



A-560-836  
Investigation  
POI: 1/1/2019-12/30/2019  
**Public Document**  
E&C/OVIII: JCM/BCS

March 18, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of  
Mattresses from Indonesia

---

## I. SUMMARY

The Department of Commerce (Commerce) finds that mattresses from Indonesia 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). One company, PT Zinus Global Indonesia (Zinus), was individually examined. The estimated weighted-average dumping margins are shown in the “Final Determination” section of the accompanying *Federal Register* notice.

As a result of our analysis and consideration of the comments submitted by interested parties, we have made certain changes to the *Preliminary Determination*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues for which we received comments from the interested parties:

- Comment 1: Zinus’ Reporting of Constructed Export Price (CEP) Inventory Sales
- Comment 2: Zinus’ Reporting of Sales Deductions
- Comment 3: Transactions Disregarded Adjustments
- Comment 4: Financial Statements Used to Value Constructed Value (CV) Profit and Selling Expenses
- Comment 5: Startup Adjustment
- Comment 6: Region in Cohen’s *d* Test
- Comment 7: Level of Trade (LOT) in Cohens *d* Test
- Comment 8: Treatment of Intra-Company Payments
- Comment 9: Clerical Error Corrections

---

<sup>1</sup> See *Mattresses from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 85 FR 69597 (November 3, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

## II. BACKGROUND

On November 3, 2020, Commerce published in the *Federal Register* its *Preliminary Determination*.

On December 2, 2020, Commerce issued a supplemental questionnaire to Zinus, to which Zinus timely responded.<sup>2</sup> On January 19, 2021, Commerce issued a questionnaire requesting additional information from Zinus in lieu of performing an on-site verification, in accordance with section 782(i) of the Act, to which Zinus timely responded.<sup>3</sup> On January 29, 2021, we invited parties to comment on the *Preliminary Determination*.<sup>4</sup> On February 9, 2021, we received case briefs from the petitioners<sup>5</sup> and Zinus.<sup>6</sup> On February 16, 2021, we received rebuttal briefs from the petitioners and Zinus.<sup>7</sup> On March 8, 2021, the petitioners and Zinus withdrew their requests for a hearing, respectively.<sup>8</sup> On March 8 and 9, 2021, we held *ex-parte* meetings with the petitioners and Zinus, respectively.<sup>9</sup>

## III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2019, through December 31, 2019. This period corresponds to the most recently completed fiscal quarters prior to the month of the filing of the Petition, which was March 2020.

---

<sup>2</sup> See Commerce's Letter to Zinus, "Antidumping Duty Investigation of Mattresses from Indonesia: Zinus Post-Preliminary Supplemental Questionnaire," dated December 2, 2020 (Post-Preliminary Supplemental Questionnaire); see also Zinus' Letter, "Mattresses from Indonesia: Zinus' Post-Preliminary Supplemental Questionnaire Response (questions 1-4)," dated December 14, 2020 (Post-Preliminary SQR - Pt 1); and Zinus' Letter, "Mattresses from Indonesia: Zinus' Response to Question 5 of the Post-Preliminary Supplemental Questionnaire," dated December 18, 2020.

<sup>3</sup> See Commerce's Letter to Zinus, "Antidumping Duty Investigation of Mattresses from Indonesia: Supplemental Questionnaire in Lieu of On-Site Verification," dated January 19, 2021 (Zinus January 19, 2021, Verification Questionnaire); see also Zinus' Letter, "Mattresses from Indonesia: Zinus' Response to Supplemental Questionnaire in Lieu of Verification," dated January 28, 2021 (ILOV QR).

<sup>4</sup> See Commerce's Letter, dated January 21, 2021.

<sup>5</sup> The petitioners are Corsicana Mattress Company, Elite Comfort Solutions, Future Foam, Inc., FXI, Inc, Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, Serta Simmons Bedding, LLC, Tempur Sealy International, Inc., and International Brotherhood of Teamsters, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (collectively, the petitioners).

<sup>6</sup> See Petitioners' Letter, "Mattresses from Indonesia: Petitioners' Case Brief," dated February 9, 2021 (Petitioners' Case Brief); see also Zinus' Letter, "Mattresses from Indonesia: Case Brief," dated February 9, 2021 (Zinus' Case Brief).

<sup>7</sup> See Petitioners' Letter, "Mattresses from Indonesia: Petitioner's Rebuttal Brief," dated February 16, 2021 (Petitioners' Rebuttal Brief); see also Zinus' Letter, "Mattresses from Indonesia: Rebuttal Brief," dated February 16, 2021 (Zinus' Rebuttal Brief).

<sup>8</sup> See Petitioners' Letter, "Mattress Petitioners' Withdrawal of Request for a Public Hearing" dated March 8, 2021; and Zinus' Letter, "Mattresses from Indonesia: Withdrawal of Request for Hearing," dated March 8, 2021.

<sup>9</sup> See Memorandum, "Antidumping Duty Investigation of Mattresses from Indonesia: *Ex Parte* Meeting with Petitioners' Counsel," dated March 16, 2021; see also Memorandum, "Antidumping Duty Investigation of Mattresses from Indonesia: *Ex Parte* Meeting with Respondent's Counsel," dated March 16, 2021.

#### IV. CHANGES FROM THE PRELIMINARY DETERMINATION<sup>10</sup>

- We made a price adjustment to all of Zinus' CEP sales. *See* Comment 2.
- We revised Zinus' direct material costs using only Indonesian import data from Global Trade Atlas (GTA) as the basis for market price, where applicable. *See* Comment 3.
- We made corrections in how we applied the transactions disregarded rule. *See* Comment 9.
- We found one LOT in the U.S. market and incorporated our findings in our differential pricing analysis. *See* Comment 7.
- We corrected the U.S. direct selling expense and CEP selling expense calculation for export price (EP) and CEP sales transactions, as appropriate. *See* Comment 9.
- We revised Zinus' reported U.S. packing expenses.
- We adjusted the U.S. price for reported billing adjustments which we inadvertently did not take into account in the *Preliminary Determination*.

#### V. DISCUSSION OF THE ISSUES

##### Comment 1: Zinus' Reporting of CEP Inventory Sales

*Zinus' Case Brief*:<sup>11</sup>

- Zinus fully explained and supported the fact that Zinus, Inc.'s (Zinus US's) inventory tracking during the POI did not permit the company to retrospectively identify the country of origin for prior sales, and Commerce's initial questionnaire acknowledges that there will be situations where a respondent does not have records to identify with certainty the country of origin.<sup>12</sup>
- In prior cases, Commerce has accepted first-in, first-out (FIFO)-based methodologies to identify the country of origin.<sup>13</sup>
- As Zinus previously explained, the FIFO methodology ensures that older product is picked up in the reporting, consistent with inventory movement principles that seek to sell off older product first to ensure that product does not stay in inventory in perpetuity while newer product is continuously sold out first.
- The U.S. International Trade Commission has stated (when addressing critical circumstances and inventory stockpiling issues) "the three-to-six-month shelf life of

---

<sup>10</sup> *See* Memoranda, "Antidumping Duty Investigation of Mattresses from Indonesia: Final Determination Margin Calculation for Zinus" (Zinus Final Determination Calculation Memorandum), and "Antidumping Duty Investigation of Mattresses from Indonesia: Final Cost Calculation Memorandum for Zinus" (Zinus Final Cost Calculation Memorandum), both dated concurrently with this memorandum.

<sup>11</sup> *See* Zinus' Case Brief at 4-23.

<sup>12</sup> *Id.* at 11 (citing Zinus' Letter, "Mattresses from Indonesia: Zinus' Section A Questionnaire Response," dated June 19, 2020 (Zinus AQR), at A-4 to A-5).

<sup>13</sup> *Id.* (citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017), and accompanying Issues and Decision Memorandum (IDM) at Comment 3).

{mattresses in boxes} would limit the ability of importers to stockpile subject imports in a way that could undermine the remedial effect of the order.”<sup>14</sup>

- Given this limited shelf life of mattresses, especially of mattresses sold compressed in boxes, the only prudent inventory management strategy is one that limits overall time in inventory, meaning that older stock would be pulled out and sold first to avoid unnecessary product degradation.
- As Zinus explained, “under Zinus US’s SAP inventory management system, when moving inventory for sales, the system uses a FIFO stock removal strategy.”<sup>15</sup> Given Commerce’s requirements that companies adhere to their normal accounting practices for preparing responses, Zinus was required to use the FIFO methodology to identify a country of origin for CEP inventory sales.
- Although this methodology does not identify the actual country of origin for each sale, the methodology is reasonable and closely correlates to actual inventory and sales. As explained in Zinus’ Section A response, where mattresses are moved into the warehouse for reasons other than normal purchases, or are identified as a result of inventory stock-taking, the methodology assigns a country of origin based on the inventory balance by country of origin at that time.
- The record also confirms that applying simple quarterly averages utterly fails to identify sales of Indonesian origin products reasonably for two reasons: 1) using the quarterly ratios results in the absurd outcome where sales are treated as Indonesian origin before the model was ever imported from Indonesia; and 2) applying the quarterly ratios results in more units being sold than were imported.
- By applying the quarterly ratios used in the *Preliminary Determination*, Commerce classified more than double the number of mattresses Zinus US had received from Indonesia as CEP inventory sales of Indonesian origin.
- Among these two competing alternatives, the FIFO methodology is superior to the quarterly import ratios, which do not correlate to the model- and time-specific import patterns and result in widespread distortions and inaccuracies.
- The petitioners’ quarterly ratio methodology and calculations first identified a ratio of subject and non-subject CEP inventory sales based on the overall reported inventory quantities, then increased the number of Indonesian mattresses to base the ratios instead on the number of mattresses sold by the Korean parent company, Zinus Inc. (Zinus KR) to an affiliated reseller, Zinus US. However, the petitioners ignore the fact that many of Zinus KR’s sales were still in transit from Indonesia to the United States.
- Any identification of CEP inventory sales must start with Zinus US’s inventory actually received in the United States during the POI. The difference between Zinus KR’s POI sales to Zinus US and Zinus US’s POI receipt of mattresses in inventory in the United States is simply the result of timing associated with trans-global shipments.

---

<sup>14</sup> *Id.* at 12 (citing Petitioners’ Letter, “Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Responses to Petition Supplemental Questionnaires,” dated April 8, 2020, at Exhibit I-Supp-2).

<sup>15</sup> *Id.* (citing Zinus’ Letter, “Mattresses from Indonesia: Zinus’ Section C Supplemental Questionnaire Response (part 2),” dated September 28, 2020 (Zinus CSQR 9-28-2020), at SC2-8).

*Petitioners' Rebuttal Brief*.<sup>16</sup>

- Given the record evidence, Commerce properly rejected the FIFO methodology that was created for purposes of this investigation to segregate individual sales into subject and non-subject merchandise.
- The petitioners have demonstrated that Zinus' FIFO methodology to assign origin to specific sales of commingled mattresses undercounts POI CEP inventory sales and is distortive to the Cohen's *d* test.<sup>17</sup>
- The petitioners proposed that Commerce apply ratios to all potential sales of subject merchandise — an approach Commerce has previously applied in other cases, such as *Circular Welded Pipe from Mexico* and *Softwood Lumber from Canada*.<sup>18</sup>
- The quarterly ratios methodology is appropriate for the following reasons: (1) it uses the correct “starting point” of all Indonesian mattresses sold to Zinus US; (2) it has been demonstrated to be non-distortive; and (3) it is agnostic in terms of determining which sales to report as subject merchandise.
- Zinus expects Commerce to consider only the “imported CEP inventory quantity” as sales for purposes of evaluating and determining the Indonesian portion of Zinus US's commingled sales. However, nothing in the statute or in Zinus' books and records support this unprecedented “in-transit” loophole, where sales are subject to the investigation but are unavailable for use in the margin calculations because they are “in transit.”
- Furthermore, Zinus fails to provide any operational reason why goods “in transit” could not be sold to unaffiliated customers and fails to define “in transit.” Thus, the opportunities for manipulation arising from this unprecedented “in-transit” exception are limitless.
- Section 772(b) of the Act defines CEP to be “the 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 . . . .”
- Pursuant to the SAA, if, before or after the time of importation, the first sale to an unaffiliated person is made by (or for the account of) the producer or exporter or by a seller in the United States who is affiliated with the producer or exporter, then Commerce will base its calculation on CEP.<sup>19</sup>

---

<sup>16</sup> See Petitioners' Rebuttal Brief at 5-32.

<sup>17</sup> *Id.* at 5 (citing Petitioners' Letter, “Mattresses from Indonesia: Mattress Petitioners' Comments Concerning the Preliminary Determination,” dated October 9, 2020 (Petitioners' Pre-Preliminary Comments), at 2-3 and 6-10; and Petitioners' Letter, “Mattresses from Indonesia: Mattress Petitioner's Deficiency Comments Concerning Zinus' Section C Questionnaire Response – Part 1: Reconciliation and Country of Origin,” dated August 10, 2020, at 20-25).

<sup>18</sup> *Id.* at 6 (citing *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011) (*Circular Welded Pipe from Mexico*), and accompanying IDM at Comment 3; and *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada*, 69 FR 75921 (December 20, 2004) (*Softwood Lumber from Canada*), and accompanying IDM at Comment 8).

<sup>19</sup> *Id.* at 11 (citing Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316 (1994) (SAA) at 822).

- Commerce’s “Glossary of Terms” defining EP and CEP explains that “constructed export price applies even if the sale occurs before importation, unless the U.S. affiliate performs only clerical functions in connection with the sale.”<sup>20</sup>
- Zinus has not claimed that Zinus US performs only clerical functions, and it has provided no documentation indicating that mattresses cannot be sold to unaffiliated customers until after they are no longer in transit. Accordingly, all sales made to Zinus US, whether prior to importation or after importation, are inventory of subject merchandise available for sale and should be taken into account when assigning origin.
- As Zinus is a multinational company with experience in antidumping duty investigations, Zinus was on notice that it would need to address country of origin tracing before the first mattress was shipped from Zinus. Record evidence suggests Zinus KR began planning for production in Indonesia in reaction to the *Mattresses from China*<sup>21</sup> investigation.
- Zinus relies on the *Diamond Sawblades* cases as support for the use of FIFO, but in those cases the U.S. Court of International Trade (CIT) affirmed Commerce’s application of AFA, saying “Bosun did not provide Commerce the requested direct country of origin information, which is ‘unquestionably necessary to distinguish U.S. sales of subject merchandise and to determining accurate duty margins’ and ‘among the most basic data necessary for {that} calculation.’”<sup>22</sup>
- Though Zinus provided a U.S. sales reconciliation in Zinus CQR<sup>23</sup> at Exhibit C-2B, no “additional materials” worksheets or steps detailing how Zinus’ SAP system allocates specific SKUs were provided. Furthermore, Zinus does not reveal anywhere in the Zinus KR reconciliation that it is not using the total Zinus KR sales to Zinus US as the “starting point” for its FIFO analysis.
- If Zinus intended to disregard the reconciliation value and instead rely on “import” volume and value as opposed to “sales volume and value,” it should have included a reconciliation adjustment in the original (or resubmitted) Zinus KR reconciliation.
- In the *Preliminary Determination*, Commerce properly rejected Zinus’ FIFO methodology for determining subject merchandise within commingled CEP inventory sales.
- Furthermore, despite a clear signal from Commerce in the *Preliminary Determination* that it had concerns about the FIFO methodology, Zinus took no steps to supplement the record to demonstrate accuracy. Typically, Commerce changes a preliminary determination only if new information is placed on the record that alters the preliminary analysis.<sup>24</sup> That has not occurred here.

---

<sup>20</sup> *Id.* (citing Commerce’s webpage, “Glossary of Terms: Glossary of AD Terms for Market and Non-Market Economy Cases” (last updated: September 30, 2004; accessed February 13, 2021)).

<sup>21</sup> *See Mattresses from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 56761 (October 23, 2019) (*Mattresses from China*).

<sup>22</sup> *Id.* at 13 (citing *Diamond Sawblades Mfrs.’ Coal. v. United States*, 415 F. Supp. 3d 1365, 1371 (Ct. Int’l Trade 2019)).

<sup>23</sup> *See* Zinus’ Letter, “Mattresses from Indonesia: Zinus’ Section C Questionnaire Response” dated July 14, 2020 (Zinus CQR).

<sup>24</sup> *Id.* at 21 (citing *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2015-2016*, 83 FR 16829 (April 17, 2018), and accompanying IDM at Comment 6).

- Under applicable regulations, the party using an allocation bears the burden to establish that its chosen allocation is not distortive.<sup>25</sup> Zinus has made no attempt to demonstrate meaningfully that use of the FIFO allocation was non-distortive and record evidence shows that it is distortive.
- Zinus’ assertion that FIFO is used in the normal course of business is not supported with record evidence and is contradictory to certain notes to the Zinus US audited financial statement addressing inventories.
- In accordance with section 773(f)(1)(A) of the Act, Commerce normally relies on data from a respondent’s normal books and records where those records are prepared in accordance with Generally Accepted Accounting Principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sales of the merchandise. In this instance, the normal GAAP methodology is not FIFO.
- In *Stainless Steel Bar from Italy*, Commerce refused to accept an inventory change adjustment that “is not recorded in {respondent’s} normal books and records.”<sup>26</sup>
- Mattress shelf life is not relevant in selecting an allocation methodology and it is at odds with Zinus’ claims that it cannot track country of origin: if shelf life were a driving factor, then tracking mattress country of origin would be necessary because of differences in days in transit from the various production facilities.
- Record evidence shows that the number of days in inventory is not driven by the mattresses shelf life but, rather, by market demand.
- As indicated in its Section A response, Zinus loses traceability once a mattress is inventoried on a pallet.<sup>27</sup> Therefore, Zinus cannot accurately determine the sale of a mattress on first in first out basis.
- The *Diamond Sawblades* appeal and remand determination do not sanction FIFO over other methods, but do show that experienced respondents must track country of origin and Commerce will not accept distortive country of origin allocation methodologies.
- When requesting an explanation for how Zinus determined country of origin, Commerce did not “acknowledge that there will be situations where a respondent does not have records to identify with certainty the country of origin.”
- Commerce should determine sales of subject merchandise using the quarterly ratios, as it did in the *Preliminary Determination*.
- Commerce should not adjust the quarterly methodology used in the *Preliminary Determination* by using an understated value for POI CEP inventory sales because physical inventory in the United States does not equal saleable inventory.
- Specifically, moving off sales and shipment date to using “import date” creates at least two distortions: (1) it reduces the “starting point” of sales to Zinus US; and (2) shifts the dates forward in time (meaning the transaction volume associated with a given sales invoice and shipment date may be reported with an earlier “import date”).
- Zinus has failed to reconcile the “month-by-month” and “country-by-country” “imported CEP quantity” or “total number of models entered into U.S. inventory” data to sales or warehouse data for all countries involved in the FIFO analysis. In fact, the record is still

---

<sup>25</sup> *Id.* (citing 19 CFR 351.401(g)(2); and *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 5, 2007), and accompanying IDM at Comment 7).

<sup>26</sup> *Id.* at 25 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy*, 67 FR 3155 (January 23, 2002) (*Stainless Steel Bar from Italy*), and accompanying IDM at Comment 49).

<sup>27</sup> *Id.* at 28 (citing Zinus AQR at 6).

unclear as to the specific date used to identify the quantity of CEP inventory of Indonesian mattresses.

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

During the POI, Zinus' affiliated reseller, Zinus US, purchased mattresses from affiliates located in various countries, but Zinus claimed that its inventory management and sales systems do not track the country of origin for its CEP inventory sales in the normal course of business.<sup>28</sup> Furthermore, Zinus claimed that its third-party warehouses do not provide sufficient details to trace sales back to inbound shipments to the warehouse.<sup>29</sup> In order to allocate certain CEP inventory sales to shipments from Indonesia for the purpose of reporting its subject merchandise sales to Commerce, Zinus applied a FIFO methodology to determine which of these sales should be attributed to sales of the subject merchandise, which it reported in its U.S. sales database, along with its EP and back-to-back CEP sales. Zinus also provided a separate sales database containing all sales made out of inventory during the POI from which it derived the subset of reported CEP inventory sales.<sup>30</sup>

Throughout the investigation, the petitioners have argued that the FIFO methodology is distortive, claiming that it leads to the underreporting of total CEP inventory sales.<sup>31</sup> We preliminarily rejected Zinus' FIFO methodology in favor of a methodology devised by the petitioners that applies quarterly ratios based on purchase data to all sales of mattresses held in inventory (*i.e.*, both subject and non-subject)<sup>32</sup> and stated the following:

“Questions remain about the accuracy of this {FIFO} methodology with respect to CEP sales reporting. Thus, for purposes of the preliminary determination, we applied quarterly ratios, calculated based on the proportion of mattresses purchased from Indonesia during the POI, to the universe of Zinus U.S.'s warehouse sales. Commerce will continue to examine this issue for purposes of the final determination.”<sup>33</sup>

After the *Preliminary Determination*, we sent a supplemental questionnaire requesting information as to whether Zinus US and another affiliated U.S. reseller, Best Priced Mattress (BPM), commingled merchandise before the POI, and if so, how they tracked the country of origin of their sales.<sup>34</sup> In response, Zinus noted that Zinus US only purchased mattresses from Chinese affiliate, Zinus Xiamen, prior to the POI, meaning the country of origin was clear prior to the POI.<sup>35</sup> This statement is confirmed by the auditor's notes to Zinus US's 2018 financial statement.<sup>36</sup> Regarding BPM, Zinus states that, similar to Zinus US during the POI, BPM only

---

<sup>28</sup> See Zinus AQR at A-5 to A-7; see also Zinus CQR at C-2 to C-3.

<sup>29</sup> *Id.* at A-6.

<sup>30</sup> See Zinus CQR at Exhibit C-1B; see also Zinus CSQR 9-28-2020 at Exhibit SC-1B.

<sup>31</sup> See Petitioners' Pre-Preliminary Comments at 6-10.

<sup>32</sup> *Id.*

<sup>33</sup> See *Preliminary Determination* PDM at 9-10.

<sup>34</sup> See Post-Preliminary Supplemental Questionnaire at 3.

<sup>35</sup> See Post-Preliminary SQR - Pt 1 at 6.

<sup>36</sup> See Zinus AQR at Exhibit A-11(b)2.



tracks the country of origin for its purchases of mattresses from Zinus KR, but does not track it once the merchandise is in inventory in the United States.

Zinus reported that it pays warranty claims for defective and damaged merchandise on a customer-specific basis.<sup>37</sup> Zinus also reported that it only paid commissions on sales of non-subject merchandise during the POI.<sup>38</sup> However, there is no information on the record demonstrating how Zinus US can be reimbursed by the manufacturer for warranty claims or grant commissions on its sales if it does not know the origin of the merchandise sold out of inventory. Specifically, while Zinus has explained on the record how it reimburses its U.S. customers for warranty claims,<sup>39</sup> there is nothing on the record concerning how Zinus US is able to seek reimbursement from its own suppliers when warranty claims are made if it does not know the country of origin of the defective merchandise. Similarly, while Zinus claims that it paid commissions only on non-subject merchandise sales during the POI,<sup>40</sup> there is nothing on the record concerning how Zinus US grants commissions on sales of non-subject merchandise if it does not know the country of origin of the merchandise it sells out of inventory. We find that these two claims – Zinus’ claim about lack of knowledge about the country of origin of merchandise in its inventory and Zinus US’s granting of commissions on sales of non-subject merchandise -- are inconsistent. Either Zinus is aware of the country of origin of merchandise in inventory, and can grant commissions on the sales of certain merchandise based on that knowledge, or it does not, and therefore should not be able to grant commissions based on the country of origin of the merchandise.

Accordingly, we find that Zinus’ reported FIFO-based sales methodology does not accurately or appropriately capture a sufficient number of sales of subject merchandise. To come to any other conclusion would be inconsistent with the commercially realistic business practices of a multinational company engaged in the production and sale of a consumer product such as mattresses that provides commissions on certain sales from its inventory.

We therefore agree with the petitioners that the quarterly ratio sales reporting methodology used in the *Preliminary Determination*, along with the quantity of mattresses that Zinus US purchased from Zinus KR, is preferable in this case. Because it applies quarterly ratios grounded in purchase data to the full universe of Zinus US’s sales from inventory during the POI, it is neutral in terms of determining which sales to report as subject merchandise sales.<sup>41</sup> Therefore, it is less susceptible to manipulation. Accordingly, we have continued to apply it in the final determination. Furthermore, we encourage Zinus to revisit its reported U.S. inventory practices so that this issue does not arise in any future segments of the proceeding, if this investigation results in an antidumping duty (AD) order.

## **Comment 2: Zinus’ Reporting of Sales Deductions**

### *Petitioner’s Brief*<sup>A2</sup>

---

<sup>37</sup> See Zinus CQR at C-37 to C-38 and C-41.

<sup>38</sup> See Post-Preliminary SQR - Pt 1 at 4.

<sup>39</sup> See Zinus CQR at C-58.

<sup>40</sup> See Post-Preliminary SQR - Pt 1 at 2-3.

<sup>41</sup> See Petitioners’ Pre-Preliminary Comments at 15-17.

<sup>42</sup> See Petitioners’ Case Brief at 5-18.

- After being assigned high preliminary and final margins in *Mattresses from China*, the Korean parent company, Zinus KR, “hopped” from China to Indonesia and continued selling dumped mattresses into the United States with impunity.
- While Zinus KR changed the final production location, it kept making sales of the same products (mattresses), using the same supply chain as the Chinese affiliate.
- The first Indonesian factory began production in February 2019, just before imposition of provisional measures in *Mattresses from China*.<sup>43</sup>
- Zinus obtained inputs from the China non-market economy (NME) supply stream, including multiple manufacturers and trading companies specializing in mattress inputs.<sup>44</sup>
- In February of 2019, when filing its section A response in *Mattresses from China*, Zinus failed to mention production in Indonesia, although two factories were operating in Indonesia by September 2019.
- Commerce has statutory and regulatory tools to address this and the overarching requirement to calculate dumping margins as accurately and equitably as possible.<sup>45</sup>
- In *Mattresses from China*, Zinus’ U.S. sales were handled by four entities, Zinus KR, Zinus US, BPM, and Keetsa, Inc., while in this POI, BPM made no sales of subject merchandise, although it still sells mattresses.
- Zinus has never straightforwardly explained why BPM sells no subject mattresses, and it has not explained its allocation of selling expenses.
- The manipulation of selling expenses is accomplished through deceptively simple changes to sales channels and selling practices involving the strategic use of affiliated resellers and multi-country sourcing to shift commission expenses to merchandise produced outside of Indonesia.
- Commerce recently reiterated its policy that “money is fungible within a single integrated company and its use for one purpose may free up money to benefit another purpose.”<sup>46</sup> While Commerce has generally applied the “money is fungible” principle to financial expenses, the principle applies equally here. From Zinus KR’s perspective it does not matter if commission-based selling expenses are traced to transactions made by BPM, Zinus US, or itself.
- For the six months of sales reviewed in *Mattresses from China*, Zinus KR, Zinus US, and BPM paid commissions on U.S. sales. In this investigation, no commissions were paid on any U.S. sales of subject merchandise, and no subject merchandise was sold through BPM. Furthermore, most of BPM’s 2019 mattress sales were made to certain customers that also purchased Indonesian-origin mattresses.
- There is a disproportionate relationship between BPM’s deductions and total sales between 2018 and 2019.<sup>47</sup> This appears to be how Zinus managed to achieve a 2.61

---

<sup>43</sup> *Id.* at 5 (citing Zinus’ Letter, “Mattresses from Indonesia: Zinus’ Section D Questionnaire Response,” dated July 7, 2020 (Zinus DQR), at D-3).

<sup>44</sup> *Id.* (citing Zinus DQR at D-5 and Exhibit D-4; Zinus’ Letter, “Mattresses from Indonesia: Zinus’ Section A Questionnaire Response,” dated Jun 19, 2020 (Zinus AQR), at 9 and Exhibit A-3; and Zinus’ Letter, “Mattresses from Indonesia: Zinus’ Section D Supplemental Questionnaire Response, dated September 23, 2020 (Zinus DSQR), at Exhibit SD-8).

<sup>45</sup> *Id.* at 6 (citing *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013)).

<sup>46</sup> *Id.* at 9 (citing *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018), and accompanying IDM at Comment 9; and *Stainless Steel Wire Rod From Taiwan; Final Results of Antidumping Duty Administrative Review*, 66 FR 52587 (October 15, 2001), and accompanying IDM at Comment 1).

<sup>47</sup> *Id.* (citing Post-Preliminary SQR - Pt 1 at 11).

percent preliminary dumping margin in this investigation after earning a 192 percent final margin in *Mattresses from China*, barely a year earlier.

- Commerce has the discretion and authority to rely on facts otherwise available (FA) pursuant to section 776(a) of the Act when necessary information is missing from the record.
- Rather than provide a full and complete response as to why its commission practices changed, Zinus simply stated that no sales of subject merchandise involved commissions. Given Commerce’s limited time and resources, there is now insufficient time for additional factfinding in this investigation.
- Accordingly, Commerce should apply FA to fill in the gaps of missing information and should reallocate sales expenses and/or commission expenses on sales to purchasers of subject and non-subject merchandise.
- In selecting and applying neutral FA, Commerce may use information available on the record, including information provided by respondents<sup>48</sup> or information contained in the petition.<sup>49</sup>
- In applying FA, consistent with the use of consolidated customer codes and the definition of “price adjustments” set forth in 19 CFR 351.102(b)(38), Commerce’s sales expenses and commissions analysis should focus on “the purchaser’s net outlay” when purchasing mattresses from Zinus—whether the seller is Zinus KR, Zinus US, or BPM and whether the sales are technically made to the parent or one of the parent’s affiliates.
- Furthermore, because commission income is simply money that is fungible, as discussed above, in this instance commission payments to customers should be viewed at the consolidated customer level.
- The record contains necessary data to calculate a Zinus/BPM sales deduction rate from reported revenue and expenses that have been pushed to BPM’s sales of non-Indonesian origin mattresses. As neutral facts available, Commerce should apply the Zinus/BPM sales deduction rate to the gross unit price of Zinus US customers that are included in the sales value used to allocate the expense. Commerce should then deduct the resulting expense from the U.S. price.
- Section 351.401(g)(4) of Commerce’s regulations provides that the “Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or a foreign like product (whichever is applicable).”
- Furthermore, the CIT has affirmed that Commerce may accept allocation methodologies that include expenses or price adjustments on non-subject merchandise so long as the methodology is not distortive.<sup>50</sup>
- Thus, the petitioners’ proposed adjustment method cannot be rejected simply because expenses attributable to BPM’s sales on non-Indonesian mattresses are commingled with expenses relating to subject merchandise.

---

<sup>48</sup> *Id.* at 14 (citing *Steel Wire Garment Hangers from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587, 47590 (August 14, 2008); and *Silicon Metal from Norway: Affirmative Final Determination of Sales at Less Than Fair Value, Final Determination of No Sales, and Final Negative Determination of Critical Circumstances*, 83 FR 9829 (March 8, 2018), and accompanying IDM at Comment 6).

<sup>49</sup> *Id.* at 15 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea*, 65 FR 41437 (July 5, 2000), and accompanying IDM at Comments 3-4).

<sup>50</sup> *Id.* at 16 (citing *Acciai Speciali Terni S.P.A. v. United States*, 142 F. Supp. 2d 969, 989 (CIT 2001)).

*Zinus' Rebuttal Brief.*<sup>51</sup>

- The petitioners' allegation that Zinus "hopped" from China ignores the fact that Zinus was already in the process of establishing Indonesian operations prior to the filing of the China AD petition.
- The petitioners' theory of commission-shifting contradicts the record.
- The petitioners grossly misrepresent the information Zinus presented in its December 14, 2020, supplemental questionnaire response regarding sales by BPM in 2019. That response actually shows that the "sales deductions" amount cited by the petitioners consists of "sales return, allowances, commission and *etc.*," which covers considerably more than "commissions." Moreover, that figure pertains to all BPM sales, and not just sales of mattresses.
- The Zinus US 2019 financial statements show that total commission expenses in 2019 were similar to commission expenses reported in 2018. However, because no commissions were paid with respect to Indonesian-origin sales, Zinus did not report commissions for {the commingled} sales reported in the non-subject sales database for these sales of non-subject China-origin mattresses.
- Record information confirms that sales deductions as a percentage of 2018 Zinus US revenue increased from 2018 to 2019.<sup>52</sup> Moreover, the BPM sales deduction percentage is on a par with that of Zinus US in 2019. Thus, record information confirms that Zinus US's sales deductions (including commissions) did not decrease in the POI and that BPM's sales deductions were effectively the same as that of Zinus US during the POI.
- Under the petitioners' theory, accepting the burden of the alleged commission-shifting would have had to significantly lower BPM's profit. However, BPM's profit rate was essentially the same in 2019 as it was in 2018.<sup>53</sup>
- As the petitioners noted, Zinus US and BPM made sales to Customer 1<sup>54</sup> in 2019. However, they fail to recognize that the breakdown of commissions paid on U.S. sales reported in *Mattresses from China* in Attachment 1 to their case brief demonstrates that Zinus US did not pay any commissions with respect to sales to Customer 1, while BPM did. Furthermore, Zinus US did not pay commissions on Chinese mattress sales in 2018 and Indonesian mattresses sales in 2019. Thus, no commission expenses were shifted from Zinus US to BPM.
- With regard to Customer 2, neither Zinus US nor BPM incurred commission expenses on sales to this customer during the *Mattresses from China* investigation. With respect to this customer, which makes up the bulk of BPM's mattress business, there simply was no commission "shifting" because BPM paid no commissions on Chinese-origin mattresses in the first place.
- Based on the petitioners' proposed calculations, the commission expenses attributed to Customer 2 allegedly shifted to BPM from Zinus US were greater than the total value of Zinus US's sales to Customer 2. Furthermore, the petitioners calculated an average

---

<sup>51</sup> See Zinus' Rebuttal Brief at 3-19.

<sup>52</sup> *Id.* at 10 (citing Zinus' Letter, "Mattresses from Indonesia: Zinus' Section A Questionnaire Response," dated June 19, 2020 (Zinus AQR), at Exhibit A-11b(1) and A-11b(2)).

<sup>53</sup> *Id.* at 11 (citing Zinus AQR at Exhibit A-11e(1)).

<sup>54</sup> As customer names are business proprietary information, we refer to particular customers named by Zinus as Customers 1, 2, and 3.

commission rate for Zinus US sales to Customer 3 that would yield a commission amount higher than the total amount of BPM's sales deductions in 2019 to all customers.

- The petitioners argue that any financial hit taken by U.S. customers for higher-priced Indonesian mattresses purchased from Zinus US is being offset by high commission payments paid by BPM for sales of non-subject merchandise. Commerce's practice is to require more than general circumstances even to investigate such an accusation of masking dumping, let alone to make an affirmative finding.<sup>55</sup>
- The application of the petitioners' proposed deduction to the U.S. price would not be "neutral" facts available because the petitioners propose an invented U.S. direct selling expense called a "Zinus/BPM Selling Deduction Rate" based on the financial information of BPM, a U.S. affiliate that has been confirmed not to have been involved with sales of the merchandise under investigation.<sup>56</sup>
- Any determination that concludes, against all record evidence, that BPM was involved in any way with sales of the merchandise under investigation is not a determination based on "facts available."
- There is nothing "neutral" about an adjustment that assumes a U.S. direct selling expense where no additional U.S. direct selling expenses associated with sales of the merchandise under investigation exist.

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

We agree with the petitioners that a price adjustment in the final calculations is appropriate.

Throughout the investigation, the petitioners have argued that Zinus is attempting to avoid high margins imposed in the *Mattresses from China* investigation by moving its mattress production from China to Indonesia.<sup>57</sup> Zinus took initial steps toward establishing its factory in Indonesia in 2018 and began shipping to the United States in April 2019.<sup>58</sup> The *Mattresses from China* investigation was ongoing during this period, and the POI for this investigation covers the 2019 calendar year. Specifically, the petitioners allege that Zinus was masking dumping of Indonesian mattresses during the POI by shifting sales deductions that would have been incurred by Zinus US for sales of Indonesian mattresses to sales of non-subject merchandise made through a different affiliated reseller, BPM, the U.S. reseller at issue in the *Mattresses from China* investigation.

As noted above, Zinus claimed that it only paid commissions on non-subject merchandise.<sup>59</sup> In response to the petitioners' concerns on this matter, Commerce requested, via supplemental

---

<sup>55</sup> *Id.* at 14 (citing *Stainless Steel Plate in Coils from Belgium: Antidumping Duty Administrative Review*, 2010-2011, 77 FR 73013 (December 7, 2012), and accompanying IDM at 4).

<sup>56</sup> *Id.* at 7 (citing Zinus AQR at A-9; Zinus' Letter, "Mattresses from Indonesia: Zinus' Section A Supplemental Questionnaire Response," dated August 20, 2020 (Zinus ASQR), at 5; Zinus CSQR 9-28-2020 at SC2-6 and Exhibit SC-12; and Zinus' Letter, "Mattresses from Indonesia: Response to Petitioners' Post-Preliminary Comments," dated November 27, 2020, at 2-4).

<sup>57</sup> *See, e.g.*, Petitioners' Pre-Preliminary Comments at 2-3; *see also Mattresses from China*, 84 FR at 56763, where Zinus Inc., Zinus Xiamen Inc., and Zinus Zhangzhou Inc. received an estimated weighted-average dumping margin of 192.02 percent.

<sup>58</sup> *See* Zinus AQR at Exhibit A-11a(1) and A-11a(2).

<sup>59</sup> *See* Post-Preliminary SQR - Pt 1 at 4.

questionnaires and our in-lieu-of-verification (ILOV) questionnaire, extensive documentation on BPM, the *Mattresses from China* investigation, commission expenses incurred by Zinus, Zinus US, and Zinus KR, and the sales agreements of Zinus US and BPM.<sup>60</sup> Zinus provided all the information requested. However, questions remain as to the commercial practicality of Zinus' reporting of its sales practices with regard to commissions and certain other sales allowances.

First, with respect to CEP inventory sales, as noted above in Comment 1, it is not clear how Zinus is able to identify which of the non-subject mattresses it sold from inventory earned commissions if it does not know the country of origin of the merchandise sold out of inventory. In our Post-Preliminary Supplemental Questionnaire, we asked Zinus to explain why the company apparently changed its selling practices with respect to commissions on U.S. sales of the subject merchandise through Zinus US since the time of the *Mattresses from China* investigation.<sup>61</sup> In response, Zinus stated that "Zinus US's customers to whom it paid a commission in the China investigation simply did not purchase Indonesian mattresses during the POI, and thus did not earn commissions under the terms of the agreements based on sales of subject mattresses."<sup>62</sup> However, Zinus did not explain why some of Zinus US's customers would agree to purchase mattresses of Indonesian origin on which they would earn no commissions when they could receive commissions from Zinus US on mattresses manufactured in other countries.

Moreover, in its response to our Post-Preliminary Supplemental Questionnaire, Zinus also stated that Zinus US sold subject merchandise to corporate customers whose affiliates purchased non-subject merchandise from both Zinus US and BPM and earned commissions on these sales.<sup>63</sup> Furthermore, for a particular customer, Zinus stated that, as of March 2019 (*i.e.*, a month before Zinus US began purchasing mattresses from Zinus), it no longer paid commissions to this customer and that Zinus began selling Indonesian mattresses to this customer in November 2019.<sup>64</sup> Zinus again did not explain why it ceased paying commissions to this customer or whether the sourcing of the mattresses had any influence on this decision.

The fact that BPM's financial statements on the record show disproportionate changes between BPM's overall sales deductions and its revenues between 2018 and 2019 raises further questions about the reliability of Zinus' reporting with respect to its sales practices regarding the payment of commissions.<sup>65</sup> For these reasons, we find it appropriate to make an adjustment to the prices of Zinus' CEP sales to ensure that all sales allowances and deductions are accounted for in the margin calculation.

The petitioners' proposed price adjustment involves calculating the ratio of BPM's 2018 sales deductions over its 2018 sales revenue and applying that ratio to BPM's 2019 revenue. The petitioners argue that this calculation would yield the theoretical 2019 sales deduction for BPM, were it not for the alleged shifting of commission expenses. The petitioners propose taking the difference between this theoretical sales deduction and the sales deduction that BPM actually

---

<sup>60</sup> See Post-Preliminary Supplemental Questionnaire; and Commerce's Letter, "Antidumping Duty Investigation of Mattresses from Indonesia: Supplemental Questionnaire in Lieu of On-Site Verification," dated January 19, 2021.

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

<sup>62</sup> See Post-Preliminary SQR - Pt 1 at 4.

<sup>63</sup> *Id.* at 4-5.

<sup>64</sup> *Id.* at 5.

<sup>65</sup> *Id.* at 11.

reported in 2019 and deriving a deduction rate using sales made by Zinus US. The petitioners would then have us apply this deduction rate to the reported gross unit prices of Zinus US's subject merchandise sales to in-common customers with BPM. This proposal presents challenges for two reasons, however. First, the sales deduction rate is derived using BPM's financial information from 2018 (*i.e.*, before the POI). Second, the petitioners base their calculation solely on BPM's experience regarding sales deductions without taking into account Zinus' experience as well.

For these reasons, we calculated a different adjustment that takes into consideration the sales deduction experience of both companies during the POI. Specifically, we combined Zinus US's and BPM's 2019 (*i.e.*, POI) sales deductions, net of discounts and returns, and divided by the companies' combined gross sales, as reported in their respective financial statements. We then applied this ratio to the gross unit price of all sales made by Zinus US (*i.e.*, all CEP sales).<sup>66</sup> To avoid double counting reported expenses to the extent possible, we did not adjust these U.S. prices for certain rebates. We did not make a similar adjustment for EP sales because we did not have the information on the record with which to do so.

### **Comment 3: Transactions Disregarded Adjustments**

#### *Zinus' Case Brief*<sup>67</sup>

- Commerce should not use Global Trade Atlas (GTA) import data to calculate the transaction disregarded rule (TD rule) adjustment, but if Commerce does rely on GTA import data, it must rely on Indonesia GTA import data only, rather than using the average GTA import data for Indonesia, Brazil, Malaysia, Mexico, Romania, Russia, and Turkey.<sup>68</sup>
- The statute pertaining to the TD rule adjustment does not give Commerce unlimited discretion to select substitute values or adjustments to the reported data. Market value necessarily pertains to the market under consideration, in this case Indonesia.<sup>69</sup>
- Zinus provided all the data that Commerce required and has traditionally used in its arm's-length analysis. Together, with the purchases of inputs from unaffiliated suppliers, these data confirm that Zinus' purchases of inputs from affiliated Chinese suppliers are at market values.<sup>70</sup>

#### *Petitioner's Case Brief*<sup>71</sup>

- Commerce should modify the TD rule adjustment to exclude Indonesian import GTA data from its market price average to avoid distortive and inaccurate results in the final determination.<sup>72</sup>

---

<sup>66</sup> See Zinus Final Determination Calculation Memorandum.

<sup>67</sup> See Zinus' Case Brief at 24-30.

<sup>68</sup> *Id.* at 24.

<sup>69</sup> *Id.* at 24-25.

<sup>70</sup> *Id.* at 27-28.

<sup>71</sup> See Petitioners' Case Brief at 19-23.

<sup>72</sup> *Id.* at 19.

- Commerce should not use the Indonesia GTA import data because record evidence shows the Indonesia data may be distorted and inaccurate due to circularity problems and acknowledged misclassifications of HTS codes on certain inputs<sup>73</sup>

*Zinus' Rebuttal Brief*<sup>74</sup>

- The submitted Indonesian GTA import data are not distorted because the data already exclude imports from China based on Commerce's instructions, and there is no evidence to suggest that the imports from Zinus' Chinese affiliates have not been classified as Chinese.<sup>75</sup>
- There is no supportive evidence that purchases from Zinus' Chinese affiliates may somehow still be included in Indonesian GTA data even though imports from China are excluded from the Indonesian GTA data. This argument is not based on any evidence and it can apply to any of the other countries' (*i.e.*, Brazil, Malaysia, Mexico, Romania, Russia, and Turkey) GTA import data as well.<sup>76</sup>
- When a market price is not available, Commerce should use the affiliated suppliers' cost of production (COP)<sup>77</sup> as a market price.
- Zinus provided and explained more appropriate HTS codes for determining the market value of the input in the section D supplemental questionnaire response.<sup>78</sup>

*Petitioner's Rebuttal Brief*<sup>79</sup>

- Commerce should use only the Brazil, Malaysia, Mexico, Romania, Russia, and Turkey average GTA import data when establishing an Indonesia market price because they are reasonable sources for market value.<sup>80</sup>
- Zinus' assertions as to the use of its Chinese affiliates' COP is not reasonable, as these costs were incurred in an NME, where Commerce has long recognized that costs and prices are inherently suspect.<sup>81</sup>

**Commerce's Position:**

Background:

Zinus obtained ten types of minor inputs from NME-based affiliated suppliers. In the *Preliminary Determination*,<sup>82</sup> we analyzed these transactions in accordance with the TD rule at section 773(f)(2) of the Act:

---

<sup>73</sup> *Id.* at 20-22.

<sup>74</sup> *See* Zinus' Rebuttal Brief at 20-26.

<sup>75</sup> *Id.* at 21.

<sup>76</sup> *Id.* at 22-23.

<sup>77</sup> *Id.* at 27-28.

<sup>78</sup> *Id.* at 24-26; *see also* Zinus DSQR at SD-13 and 22 and Exhibit SD-8 and SD-9b.

<sup>79</sup> *See* Petitioners' Rebuttal Brief at 33-39.

<sup>80</sup> *Id.* at 33-35.

<sup>81</sup> *Id.* at 35.

<sup>82</sup> *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – PT Zinus Global Indonesia," dated October 27, 2020 (Preliminary Cost Memorandum).



*773(f)(2) TRANSACTIONS DISREGARDED.—A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.*

The record evidence shows that Zinus did not purchase many of these material inputs from unaffiliated suppliers.<sup>83</sup> Thus, Commerce was without a market price against which to test the affiliated party purchases for many items. When market prices are not available to test affiliated party transactions, Commerce will often solicit the affiliated supplier's COP for use as a surrogate for market price. However, because these transactions were between Zinus and NME-based affiliated suppliers, Commerce was unable to use the NME-based affiliated suppliers' COP for use as a substitute for market price. Commerce decided to not apply an NME factors of production methodology analysis to the respondents' minor inputs obtained from NME-based affiliated suppliers, as section 773(c) of the Act specifically addresses the issue of determining a normal value (NV) for NME-based respondents rather than a COP for NME suppliers of market economy-based respondents, and for the practical reason that a complex NME analysis of the many NME-sourced affiliated inputs would not be administrable given the significant resources required and strict deadlines of the case.

Therefore, Commerce sought to obtain surrogate price information that would allow it to fulfill the requirements of the statute under section 773(f)(2) of the Act. It was determined that the most reasonably available information to the parties for this purpose would be GTA import data, as it is readily available and reasonably specific to the voluminous number of affiliated NME inputs. Further, to narrow the request, and given that the affiliated suppliers are from an NME country, we determined to solicit GTA import data from countries economically similar to the affiliated suppliers' NME country. Thus, Commerce requested and obtained from the parties GTA import data for the countries that are currently used by Commerce as potential surrogate sources for the particular NME country (*i.e.*, Brazil, Malaysia, Mexico, Romania, Russia, and Turkey).<sup>84</sup> In addition, Commerce requested, and Zinus placed on the record, GTA import data for Indonesia.<sup>85</sup>

At the *Preliminary Determination*,<sup>86</sup> Commerce made the following decisions. Where available, we compared the price paid to Zinus' affiliated supplier (*i.e.*, the transfer price) to prices paid by Zinus for the same inputs to unaffiliated suppliers (*i.e.*, market prices).<sup>87</sup> For affiliated inputs where Zinus did not purchase the same input from an unaffiliated supplier, we determined a

---

<sup>83</sup> See Zinus DSQR at D-6 to D-13 and Exhibits SD-8 and SD-9.

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

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

<sup>86</sup> See Preliminary Cost Memorandum.

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

market price using the average of the GTA import data for seven countries (*i.e.*, Indonesia, Brazil, Malaysia, Mexico, Romania, Russia, and Turkey).<sup>88</sup>

#### Market Price for Inputs Under the TD Rule:

We disagree with Zinus that Commerce should not use GTA import data as a means to determine surrogate market prices in applying the TD rule.<sup>89</sup> The statute directs Commerce to test the arm's-length nature of affiliated transactions to determine whether they reflect a market value and does not specify a particular methodology for determining market values. Commerce's preference is to determine a market value based on the respondent's own purchases of the input from unaffiliated suppliers. When no such purchases are available, Commerce looks to the affiliated supplier's sales of the input to unaffiliated parties, and, lacking that, to any reasonable source for market value, for example the COP of the affiliated supplier.<sup>90</sup> In the instant case, because for raw material inputs where there are no comparable transactions with unaffiliated suppliers, the only information available that can reasonably be used to test the arms-length nature of the transfer prices from affiliates is the publicly available GTA data. Accordingly, we consider it reasonable in this case to rely on the GTA data on the record to fill the gaps where market prices are not available. In varying combinations for various inputs and raw material types, we have on the record GTA data from the following countries: Indonesia, Romania, Russia, Malaysia, Turkey, Mexico, and Brazil.<sup>91</sup> Commerce requested these data in the section D supplemental questionnaire for use as a possible market price source where input market prices were not available.<sup>92</sup>

In using the GTA data as a best available information source for market values, we must decide which country's (or countries') GTA data to use. We agree with Zinus that the statute directs Commerce to look to the market under consideration when testing the affiliated supplier transfer price against a market price. As noted above, section 773(f)(2)– Transactions Disregarded Rule, states that, “A transaction ... between affiliated persons may be disregarded if ... the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration.” Thus, the statute indicates that the item being tested should reflect a market price in the country under consideration, which is Indonesia in the instant case. Accordingly, the Indonesian GTA data best reflect market prices for the market under consideration in those instances where market prices directly from an unaffiliated supplier are not available.

We agree with the petitioners that because we are testing transactions from the respondent's affiliated Chinese suppliers whose exports to Zinus are necessarily included in the Indonesian GTA data, there is good cause to exclude the China export data included in the Indonesian GTA

---

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 24.

<sup>90</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at Comment 17; and, *Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813 (March 24, 2004), and accompanying IDM at Comment 7.

<sup>91</sup> See Zinus DSQR at D-6 to D-13 and Exhibits SD-8 and SD-9.

<sup>92</sup> *Id.*

data to avoid a clear circularity of using the same affiliated transactions to test the affiliated transfer prices. However, the Indonesian GTA import data provided by Zinus already exclude imports from China based on Commerce's instructions.<sup>93</sup> In addition, contrary to the petitioners' assertion, there is no evidence to suggest that the imports from Zinus' Chinese affiliates have been classified as being from non-Chinese sources and thus are somehow still included in the Indonesian GTA data, even though imports from China are excluded from the Indonesian GTA data.<sup>94</sup> As to the petitioners' allegation that Zinus misclassified a certain HTS code related to certain inputs, we disagree. Zinus simply provided and explained in the section D supplemental questionnaire response,<sup>95</sup> that it may be more appropriate to use more specific HTS categories and codes for determining the market value of certain inputs. This does not call into question the accuracy or reliability of the Indonesian GTA data as a whole. Therefore, for the final determination,<sup>96</sup> we first compared the affiliated party transfer prices to prices paid to unaffiliated parties for the same input. For affiliated party inputs where prices paid to an unaffiliated party are not available, we determined the market price using Indonesia GTA data.

#### **Comment 4: Financial Statements Used to Value CV Profit and Selling Expenses**

##### *Zinus' Case Brief*<sup>97</sup>

- Commerce should reject Emirates Sleep Systems Private Limited (Emirates)'s financial statements because Emirates' financial statements do not meet the following criteria: Emirates is not an Indonesian company, its financial statements do not reflect production and sales in the country under investigation, its business operation is not similar to Zinus' business operation, and its financial statements are contemporaneous with the POI for only three months.<sup>98</sup>
- Emirates does not have similar business operations because its operations rely heavily (in terms of revenue and input sourcing) on its overseas holding company. Alternatively, Commerce should classify the "marketing fee" transfer payment reported on the financial statements as non-operating revenue and exclude it from the profit calculation.<sup>99</sup>
- Commerce should use the financial statements of PT Graha Seribusatu Jaya (Graha) or PT Ecos Jaya Indonesia (Ecos) to value CV profit and selling expenses in the final determination because they are producers of identical or comparable merchandise in the home market.<sup>100</sup>
- Graha is a voluntary respondent in Commerce's investigation and it produces identical merchandise in the home market.<sup>101</sup>
- Although Ecos' financial statements have a qualified opinion from its auditor, that opinion relates to the treatment of estimated future liabilities pertaining to post-employment benefit obligations of the company. The basis of the qualification on the

---

<sup>93</sup> See Zinus' Rebuttal Brief at 20-26; see also Supp DQR at D-6 to D-13 and Exhibits SD-8 and SD-9.

<sup>94</sup> See Zinus' Case Brief at 22-23.

<sup>95</sup> See Zinus DSQR at SD-13 and 22 and Exhibit SD-8 and SD-9b; see also Petitioners' Case Brief at 20-22.

<sup>96</sup> See Zinus Final Cost Calculation Memorandum.

<sup>97</sup> See Zinus' Case Brief at 30-43.

<sup>98</sup> *Id.* at 33-38.

<sup>99</sup> *Id.* at 37-38.

<sup>100</sup> *Id.* at 38-43.

<sup>101</sup> *Id.* at 38-39.

auditor's opinion at issue here has essentially no bearing on the calculation of period costs, revenues, expenses, cash flows, profits or selling expenses.<sup>102</sup>

- Alternatively, Commerce could also rely on the financial statements of PT Innocycle, PT Chitose International, and PT Boston Furniture Industries because they are Indonesian companies and manufacture products in the same general category of the merchandise under consideration.<sup>103</sup>
- Commerce erred by using Emirates' CV profit rate as the profit cap consistent with section 773(e)(2)(B)(iii) of the Act because the record ostensibly contains profit information on sales in Indonesia of products in the same general category of merchandise as mattresses, in particular the financial statements of Ecos.<sup>104</sup>
- If Commerce is considering third country sources, Commerce should also include the financial statements of Malaysian producer Luxury Sleep Products and Serbian producer Slarafija Trade to establish a profit cap.<sup>105</sup>

#### *Petitioner's Rebuttal Brief*<sup>106</sup>

- Commerce should continue to rely on the financial statements of Emirates to value CV profit and selling expenses in the final determination. Commerce will use third country financial statements if they are the best information available.<sup>107</sup>
- Emirates is a producer of identical merchandise and has similar business operations as Zinus. In addition, Emirates' financial statements are contemporaneous with three months of the POI.<sup>108</sup>
- Alternatively, if Commerce determines that Graha can serve as a basis for CV profit and selling expense rates, it should rely on Graha's submitted home market sales and cost data made in the ordinary course of trade, not its financial statements.<sup>109</sup>
- Commerce's policy is to reject financial statements that contain a qualified auditor's opinion (*i.e.*, Ecos' financial statements).<sup>110</sup>
- Commerce should continue to rely on Emirates' financial statements to establish a profit cap in the final determination.<sup>111</sup>

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

For the final determination,<sup>112</sup> we have continued to use the Emirates financial statement, under section 773(e)(2)(B)(iii) of the Act, as a surrogate source for the CV profit ratio and selling expenses for Zinus. As explained below, after considering the record evidence and all the arguments in the parties' case and rebuttal briefs, we continue to find that Emirates' CV profit and selling expenses constitute the best source for CV profit and selling expense data on the record of this proceeding.

---

<sup>102</sup> *Id.* at 39-40.

<sup>103</sup> *Id.* at 40-41.

<sup>104</sup> *Id.* at 41-43.

<sup>105</sup> *Id.* at 43.

<sup>106</sup> *See* Petitioners' Rebuttal Brief at 39-55.

<sup>107</sup> *Id.* at 39-42.

<sup>108</sup> *Id.* at 42-48.

<sup>109</sup> *Id.* at 49-50.

<sup>110</sup> *Id.* at 50-51.

<sup>111</sup> *Id.* at 53-55.

<sup>112</sup> *See* Zinus Final Cost Calculation Memorandum.

Zinus did not have a viable home or third-country market during the POI. Thus, because Zinus did not have home or third-country market sales to serve as a basis for NV, NV must be based on CV in accordance with section 773(a)(4) of the Act. Likewise, absent a viable home or third-country market, we are unable to calculate CV profit and selling expenses using the preferred method under section 773(e)(2)(A) of the Act (*i.e.*, based on the respondents own home market or third-country sales made in the ordinary course of trade). In situations where we cannot calculate CV profit under section 773(e)(2)(A) of the Act, section 773(e)(2)(B) of the Act sets forth three alternatives:

(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review . . . for profits, in connection with the production and sale, for consumption 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 that are subject to the investigation or review (other than the exporter or producer described in clause (i)) . . . for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country; or

(iii) the amounts incurred and realized . . . for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) 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.<sup>113</sup> Moreover, as noted in the SAA, “the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data.”<sup>114</sup> In this case options (i) and (ii) are not possible. Zinus does not have sales of the general category of merchandise in the home market and there are no other respondents being investigated in this proceeding. Thus, the only option available to Commerce is (iii), any other reasonable method.

Interested parties submitted financial statements for eight companies as possible options for CV profit under section 773(e)(2)(B)(iii) of the Act. Interested parties have argued for the following possible sources from which to calculate CV profit and selling expenses for the final determination: (1) financial statements of Graha, a voluntary respondent mattress producer;<sup>115</sup>

---

<sup>113</sup> See 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.”).

<sup>114</sup> *Id.*

<sup>115</sup> See Zinus’ Letter, “Mattresses from Indonesia: Constructed Value Profit and Selling Expense Information and Comments,” dated August 18, 2020 (Zinus’ CV Profit), at Exhibit 1 and Petitioners’ Letter, “Mattresses from Indonesia: Mattress Petitioners’ Submission Concerning CV Profit and Selling Expenses,” dated August 17, 2020 (Petitioners’ CV Profit), at Attachment 1; see also Zinus’ Case Brief at 38-39 (relying on Graha’s financial

(2) financial statements of Ecos, an Indonesian producer of mattresses and other sleep products;<sup>116</sup> (3) financial statements of Innocycle, an Indonesian producer of non-woven and staple fiber, and materials recycling;<sup>117</sup> (4) financial statements of Chitose, an Indonesian producer of all kinds of furniture for homes, schools, restaurants, and hospitals;<sup>118</sup> (5) financial statements of Boston, an Indonesian producer of wood furniture and special construction or repairs;<sup>119</sup> (6) financial statements of Luxury, a Malaysian producer of bedroom furniture including mattresses;<sup>120</sup> (7) financial statements of Slarafija, a Serbian producer of mattresses;<sup>121</sup> and (8) financial statements of Emirates, an Indian producer of mattresses.<sup>122</sup>

In evaluating each of the available alternatives under section 773(e)(2)(B)(iii) of the Act, we followed the analysis established in *Pure Magnesium from Israel*.<sup>123</sup> In *Pure Magnesium from Israel*, Commerce set out three criteria for choosing among surrogate data under section 773(e)(2)(B)(iii) of the Act: 1) the similarity of the potential surrogate companies' business operations and products to the respondent's business operations and products; 2) the extent to which the financial data of the surrogate company reflect sales in the home market and do not reflect sales to the United States; and, 3) the contemporaneity of the data to the POI. In *CTVs from Malaysia*, Commerce added a fourth criterion which is the extent to which the customer base of the surrogate company and that of the respondent are similar (*e.g.*, original equipment manufacturers versus retailers).<sup>124</sup> These four criteria have been followed in subsequent cases to assess the appropriateness of using various financial statements on the record of a given case to determine CV profit and selling expenses under section 773(e)(2)(B)(iii) of the Act.<sup>125</sup>

Based on the above criteria and Commerce's practice, we reviewed each of the submitted financial statements to ensure that they: (1) reflect a net profit; 2) are complete (*i.e.*, all of the financial statements are included with the auditor's report showing an unqualified opinion and all accompanying footnotes were provided); and 3) are fully translated. We disregarded the following financial statements. For Slarafija, we do not have the complete financial statements, and the financial statements and auditor's opinion are not fully translated.<sup>126</sup> Ecos's financial statement has a qualified opinion.<sup>127</sup> Although Zinus argues that the qualified opinion does not impact the calculation of period costs, revenues, expenses, cash flows, profits or selling

---

statements) and Petitioners' Rebuttal Brief at 49-50 (relying on Graha's submitted home market sales and cost data made in the ordinary course of trade).

<sup>116</sup> See Zinus' CV Profit at Exhibit 2.

<sup>117</sup> *Id.* at Exhibit 3.

<sup>118</sup> *Id.* at Exhibit 4.

<sup>119</sup> *Id.* at Exhibit 5.

<sup>120</sup> *Id.* at Exhibit 6.

<sup>121</sup> *Id.* at Exhibit 7.

<sup>122</sup> See Petitioners' CV Profit at Attachment 2.

<sup>123</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (September 27, 2001) (*Pure Magnesium from Israel*), and accompanying IDM at Comment 8.

<sup>124</sup> See *Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004), and accompanying IDM at Comment 26 (CTVs from Malaysia).

<sup>125</sup> See, *e.g.*, *Certain Oil country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstance*, 79 FR 41983 (July 18, 2018) (*OTCG from Korea*), and accompanying IDM at Comment 1.

<sup>126</sup> See Zinus' CV Profit at Exhibit 7.

<sup>127</sup> *Id.* at Exhibit 2.

expenses,<sup>128</sup> we disagree. The qualified opinion relates to estimated future liabilities pertaining to post-employment benefit obligations of the company. This qualification could very well impact the current costs recognized by the company, either increase or decrease them, had the company followed the requirements of the GAAP of Indonesia. As such, there is no evidence to confirm that the qualified opinion does not impact the calculation of period costs, revenues, expenses, cash flows, profits or selling expenses. Luxury and Slarafija's 2018 financial statements are not contemporaneous with the POI.<sup>129</sup> For Chitos, an Indonesian producer of all kinds of furniture for homes, schools, restaurants, and hospitals, and Boston, an Indonesian producer of wood furniture and special construction or repairs, we note that they both produce and sell products<sup>130</sup> that are not comparable to mattresses. For Graha, we disagree with both parties' suggestion that we run a margin program on the home market sales and cost information this company submitted solely to obtain a profit.<sup>131</sup> We disagree that it is appropriate to rely on the voluntary respondent's submitted home market sales and cost information, because Commerce chose not to investigate this company and the information it submitted has not been reviewed or analyzed by Commerce. Regarding Graha's financial statements, Graha's 2018 financial statements are not contemporaneous with the POI and Graha's 2019 financial statements are not audited.<sup>132</sup> As a result, we are left with two possible alternatives, the financial statements of Innocycle and Emirates. Both of these financial statements: 1) reflect a net profit; 2) are complete (*i.e.*, all of the financial statements are included with the auditor's report showing an unqualified opinion and all accompanying footnotes were provided); and 3) are fully translated. Furthermore, neither financial statement reflects sales predominantly to the United States.<sup>133</sup>

The specific language of both the preferred and alternative methods appear to show a preference that the profit and selling expenses reflect: 1) production and sales in the foreign country; and 2) the foreign like product, *i.e.*, the merchandise under consideration. However, when selecting a profit rate from available record evidence, we may not be able to find a source that reflects both factors. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Emirates is an Indian-based manufacturing company that primarily manufactures all types and kinds of mattresses, bases, and other sleep related products and systems. Even though Innocycle is an Indonesian producer of mattresses, only six percent of its revenue is from mattresses, so it is clearly not predominantly a mattress producer as Emirates is.<sup>134</sup> Rather, Innocycle is predominantly a producer of non-woven and staple fiber, and materials recycling.<sup>135</sup> Therefore, in weighing the available information and determining which source of information to use under alternative (iii), we must consider both of these important criteria (both the market and the product produced). In the instant case, Emirates is an out-of-country producer (*i.e.*, Indian producer), however it predominantly produces and sells the

---

<sup>128</sup> See Zinus' Case Brief at 39-40.

<sup>129</sup> See Zinus' CV Profit at Exhibit 6 and 7.

<sup>130</sup> *Id.* at Exhibit 4 and 5.

<sup>131</sup> See Zinus' Case Brief at 38-43; see also Petitioners' Rebuttal Brief at 49-50.

<sup>132</sup> See Zinus' CV Profit at Exhibit 1; see also Petitioners' CV Profit at Attachment 1.

<sup>133</sup> See Petitioners' CV Profit at Attachment 2; see also Zinus' CV Profit at Exhibit 3.

<sup>134</sup> See Zinus' CV Profit at Exhibit 3.

<sup>135</sup> *Id.*

comparable merchandise (*i.e.*, mattresses).<sup>136</sup> Innocycle, is an in-country producer, however, it predominantly produces non-comparable merchandise.

Zinus argues that Emirates' financial statements are only contemporaneous with the first three months of the POI.<sup>137</sup> The petitioner disagrees that Emirates' financial statements are not contemporaneous to the POI.<sup>138</sup> Because our periods of investigation and review do not normally coincide with the calendar year or other fiscal years typically adopted by companies, Commerce regularly accepts as contemporaneous a statement that overlaps the POI by some amount. Furthermore, Commerce has been reluctant to exclude one financial statement over another for the sole reason that one of them covers more months of the POI. Therefore, while Commerce prefers to use contemporaneous financial statements for CV profit, Commerce does not require a financial statement's reporting period to be identical to the POI to be considered contemporaneous.<sup>139</sup> We agree with the petitioners that in selecting surrogate financial statements for CV profit, as long as the financial statement period overlaps the POI, we consider it contemporaneous and, if the information is useful, we consider it as potential source for our selection.

In addition, Zinus argue that Emirates generates a significant portion of its revenues through sales of services which are intercompany charges for providing advertising, marketing, and promotional services related to retail operations.<sup>140</sup> However, we disagree with the assertion that these activities would disqualify Emirates from consideration. The Emirates' financial statements show that 76.71 percent of the company's activities relate to manufacturing of mattresses, while only 23.29 percent relate to marketing.<sup>141</sup> Further, in addition to explaining that the "company basically {is} into the manufacturing of all types and kinds of mattresses and other sleep related products and systems", at Note 1, the Emirates' financial statements state "The company is also into trading both wholesale and retail of such manufactured products" and "The company provides advertising, marketing, and promotion services to its holding company," Dubai Furniture Manufacturing LLC.<sup>142</sup> We believe that the marketing, promotion, and trading activities related to mattresses and sleep systems is a completely appropriate activity for a company engaged in the manufacturing and sale of mattresses. Additionally, there is no record evidence, nor has it been shown by the respondents, that the expenses related to these revenues are missing from the calculation of profit on the Emirates financial statements.<sup>143</sup> Finally, we note that when calculating selling expenses for CV, we did not include the retail, marketing and advertising service or commission costs, but rather only included transportation expenses as a selling expense.<sup>144</sup>

---

<sup>136</sup> See Petitioners' CV Profit at Attachment 2.

<sup>137</sup> See Zinus' Case Brief at 33-38.

<sup>138</sup> See Petitioners' Rebuttal Brief at 42-48.

<sup>139</sup> See, *e.g.*, *Pure Magnesium from Israel* IDM at Comment 8.

<sup>140</sup> See Zinus' Case Brief at 37-38.

<sup>141</sup> See Petitioners' CV Profit at Attachment 2.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*



Zinus also argues that the financial statements of Emirates are incomplete because they are missing some annexures that are specifically referenced in the financial statement notes.<sup>145</sup> We disagree that the Emirates' financial statements are incomplete because they include the full audit report, each of the financial statements, and all of the accompanying footnotes.<sup>146</sup> None of the annexures refer to information that would bring into question any of the amounts on the income statement which affect the profit or selling expenses.<sup>147</sup> Each of the annexure references are in footnotes that already detail the affected balance sheet items.<sup>148</sup>

In summary, Commerce is faced with choosing among two alternatives, Innocycle and Emirates, for calculating CV profit and selling expenses in this investigation. Emirates is a mattress producer that has business operations, products, and a customer base that are very similar to that of the respondent, an Indonesian mattress producer.<sup>149</sup> Innocycle, on the other hand, as a producer of non-woven and staple fiber, and materials recycling products, which are not comparable merchandise, is less representative of an Indonesian mattress producer' business operations, products, and customer base.<sup>150</sup> Therefore, after considering the record evidence and the arguments raised in the parties' case and rebuttal briefs, we have continued to use Emirates' CV profit and selling expense ratios for the final determination.

Further, we are unable to calculate the amount realized by exporters or producers in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category of products as the subject merchandise (*i.e.*, the "profit cap"), in accordance with section 773(e)(2)(B)(iii) of the Act, because the record does not contain any information for making such a calculation. However, the SAA makes clear that Commerce might have to apply alternative (iii) on the basis of facts available.<sup>151</sup> We disagree with Zinus that any of its submitted financial statements meet the specific criteria in the law for the profit cap.<sup>152</sup> When establishing a profit cap, the law specifies that we use the profit on sales in the foreign country for the "merchandise in the same general category of products as the subject merchandise." None of the suggested financial statements reflect profit only on sales of the general category of products in the foreign country under investigation.<sup>153</sup> As Emirates was found to be the best available option for calculating CV profit, we likewise consider it the best option for determining the profit cap as facts available. Therefore, we continue to find that Emirates' profit information serves as a reasonable profit cap for the final determination.<sup>154</sup>

## **Comment 5: Startup Adjustment**

---

<sup>145</sup> See Zinus' Case Brief at 36 (footnote 51).

<sup>146</sup> See Petitioners' CV Profit at Attachment 2.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> See Petitioners' CV Profit at Attachment 2;

<sup>150</sup> See Zinus' CV Profit at Exhibit 3.

<sup>151</sup> See SAA at 840.

<sup>152</sup> See Zinus' Case Brief at 41-43.

<sup>153</sup> Although Graha's financial statements may reflect the production and sale of merchandise in the same general category of products as the subject merchandise, its financial statements are 1) not contemporaneous within the POI (2018 financial statements); not audited (2019 financial statements); and 3) as voluntary respondent, Graha's sales may be made predominantly to the United States.

<sup>154</sup> See Zinus Final Cost Calculation Memorandum.

*Zinus' Case Brief*<sup>155</sup>

- Zinus' startup cost adjustment is reasonable and meets the criteria of a startup adjustment under the statute.<sup>156</sup>
- Zinus seeks to exclude from its general and administrative (G&A) ratio calculation the one-time incurred expenses necessary to bring its new facility online and to test its new foam production machine. Zinus recognized the related input material purchase costs as research and development (R&D) material costs and maintains that if these costs are not excluded altogether, they should be allocated over an eight-year period.<sup>157</sup>

*Petitioners' Rebuttal Brief*<sup>158</sup>

- Commerce properly rejected the R&D-based startup adjustment because, although Zinus asserts its entitlement to a startup adjustment, it has failed to demonstrate its entitlement to such an adjustment.<sup>159</sup>

**Commerce's Position:**

We agree with the petitioners that the proposed startup adjustment reported by Zinus for its R&D material costs should be rejected. Zinus failed to meet at least one of the two criteria in the two-pronged test required under section 773(f)(1)(c)(ii) of the Act.<sup>160</sup> Section 773(f)(1)(c)(ii) of the Act permits adjustments for a startup operation if: 1) a producer is using new production facilities or producing a new product that requires substantial investment; and 2) production levels are limited by technical factors associated with the initial phase of commercial production.<sup>161</sup> Although Zinus may have satisfied the first criterion because its facility was new, it failed to meet the second criterion. Specifically, it failed to: 1) demonstrate that production levels were limited; 2) explain how the purchase and testing of new equipment delayed production; 3) identify technical factors encountered; and 4) explain how its R&D expenses constitute technical difficulties.<sup>162</sup> Accordingly, the claimed startup adjustment is not supported by record evidence. The full amount of the R&D expense was recognized in the current period in accordance with the respondent's normal books and records. As it is not unreasonable for a company to recognize R&D costs incurred in the current year in full, we have continued to include the full amount of the related R&D expenses in the G&A rate calculation for the final determination.<sup>163</sup>

**Comment 6: Region in Cohen's *d* Test**

*Zinus' Case Brief*.<sup>164</sup>

---

<sup>155</sup> See Zinus' Case Brief at 43-45.

<sup>156</sup> *Id.* at 44.

<sup>157</sup> *Id.* at 45.

<sup>158</sup> See Petitioners' Rebuttal Brief at 56-58.

<sup>159</sup> *Id.* at 56-58.

<sup>160</sup> *Id.*

<sup>161</sup> See Section 773(f)(1)(c)(ii) of the Act.

<sup>162</sup> See Zinus DQR at D-19 to D-21 and D-25, and Exhibits D-11 and D-13; see also Zinus DSQR at D-26 to D-27 and Exhibit SD-25.

<sup>163</sup> See Zinus Final Cost Calculation Memorandum.

<sup>164</sup> See Zinus' Case Brief at 45-57.

- In the *Preliminary Determination*, Commerce relied on the ZIP code reported in the field DESTU to determine the existence of a pattern of prices that differ significantly among regions.
- In response to Commerce’s question, Zinus reported in field DEST1U the ZIP code associated with the U.S. port of entry, which is “closest to the final destination that is managed by Zinus.”
- Zinus originally reported the U.S. ZIP code in the DESTU field. In the Zinus CQR, Zinus stated, “For EP sales and back-to-back CEP sales, Zinus has reported the ZIP code of the customers to whom Zinus US issued its invoices as Zinus has no other information on the final destination.”<sup>165</sup>
- In response to questions raised in Commerce’s supplemental questionnaire, Zinus created a new field, DEST1U, to record the U.S. port where the mattresses from Indonesia entered in its ERP system for back-to-back CEP sales. Zinus explained, “Even if this is not a final destination (such as a customer’s warehouse), Zinus believes it is the most appropriate information as this address is closest to the final destination that is managed by Zinus.”<sup>166</sup>
- The DEST1U ZIP code clearly offers an improved correlation to the U.S. region to which the merchandise was actually sold and shipped. For the final determination, Commerce therefore should rely on the ZIP code information reported in the field DEST1U, rather than DESTU.

*Petitioners’ Rebuttal Brief*.<sup>167</sup>

- Commerce should reject Zinus’ argument that Commerce should revise its differential pricing analysis to rely on DEST1U rather than DESTU to define region in the Cohen’s *d* test.
- Commerce requests multiple destinations, both ZIP codes and states, and has the discretion to choose from the available destinations.
- Zinus does not know the final destination of the subject merchandise for its EP and CEP back-to-back sales.<sup>168</sup> Therefore, neither DESTU nor DEST1U provide the final destination. In fact, the destination in DEST1U is representative of Zinus’ location, not that of the customer.
- Information on both DESTU and DEST1U was on the record prior to the *Preliminary Determination*, and Commerce chose to use DESTU to define the region for the Cohen’s *d* test. As no other information has been placed on the record, no reason exists for Commerce to revise its decision in the final determination.

**Commerce’s Position:**

We agree with the petitioners. Section 777A(d)(1)(B)(i) of the Act directs Commerce to identify whether there is a pattern of prices that differ significantly “among purchasers, regions, or periods of time.” With respect to identifying a pattern of prices, Commerce stated in the

<sup>165</sup> *Id.* at 46 (citing Zinus CQR C-53).

<sup>166</sup> *Id.* at 47 (citing Zinus’ Letter, “Mattresses from Indonesia: Zinus’ Section C Supplemental Questionnaire Response (part 1),” dated September 21, 2020 (Zinus CSQR 9-21-2020), at SC1-18).

<sup>167</sup> See Petitioners’ Rebuttal Brief at 58-59.

<sup>168</sup> *Id.* at 59 (citing Zinus CSQR 9-21-2020 at SC1-18).

*Preliminary Determination*, as part of the Cohen’s *d* test, that “{r}egions are defined using the reported destination code, *i.e.*, ZIP code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau.”<sup>169</sup> While Zinus reported additional destination information for a limited number of U.S. sales prior to the *Preliminary Determination* under DEST1U, we have determined it is appropriate to continue to use Zinus’ original destination information, which was reported on a consistent basis for the overwhelming majority of its U.S. sales quantity during the POI. Accordingly, for the final determination, we have continued to use the original destination variable DESTU, as reported by Zinus, to define region in the Cohen’s *d* test.

### **Comment 7: LOT in Cohen’s *d* Test**

#### *Zinus’ Case Brief*<sup>170</sup>

- In conducting the Cohen’s *d* test as part of the differential pricing analysis, Commerce inadvertently did not consider the LOT as reported in Zinus’ U.S. sales data.<sup>171</sup>
- Commerce must include LOT as part of the Cohen’s *d* test because it did not indicate in the *Preliminary Determination* that the two LOTs reported in the U.S. market constitute one LOT.<sup>172</sup>
- Commerce should rely on Zinus’ reporting of LOT in the field LOTU in its U.S. sales data.<sup>173</sup>

#### *Petitioners’ Rebuttal Brief*<sup>174</sup>

- Commerce correctly conducted its differential pricing analysis in the *Preliminary Determination*, as LOT should not be conflated with sales type and LOT is also not a requirement in every situation.<sup>175</sup>
- LOT is examined in conjunction with comparing US sale prices to NVs, whereas the Cohen’s *d* test compares prices within just the U.S. market.<sup>176</sup>
- Given there is no viable home market in this investigation, a LOT analysis is irrelevant.<sup>177</sup>
- There is a one-to-one correlation between sale type and LOT in Zinus’ reported U.S. sales data.
- Because Commerce “is correctly treating sales type (SALEU), and sales type and level of trade have the same value, and level of trade is not required or needed in this case, Zinus’ suggestion would erroneously add distortion into the {dumping analysis}.”<sup>178</sup>

### **Commerce’s Position:**

---

<sup>169</sup> See *Preliminary Determination* PDM at 6.

<sup>170</sup> See Zinus’ Case Brief at 48-49.

<sup>171</sup> *Id.* at 48.

<sup>172</sup> *Id.* at 48-49.

<sup>173</sup> *Id.* at 49.

<sup>174</sup> See Petitioners’ Rebuttal Brief at 59-60.

<sup>175</sup> *Id.* at 59.

<sup>176</sup> *Id.* (citing section 773(a)(7) of the Act).

<sup>177</sup> *Id.* at 59.

<sup>178</sup> *Id.* at 60.

We agree with Zinus that Commerce erroneously omitted LOT from the Cohen's *d* test in the *Preliminary Determination*. Accordingly, we have included LOT, in general, as part of our dumping analysis for the final determination. Further, we find that Zinus' U.S. sales were all made at a single LOT for this final determination.

Section 777A(d)(1)(B)(i) of the Act directs Commerce to identify whether there is a pattern of prices that differ significantly "for comparable merchandise." In describing the differential pricing analysis, including the Cohen's *d* test in the *Preliminary Determination*, we defined comparable merchandise as follows:

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.<sup>179</sup>

Section 773(a) of the Act states that "in order to achieve a fair comparison with the export price or constructed export price, normal value shall be determined as" the comparison market price "at the same level of trade as the export price or constructed export price."<sup>180</sup> When NV is alternatively based on CV, the selling, general and administrative (SG&A) expenses, and profit are generally determined by LOT.<sup>181</sup> Accordingly, LOT is one of the characteristics which define "comparable merchandise" in the Cohen's *d* test and which define the U.S. sales grouped into each test and comparison group to determine whether there exists a pattern of prices that differ significantly.

We disagree with petitioners that "without a home market, the LOT serves no purpose"<sup>182</sup> and that "level of trade is intended to address differences between markets, not within markets."<sup>183</sup> Beyond the obvious that LOT applies to third-country market sales used as a basis for NV,<sup>184</sup> LOT is also instrumental to determining the appropriate SG&A expenses and profit when calculating CV. Additionally, beyond the comparison of U.S. price with NV, LOT is considered relevant as part of the arm's-length test, where prices to an affiliated comparison market customer are compared with prices to all unaffiliated customers.<sup>185</sup> The arm's-length test groups prices by product, LOT, and other characteristics as might be relevant, such as the designation of the product as prime/non-prime or the manufacturer of the product. Accordingly, the petitioners' claim that LOT is irrelevant for the dumping analysis for Zinus in this investigation is meritless.

We additionally disagree with the petitioners that LOT is irrelevant because there is a direct correlation between LOT and sale type (*i.e.*, whether a U.S. sale price is calculated based on EP or CEP). Whether U.S. sale price is calculated based on EP or CEP is determined by the statute

---

<sup>179</sup> See *Preliminary Determination* PDM at 6.

<sup>180</sup> See section 773(a)(1)(B)(i) of the Act.

<sup>181</sup> See *Preliminary Determination* PDM at 11 ("When NV is based on CV, the NV level of trade (LOT) is that of these sales from which we derive selling expenses and profit."); see also section 773(e)(2)(A) of the Act.

<sup>182</sup> See Petitioners' Rebuttal Brief at 59.

<sup>183</sup> *Id.*

<sup>184</sup> See sections 773(a)(1)(B)(ii)(I) and 773(a)(1)(C)(i) of the Act.

<sup>185</sup> See Macro Program at HM3\_ARMSLENGTH (included in Zinus Final Determination Calculation Memorandum at Attachment 1).

in sections 772(a) and 772(b) of the Act, respectively, which examine the specifics of the sale, such as the time of the U.S. sale relative to the importation of the merchandise or the actual physical location where the U.S. sale was consummated. Separately, LOT addresses the price comparability where 19 CFR 351.412(c)(2) provides that different LOTs represent “different marketing stages” which can be represented by different selling activities. Commerce rejects the petitioners’ assertion that there is a correlation between sale type and LOT for Zinus and that LOT “serves no purpose.” In fact, these two characteristics of U.S. sales are distinct and serve different purposes.

For the *Preliminary Determination*, we inadvertently did not perform a LOT analysis because this necessity was not realized as a result of calculating NV based entirely on CV where the SG&A expenses and profit ratios are based on financial statements with no information concerning LOT. Therefore, for the final determination, we have conducted an LOT analysis on Zinus’ reported U.S. sales. Based on our analysis, further discussed below, we find only one LOT in the U.S. market.

With respect to the U.S. market, Zinus reported that it made: (1) CEP sales to a U.S. affiliate (U.S. Channel 1); (2) EP sales (U.S. Channel 2); and (3) back-to-back CEP sales (U.S. Channel 2); and reported two LOTs.<sup>186</sup> Zinus also stated in the Zinus AQR that there are no meaningful differences between these two U.S. LOTs with respect to the selling activities performed on its U.S. sales outside of the United States through any of the three sales channels.<sup>187</sup> Based on Zinus’ selling functions chart and accompanying narrative in its AQR, we also find that no significant differences existed in Zinus’ performance of technical support, logistical services, and sales-related administrative activities for all U.S. sales regardless of selling channel.<sup>188</sup> Moreover, we also find these activities were performed at the same level of intensity in both channels.<sup>189</sup> Therefore, for purposes of the final determination, we determine that Zinus’ sales to the U.S. market during the POI were made at one LOT

## **Comment 8: Treatment of Intra-Company Payments**

### *Petitioners’ Case Brief*<sup>190</sup>

- Commerce should adjust U.S. prices for commissions earned by Zinus KR for selling activities on U.S. sales in accordance with applicable accounting rules.<sup>191</sup>
- Record evidence does not support Zinus’ claims that Zinus KR’s role in the sales process is minimal but rather shows that Zinus KR conducts significant selling activities on all US sales and incurs significant expenses associated with those activities; and they must be captured in the margin calculations used for the final determination.<sup>192</sup> The petitioners refer to selling activities, Zinus KR’s 2019 annual report, a shared office location chart,

---

<sup>186</sup> See Zinus’ Letter, “Mattresses from Indonesia: Zinus’ Section A Questionnaire Response,” dated June 19, 2021, at Exhibit A-7a.

<sup>187</sup> *Id.* at A-17.

<sup>188</sup> *Id.* at A-14 through A-17 and Exhibit A-7a.

<sup>189</sup> *Id.*

<sup>190</sup> See Petitioners’ Case Brief at 23-37.

<sup>191</sup> *Id.* at 23.

<sup>192</sup> *Id.* at 23-24 and 27.

Zinus KR's coordination of activities with its subsidiaries, and Zinus KR's U.S sales reporting to support its claim.<sup>193</sup>

- Zinus KR indicated that it issues sales invoices to unaffiliated customers and to Zinus US which is evidence that it was involved with some aspect of every sale of subject merchandise examined in this investigation.<sup>194</sup>
- Some portion of the Zinus KR's salary line item included in Note 31 (SG&A) to the Zinus KR Audit Report covers salaries for sales personnel handling US sales.<sup>195</sup>
- Zinus KR also directly negotiates some master sales agreements, program agreements, and rebate programs.<sup>196</sup>
- Zinus KR is a commission agent and has failed to report its commission agent expenses or sales agent status as required under applicable Korean-version International Financial Reporting Standards (K-IFRS).<sup>197</sup>
- Commerce should identify an amount for selling expenses and treat this amount as fees or commissions associated with K-IFRS for both Zinus' EP and CEP sales in the final determination.<sup>198</sup>
- Despite its claim that Zinus does not pay Zinus KR a commission or that Zinus KR is not a sales agent, it is irrelevant that this record does not contain a demand for commission payment from Zinus and a corresponding remittance to Zinus KR considering the fact that Zinus KR is acting as an agent and that the revenue earned by Zinus KR when in that capacity is a "fee or commission" per the IFRS rule.<sup>199</sup>
- This issue and commission expense were neither resolved nor accounted for in *Mattresses from China*, and these expenses should be deducted from the U.S. sales in this investigation to calculate an accurate margin regardless of what occurred in the China investigation.<sup>200</sup>

*Zinus' Rebuttal Brief*<sup>201</sup>

- At no point has Commerce requested that Zinus revise its reporting in any way and its standard reporting requirements instruct respondents to report payments to unaffiliated parties only.<sup>202</sup>
- Zinus KR reported all sales expenses associated with U.S. sales and all relevant G&A expenses (*e.g.*, salary expenses) as requested by Commerce's initial and supplemental questionnaires.<sup>203</sup>
- Contrary to the petitioners' claim suggesting otherwise, the record confirms that the role of and expenses incurred by Zinus KR are minimal.<sup>204</sup>

---

<sup>193</sup> *Id.* at 24.

<sup>194</sup> *Id.* at 24-25.

<sup>195</sup> *Id.* at 26.

<sup>196</sup> *Id.* at 24-25 and 27.

<sup>197</sup> *Id.* at 28-31.

<sup>198</sup> *Id.* at 28 and 31-34.

<sup>199</sup> *Id.* at 35-36.

<sup>200</sup> *Id.* at 36-38.

<sup>201</sup> See Zinus' Rebuttal Brief at 26-46.

<sup>202</sup> *Id.* at 27-28.

<sup>203</sup> *Id.* at 28-29.

<sup>204</sup> *Id.* at 29.

- Commerce does not normally treat price mark-ups between affiliated parties as commissions but rather as intra-company transfers which are part of the general operating expenses of the affiliated party.<sup>205</sup>
- Record evidence demonstrates that none of the Zinus companies (located in Indonesia, Korea, or the United States) charge each other commissions.<sup>206</sup>
- Under the applicable IFRS rule for reporting revenues and costs, Zinus KR determines its profit on the sale by eliminating the purchase price it paid (as recorded in its books and records) from both the cost of goods sold and sales revenue, such that the amount the petitioners are alleging represents a commission paid to Zinus KR is in fact its profit.<sup>207</sup>
- Commerce examined the same sales process in *Mattresses from China* and did not treat any affiliated party's price mark-up as a commission.<sup>208</sup>
- The petitioners' commission calculation is distortive and overstates the applicable expenses, which do not apply to EP or CEP sales.<sup>209</sup>
- If Commerce decides to treat the price mark-up as an expense, Commerce should treat any such expense as an overseas indirect selling expense, (*i.e.*, DINDIRS2U).<sup>210</sup>

### Commerce's Position:

We agree with Zinus that it is Commerce's practice to use the affiliate's actual expenses, not the affiliated party commissions, in its calculations.<sup>211</sup> Specifically, Commerce's current AD questionnaire requests a respondent to report the expenses of any affiliated selling agents instead of the commissions paid to those agents.<sup>212</sup>

In this investigation, Zinus reported, where applicable, Zinus KR's actual expenses<sup>213</sup> incurred on behalf of U.S. sales in the U.S. sales database. In addition, Zinus reported, as requested, Zinus KR's G&A expenses (*i.e.*, salary expenses) as an element of Zinus' G&A expenses.<sup>214</sup> We find that the reporting of such expenses is also consistent with respect to Zinus KR's reportedly limited role as an invoicing party in Zinus' U.S. sales process.

As for Zinus KR's mark up in the price it charges to Zinus US, Commerce's practice is not to treat such price mark ups as commissions but rather to require the affiliated party charging the price mark up to report its actual expenses associated with the sale.<sup>215</sup> As noted above, Zinus KR reported all of its relevant expenses.

---

<sup>205</sup> *Id.* at 30.

<sup>206</sup> *Id.* at 32-33.

<sup>207</sup> *Id.* at 34-36.

<sup>208</sup> *Id.* at 36-38.

<sup>209</sup> *Id.* at 38-45.

<sup>210</sup> *Id.* at 45-46.

<sup>211</sup> *See, e.g., Fresh Tomatoes from Mexico: Final Determination of Sales at the Less Than Fair Value*, 84 FR 57,401 (October 25, 2019), and accompanying IDM at Comment 17.

<sup>212</sup> *See* Commerce's AD Questionnaire issued to Zinus, dated May 14, 2020, at C-21.

<sup>213</sup> These expenses were reported as advertising expenses (ADVERTU), rebates (REBATE3U, REBATE5U), and bank charges (BANKCHARU) in the U.S. sales database.

<sup>214</sup> *See* Zinus' Sept. 23, 2020, SDQR at SD-25 and Exhibit SD-25.

<sup>215</sup> *See, e.g., Oil Country Tubular Goods from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 13962, 13968 (Comment 4) (March 23, 1999).



Finally, as Zinus KR has reported all of its relevant expenses associated with the U.S. sales under investigation, we find that no adjustment as prescribed by the petitioners or otherwise is necessary or required for the final determination.

### Comment 9: Clerical Error Corrections

#### *Petitioners' Case Brief*<sup>216</sup>

- Commerce misclassified certain selling and advertising expenses when deducting them from EP and CEP sales transactions in the preliminary determination SAS margin program.<sup>217</sup>
- Using the proposed SAS language will correct this error and also result in correctly calculating CEP profit.<sup>218</sup>
- Instead of using the higher of transfer price or market price, Commerce used exclusively the market price, whether it was higher or lower, to adjust costs in accordance with the TD rule in the *Preliminary Determination*.<sup>219</sup>

*Zinus did not comment on either clerical error allegation noted above.*

#### Commerce's Position:

In the *Preliminary Determination*, we mistakenly did not deduct certain selling expenses from the U.S. price reported for Zinus' CEP sales and did not include them in the CEP expense pool used to derive CEP profit. For the final determination, we have corrected these errors by incorporating the SAS language proposed by the petitioners into the margin program.<sup>220</sup>

In addition, we agree with the petitioners that we erred in applying the TD rule as described above and have corrected this error in the final determination. Specifically, we recalculated the TD adjustment using the higher of the transfer price or market price,<sup>221</sup> by item type.

## VI. RECOMMENDATION

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



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

<sup>216</sup> See Petitioners' Case Brief at 38-40.

<sup>217</sup> *Id.* at 38-39.

<sup>218</sup> *Id.*

<sup>219</sup> *Id.* at 40-41.

<sup>220</sup> See Zinus Final Determination Calculation Memorandum.

<sup>221</sup> See Zinus Final Cost Calculation Memorandum.

3/18/2021

X 

---

Signed by: CHRISTIAN MARSH

**Christian Marsh**  
Acting Assistant Secretary  
for Enforcement and Compliance