asks for an exception to Commerce's practice.⁵⁰ In *CWP from Thailand*, Commerce took into account an exceptional circumstance where the period in question featured a comparatively low export volume for the warranty expenses in question.⁵¹ That case relied on *MT Presses from Japan*, where Commerce took into account variations in how warranty expenses were recorded in each market and across product types.⁵² These cases cited by PESL are inapposite to the instant investigation; PESL does not advance any argument as to how its historical experience represents exceptional circumstances beyond variation across the three fiscal years used in our calculation of warranty expense.

Similarly, we find the petitioner's argument that Commerce should use PESL's warranty provision as its expense to be similarly unconvincing. The petitioner argues that PESL's description of how it determines its warranty provision indicates that the provision is a better approximation of PESL's likely warranty expenses for merchandise sold during the POI.⁵³ Citing *Steel Nails from Oman*, the petitioner argues that Commerce should treat this provision as PESL's reported expense.⁵⁴ Additionally, the petitioner argues that in *Micron Technology*, the court upheld Commerce's decision to treat translation losses as costs of production.⁵⁵ We note that these examples do not parallel this case. *Steel Nails from Oman* deals with Commerce's treatment of provision for doubtful accounts for the aging of accounts receivable, and *Micron Technology* addressed the incorporation of unrealized losses related to foreign exchange rates into costs of production.

PESL reported its actual warranty expenses for the three most recent fiscal years, leading up to and inclusive of the POI. We find this to be a more reasonable treatment of PESL's warranty expenses than either alternative proposed by parties and in keeping with our common practice, as it makes use of PESL's actual warranty expenses and accounts for the variable nature of such expenses.

As a related matter, in our examination of warranty expenses at verification, we discovered that PESL's use of its warranty provision was offset by a reversal entry. The net of these ledger entries is what PESL reported for its warranty provision utilized in its 2016-2017 profit and loss statement.⁵⁶ However, PESL reported the warranty expense amount without accounting for this reversal to Commerce. Parties did not comment on this discrepancy. Nevertheless, for our final

⁵⁰ See PESL's Case Brief at 11-12 (citing *Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 61 FR 1328 (January 19, 1996) (*CWP from Thailand*), and accompanying IDM at Comment 3 (citing *Mechanical Transfer Presses from Japan: Final Determination of Sales at Less Than Fair Value*, 55 FR 335, 343 (January 4, 1990) (*MT Presses from Japan*) at Comment 19)).

⁵¹ See *CWP from Thailand* IDM at Comment 3.

⁵² See *MT Presses from Japan*, 55 FR at 343 (i.e., Comment 19).

⁵³ See Petitioner's Case Brief at 19-21 (citing proprietary policies and figures found in PESL's Sales Verification Report at 11 and SVE-12).

⁵⁴ *Id.* at 22 (citing *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 58231 (November 19, 2018) (*Steel Nails from Oman*), and accompanying IDM at Comment 2).

⁵⁵ *Id.* at 22 (citing *Micron Technology, Inc. v. United States*, 893 F. Supp. 21, 33 (CIT 1995)).

⁵⁶ See PESL's Sales Verification Report at 11 and SVE-12.

determination, we are making use of the warranty provision utilized amount that PESL reports in its own financial statements in our calculation of PESL's historical average warranty expense.⁵⁷

Comment 4: Whether to Exclude PESL's Paid U.S. Sample Sales

Background: Prior to the *Preliminary Determination*, in accordance with standard practice and pursuant to Commerce's request, PESL excluded its zero-priced sample sales (*i.e.*, free samples) from its U.S. sales database and reported the value of such sales as direct selling expenses allocated across remaining U.S. sales. With respect to PESL's reporting of sample sales for compensation (*i.e.*, paid samples) in the United States, we noted that, for the *Preliminary Determination*, we were including paid sample sales, despite PESL's request that such sales also be excluded, and that we would examine the issue further for our final determination.⁵⁸

*PESL's Case Brief*⁵⁹

- Commerce may exclude sales that are not *bona fide*, including when sales are unrepresentative or distortive. It may consider factors including sale timing, price and quantity, associated expenses, whether the goods were resold for a profit, and whether the relevant transaction was at arm's length. The factors that inform Commerce's decision regarding *bona fide* sales also apply to whether they were made in the ordinary course of trade.
- PESL has supplied support for excluding its paid U.S. sample sales on the basis that they are outside the ordinary course of trade, mirroring the criteria set forth in *CDMT from Switzerland*.⁶⁰
 - First, PESL's paid samples are not sold for commercial consumption or installation. PESL has demonstrated that sample sizes differ in dimensions from its regular slab and cut to size (CTS) products and that its customers use them as marketing and promotional items.
 - Second, these samples are negotiated differently. Their prices are generally more constant and lower on a per square foot basis than equivalent slab products.
 - Third, paid samples represent a small portion of U.S. sales by quantity in square meters.
 - Fourth, paid samples are recorded differently in PESL's records. PESL assigns barcodes to its slab and CTS non-sample products, and its sample sales do not.
 - Fifth, PESL's paid samples are unrepresentative. They account for a disproportionate amount of PESL's preliminary dumping margin.

⁵⁷ See Memorandum, "Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Quartz Surface Products from India: Pokarna Engineered Stone Limited," dated concurrently with this memorandum (PESL's Final Analysis Memo).

⁵⁸ See Memorandum, "Analysis for the Preliminary Determination in the Investigation of Certain Quartz Surface Products from India: Pokarna Engineered Stone Limited," dated December 4, 2019.

⁵⁹ See PESL's Case Brief at 2-11.

⁶⁰ *Id.* at 5-6 (citing *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Switzerland: Final Determination of Sales at Less Than Fair Value*, 83 FR 16293 (April 16, 2019) (*CDMT from Switzerland*), and accompanying IDM at Comment 1).

*Importers' Case Brief*⁶¹

- PESL's paid samples can only be used for marketing and advertising. The petitioner agreed with the purpose of paid samples in its comments prior to Commerce's *Preliminary Determination*, and MSI has a declaration regarding its use on the record.
- Commerce's verification found that paid sample prices did not change over a period where slabs did, confirming PESL's reporting that prices for samples are "fixed for a particular size irrespective of the design."⁶²
- Importers view paid samples as shared expense samples. They should be treated as any other marketing material, such as brochures or advertising agency fees, that is shared between producer and distributors.
- The totality of circumstances of these sales are such that they should not be considered *bona fide*. These samples are not sold as commercial goods; instead they promote actual commercial products used in surface product applications and do not have typical prices and quantities. PESL exchanges these samples at very low prices, at no or little profit. Their price does not vary with the price of quartz slabs, possessing a different timing and expense.
- Paid sample sales are not *bona fide* sales. In order to calculate a realistic margin, Commerce should exclude them and allocate their cost as a selling expense, offset by the amount paid by the U.S. customer. Including these sales may encourage new shippers to manipulate their margins by basing their U.S. sales database on samples.
- These sales should also be excluded as outside of the ordinary course of trade. Commerce has previously excluded paid samples when faced with similar facts in *CDMT from Switzerland* and *TRBs from Japan*.⁶³
- The only difference between PESL's paid sample sales and free samples is that a portion of the advertising expense is shared with PESL's customers in paid sample sales.

*Petitioner's Rebuttal Brief*⁶⁴

- There are only two instances in which Commerce excludes sample sales: free samples directed to a customer's customer as direct selling expenses; and free samples destroyed in testing or imported under temporary importation bond to be returned later.
- The statute and Commerce's practice do not allow for disregarding non-*bona fide* sales in an investigation. Regardless of this fact, PESL's paid sample sales are *bona fide* sales.
- The core of *bona fide* determinations by Commerce is to prevent fraud through the use of atypical sales to obtain a lower dumping margin. The statute does not allow Commerce to exclude sales for margins that are, as PESL argues, unrepresentatively too high.
- Commerce's authority to assess whether sales are *bona fide* was codified in section 751(a)(2)(B)(iv) of the Act, which deals with reviews of existing orders. All of the proceedings cited to by PESL are reviews and not investigations.

⁶¹ See Importers' Case Brief at 11-21.

⁶² *Id.* at 14 (citing PESL's 2nd SQR at 7).

⁶³ *Id.* at 19-20 (citing *CDMT from Switzerland* IDM at Comment 1; and *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 4951 (February 11, 1992) (*TRBs from Japan*), and accompanying IDM at Comment 43).

⁶⁴ See Petitioner's Rebuttal Brief at 1-17.

Commerce’s Position: For our final determination, we continue to consider PESL’s paid U.S. sample sales in our margin calculation. It is not our practice to exclude such U.S. sales from consideration in an investigation.

As noted by commenting parties, section 773(a)(1)(B) of the Act establishes that Commerce will look at prices for sales in the ordinary course of trade to determine normal value. Section 771(15) of the Act provides that sales may be considered outside the normal course of trade, referring to only section 773 of the Act discussing normal value. In *CDMT from Switzerland* and *TRBs from Japan*, we relied on these provisions to examine comparison market sample sales.⁶⁵ Additionally, 19 CFR 351.102(b)(35) provides a more general provision for determining sales outside of the normal course of trade.⁶⁶ In their respective briefs, PESL and MSI and Arizona Tile cite 19 CFR 351.102(b)(35), but do not explain how the provisions concerning normal value extend to PESL’s U.S. sales of samples.⁶⁷

PESL and MSI and Arizona Tile’s citations to Commerce’s use of a *bona fide* analysis consist of cases related to new shipper reviews and administrative reviews, their related court cases, and, in one instance, where Commerce decided sales between affiliated entities were not *bona fide* after conducting a principal-agent analysis.⁶⁸ The petitioner contends that Commerce does not apply *bona fide* analyses in investigations, since they are intended to identify sales that may be fraudulent or otherwise manipulative with respect to an existing order.⁶⁹ We agree that it is not our practice to apply *bona fides* analyses in investigations and that section 751(a)(2)(B)(iv) of the Act, which provides for determinations based on *bona fide* sales, pertains to administrative reviews.

Section 735(a) of the Act states that Commerce shall make a final determination of whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value. Because PESL’s U.S. paid sample sales consisted of a “transfer of ownership to an unrelated party and consideration,”⁷⁰ we have included these sales in PESL’s margin calculation for purposes of the final determination.

⁶⁵ See *CDMT from Switzerland* IDM at Comment 1; and *TRBs from Japan* IDM at Comment 43.

⁶⁶ See 19 CFR 351.102(b)(35), “The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question.”

⁶⁷ See, e.g., Importers’ Case Brief at 18, “The CIT has held that Commerce has discretion to determine what sales are outside the ordinary course of trade,” (citing *Appvion, Inc. v. United States*, 100 F. Supp. 3d 1374 (CIT 2015), which dealt with Commerce’s examination of sales in the context of calculating normal value and not export price).

⁶⁸ For the latter, see *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018), and accompanying IDM at Comment 11.

⁶⁹ See Petitioner’s Rebuttal Brief at 5 (citing *Huzhou Muyun Wood Co. v. United States*, 324 F. Supp. 3d 1364 (CIT 2018), “What is constant, however, is the basic Congressional rationale for requiring determinations based on *bona fide* sales: to ensure that a producer does not unfairly benefit from an atypical sale to obtain a lower dumping margin than the producer’s usual commercial practice would dictate.”).

⁷⁰ See *NSK Ltd. v. United States*, 115 F. 3d 965, 975 (CAFC 1997) (“the term ‘sold’ . . . requires both a transfer of ownership to an unrelated party and consideration.”).

Comment 5: Whether to Rely on Antique Group’s Profit Rate and Selling Expenses to Calculate CV for PESL

Background: PESL had no viable home or third-country markets during the POI. In the *Preliminary Determination*, we calculated PESL’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.⁷¹

*PESL’s Case Brief*⁷²

- Commerce should not rely on Antique Marbonite’s CV profit rate and selling expenses because that data is not a suitable proxy under the statute.
- Instead, in accordance with section 777(e)(2)(B)(iii) of the Act, Commerce should rely on any or an average of the CV rates of the ten Indian companies who are engaged in selling the same class of product, financial statements of which were provided by PESL.
- Antique Marbonite’s CV profit rate and selling expenses are inconsistent with the publicly available CV selling and profit information of other Indian manufacturers placed on the record by PESL.
- Antique Marbonite and its affiliate Prism Johnson have invested (and continue to invest) in retail infrastructure, salespeople, and branding and marketing initiatives during the POI in order to increase their retail presence.
- As a retailer with operating display centers and necessary staff, Antique Marbonite and Prism Johnson have considerably higher selling expenses than PESL, which is only a producer of the subject merchandise.
- Commerce has verified that PESL does not operate retail premises like Prism Johnson, nor does it have the need for the vast number of salespersons necessary to run a retail establishment.
- Antique Marbonite and its affiliate are not operating at the same level of trade as PESL, and therefore, their CV profit and selling rates should not be attributed to PESL.
- The combined CV profit and selling rates of the ten Indian companies are vastly different from Antique Marbonite’s rates.

*Petitioner’s Rebuttal Brief*⁷³

- Commerce should continue to use the Antique Group’s combined CV profit and selling rates information for the final determination because they reflect the selling expenses and profit experience of an Indian producer of the subject merchandise and reflect sales made in the ordinary course of trade in India.
- Relying on the Antique Group’s data most closely simulates the statutory preference for calculating CV selling expenses and profit.
- The combined CV profit and selling rates can be made public; alleviating any concerns with disclosing Antique Marbonite’s business proprietary information.
- There is no support on the record for PESL’s contention that Antique Marbonite is “not operating at the same level of trade” as PESL.

⁷¹ Note that any reference to profit and selling expense from Antique Group with respect to this comment is inclusive of Antique Marbonite and Prism Johnson and not Shivam, as is otherwise true in the document.

⁷² See PESL’s Case Brief at 15-16.

⁷³ See Petitioner’s Rebuttal Brief at 20-28.

- PESL’s claim that it has no sales operations in the home market misses the entire point of Commerce having to base normal value on CV.
- Because the financial statements placed on the record by PESL were never formally made part of the record of this investigation, the petitioner never had the right under the regulations to submit rebuttal factual information.
- If the financial statements submitted by PESL are made part of the record, five of the ten financial statements are not suitable alternatives because the companies either don’t produce the subject merchandise, the financial information includes sales of subject merchandise to the United States, or the financial statements reflect receipt of countervailable subsidies or duty drawback.
- The financial statements of four Indian producers of tile products, a Pakistani company and a Dutch company are also not suitable for calculating CV selling expenses and profit because they do not reflect production and sales of the foreign like products in the foreign country.⁷⁴

Commerce’s Position: We agree with the petitioner and continue to rely on Antique Group’s combined CV profit and selling information for the final determination.⁷⁵ Consistent with the *Preliminary Determination*, we find that Antique Group’s combined profit and selling expense rates reflect the profit and selling experience of an Indian quartz surface products manufacturer, on comparison market sales of the merchandise under consideration, in the ordinary course of trade.⁷⁶ Further, the combined CV profit and selling expense ratio is also public information.

Because PESL does not have a comparison market, Commerce cannot determine selling expenses and profit under the preferred method of 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”).

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit and selling expenses.⁷⁷ Moreover, as noted in the SAA, “the selection of an alternative

⁷⁴ The petitioner refers to *OCTG from Korea Final IDM* at Comment 1.

⁷⁵ See PESL’s Final Analysis Memo.

⁷⁶ See *Preliminary Determination PDM* at 21.

⁷⁷ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 840 (“At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.”).

will be made on a case-by-case basis, and will depend, to an extent, on available data.”⁷⁸ As such, Commerce has the discretion to select from any of the three alternative methods, depending on the information available on the record. In this case, Commerce is faced with choosing among several alternatives for CV profit based on available data that reflect at least one of the criteria noted above.⁷⁹ Therefore, we must weigh the pros and cons of the available data and determine which requirement is more relevant for this case based upon the record data before us. With each of the statutory alternatives in mind, we evaluated the data available in the instant investigation and weighed each of the statutory alternatives to determine which surrogate data source most closely fulfills the aim of the statute.

PESL does not produce any merchandise other than subject merchandise. Therefore, we are not able to rely on alternative (i) of section 773(e)(2)(B) of the Act and must look to alternatives (ii) and (iii). Under section 773(e)(2)(B)(ii) of the Act, we have the profit and selling expense information of the other mandatory respondent in this investigation, Antique Group. Pursuant to section 773(e)(2)(B)(iii) of the Act, PESL submitted information for the calculation of profit and selling expenses to be added to CV. Specifically, PESL submitted the financial statements of five quartz producers in India; 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).⁸⁰

Through our practice, we have favored using an alternative method that most closely corresponds to the preferred method.⁸¹ Here, we find that the profit and selling information of Antique Group most closely corresponds to the preferred method as the information is based on the experience of an Indian producer of quartz surface products, in the ordinary course of trade, in India. In contrast, none of the financial statement data provided by PESL permits Commerce to determine sales of the foreign like product made in the normal course of trade in India, *i.e.*, the financial statement data is not specific regarding sales prices in the comparison market, the production costs of the products sold in the comparison market and whether the comparison market sales were made at prices above production costs.⁸² Therefore, we find that relying on Antique Marbonite’s profit and selling expense information is the best alternative for the calculation of profit and selling expenses to be added to CV.

⁷⁸ *Id.*

⁷⁹ See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea 2014-2015 Final Results*), and accompanying IDM at Comment 1.

⁸⁰ See PESL’s Letter, “Quartz Surface Products from India: Submission of Financial Information for the Calculation of CV Profit and SG&A,” dated November 1, 2019 (PESL’s Financial Statement Submission 1); see also PESL’s Letter, “Quartz Surface Products from India: Submission of Financial Information for the Calculation of CV Profit and SG&A,” dated November 4, 2019 (PESL’s Financial Statement Submission 2).

⁸¹ 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 17, where, in seeking an alternative calculation of CV profit, Commerce sought to replicate the statutory preferred method as closely as possible.

⁸² See PESL’s Financial Statement Submission 1; and PESL’s Financial Statement Submission 2.

PESL asserts that Antique Group's profit and selling information should not be relied upon because Antique Group operates at a different level of trade (LOT) than PESL within India.⁸³ We find that neither the statute, at section 773(e)(2)(B) of the Act, nor Commerce's practice in evaluating the best alternative in calculating CV profit and selling expenses requires Commerce to conduct a LOT analysis of the data available to calculate CV profit and selling expenses.⁸⁴ Moreover, the financial statement data provided by PESL fails to show LOT information, thereby failing to support PESL's argument that a LOT analysis should influence the selection of the appropriate source for determining CV profit and selling expenses.⁸⁵

Finally, we disagree with the petitioner's claim that the financial statements placed on the record by PESL were never formally made part of the record of this proceeding. Contrary to the petitioner's claim, PESL's financial statement information was properly submitted in accordance with Commerce's factual information regulations.⁸⁶ Upon receipt of PESL's original submission, Commerce specifically requested that PESL provide a clarification of why the financial statement submission was acceptable under Commerce's factual information regulations.⁸⁷ PESL complied with Commerce's request stating that the financial statement information was submitted in accordance with section 351.102(b)(21)(v) of Commerce's regulations.⁸⁸

Comment 6: Whether to Adjust PESL's General and Administrative (G&A) Expense Ratio

*Petitioner's Case and Rebuttal Briefs*⁸⁹

- Commerce should adjust PESL's G&A expense ratio to exclude the offset for actuarial gains and deferred taxes on those gains because these items relate to income taxes.
- Commerce's practice is to exclude tax items in the calculation of a company's cost of production and constructed value.
- Commerce verified that the net actuarial gains and deferred taxes were below profit but before taxes on PESL's income statement.

*PESL's Case and Rebuttal Briefs*⁹⁰

- PESL's G&A expense ratio was correctly reported.
- The actuarial net gains related to leave encashment and gratuities are not income tax items and, as such, were correctly considered as an offset to the numerator of the G&A expense ratio.

⁸³ PESL refers to Commerce's verification of indirect selling expenses as a LOT analysis. See PESL's Case Brief at 16.

⁸⁴ See, e.g., *Shrimp from Thailand* IDM at Comment 17.

⁸⁵ See PESL's Financial Statement Submission 1; and PESL's Financial Statement Submission 2.

⁸⁶ See PESL Letter, "Quartz Surface Products from India: Constructed Value Submissions of November 3 and 4, 2019," dated November 12, 2019 (PESL's Constructed Value Letter).

⁸⁷ See Commerce's Letter, "Antidumping Investigation of Certain Quartz Surface Products from India: PESL's Submissions Regarding CV Profit and SG&A Expenses," dated November 8, 2019.

⁸⁸ See PESL's Constructed Value Letter.

⁸⁹ See Petitioner's Case Brief at 23; see also Petitioner's Rebuttal Brief at 19-20.

⁹⁰ See PESL's Case Brief at 12-15; see also PESL's Rebuttal Brief at 13-16.

- Actuarial gains and losses are estimated and presented below profit for the year for the purpose of financial statements reporting as per the requirement of Indian accounting standards.
- All current and deferred taxes were excluded from the G&A expense calculation.
- Footnote L accompanying PESL's fiscal year end March 31, 2019 financial statements explains that the actuarial gains/losses are not tax amounts.
- Consistent with Commerce's treatment in *Circular Welded Pipe from the UAE* of expenses reported below the profit line on a company's financial statement, Commerce should continue to consider the actuarial gain on account of gratuity and leave encashment as an offset for calculation of the G&A expense.⁹¹

Commerce's Position: We agree with PESL and continue to rely on the G&A expenses reported by PESL for the final determination. In its original section D submission, PESL included actuarial gains and losses as well as the related deferred tax expenses in the calculation of the numerator of the company's G&A expense ratio.⁹² In response to Commerce's request, PESL revised the numerator of the G&A expense ratio to exclude the deferred taxes.⁹³ While we agree with the petitioner that tax items should be excluded from PESL's G&A expenses, review of PESL's income statement and trial balance shows that the actuarial gains and losses included in the G&A expense calculation are retirement expenses, rather than income tax items, and were included in the calculation of profit before taxes on the income statement.⁹⁴ Regarding PESL's arguments concerning whether or not below the profit line items on the income statement should be included in G&A expenses, we note that the argument doesn't apply here. PESL's worksheet showing the classification of reported expenses in Exhibit D-8, part 1, of its original section D submission shows the net value of actuarial gains/losses and the related deferred taxes as below profit line items. However, the presentation of the net value of actuarial gains/losses and the related deferred taxes in Exhibit D-8, part 1, is incorrect because as shown in PESL's audited income statement, only the deferred taxes, which were excluded from the G&A expenses, are below the profit line items.⁹⁵

⁹¹ PESL cites to *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates; Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016) (*Circular Welded Pipe from the UAE*), and accompanying IDM at Comment 1.

⁹² See PESL's DR at Exhibit D-16.

⁹³ See PESL's SDR at SD-18, SD-19, and Exhibit D1-16.

⁹⁴ See PESL's Letter, "Cost Verification Exhibits of Pokarna Engineered Stone Limited," dated January 13, 2020, at Cost Verification Exhibit 5.

⁹⁵ *Id.*

Comment 7: Whether to Allocate the Costs of PESL's Non-Prime Products to Prime Products

*Petitioner's Case Brief*⁹⁶

- Commerce should increase the cost of PESL's grade 1 (prime) products by the difference between the costs allocated to the grades 2 and 3 (non-prime) products and the non-prime sales revenue consistent with its practice in *OCTG from Korea*.⁹⁷
- Commerce should treat PESL's non-prime products as byproducts, rather than co-products, because the non-prime products meet all Commerce's criteria for determining whether an output is a co-product or byproduct.
- PESL's non-prime products are not significant in comparison to prime products; PESL records the non-prime products as different grades than prime products in its normal books and records; non-prime merchandise is an unavoidable consequence of producing prime products; and non-prime merchandise does not undergo any significant processing after the "split-off point" given that it is simply a finished product that has been identified as defective.⁹⁸
- PESL has allocated costs of production to non-prime merchandise that is not able to be sold and, in fact, is ultimately discarded as trash.
- Where Commerce determines a product to be a byproduct as opposed to a co-product, it allocates all common costs to the prime merchandise and subtracts the amount of the revenue from the sale of byproducts from the total cost of manufacturing of the prime merchandise.

*PESL's Rebuttal Brief*⁹⁹

- Commerce should not allocate the costs of PESL's non-prime products to prime products because grade 2 and 3 products are subject merchandise, the same as grade 1 prime products, and are sold in a similar manner and for the same applications as prime grade products.
- Commerce's practice is to analyze the products sold as non-prime products on a case-by-case basis to determine how such products are treated in the respondent's normal books and records, whether they remain in scope, and likewise whether they can still be used in the same applications as the prime subject merchandise.¹⁰⁰
- PESL did not state that non-prime products are entirely discarded as trash but rather that PESL's prime and non-prime products are used for the same application either fully or

⁹⁶ See Petitioner's Case Brief at 24-27.

⁹⁷ The petitioner refers to *Certain Oil Country Tubular Goods from the Republic of Korea: Negative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 79 FR 10480 (February 25, 2014) (*OCTG from Korea*), and accompanying PDM at 21, unchanged in *Certain Oil Country Tubular Goods Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea Final*), and accompanying IDM.

⁹⁸ The petitioner cites to *Oil Country Tubular Goods from Argentina*, 60 FR 33539, 33574 (June 28, 1995); and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa*, 67 FR 35485 (May 20, 2002) (*Steel Beams from South Africa*), and accompanying IDM at Comment 4.

⁹⁹ See PESL's Rebuttal Brief at 16-21.

¹⁰⁰ *Id.* (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 27762 (June 14, 2019) (*Line Pipe from Korea 2016-2017*), and accompanying IDM at Comment 8).

partially while unusable cut areas of non-prime products may have to be discarded as trash or used for other suitable applications by the end user.

- The petitioner’s calculations of the significance of the sales of non-prime products for its coproduct/byproducts analysis is baseless because it fails to address certain applications; consideration of all applications shows the sales of non-prime products to be significant.
- The facts in this case differ from *OCTG from Korea* where Commerce determined that since the non-prime merchandise could not be used for the same application as the prime OCTG, an adjustment to the cost of prime OCTG was required.
- The facts here are similar to those in *PET Film from Korea* where the only difference between the resulting prime and non-prime products is at the final inspection point and *Rebar from Turkey* where the downgraded merchandise could still be used in the same applications as the prime merchandise.¹⁰¹
- *Steel Beams from South Africa* is not relevant here because, in that case, the byproduct was a completely different product than the main product.

Commerce’s Position: We agree with PESL that full production costs should be allocated to grade 2 non-prime merchandise. Grade 2 non-prime merchandise is valued at full production cost in PESL’s normal books and records, remains within the scope of this proceeding, and can be used in the same applications as grade 1 prime products.¹⁰² We disagree with PESL that grade 3 merchandise should be allocated full production costs. Although grade 3 non-prime products remain within the scope of this proceeding and can be used in the same applications as grade 1 prime products, in its normal books and records, PESL values grade 3 non-prime products at a market value that is less than full production cost.¹⁰³ As such, for the final determination, we reduced the costs reported for grade 3 merchandise to reflect the market price of grade 3 products.¹⁰⁴ Consequently, we also increased the costs reported for grades 1 and 2 product for the difference between the reported costs of grade 3 products and the market value of grade 3 products.¹⁰⁵

During the POI, PESL produced and sold grades 1, 2, and 3 quartz surface products.¹⁰⁶ Grade is assigned to quartz surface products by PESL at the end of the production process.¹⁰⁷ Grades 2 and 3 non-prime products differ from grade 1 products in that grades 2 and 3 products have

¹⁰¹ *Id.* (citing *Polyethylene Terephthalate Film, Sheet and Strip from Korea: Final Results of Antidumping Duty Administrative Review*, 65 FR 55003 (September 12, 2000) (*PET Film from Korea*), and accompanying IDM at Comment 1; *Steel Concrete Reinforcing Bar from Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 21986 (September 15, 2014) (*Rebar from Turkey*), and accompanying IDM at Comment 15; and *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27233 (June 14, 2017) (*Rebar from Mexico*), and accompanying IDM at Comment 3).

¹⁰² See PESL’s 2SD at D2-31 and D2-32.

¹⁰³ *Id.*

¹⁰⁴ See Memorandum, “Cost of Production and Constructed Value Calculation Adjustment for the Final Determination – Pokarna Engineered Stone Ltd.,” dated concurrently with this final determination (PESL Final Cost Memo).

¹⁰⁵ *Id.*

¹⁰⁶ See, e.g., PESL’s 2DR at D2-33.

¹⁰⁷ See PESL’s DR at D-22.

mechanical or visual defects.¹⁰⁸ In the normal course of business, PESL values grades 1 and 2 quartz surface products in the same manner for inventory valuation purposes.¹⁰⁹ Grade 3 products, however, are valued at market value, the best estimate by PESL's management of what a product can be sold for, less selling expenses.¹¹⁰ In this proceeding, grade is not a physical characteristic.¹¹¹ For reporting purposes, PESL reported full production costs for all grades of quartz surface products.¹¹² PESL also reported that grades 2 and 3 products can ultimately be used in the same manner as grade 1 prime products.¹¹³

Commerce's practice with respect to assigning costs to non-prime products is to analyze the products sold as non-prime on a case-by-case basis to determine how such products are treated in the respondent's normal books and records, whether the non-prime products remain in the scope of the proceeding, and whether they can still be used in the same applications as the prime subject merchandise.¹¹⁴

Sometimes the downgrading is minor, and the product remains within a product group, while at other times the downgraded product differs so significantly, that it no longer belongs to the same group and cannot be used for the same applications as the prime product. If the product is not capable of being used for the same applications, the product's market value is typically significantly impaired, often to a point where its full cost cannot be recovered and assigning full costs to that product would not be reasonable.¹¹⁵

Here, PESL's grade 2 non-prime products are valued in the same manner as grade 1 prime products in the company's normal books and records.¹¹⁶ The grade 2 products remain within the scope of the investigation and the grade 2 products can be used in the same applications as grade 1 prime products.¹¹⁷ As such, consistent with our practice, we find it reasonable for PESL to allocate full production costs to grade 2 non-prime products. However, in regard to grade 3 non-prime products, we do not find it appropriate for PESL to allocate full production costs to these products for reporting purposes when the company assigns a cost to the grade 3 non-prime products in its normal books and records that is less than the full cost of production. Section 773(f)(1)(A) of the Act mandates that a respondent's costs should be based on the company's normal books and records, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production of the merchandise. PESL, in its normal books and records,

¹⁰⁸ See PESL's 2DR at D2-30.

¹⁰⁹ See PESL's 2DR at D2-31.

¹¹⁰ *Id.*

¹¹¹ See Commerce's Letter, "Certain Quartz Surface Products from India: Revised Product Characteristics," dated July 3, 2019; see also Memorandum, "Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from India: Clarification of Product Characteristics," dated July 8, 2019.

¹¹² See PESL's DR at D-22.

¹¹³ See PESL's 2DR at D2-32.

¹¹⁴ See, e.g., *Rebar from Mexico* IDM at Comment 3; see also *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at Comment 9; and *Rebar from Turkey* IDM at Comment 15.

¹¹⁵ See *Welded Line Pipe from Korea* IDM at Comment 9.

¹¹⁶ See PESL's 2DR at D2-31.

¹¹⁷ *Id.* at D2-30 and D2-32.

values grade 3 products at their likely selling price.¹¹⁸ This value is lower than the cost PESL assigned to grade 3 products for purposes of reporting its costs to Commerce.¹¹⁹ While we recognize that the grade 3 products remain within scope and may be used in the same manner as grades 1 and 2 products, the market value of grade 3 products is significantly impaired such that the company relies on the market value for purposes of valuing its grade 3 inventory. As such, we consider PESL's normal accounting treatment of assigning less than full cost to such products reasonable. Commerce's practice, upheld by the court, is to rely on a respondent's normal books in records in instances where non-prime merchandise is valued at a significantly lower market value rather than the full cost of production.¹²⁰ As such, we find no basis for departing from PESL's normal treatment of grade 3 products in its books and records. For the final determination, we decreased PESL's reported cost of grade 3 non-prime products to reflect market value consistent with PESL's normal books and records.¹²¹ Likewise, we increased the costs reported for grade 1 and 2 products to reflect the difference between the reported costs of grade 3 products and their market value.¹²²

We find the petitioner's arguments regarding co-products vs. byproducts are not relevant here. As explained in *Welded Line Pipe from Korea*, joint products – a term which includes byproducts and co-products – are multiple products generated simultaneously in a single production process.¹²³ These products incur undifferentiated joint costs until a “split-off point,” after which the joint products become separately identifiable.¹²⁴ Often, the joint products then undergo separate processing activities.¹²⁵ Similar to the facts in *Welded Line Pipe from Korea*, here there is no split-off point in the production process of quartz surface products.¹²⁶ Rather, the quartz surface products are made sequentially on a production line and costs and production activities are generally identifiable to individual products.¹²⁷

We disagree with PESL that this case is similar to *PET Film from Korea*.¹²⁸ In that case, Commerce reallocated the respondent's costs equally between grade A and grade B PET film because Commerce found that not only were the production processes of grade A and grade B PET film identical but also that grade B PET film had the same commercial value as grade A PET film (*i.e.* the market value of grade B PET film was not significantly lower than the market value of grade A PET film).¹²⁹ In the instant case, the market value of grade 3 non-prime

¹¹⁸ See PESL's 2SDR at D2-31.

¹¹⁹ See PESL's Final Cost Memo at Attachment 1.

¹²⁰ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363, April 4, 2017 and accompanying IDM at Comment 11, upheld by the court in *Dillinger France S.A. v. United States*, 350 F. Supp. 3d 1349, 1373 (CIT 2018).

¹²¹ See PESL's Final Cost Memo at 1; see also PESL's 2CR at exhibit S2-9.

¹²² *Id.*

¹²³ See *Welded Line Pipe from Korea* IDM at Comment 9; see also *Rebar from Turkey* IDM at Comment 15.

¹²⁴ See *Welded Line Pipe from Korea* IDM at Comment 9.

¹²⁵ *Id.*

¹²⁶ See *Welded Line Pipe from Korea* IDM at Comment 9; see also *Rebar from Turkey* IDM at Comment 15.

¹²⁷ See PESL's DR at D-5 and D-22.

¹²⁸ See *PET Film from Korea* IDM at Comment 1.

¹²⁹ *Id.*

products is significantly less, so much so, that PESL values the grade 3 non-prime products at market value rather than full production costs in its normal books and records.¹³⁰

While the downgraded non-prime products in *Rebar from Turkey* could be used in the same applications as the prime products as noted by PESL, similar to grades 1 and 3 here, the downgraded rebar products in that case were sold at prices close to that of prime products.¹³¹ Here the sales value for grade 3 products are not close to the prices reported for grade 1 products.¹³² Similarly, in *Rebar from Mexico*, downgraded pipe was treated in the same manner as prime pipe.¹³³ Commerce noted in its analysis in *Rebar from Mexico* that the non-prime products did not have a significantly downgraded value in the marketplace such that allocating full product costs to the downgraded products was not unreasonable.¹³⁴ Here, grade 3 products have a significantly downgraded market value in comparison to grade 1 prime products. Therefore, allocating full product costs to grade 3 products, similar to grade 1 products, is not reasonable.

Comment 8: Treatment of Antique Group's Reported Credit Expenses

*Petitioner's Case Brief*¹³⁵

- Consistent with the Initial Questionnaire, Antique Group stated that it reported credit expenses on a transaction-by-transaction basis using the number of days between date of shipment to the customer and date of payment. Thus, in the *Preliminary Determination*, Commerce relied on Antique Group's CREDITH expenses, as reported.
- Commerce discovered at verification that certain home-market customers pay outstanding balances on a rolling basis and cannot be tied directly to a specific sale.¹³⁶ Antique Group may know that a customer has paid off a certain amount of its rolling balance; it just does not know when payment was made and how to attribute payment to specific sales. Because knowledge of the exact number of days involved is central to the calculation of credit, not knowing the actual number of days involved means Antique Group's reported CREDITH is unverifiable.
- Commerce's regulations state that "the interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment."¹³⁷ In prior proceedings where Commerce has discovered

¹³⁰ See PESL's 2SDR at D2-31.

¹³¹ See *Rebar from Turkey* IDM at Comment 15.

¹³² See PESL's 2CR at exhibit S2-9.

¹³³ See *Rebar from Mexico* IDM at Comment 3.

¹³⁴ *Id.*

¹³⁵ See Petitioner's Case Brief at 27-32.

¹³⁶ *Id.* at 28-29 (citing Antique Group Sales Verification Report at 9-10).

¹³⁷ *Id.* at 28 (citing 19 CFR 351.401(b)(1); also citing, e.g., *SKF United States v. INA Walzlager Schaeffler KG*, 180 F. 3d 1370, 1377 (CAFC 1999) ("The party seeking a direct price adjustment bears the burden of proving entitlement to such an adjustment.") (citing *Fujitsu General Ltd. v. United States*, 88 F. 3d 1034, 1040 (CAFC 1996))).

that a respondent's reported CREDITH expenses are not verifiable, the agency has denied the respondent's claim for a CREDITH expense.¹³⁸

- Commerce should apply partial facts available with an adverse inference based on the Antique Group's failure to cooperate to the best of its ability in reporting its CREDITH expenses. Alternatively, Commerce should find that the Antique Group has simply not provided the evidence necessary for it to be entitled to a CREDITH adjustment.¹³⁹
- Commerce should thus deny the claim for home market credit expenses reported in field CREDITH by Antique Group.¹⁴⁰

*Antique Group's Rebuttal Brief*¹⁴¹

- Antique Group acted to its best ability to report payment date (and thus credit expense) based on the accounting records maintained in normal course of business. Antique Group submitted the details of its credit expenses in the home market database, which makes clear the documents used as the basis of recording payment date, as reported.¹⁴² Commerce was then able to verify that the document indeed was used as the basis of recording date of payment in the accounting system and for reporting in the instant investigation, noting no discrepancies.
- The petitioner misinterprets and over-inflates the importance of the observation from the sales verification report that Commerce was unable to verify the payment date for one sales trace transaction and ignores a crucial qualifying statement that "{ Commerce } did, however, review customer-specific transaction history (*i.e.*, sales and payment transaction) for the entirety of FY 2019, which reflected zero balance and, thus, that payment was complete for all sales to that customer in the fiscal year. *See SVE-7.*"¹⁴³

¹³⁸ *Id.* at 29 (citing, *e.g.*, *Ripe Olives From Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018) (*Olives Spain LTFV Final*), and accompanying IDM at Comment 11 (denying home market credit expense adjustment to respondent whose payment dates were unverifiable); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Brazil*, 67 FR 62134 (October 3, 2002) (*CRS Brazil LTFV Final*), and accompanying IDM at Comment 15; *Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) (*SSSS Taiwan 99-00 AR Final*), and accompanying IDM at Comment 4 (denying a home market credit adjustment to a respondent whose shipment dates were unverifiable); and *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan*, 57 FR 53705 (November 12, 1992) (*CWP Taiwan LTFV Final*) (denying home market credit adjustment to respondent whose home market interest rate was unverifiable)).

¹³⁹ *Id.* at 31 (citing *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009), and accompanying IDM at Comment 5.A.2 (when Commerce is unable to tie information reviewed through spot checks at verification to information reported, it "cannot have confidence that information reported in {the} U.S. sales database is accurate or reliable")).

¹⁴⁰ *Id.* at 31 (citing *SSSS Taiwan 99-00 AR Final* IDM at Comment 4 (as a result of a finding that a respondent's reported shipment dates were inaccurate and therefore unverifiable, Commerce disallowed all credit expenses for sales with a reported positive credit expenses but continued to adjust the home market prices where a negative credit expense was reported)).

¹⁴¹ *See* Antique Group's Rebuttal Brief at 3-6.

¹⁴² *Id.* at 3 (citing, *e.g.*, Antique Group's 1st SQR).

¹⁴³ *Id.* at 4-5 (citing, *e.g.*, Antique Group's Sales Verification Report at 9).

- Year-end account ledgers and payment documents for the customer in question indicate that the payment was received in advance and that no balances were outstanding at the end of the year for the customer.¹⁴⁴
- While there may be minor variations in the manner of accounting of customer payment in rolling accounts between different companies, the statute does not require absolute perfection in reporting all details.¹⁴⁵ The extrapolation of such difference in accounting practice for one sales transaction to all sales reported by Antique Group is not legally valid. Commerce must, therefore, allow the credit expense to Antique Group in all its reported home market sales, as reported.

Commerce Position: Antique Group reported the per-unit cost of credit in the home market computed using the actual cost of short-term debt incurred and the transaction-specific amount of days between shipment and customer payment, consistent with Commerce’s initial questionnaire.¹⁴⁶

At verification, we noted the following with respect to Home Market Sales Trace #1:

Payment documentation was initially provided showing only partial payment... Commerce requested documentation of the full payment, and Antique Group provided a second payment... {which} approximates the total invoiced value {for that invoice}... {For home market sales traces, in general,} Company officials noted that payment from customers in the home market typically paid off balances on a rolling basis, with payment not always corresponding precisely to the balance of a single invoice. However, as this transaction was reported in the home market database with payment received prior to the invoice date of the sale (with the payment date reported as the date of receipt of the final payment from the customer prior to invoice) (and, thus, negative CREDITH reported), without documentation that the payment received was precisely equal to the transaction value, Commerce is thus unable to verify the PAYMDATEPH (and, thus, CREDITH) reported, as – given the statement that the customer may pay on a rolling basis and lacking documentation that the approximate payment was attributable to that exact transaction and/or the excess was attributable to an outstanding balance – there is no way to determine whether the payment received was indeed attributable to the relevant sale or, alternatively, payment for a prior outstanding balance for this particular sale. We did, however, review customer-specific transaction history (*i.e.*, sales and payment transaction) for the entirety of FY 2019, which reflected zero balance and, thus, that payment was complete for all sales to that customer in the fiscal year.¹⁴⁷

¹⁴⁴ *Id.* at 5 (citing Antique Group’s Sales Verification Report at Exhibit SVE-7A).

¹⁴⁵ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

¹⁴⁶ See 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), at B-41.

¹⁴⁷ See Antique Group’ Sales Verification Report at 9-10.

The petitioner thus concludes that Antique Group only knows when a customer pays off a rolling balance, but does not know the sale for which the payment is attributable; thus concluding that Antique Group's reported home market credit is unverifiable on the whole, as it does not know the actual number of days involved. However, this interpretation overstates the finding with respect to one sale, extrapolates this discrepancy to overall sales, and ignores evidence otherwise, which supports that Antique Group's home market payment date reporting was generally accurate.

In reviewing the first sales trace (SVE-7A), as laid out above, which reported a negative credit expense because payment was received before the sale was invoiced and shipped, initial documentation received provided only partial payment. Antique Group then provided the second half of the payment documentation, which together generally approximated the total amount, but did not exactly equal it or otherwise indicate the specific invoice for which the payment was applicable, which did not allow for a direct tie from the documentation of payment received (and, thus, pay date) to the invoiced amount. However, as noted above, we reviewed the customer-specific transaction history (*i.e.*, sales and payment transaction) for the entirety of FY 2019, which reflected a zero balance, and which did not provide information to contradict that the pre-sale payment with respect to SVE-7A was incorrectly reported. As Commerce reviewed the other sales traces, we further discussed the recording of payment date and how Antique Group was able to determine that payment was attributable to certain sales when customers paid on a rolling basis and/or in a lump payment for multiple sales. Specifically, when reviewing the next two sales traces, SVE-7B and SVE-7C, we noted customers made payment for the approximate, but not exact, amounts owed on an invoice, and Antique Group was able to provide customer ledgers and correspondence that tied payment to the precise invoice and noted that account balances were zero at the end of the year. Moreover, for other sales reviewed, such as SVE-7H, the invoice and payment amount matched precisely. As such, the nature of the discrepancy identified for Home Market Sales Trace #1 (SVE-7A) was simply that the payment amount for a single sale did not match precisely and did not have notation linking it directly to the invoice; however, the fact that the payments roughly approximated the invoice amount, our review of the customer ledger showing all debits and credits in the fiscal year supported that this payment date was reported as it was recorded in the normal course of business, and the fact that this sale involved negative credit expense (as such, Antique Group's reporting of this payment as occurring before the shipment date confers no benefit) allay concerns with respect to this specific sale. Furthermore, the fact that – where elsewhere reviewed and documented with further support (*i.e.*, SVE-7B and 7C) – Antique Group was able to provide customer transaction letters and/or correspondence directly linking payment to invoices, alleviates concern that there is any inaccuracy in Antique Group's home market payment date on the whole.

Accordingly, we agree with Antique Group that it acted to its best ability to report payment date (and thus credit expense) based on the accounting records maintained in the normal course of business, and Commerce reviewed these documents at verification and confirmed that information was accurately reported. In this regard, the examples of past cases cited by petitioner are inapposite. Specifically, in *Olives Spain LTFV Final*, home market credit expenses were disallowed pursuant to Commerce's finding: (1) that the respondent did not comply with Commerce's request regarding reporting methodology for date of payment; and (2) that Commerce discovered at verification that payment date reporting methodology was other than

what the respondent specifically stated in prior responses. However, in the instant case, Antique Group complied with our requests, and the payment date recording methodology was as it was stated in questionnaire responses and in the normal course of business.¹⁴⁸ In the *CRS Brazil LTFV Final*, reported payment date was found to be unverifiable, on the whole, because discrepancies were found between dates reported on bank statements and as recorded in the system; whereas, here, payment dates on the source documents are identical to those reported in the system and to Commerce, and there is no discrepancy between dates listed between documents (merely that record-keeping may not always identify a direct link between payment amount and invoice amount).¹⁴⁹ Further, *Stainless Pipe Taiwan LTFV Final* concerned unverifiable interest rates, whereas we were able to verify the home market interest rate with respect to credit in the instant case.¹⁵⁰ Finally, the *SSSS Taiwan 99-00 AR Final* involved a case where there was a systematic misreporting of payment date from the respondent's sales system; no such systematic misreporting was found in the instant case.¹⁵¹

Though Antique Group was unable to provide precise linkage between all invoice and payment documents in every instance, it was otherwise able to substantiate the accuracy of the methodology used to record payment date in the normal course of business and in its home market sales reporting. Accordingly, we continue to allow the credit expense to Antique Group in all its reported home market sales, as reported.

Comment 9: Treatment of Antique Group's Reported Quality Discounts

Background: In the *Preliminary Determination*, Commerce explained that we did not adjust for Antique Group's reported quality discounts, as our analysis of the documentary evidence provided in support of this discount represents a quality claim on non-subject merchandise and, thus, Antique Group did not sufficiently demonstrate that the adjustments are warranted, as reported.¹⁵²

*Antique Group's Case Brief*¹⁵³

- Antique Group provided sufficient explanation as to the methodology adopted for identification and allocation of quality discounts to subject merchandise and non-subject merchandise.¹⁵⁴ Specifically, Antique Group explained that the quality discounts are claimed by the customers and are recorded against each invoice for the business unit which handles both subject quartz and non-subject marble sales. Since this unit generally sells both subject and non-subject merchandise in a single invoice, the quality discount or damage or defect is recorded

¹⁴⁸ See *Olives Spain LTFV Final* IDM at Comment 11.

¹⁴⁹ See *CRS Brazil LTFV Final* IDM at Comment 15.

¹⁵⁰ See *Stainless Pipe Taiwan LTFV Final*.

¹⁵¹ See *SSSS Taiwan 99-00 AR Final* IDM at Comment 4.

¹⁵² See Memorandum, "Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Quartz Surface Products from India: Antique Group," dated concurrently with this memorandum (Antique Group's Final Analysis Memo).

¹⁵³ See Antique Group's Case Brief at 3-6.

¹⁵⁴ *Id.* at 4 (citing Antique Group's Letter, "Certain Quartz Surface Products from India (A-533-889): Antique Marbonite Rebuttal to pre-preliminary comments filed by the petitioner," dated November 28, 2019 (Antique Group's Pre-Preliminary Comments), at 9).

in the accounting system against the total invoice, not based on the specific type of product by Antique Group.

- Thus, for the purpose of reporting quality claims relevant to subject sales, Antique Group identified all quality discounts allowed on invoices which include subject merchandise and allocated the claim across all products sold on that invoice. For certain sales, the specific sub-transaction on the invoice which resulted in the quality claim may have been a non-subject marble product (such as the transaction identified by Commerce in the *Preliminary Determination*), whereas for other sales, such as the transaction trace examined in SVE-7D, the total quality discount is allocated to all the sales in the selected invoice in the same manner, but the constituent transactions are all subject.¹⁵⁵
- The supporting documents submitted by Antique Group for sales traces at verification show the underlying claim approval forms, which support Antique Group's prior statements that documentation of quality claims are recorded against the invoice but do not specifically flag the specific sub-transaction to which the claim is applicable.¹⁵⁶ Commerce stated that no discrepancies were noted in the accuracy and allocation of quality discounts, as reported, during the verification.¹⁵⁷ Thus, the explanations and evidence provided by Antique Group in supplementary questionnaires have been considered by Commerce in further analysis and verification of the claim for quality discounts made by Antique Group.
- Antique Group thus accurately reported the discounts incurred on all invoices with subject sales and accurately allocated those expenses between subject and non-subject merchandise. While Antique Group was not able to track these expenses specifically to each sale, nevertheless, it was able to provide a reasonable allocation. Thus, Commerce should accept Antique Group's reasonable allocation and apply the allocated portion of the discount to the reported sales.

*Petitioner's Rebuttal Brief*¹⁵⁸

- In the normal course of business, a company successfully selling a product would be expected to have relatively few quality complaints. Antique Group initially reported quality claims with respect to a significant percentage of its sales. Despite Commerce's request, as recommended by the petitioner, that Antique Group document customer complaints and the marketing team's verification of the complaints, Antique has still never provided said documentation, nor does any of the quality discount information subsequently reviewed at verification support Antique Group's claim that the post-sale rebates are due to customer complaints.
- Examples provided to the record and reviewed at verification demonstrate that a post-sale rebate was provided, but nowhere do such documents substantiate that such claims are for quality/damage claims but, rather, identify only that a credit was necessary for general adjustments to the amount previously invoiced, with no indication of an underlying reason such as damage.

¹⁵⁵ *Id.* at 5 (citing Antique Group's Sales Verification Report at SVE – 7D, which Antique Group purports to show that the allocation of QUALDISH has been explained and supported by accounting vouchers, *i.e.*, claim approval form and the accounting voucher recorded in ERP system).

¹⁵⁶ *Id.* at 5 (citing Antique Group's 1st SQR at Exhibit B-13; and Antique Group's Sales Verification Report at SVE - 7D and SVE - 7F).

¹⁵⁷ *Id.* at 6 (citing Antique Group's Sales Verification Report at part IX on page 9).

¹⁵⁸ *See* Petitioner's Rebuttal Brief at 28-32.

- As noted in the *Preliminary Determination*, Antique Group allocated these post-sale discounts between all line-item transactions on an invoice, regardless of whether the specific transaction which resulted in the purported quality issue was subject or non-subject.
- As 19 CFR 351.401(b)(1) specifies, the “interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment.” Furthermore, pursuant to 19 CFR 351.401(c), “{Commerce} does not accept a price adjustment that is made after the time of sale unless the interested party demonstrates . . . its entitlement to such an adjustment.” Antique Group has not been straightforward about the purpose of these post-sale rebates, record evidence shows they are not being provided in response to verified complaints about quality, and Antique Group has misallocated these adjustments between subject and non-subject merchandise. Thus, Antique Group has not satisfied its burden of showing it is entitled to this post-sale price adjustment, and Commerce should not adjust Antique Group’s home market price by the reported quality discounts in the final determination.

Commerce’s Position: As an initial matter, we disagree with certain aspects of the petitioner’s characterization of the record with respect to the scope of Antique Group’s reporting of its quality complaints. The petitioner’s brief states that “Antique Marbonite reported that {a large percentage} of its home market sales had quality problems that generated customer complaints that were verified and resulted in sales credits.”¹⁵⁹ The petitioner’s brief otherwise acknowledges that it recommended that Commerce ask for further documentation of these claims,¹⁶⁰ which Commerce did in a supplemental questionnaire, but then fails to acknowledge the impact of revised reporting with respect to the scope of quality claims reported. However, when asked about the reporting of quality claims, including the unusually high percentage of claims reported in the home market, Antique Group clarified that it “had wrongly reported the quality claims by allocating the total amount appearing in the {relevant account}. As a result of this erroneous allocation, the quality discount is appearing against all invoices... The list of claims booked for all customers of the {relevant division} at Prism Johnson is provided in Exhibit B-13 along with supporting documentation.”¹⁶¹ This revision then greatly reduced the amount of quality claims reported, properly allocating such claims only to the transactions for which the corresponding invoice reflected such an adjustment. Lacking acknowledgement of this revised reporting, when later stating that “One would think that if {the aforementioned percentage} of its home market sales got completely damaged in shipment, Antique Marbonite would have changed something about its packing and shipping,”¹⁶² the petitioner’s rebuttal brief gives the false impression that such claims remain vastly over-reported. However, in the context of the revised reporting, as verified, the implication that such claims remain massively over-reported is improper.

Second, the petitioner’s arguments on this issue support Commerce’s preliminary finding that such rebates are disallowed because the documentary evidence provided in support shows that quality claims on non-subject merchandise may be allocated to subject quartz sales, whereas Antique Group requests that Commerce reconsider this preliminary finding on the basis that such

¹⁵⁹ See Petitioner’s Rebuttal Brief at 29.

¹⁶⁰ *Id.*

¹⁶¹ See Antique Group’s 1st SQR at 4-5.

¹⁶² *Id.* at 30.

rebates were reported consistent with record-keeping in the normal course of business and on an invoice-specific basis, thus, as accurately as possible. The petitioner emphasizes the fact that information provided prior to the *Preliminary Determination* and at verification shows that the reporting of quality discounts allocated across all transactions on the invoice, which may include non-subject products, necessarily means that rebates applicable to damage/defects on the non-subject merchandise components of an invoice may be allocated to subject products. We have reconsidered our preliminary finding in this respect, and agree with Antique Group that the rebates were reported as accurately as Prism Johnson's record-keeping system would allow and should not be disallowed only on the basis that such transactions may allocate claims with respect to non-subject products.

Specifically, the Antique Group notes that, for certain invoices, subject quartz and non-subject marble merchandise are sold by Prism Johnson to home market customers on one invoice and delivered together, and that any claims with respect to individual components of a certain sale (such as damage claims, or "other" non-early payment claims) are recorded in the normal course of business against the entirety of the invoice. As such, Antique Group does not contest that, for certain quality claims reported, the specific sub-transaction to which the reported claim applies may be for a non-subject marble product. Rather, Antique Group notes that, because the ledger accounts specify only the invoice to which the claim is applicable, the methodology used to report such claims – *i.e.*, first identifying all invoices which contained sales of subject merchandise and allocating the discounts applicable to only those invoices, across all transactions on the invoice, whether subject or non-subject (and, thus, in certain instances claims against a subject quartz product may be allocated, in part, over non-subject marble products on a given invoice, just as claims against a marble product may be allocated over quartz products in other instances, whereas other instances involve invoices sales of only quartz products) is consistent with how such claims are recorded in the normal course of business and represents the most accurate reporting possible with respect to such claims.¹⁶³

Though the sole example of documentation of such discounts provided on the record prior to the *Preliminary Determination* contains a notation that was able to identify the specific transaction on the invoice attributable to the reported claim (and said transaction was of non-subject merchandise), documents reviewed at verification support Antique Group's statements that the documentation kept in the normal course of business with respect to these claims is specific only to the invoice and does not generally identify the sub-transaction which was the genesis for the claim.¹⁶⁴ The petitioner's arguments on this issue imply that, lacking documentation identifying the specific sub-transaction responsible for the claim, the accuracy of any such allocation is questionable, as such claims may always be a result of claims on non-subject merchandise. However, a comparison Exhibit B-13 of Antique Group's 1st SQR, containing all invoices containing subject merchandise which also contained a "quantity claim" with the sales register for all non-subject sales of the relevant division during the POI provided in the Prism Johnson sales reconciliation at SVE-3 allays such concerns, as it allows for the identification of which

¹⁶³ See Antique Group's Case Brief at 4; Antique Group's 1st SQR at 12; and Antique Group's Pre-Preliminary Comments at 5-6.

¹⁶⁴ See Antique Marbonite 1st SQR at Exhibit B-13, compared with Antique Group's Sales Verification Report at SVE - 7D and SVE - 7F.

invoices contained claims that were allocated between subject and non-subject transactions on the invoice, with the balance thus representing transactions which only contained subject sales. This analysis demonstrates that the majority of invoices for which a quality claim was reported were entirely of quartz products, whereas the remainder were of both quartz and non-subject products, and reasonably allocated to all sales on the invoice.¹⁶⁵

However, we agree with the petitioner that such claims should continue to be disallowed on the basis that the Antique Group has not satisfactorily established the nature of the particular adjustment; *i.e.*, that Antique Group has not provided sufficient support that such rebates represent quality claims, as reported. Antique Group initially reported that, in the home market, it reported a field for quality discounts which represent payment for quality-related claims, noting “Prism Johnson pays claims for quality related issues to its customers... Prism Johnson does not have a standard policy for grant of quality discounts but allows quality discounts on a case to case basis upon verification of customer claims for defective products.”¹⁶⁶ In response to a supplemental question regarding the unusually high percentage of sales reported with such claims and Commerce’s request that supporting documentation related to such claims be provided to the record, Antique Group noted the following:

Antique Marbonite has segregated the expenses reported in {the account used to book reported discounts, including, but not limited to quality claims, early payment claims, and other rebates}. Prism Johnson had not completed the recording of quality claims and other claims against each invoice / clearing document in accounting ledgers for home market sales of MUC made during the POI until September 30, 2019. This is due to time lag between the sales and the approval of claims by the sales and marketing team... Prism Johnson has revised the amount of claims reported against each invoice in the home market recorded in the customer ledgers (mentioned above) until September 30, 2019. The list of claims booked for all customers of the {relevant division of} Prism Johnson is provided in Exhibit B-13 along with supporting documentation... Further, in the course of identification of claims recorded in the customer ledger up to September 30, 2019, Prism Johnson has identified additional the early payment discounts that were given on sales of MUC in the home market during the POI. A list of prepayment discounts recorded in the customer ledgers is provided in Exhibit B-15 for ready reference. These early payment discounts are also updated in the revised home market database AMPLHM02.¹⁶⁷

Further,

“Other discounts and rebates, if any, are {given for quality claims} on sales of subject merchandise in home market during the POI.”¹⁶⁸

¹⁶⁵ See Antique Group’s Final Analysis Memo.

¹⁶⁶ See Antique Group’s BQR at 32.

¹⁶⁷ See Antique Group’s 1st SQR at 5.

¹⁶⁸ *Id.* at 21.

Accordingly, Antique Group's reporting suggests that all post-sale rebates recorded in the relevant account were identified and bifurcated in its reporting between early payment discounts, reported in one field, and other discounts, which indeed include quality discounts, though the reference to "other" discounts leaves open the possibility that "other" non-quality, non-early payments, post-sale discounts may be included in this field. However, Antique Group provides no further explanation or description of such "other discounts," and all further discussion of the nature of the transactions included in the "quality" discount field reference only that such transactions indeed represent discounts related to customer claims on damaged/defective products.¹⁶⁹

Because Antique Group discusses the transactions in this field solely in terms of being claims on damaged/defective products pursuant to customer complaint, Commerce must thus determine whether such claims have been appropriately reported and documented in determining whether Antique Group is entitled to this post-sale price adjustment. However, as the petitioner correctly notes, all documentation provided to the record for claims reported under the quality claim field, as well as relevant sales trace exhibits reviewed at verification (*i.e.*, credit notes provided in Antique Group's 1st SQR at Exhibit B-13 and Antique Group's Sales Verification Report at SVE - 7D and SVE - 7F), do not include *any* notation indicating that the rebate was for a quality claim. Indeed, at verification, though presented with the opportunity to provide information supporting the damage/defect/customer complaint, which was the purported impetus for the credit note, Antique Group was unable to provide such further documentary support (*e.g.*, emails, internal notes, *etc.*) showing the actual reason for the claim.

Lacking that further support, the credit notes themselves represent the only source documents available for these transactions, yet the notations on the credit vouchers make no reference to damage, defects, or complaints, and imply that the adjustments were general post-sale pricing adjustments. However, because Antique Group did not further explain that such discounts may include non-quality related post-sale adjustments and insisted that all such transactions resulted from an underlying quality claim, but was then unable to provide any documentary support for the nature of such a claim, Antique Group simply did not meet the burden of establishing the nature of a particular adjustment pursuant to 19 CFR 351.401(b)(1). Accordingly, as Commerce is unable to determine the nature of these transactions, we continue not to adjust for Antique Group's reported quality discounts.

As a related matter, Antique Group notes that Commerce stated that it intended to issue supplemental questions related to this issue.¹⁷⁰ We note that this statement was inadvertently included in the drafting of this document and that Antique Group had previous opportunities to address our inquiries with respect to these discounts.

¹⁶⁹ See Antique Group's Rebuttal Preliminary Comments at 4-6; and Antique Group's Case Brief at 3-6.

¹⁷⁰ See Antique Group's Case Brief at 3-4 (citing 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 December 4, 2019).

Comment 10: Whether the Arms-Length Test Was Appropriately Applied with Respect to Antique Group’s Collapsed Affiliated

Background: In the *Preliminary Determination*, Commerce tested Antique Marbonite’s input purchases from its affiliate Shivam Enterprises, to determine whether these purchases were made at arm’s length, in accordance with section 773(f)(2) of the Act. In performing the arm’s-length test, Commerce preliminarily determined it appropriate to adjust the reported transfer price on the transactions between Antique Marbonite and Shivam¹⁷¹ by adding back the inter-company profit on such transactions.

*Antique Group’s Case Brief*¹⁷²

- In the *Preliminary Determination*, Commerce collapsed and treated as a single entity Antique Marbonite, Shivam, and Prism Johnson Limited.¹⁷³ Where Commerce collapses affiliated companies as a single entity, it determines a single dumping margin for the entity and, thus, does not apply the transactions disregarded rule.¹⁷⁴ Accordingly, the preliminary adjustments made by Commerce are legally impermissible.
- Should Commerce continue to treat Antique Group as a single entity, the adjustment in the cost of production will no longer be required, as the transactions disregarded rule does not apply to single entity.¹⁷⁵
- The cost verification report notes the following with respect to affiliated party purchases: “As a result of our {arms-length test} analysis we increased AMPL’s COM... However, at the Preliminary Determination Commerce also treated AMPL, Shivam, and Prism Johnson as one combined entity and in such instances, Commerce does not apply the transactions disregarded rule. Instead, consistent with treating the combined entities as one entity, we eliminate intercompany profit and losses between them thus the combined antidumping margin reflects a combined rate. Similarly, the transactions disregarded rule may not be appropriate if Commerce continues to treat AMPL, Shivam, and Prism Johnson as a single entity.”¹⁷⁶

¹⁷¹ See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Antique Marbonite Private Limited, India,” dated December 4, 2019 (Antique Group’s Preliminary Cost Analysis Memorandum).

¹⁷² See Antique Group’s Case Brief at 6-9.

¹⁷³ *Id.* at 7 (citing *Preliminary Determination* PDM at 8).

¹⁷⁴ *Id.* (citing U.S. Department of Commerce, Enforcement and Compliance Antidumping Manual, at Chapter 9, section XV (B) – Collapsing Affiliated Parties (Consistent with treating the combined entities as one entity, Commerce eliminates intercompany profit and losses between them thus the combined antidumping margin reflects a combined rate)).

¹⁷⁵ *Id.* at 8 (stating, “The Department has a long and well-established practice of not applying the transactions disregarded rule in this context;” citing, *e.g.*, Final Results of Redetermination Pursuant to Second Court Remand (Commerce August 1999) re: *Koenig & Bauer-Albert AG, et al. v. United States*, 90 F. Supp. 2d 1284 (CIT 2000) (where Commerce noted that “treating affiliated companies as a single entity necessitates that inputs transferred between them be valued based on the group as a whole” and that “among collapsed entities, sections 773(f)(2) and (3) of the Act (*i.e.*, the “transactions disregarded” and “major-input” provisions, respectively) are not controlling” and for cost reporting purposes the Department values inputs transferred between the companies “at the cost of producing the input”)).

¹⁷⁶ See Antique Group’s Cost Verification Report at CVE-25.

- Commerce must accept the cost of production submitted by Antique Group, reversing any adjustments.

No other interested party commented on this issue.

Commerce’s Position: Consistent with our collapsing determination for the *Preliminary Determination*, unchanged for this final determination, we have treated Antique Marbonite, Shivam, and Prism Johnson as a single entity. Accordingly, we agree with Antique Group that the transactions disregarded rule is not applicable. Therefore, we are no longer denying Antique Group’s adjustment to eliminate intercompany profit and losses between the combined entities and are not making an adjustment for the transactions disregarded rule.¹⁷⁷

Comment 11: Ministerial Error Regarding Application of Antique Group’s Reported Billing Adjustments

*Antique Group’s Case Brief*¹⁷⁸

- In the margin programming for the *Preliminary Determination*, Commerce calculated the reported U.S. sales discounts and rebates in a single variable, which was deducted from gross unit price in the calculation.
- However, as Commerce verified, the billing adjustments reported are upward adjustments to the gross selling price made in the normal course of business to correct various errors in invoicing.¹⁷⁹
- Commerce may easily correct this error by adding the field billing adjustments to the gross unit price.

No other interested party commented on this issue.

Commerce’s Position: For reported billing adjustments, Commerce’s initial questionnaire instructs respondents to report a decrease in price as a negative figure and an increase in price as a positive figure. Antique Group stated that the billing adjustments reported in field BILLADJU relate to the post invoicing correction to invoices and reported positive numbers in this field for the corresponding U.S. sales database.¹⁸⁰ Further, we verified that the billing adjustments reported are upward adjustments to the gross selling price made in the normal course of business to correct various errors in invoicing.¹⁸¹

¹⁷⁷ See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Antique Marbonite Private Limited, India,” dated concurrently with this memorandum.

¹⁷⁸ See Antique Group’s Case Brief at 9-10.

¹⁷⁹ *Id.* at 10 (citing Antique Group’s Sales Verification Report at US Sales Trace 3 (“Information regarding the billing adjustment reported demonstrates that an upward correction to the amount billed was identified by the customer, as the price was incorrectly invoiced for two transactions on the invoice (corresponding to SEQU 501 and 502; transactions SEQU 499, 500, 501, and 502 are covered by this invoice)”)).

¹⁸⁰ See Antique Group’s 2nd SQR at 8 and corresponding U.S. sales database; see also Antique Group’s CQR at 3.6 and Exhibit C-16.

¹⁸¹ See Antique Group’s Sales Verification Report at US Sales Trace 3 (“Information regarding the billing adjustment reported demonstrates that an upward correction to the amount billed was identified by the customer, as the price was incorrectly invoiced for two transactions on the invoice”).

Accordingly, we agree with Antique Group that billing adjustments were improperly deducted from U.S. price in the *Preliminary Determination*. Thus, we have corrected this error to increase U.S. price by the amount of the reported billing adjustment.¹⁸²

Comment 12: Whether the Initiation of the Investigation was Contrary to Law

*Arizona Tile and MSI's Comments*¹⁸³

- Commerce's statute requires that a petition be filed on behalf of a U.S. industry, and Commerce is directed to look to U.S. producers and workers as a whole that produce the domestic like product. Commerce accepted that the domestic like product is coextensive with the scope of the investigation, which covers not only "slabs" but also "other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles."¹⁸⁴ Thus, the domestic like product includes fabricated slabs, which are products manufactured by U.S. fabricators, who purchase quartz surface slabs and then further process them into fabricated quartz surface products, like countertops and backsplashes.
- Commerce erroneously disregarded the views of U.S. fabricators at initiation, who challenged the definition of the domestic industry. Commerce determined that U.S. fabricators were not members of the domestic industry for industry support purposes because they did not "perform sufficient production-related activities." However, evidence on the record indicates that fabricators constitute an important part of the U.S. industry. Further, the views of the domestic industry as a whole must be considered unless producers are related to foreign producers or are importers. Commerce did not make a finding at initiation that U.S. fabricators fall into either of those categories.
- Commerce neglected its obligation under the Act to poll the industry or determine support among U.S. fabricators. Thus, Commerce initiated this investigation contrary to the wishes of the majority of the industry, and the investigation should be terminated or suspended pending Commerce's polling of the industry.

*Petitioner's Rebuttal*¹⁸⁵

- The statute prohibits Commerce from reconsidering industry support after the initiation of an AD or CVD investigation, which the CIT has recognized.¹⁸⁶
- Commerce rejected similar arguments by Arizona Tile and MSI in *Quartz Surface Products from China AD*, explaining that "Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation."¹⁸⁷

¹⁸² See Antique Group's Final Analysis Memo.

¹⁸³ See Arizona and MSI's Case Brief at 6-11.

¹⁸⁴ See Antidumping Duty Investigation Initiation Checklist: Certain Quartz Surface Products from India, dated May 28, 2019 (Initiation Checklist), at Attachment I.

¹⁸⁵ See Petitioner's Rebuttal Brief at 32-36.

¹⁸⁶ See *P.T. Pindo Deli Pulp & Paper Mills v. United States*, 825 F. Supp. 2d 1310, 1323 (CIT 2012).

¹⁸⁷ See *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Quartz Surface Products from China AD*), and accompanying IDM at Comment 1.

- Assuming Commerce is able to reconsider its industry support determination, Commerce properly rejected Arizona Tile and MSI’s challenge at initiation and nothing in the companies’ case brief warrants a change to Commerce’s analysis.
- There was no need for Commerce to poll the industry, as Commerce properly found that the Petition was supported by domestic producers and workers which account for more than 50 percent of the total production of the domestic like product.

Commerce’s Position: Section 732(c)(4)(E) of the Act directs Commerce as follows regarding the consideration of comments regarding industry support:

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. *After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.*¹⁸⁸

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation. As a result, we continue to rely on our determination of industry support provided in the Initiation Checklist.¹⁸⁹

As stated in the Initiation Checklist, for India, the information contained in the petition met the requirements of sections 732(c)(4)(A)(i) and (ii) of the Act. Therefore, it was unnecessary for Commerce to poll the industry or rely on other information to determine industry support for the India Petitions.¹⁹⁰

Further, with respect to the inclusion of fabricators, Commerce addressed MSI and Arizona Tile’s arguments in detail at the initiation stage of the investigation.¹⁹¹ Specifically, we stated:

{W}e have analyzed the information provided by the petitioner and find there is reason again to conclude that fabricators do not perform sufficient production-related activities to be included in the domestic industry for industry support purposes. The petitioner provided detailed information to support its argument that fabricators should not be considered part of the domestic industry for standing, making it clear that there are significant differences in the level of complexity and capital investment, employment, training and technical expertise, production processes, and type of equipment, between quartz surface product slab producers and fabricators.¹⁹² Based on the information provided by the petitioner,

¹⁸⁸ See section 732(c)(4)(E) of the Act (emphasis added); see also *Certain Uncoated Groundwood Paper from Canada: Final Determination of Sales at Less Than Fair Value*, 83 FR 39412 (August 9, 2018), and accompanying IDM at Comment 1.

¹⁸⁹ See Initiation Checklist at Attachment II.

¹⁹⁰ *Id.* at Attachment II, p.8.

¹⁹¹ *Id.* at Attachment II, pp. 14 – 16.

¹⁹² See Petitioner’s Letter, “Certain Quartz Surface Products from India and the Republic of Turkey: Petitioner’s Response to MSI’s Comments on Standing,” dated May 28, 2019, at 4-18 and Exhibits 2-8.

quartz slab production involves highly complex and interconnected machinery and engineering processes, and, as a result, requires specialized equipment dedicated to quartz surface products production and a significantly greater amount of capital investment, training and technical expertise, and number of employees than the fabrication process.¹⁹³ In contrast, information provided by the petitioner indicates that the fabrication process requires limited equipment that is not dedicated solely to quartz surface products, fewer employees, much less technical expertise, and significantly less capital investment.¹⁹⁴ Information provided by the petitioner further indicates that the fabrication process does not change the fundamental physical characteristics imparted during the slab production process, as fabricators simply convert an existing slab into a geometrical form for its end use or application.¹⁹⁵ In addition, many fabricators rely on imported slabs to produce final fabricated products.^{196, 197}

Thus, we determined not to include fabricators in the domestic industry and industry support calculation at the initiation stage of this investigation, which we are not revisiting for purposes of the final determination.

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.

Agree

Disagree

4/27/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁹³ *Id.* at 6-12 and Exhibits 2-8.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 6 and Exhibit 2.

¹⁹⁶ *Id.* at 13, 20, and Exhibit 7.

¹⁹⁷ *See* Initiation Checklist at Attachment II, p. 14.