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Investigation  
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October 6, 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:** Decision Memorandum for the Preliminary Affirmative  
Determination in the Less-Than-Fair-Value Investigation of  
Common Alloy Aluminum Sheet from India

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (aluminum sheet) from India is being, or is likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On March 9, 2020, Commerce received an antidumping duty (AD) petition concerning imports of aluminum sheet from India, filed in proper form by the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members: Aleris Rolled Products, Inc.; Arconic, Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc. (collectively, the petitioners), domestic producers of aluminum sheet.<sup>1</sup> On March 30, 2020, Commerce initiated the AD investigation on aluminum sheet from India.<sup>2</sup>

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<sup>1</sup> See Petitioners’ Letter, “Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey – Petition for the Imposition of Antidumping and Countervailing Duties,” dated March 9, 2020 (Petition).

<sup>2</sup> See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 19444 (April 7, 2020) (Initiation Notice).



In the *Initiation Notice*, Commerce notified the public that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the “Scope of the Investigations,” in the appendix of the *Initiation Notice*.<sup>3</sup> Accordingly, on March 24, 2020, we released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.<sup>4</sup> On April 10, 2020, the petitioners submitted comments on respondent selection.<sup>5</sup>

On April 23, 2020, Commerce limited the number of respondents selected for individual examination to the two exporters and producers that accounted for the largest volume of entries of the subject merchandise into the United States during the period of investigation (POI), Hindalco Industries Limited (Hindalco) and Manaksia Aluminum Company Limited (MALCO).<sup>6</sup> Accordingly, we issued the AD questionnaire to Hindalco and MALCO.<sup>7</sup>

On April 29, 2020, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of aluminum sheet from India.<sup>8</sup>

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of aluminum sheet to be reported in response to Commerce’s AD questionnaire.<sup>9</sup> On April 27, 2020, we received timely-filed comments from interested parties. On May 11, 2020, we received timely-filed rebuttal product characteristics comments from interested parties. On May 18, 2020, Commerce officials spoke via telephone with counsel for the petitioners regarding the petitioners’ product characteristics comments and rebuttal comments.<sup>10</sup> On May 19, 2020, Commerce determined the product characteristics applicable to this investigation.<sup>11</sup>

From May 4, 2020 through May 6, 2020, we received timely-filed comments concerning the scope of the investigation from interested parties. On May 21, 2020, we received timely-filed rebuttal scope comments from interested parties. On May 27, 2020, Commerce officials spoke with counsel for the petitioners via telephone regarding the petitioners’ scope comments and

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<sup>3</sup> *Id.*, 85 FR at 19448.

<sup>4</sup> See Memorandum, “Release of U.S. Customs and Border Protection Data,” dated March 24, 2020.

<sup>5</sup> See Petitioners’ Letter, “Common Alloy Aluminum Sheet from India – Petitioners’ Respondent Selection Comments,” dated April 10, 2020.

<sup>6</sup> See Memorandum, “Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from India: Respondent Selection,” dated April 23, 2020.

<sup>7</sup> See Commerce’s Letter, “Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from India: Initial Questionnaire,” dated April 23, 2020.

<sup>8</sup> See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey*, Investigation Nos. 701–TA–639–642 and 731–TA–1475–1492 (Preliminary), 85 FR 23842 (April 29, 2020).

<sup>9</sup> See *Initiation Notice*, 85 FR at 19445. Commerce subsequently extended the deadlines for comments and rebuttal comments on the scope and product characteristics.

<sup>10</sup> See Memorandum, “Phone Call with Outside Counsel,” dated May 19, 2020.

<sup>11</sup> See Commerce’s Letter, “Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Product Characteristics,” dated May 19, 2020.

rebuttal comments.<sup>12</sup> We issued the Preliminary Scope Decision Memorandum on October 6, 2020, concurrently with this memorandum.<sup>13</sup>

On June 4, 2020, Commerce issued revised descriptions for certain product characteristics.<sup>14</sup> On June 11, 2020, the petitioners submitted comments in response to a request from Hindalco, and other respondents in other aluminum sheet investigations, to rescind the revisions made in Commerce's Revised Product Characteristics Memo.<sup>15</sup> On June 12, 2020, Commerce officials spoke via telephone with counsel for the petitioners, counsel for Hindalco, and counsel for respondents in other aluminum sheet investigations regarding Commerce's Revised Product Characteristics Memo.<sup>16</sup> On June 16, 2020, we issued the final product characteristics in this investigation.<sup>17</sup>

On July 29, 2020, Commerce postponed the preliminary determination of this investigation by 50 days, to October 6, 2020, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).<sup>18</sup>

Hindalco and MALCO submitted timely responses to Section A of Commerce's AD questionnaire, *i.e.*, the section relating to general information, in May 2020.<sup>19</sup> In June 2020, Hindalco and MALCO responded to sections B, C, and D of Commerce's AD questionnaire, *i.e.*, the sections relating to home market sales, U.S. sales, and cost of production (COP), respectively.<sup>20</sup>

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<sup>12</sup> See Memorandum, "Common Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Deadline for Scope Comments: Ex Parte Telephone Call with Counsel for the Aluminum Association Trade Enforcement Working Group," dated May 29, 2020.

<sup>13</sup> See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated concurrently with this memorandum (Preliminary Scope Decision Memorandum).

<sup>14</sup> See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Product Characteristics Correction," dated June 4, 2020 (Revised Product Characteristics Memo).

<sup>15</sup> See Petitioners' Letter, "Antidumping Investigations Concerning Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey – Petitioners' Response to Respondents' Requests to Rescind Product Characteristics Clarification and for Extensions of Time to Submit Section B – D Questionnaire Responses," dated June 11, 2020.

<sup>16</sup> See Memorandum, "Meeting with Outside Counsel," dated June 16, 2020.

<sup>17</sup> See Memorandum, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: Revised Product Characteristics Guidance," dated June 16, 2020 (Final Product Characteristics Memo).

<sup>18</sup> See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 45576 (July 29, 2020).

<sup>19</sup> See MALCO's May 26, 2020 Section A Questionnaire Response (MALCO May 26, 2020 AQR); and Hindalco's May 27, 2020 Section A Questionnaire Response (Hindalco May 27, 2020 AQR).

<sup>20</sup> See Hindalco's June 23, 2020 Section B and C Questionnaire Response (Hindalco June 23, 2020 BCQR); Hindalco's June 30, 2020 Section D Questionnaire Response (Hindalco June 30, 2020 DQR); MALCO's June 22, 2020 Section C Questionnaire Response (MALCO June 22, 2020 CQR); MALCO's June 24, 2020 Sections B

From June through September 2020, we issued supplemental questionnaires to both Hindalco and MALCO. We received responses to these supplemental questionnaires between June and September 2020.<sup>21</sup> The petitioners submitted comments on Hindalco's and MALCO's questionnaire responses from June to August 2020. Hindalco and MALCO both filed rebuttal comments on the petitioners' submissions.<sup>22</sup>

The petitioners, Hindalco, and MALCO submitted comments for consideration in the preliminary determination.<sup>23</sup>

### III. PERIOD OF INVESTIGATION

The POI is January 1, 2019 through December 31, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was March 2020.<sup>24</sup>

### IV. SCOPE OF INVESTIGATION

The products covered by this investigation are common alloy aluminum sheet from India. For a full description of the scope of the investigation, *see* the accompanying preliminary determination *Federal Register* notice at Appendix I.

### V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,<sup>25</sup> in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>26</sup> As noted above, certain interested parties commented on the scope of this investigation, as published in the *Initiation Notice*. For a summary of the product coverage

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Questionnaire Response (MALCO June 24, 2020 BQR); and MALCO's June 29, 2020 Section D Questionnaire Response (MALCO June 29, 2020 DQR).

<sup>21</sup> See Hindalco's July 7, 2020 Supplemental Questionnaire Response (SQR); Hindalco's August 11, 2020 SQR; Hindalco's August 18, 2020 SQR; Hindalco's August 19, 2020 SQR; Hindalco's September 18, 2020 SQR; Hindalco's September 28, 2020 SQR; MALCO's July 17, 2020 SQR; MALCO's August 10, 2020 SQR; MALCO's August 24, 2020 SQR; MALCO's September 2, 2020 SQR; and MALCO's September 11, 2020 SQR. We note that Hindalco failed to respond to a supplemental questionnaire on August 6, 2020.

<sup>22</sup> See Hindalco's Letter, "Common Alloy Aluminum Sheet from India: Reply to Petitioners' Pre-Preliminary Comments," dated September 28, 2020; and MALCO's Letter, "Common Alloy Aluminium Sheet from India: Pre-Preliminary Comment of Manaksia Aluminium Company Limited," dated September 28, 2020.

<sup>23</sup> See Petitioners' Letter, "Common Alloy Aluminum Sheet from India – Petitioners' Comments Regarding the Department's Upcoming Preliminary Determination for Hindalco Industries Limited," dated September 14, 2020; Petitioners' Letter, "Antidumping Investigation of Common Alloy Aluminum Sheet from India – Petitioners' Comments on Additional Data and Preliminary Determination Calculations for Respondent MALCO," dated September 18, 2020 (Petitioners' MALCO Pre-Preliminary Comments); Hindalco's Letter, "Common Alloy Aluminum Sheet from India: Pre-Preliminary Comments of Hindalco Industries Limited," dated September 8, 2020; and MALCO's Letter, "Common Alloy Aluminium Sheet from India: Pre-Preliminary Comment of Manaksia Aluminium Company Limited," dated September 11, 2020.

<sup>24</sup> See 19 CFR 351.204(b)(1).

<sup>25</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>26</sup> See *Initiation Notice*, 85 FR at 19444.

comments and rebuttals and our accompanying analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.

## **VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE**

As stated above, Commerce selected Hindalco as a mandatory respondent in this investigation. On July 30, 2020, Commerce issued a supplemental section A questionnaire to Hindalco, which Hindalco did not respond to.<sup>27</sup> On August 10, 2020, Hindalco filed an untimely request to extend the deadline for its response to the July 30 supplemental questionnaire.<sup>28</sup> Commerce denied Hindalco's untimely extension request for failing to establish that "extraordinary circumstances" existed, pursuant to 19 CFR 351.302(c).<sup>29</sup> For the reasons stated below, we determine that the use of partial facts otherwise available with an adverse inference (AFA), pursuant to sections 776(a)-(b) of the Act, is appropriate for the preliminary determination with respect to Hindalco.

### **A. Application of Facts Available**

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

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

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

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<sup>27</sup> See Commerce's Letter, "Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from India: Supplemental Questionnaire," dated July 30, 2020 (July 30 Supplemental).

<sup>28</sup> See Hindalco's Letter, "Common Alloy Aluminum Sheet from India: Request For An Extension Of Time To Submit Hindalco's Second Supplemental Section A Response Or, In The Alternative, For Reissuance Of The Second Supplemental Section A Questionnaire," dated August 10, 2020.

<sup>29</sup> See Commerce's Letter, "Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from India: Hindalco Industries Limited's Supplemental Section A Questionnaire Response," dated August 18, 2020.

## B. Use of Adverse Inference

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.<sup>30</sup> In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>31</sup> Further, section 776(b)(2) of the Act states that use of an adverse inference when selecting from the facts otherwise available may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.<sup>32</sup> In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>33</sup> Affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.<sup>34</sup> It is Commerce’s practice to consider, in employing adverse facts available, the extent to which a party may benefit from its own lack of cooperation.<sup>35</sup>

### Hindalco

Between June 23, 2020 through July 7, 2020, Hindalco submitted its initial section B-C questionnaire response and a supplemental section A questionnaire response.<sup>36</sup> After analyzing these submissions, Commerce found that information was lacking for a wide range of topics and that Hindalco had failed to provide requested supporting documentation.<sup>37</sup> We issued an additional supplemental section A questionnaire in which we: (1) requested information regarding “deemed export” sales made by Hindalco to a Special Economic Zone or Export Oriented Unit and whether Hindalco was aware of any of these sales being ultimately shipped to the United States; (2) requested that Hindalco provide additional information regarding its warehouse expense calculation in the home market and why Hindalco could not calculate its warehousing expense by warehouse on a product-specific basis; (3) requested information and documentation supporting when certain customers became aware that they were eligible for certain price adjustments and when the amount of those adjustments were established; and (4)

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<sup>30</sup> See 19 CFR 351.308(a).

<sup>31</sup> See section 776(b)(1)(B) of the Act.

<sup>32</sup> See 19 CFR 351.308(c).

<sup>33</sup> See SAA, H.R. Doc. 103-316, vol. 1 (1994) at 870; and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>34</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Preamble*, 62 FR at 27340.

<sup>35</sup> See SAA at 870; and *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).

<sup>36</sup> See Hindalco June 23, 2020 BCQR; and Hindalco’s July 7, 2020 SQR.

<sup>37</sup> See July 30 Supplemental.

requested documentation regarding the “sale trace” for Hindalco’s largest sale made to an affiliate.<sup>38</sup> Hindalco failed to respond to this supplemental questionnaire.

Additionally, Hindalco’s failure to submit a timely response to Commerce’s supplemental section A questionnaire significantly impeded the investigation by preventing Commerce from fully analyzing several factors in calculating an accurate margin for Hindalco. Information responsive to the questions Hindalco failed to answer is essential to our understanding of whether Hindalco’s U.S. sales database is complete; whether Hindalco’s calculation of warehousing is correct; and whether certain price adjustments are appropriate. In addition, we requested that Hindalco provide documentation to support certain expenses and price adjustments. Hindalco’s failure to provide this necessary information and supporting documentation undermines the reliability of the aforementioned data it previously provided. Moreover, Hindalco’s failure to respond or timely file an extension request is not indicative of its cooperating to the best of its ability to comply with Commerce’s request for information.

In short, Hindalco failed to timely provide Commerce with the requisite explanations and documentation for certain sales, expenses, and price adjustments. By failing to meet the established deadlines or submit a timely extension request, Hindalco did not act to the best of its ability and significantly impeded this proceeding. As a result of Hindalco’s failure to respond to our requests for explanations and clarifications, Commerce preliminarily determines that certain necessary information is missing to calculate an accurate dumping margin. Therefore, the use of facts available is warranted, in accordance with sections 776(a)(1) and 776(a)(2)(B)-(C) of the Act. For the reasons stated above, and in accordance with sections 776(a) and (b) of the Act, we preliminarily determine that the use of partial facts otherwise available with an adverse inference is appropriate with respect to Hindalco.

### C. Preliminary Estimated Weighted-Average Dumping Margins Based on AFA

Section 776(b)(2) of the Act states that Commerce, when employing AFA, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.<sup>39</sup> As detailed above, the supplemental questionnaire in question covered a wide range of topics. However, these topics were limited and discreet. As such, Commerce preliminarily determines that there is useable information on the record to calculate a dumping margin for Hindalco, and does not believe that the application of total AFA is warranted. Instead, Commerce is applying partial AFA for certain necessary information that is missing from the record and is needed for our analysis. Specifically, Commerce is: (1) treating Hindalco’s “deemed export” sales as sales made to the United States and assigning the sales the highest transaction-specific margin; (2) disallowing all home market warehousing expenses; (3) disallowing certain price adjustments for specific customers in the home market; and (4) disallowing certain price adjustments and freight expenses for Hindalco’s largest home market sale made to an affiliate. For a more detailed explanation of the partial AFA decision, *see* Hindalco’s Preliminary Analysis Memo.<sup>40</sup>

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<sup>38</sup> *Id.*

<sup>39</sup> *See* 19 CFR 351.308(c).

<sup>40</sup> *See* Memorandum, “Preliminary Analysis Memorandum for Hindalco Industries Limited,” dated concurrently with this memorandum (Hindalco’s Preliminary Analysis Memo).

In light of the fact that we are relying on Hindalco’s own information obtained during the course of this investigation, there is no requirement that Commerce corroborate this information pursuant to section 776(c) of the Act.

## VII. DISCUSSION OF THE METHODOLOGY

### A. Comparisons to Normal Value

To determine whether sales of aluminum sheet from India to the United States were made at LTFV, we compared the export prices (EPs) and/or constructed export prices (CEPs) to the normal value (NV), as described in the “U.S. Price” and “Normal Value” sections of this memorandum, below.

#### 1. Determination of Comparison Method

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

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>41</sup> Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code

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<sup>41</sup> See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).



*i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

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

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot

account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.<sup>42</sup>

## 2. Results of the Differential Pricing Analysis

### Hindalco

For Hindalco, based on the results of the differential pricing analysis, Commerce preliminarily finds that 69.74 percent of the value of U.S. sales pass the Cohen's *d* test and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for Hindalco.

### MALCO

For MALCO, based on the results of the differential pricing analysis, Commerce preliminarily finds that 66.53 percent of the value of U.S. sales pass the Cohen's *d* test and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for MALCO.

## B. Product Comparisons

As stated above, Commerce gave parties an opportunity to comment on the appropriate hierarchy of physical characteristics used to define each product, including for model matching purposes,

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<sup>42</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16-1789 (Fed. Cir. July 12, 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

within a certain deadline.<sup>43</sup> We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining the product control numbers of aluminum sheet in this LTFV investigation. Commerce identified nine criteria for the physical characteristics of the subject merchandise: (1) alloy; (2) clad *versus* non-clad; (3) casting method; (4) non-mechanical surface treatment; (5) coil; (6) nominal width; (7) gauge (nominal thickness); (8) mechanical surface finish; and (9) temper.<sup>44</sup> We instructed Hindalco and MALCO to use these product characteristics in their responses to the initial questionnaire issued in this investigation.<sup>45</sup>

In accordance with section 771(16) of the Act, we considered all products produced and sold by Hindalco and MALCO in India during the POI that fit the description in the “Scope of Investigation” section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate.

### C. Date of Sale

Section 351.401(i) of Commerce’s regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter’s or producer’s records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>46</sup> Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.<sup>47</sup>

Hindalco reported the date of sale as earlier of shipment date or invoice date.<sup>48</sup> Therefore, consistent with 19 CFR 351.401(i) and Commerce’s practice, we used the earlier of shipment date or invoice date as the date of sale.

MALCO reported the invoice date as the date of sale for its home market and U.S. sales.<sup>49</sup> Because the terms of sale are not fixed until the commercial invoice is issued and because MALCO issued the commercial invoice always before or on the date of shipment, we find the

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<sup>43</sup> See *Initiation Notice*, 85 FR at 19445.

<sup>44</sup> See Final Product Characteristics Memo.

<sup>45</sup> *Id.*

<sup>46</sup> See 19 CFR 351.401(i); and *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>47</sup> See e.g., *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

<sup>48</sup> See Hindalco’s August 19, 2020 SQR at Exhibit 1-2.

<sup>49</sup> See MALCO June 24, 2020 BQR at B-22; and MALCO June 22, 2020 CQR at C-20. MALCO also reported that it sold subject merchandise to the United States pursuant to contracts and/or *pro forma* invoices prior to the commercial invoice date. See MALCO May 26, 2020 AQR at A-24. However, we find that these documents do not establish the material terms of sale because they are missing important terms or because the stated terms can, and do, change up until the time of delivery. See MALCO’s September 2, 2020 SQR at S4-6 and Exhibit S4-5.a.

appropriate date of sale is the invoice date. Therefore, consistent with 19 CFR 351.401(i) and Commerce's practice, we used MALCO's invoice date as the date of sale in both markets.

#### D. Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under subsection 772(c) of the Act. Section 772(b) of the Act defines CEP as "price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)."

Hindalco and MALCO reported only EP sales in their U.S. sales databases. In accordance with section 772(a) of the Act, we used the EP methodology for Hindalco and MALCO because the first sale to an unaffiliated party was made before the date of importation and the CEP methodology was not otherwise warranted based on the facts of the record.

We calculated EP based on the packed prices that Hindalco charged to the first unaffiliated purchaser in the United States. We made deductions, where appropriate, from the starting price for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling, international freight, inland and marine insurance, and other U.S. transportation expenses (*i.e.*, U.S. customs processing fees, U.S. harbor maintenance fees, and other charges incurred in connection with the movement of goods), in accordance with section 772(c)(2)(A) of the Act.

We calculated EP based on the packed prices that MALCO charged to the first unaffiliated purchaser in the United States. We made deductions, where appropriate, from the starting price for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling, international freight, and inland and marine insurance, in accordance with section 772(c)(2)(A) of the Act.

#### E. Duty Drawback

Section 772(c)(1)(B) of the Act states that the price used to establish EP and CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether a respondent is entitled to duty drawback, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for this adjustment to be made to U.S. prices.<sup>50</sup> The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation). The second prong of the test is that the company must demonstrate that there were sufficient imports of materials to account for the duty

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<sup>50</sup> See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*).

drawback or exemption granted for the export of the manufactured product.<sup>51</sup>

In this investigation, Hindalco provided timely responses and supporting documentation regarding its duty drawback claims, *i.e.*, a copy of the Government of India's duty drawback rules to demonstrate the amount of duty drawback received.<sup>52</sup> However, in our analysis of Hindalco's response we find that the documentation provided did not demonstrate a link between the amount of import duty paid to the duty drawback Hindalco received upon export.<sup>53</sup> It is also unclear from record evidence whether the amount of imports is sufficient to account for the duty drawback Hindalco received on the exports of aluminum sheet.<sup>54</sup> Based on these supporting documents, we preliminarily determine that Hindalco's duty drawback claim did not meet either of the two prongs laid out in *Saha Thai*. Thus, consistent with our practice,<sup>55</sup> we preliminarily determine to disallow Hindalco's duty drawback claim.

## F. Normal Value

### 1. Comparison Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

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

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<sup>51</sup> *Id.*; and Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

<sup>52</sup> See Hindalco June 23, 2020 BCQR at 38 and Exhibit C-XIII(a); and Hindalco's August 19, 2020 SQR at 58-59.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> See e.g., *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), and accompanying PDM at 14, unchanged in *Certain Quartz Surface Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 85 FR 25391 (May 1, 2020); and *Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 15582 (April 16, 2019), and accompanying PDM at 18-19, unchanged in *Stainless Steel Bar from India: Final Results of Administrative Review of the Antidumping Duty Order; 2017–2018*, 84 FR 56179 (October 21, 2019).

## 2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>56</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>57</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,<sup>58</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>59</sup>

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>60</sup>

In this investigation, we obtained information from Hindalco and MALCO regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.<sup>61</sup> Our LOT findings are summarized below.

### Hindalco

In the home market, Hindalco reported that it made sales through two channels of distribution, *i.e.*, direct sales to customers from factory and sales to customers from warehouses.<sup>62</sup> Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services;

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<sup>56</sup> See 19 CFR 351.412(c)(2).

<sup>57</sup> *Id.*; and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (2007-2008 OJ from Brazil), and accompanying IDM at Comment 7.

<sup>58</sup> Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>59</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>60</sup> See, e.g., OJ from Brazil IDM at Comment 7.

<sup>61</sup> See MALCO May 26, 2020 AQR at Exhibit A-10; and Hindalco May 27, 2020 AQR at Exhibit 8.

<sup>62</sup> See Hindalco May 27, 2020 AQR at Exhibit 8.

and (5) performance of sales-related administrative activities. Based on Hindalco's selling functions chart, we find that Hindalco performed sales support, training services, logistical services, and sales-related administrative activities for all home market sales, at the same level of intensity. Therefore, we preliminarily determine that Hindalco's sales to the home market during the POI were made at one LOT.

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Although Hindalco reports minor differences in one selling function between the home market sales channels as noted above, we do not find that these differences are significant enough to warrant finding that the home market sales channels constitute different LOTs. Because we determine that substantial differences in Hindalco's selling activities do not exist between the home market sales channels, we determine that Hindalco's sales in the home market during the POI were made at the same LOT.

With respect to the U.S. market, Hindalco reported that it made EP sales through one channel of distribution, *i.e.*, direct sales to customers.<sup>63</sup> For its U.S. sales channel, Hindalco reported that it performed sales support, logistical services, and sales-related administrative activities. Therefore, we determine that Hindalco's sales to the U.S. market during the POI were made at one LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Hindalco performed for its U.S. and home market customers are nearly identical.<sup>64</sup> Specifically, Hindalco performed three of the four same selling functions in the home market as it performed in the U.S. market. The training services Hindalco provides in the home market is limited in nature and intensity. Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

## MALCO

In the home market, MALCO reported that it made sales through two channels of distribution, *i.e.*, direct sales to customers from factory and sales to customers from warehouses or "depots."<sup>65</sup> Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: (1) sales support; (2) training services; (3) technical support; (4) logistical services; and (5) performance of sales-related administrative activities. Based on MALCO's selling functions chart, we find that MALCO performed sales support, technical support, logistical services, and sales-related administrative activities for all home market sales. The performance of sales support, technical support, and sales-related administrative activities were all performed at the same level of intensity in both sales channels. However, MALCO

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

<sup>64</sup> *Id.*

<sup>65</sup> See MALCO May 26, 2020 AQR at A-25; and MALCO June 24, 2020 BQR at B-21.

performed logistical services for channel two sales (sales through depots) at a higher level of intensity than it did for channel one sales.

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Although MALCO reports minor differences in one selling function between the home market sales channels as noted above, we do not find that these differences are significant enough to warrant finding that the home market sales channels constitute different LOTs. Because we determine that substantial differences in MALCO's selling activities do not exist between the home market sales channels, we determine that MALCO's sales in the home market during the POI were made at the same LOT.

With respect to the U.S. market, MALCO reported that it made EP sales through one channel of distribution, *i.e.*, direct sales to customers.<sup>66</sup> For all its U.S. sales, MALCO performed sales support, technical support, logistical services, and sales-related administrative activities. Therefore, we determine that MALCO's sales to the U.S. market during the POI were made at one LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions MALCO performed for its U.S. and home market customers are identical.<sup>67</sup> Specifically, MALCO performed the same selling functions in the home market as it performed in the U.S. market.<sup>68</sup> Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

### 3. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP and CV information from Hindalco and MALCO. We examined the cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we are applying our standard methodology of using annual costs based on Hindalco's and MALCO's reported data.

#### a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses. We relied on the COP data submitted by Hindalco and MALCO with one exception.<sup>69</sup> For Hindalco, we adjusted the transfer prices of certain inputs from affiliated suppliers to reflect arm's length values, in accordance with section 773(f)(3) of the Act.

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<sup>66</sup> See MALCO May 26, 2020 AQR at A-24; and MALCO June 22, 2020 CQR at C-19.

<sup>67</sup> See MALCO May 26, 2020 AQR at A-22 and Exhibit A-10.

<sup>68</sup> *Id.*

<sup>69</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Hindalco Industries Limited," dated concurrently with this memorandum.



b. Test of Comparison Market Sales Prices

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

c. Results of the COP Test

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

We found that, for certain products, more than 20 percent of Hindalco's and MALCO's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

G. Calculation of NV Based on Comparison-Market Prices

We calculated NV for Hindalco based on prices to unaffiliated customers. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments, early payment discounts, and quantity discounts, where appropriate.<sup>70</sup> We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, foreign inland freight (offset by freight revenue) and insurance. We capped freight and insurance revenues by the amount of freight and insurance expenses incurred, in accordance with our practice.<sup>71</sup>

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<sup>70</sup> For further discussion, see the "Application of Facts Available and Use of Adverse Inference" section.

<sup>71</sup> See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009) (*OJ from Brazil 2009*), and accompanying IDM at Comment 3.

For Hindalco, we made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses (*i.e.*, bank charges and imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, commissions, bank charges, warranty expenses and imputed credit expenses), where appropriate. We revised Hindalco's imputed credit expense in the home market to correct the calculation formula and to incorporate the partial AFA decisions discussed above.<sup>72</sup> We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market, where commissions were granted on sales to the United States, also known as the "commission offset." Specifically, where commissions were incurred in the U.S. market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in home market or the commissions allowed in the U.S. market, whichever is less.

We calculated NV for MALCO based on prices to unaffiliated customers. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments and early payment discounts, where appropriate. We disallowed MALCO's home market quantity discounts, in accordance with 19 CFR 351.401(b)(1), because MALCO did not demonstrate that these discounts were known to the customer at the time of the sale. We made deductions for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, warehousing expenses, foreign inland freight (offset by freight revenue), and insurance. We capped freight revenue by the amount of freight expenses incurred, in accordance with our practice.<sup>73</sup>

For MALCO, we made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses (*i.e.*, imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, commissions, bank charges, warranty expenses, bill discounting charges and imputed credit expenses), where appropriate. We revised MALCO's imputed credit expense in the home market to correct the formula. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the "commission offset." Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

For both respondents, when comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>74</sup> We also deducted home market packing costs (offset by packing revenue, where appropriate) and added U.S. packing

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<sup>72</sup> See Hindalco's Preliminary Analysis Memo.

<sup>73</sup> See, e.g., *OJ from Brazil 2009* IDM at Comment 3.

<sup>74</sup> See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

costs, in accordance with section 773(a)(6)(A) and (B) of the Act. We capped packing revenue by the amount of packing costs incurred, in accordance with our practice.<sup>75</sup>

## VIII. CURRENCY CONVERSION

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

## IX. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

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Agree

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Disagree

10/6/2020

**X** 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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<sup>75</sup> See, e.g., *OJ from Brazil 2009* IDM at Comment 3.