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Investigation
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July 19, 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: Decision Memorandum for the Final Affirmative Determination in
the Less-Than-Fair-Value Investigation of Methionine from Spain

I. SUMMARY

The Department of Commerce (Commerce) finds that methionine from Spain is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). Further, Commerce finds that critical circumstances exist for the sole mandatory respondent Adisseo España S.A. (Adisseo España), and for all other producers and exporters. The period of investigation (POI) is July 1, 2019, through June 30, 2020.

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.¹ We recommend that you approve the position described in the “Discussion of the Issues” section of this memorandum. Below are the issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether to Grant a Constructed Export Price Offset
- Comment 2: Whether Certain Sales are Outside the Normal Course of Trade
- Comment 3: Whether to Recalculate Indirect Selling Expenses (ISE)
- Comment 4: Whether to Apply Adverse Facts Available (AFA) on Certain U.S. Sales Fields

¹ See *Methionine from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination and Extension of Provisional Measures*, 86 FR 12614 (March 4, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On March 4, 2021, Commerce published in the *Federal Register* the *Preliminary Determination*.² In that notice, Commerce invited comments from interested parties. On March 9, 2021, Adisseo España submitted a timely response to Commerce's section D supplemental questionnaire.³ On March 29, 2021, Commerce issued a verification questionnaire in lieu of on-site verification⁴ to Adisseo España, to which Adisseo España timely responded.⁵ On March 15 and April 15, 2021, Adisseo España timely filed monthly critical circumstances shipment quantity and value data.⁶ The petitioner⁷ and Adisseo España timely filed case briefs on April 29, 2021.⁸ The petitioner and Adisseo España timely filed rebuttal briefs on May 10, 2021.⁹ No parties requested a hearing.

III. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Based on the review of the record and comments received from interested parties, we have revised the *Preliminary Determination* as follows:

- We revised the Indirect Selling Expenses calculation using Commerce's standard methodology. *See* Comment 3.
- We updated the program to reflect Adisseo España's most up to date section D supplemental submission. *See* Adisseo España's March 9, 2021 Third Supplemental Section D Response.

IV. FINAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

On January 26, 2021, the petitioner filed allegations that critical circumstances exist with respect to imports of subject merchandise.¹⁰ On February 24, 2021, Commerce issued its *Preliminary Determination* that critical circumstances did not exist with respect to imports of subject

² *Id.*

³ *See* Adisseo España's Letter, "Antidumping Investigation of Methionine from Spain: Response to the Department's Third Supplemental Section D Questionnaire," dated March 9, 2021 (Adisseo España's March 9, 2021 Third Supplemental Section D Response).

⁴ *See* Commerce's Letter, "Remote Verification Questionnaire for Adisseo España," dated March 29, 2021.

⁵ *See* Adisseo España's Letter, "Antidumping Investigation of Methionine from Spain: Response to the Department's Remote Verification Questionnaire," dated April 6, 2021 (Adisseo España's Verification Response).

⁶ *See* Adisseo España's Letter, "Antidumping Investigation of Methionine from Spain: Response to Request for Monthly Quantity and Value Shipment Data," dated March 15, 2021; *see also* Adisseo España's Letter, "Antidumping Investigation of Methionine from Spain: Response to Request for Monthly Quantity and Value Shipment Data," dated April 15, 2021.

⁷ The petitioner in this investigation is Novus International Inc.

⁸ *See* Petitioner's Letter, "Methionine from Spain: Petitioner's Case Brief," dated April 29, 2021 (Petitioner's Case Brief); *see also* Adisseo España's Letter, "Investigation of Methionine from Spain: Case Brief of Adisseo España S.A.," dated April 29, 2021 (Adisseo España's Case Brief).

⁹ *See* Petitioner's Letter, "Methionine from Spain: Petitioner's Rebuttal Brief," dated May 10, 2021 (Petitioner's Rebuttal Brief); *see also* Adisseo España's Letter, "Antidumping Investigation of Methionine from Spain: Rebuttal Brief of Adisseo España S.A.," dated May 10, 2021 (Adisseo España's Rebuttal Brief).

¹⁰ *See* Petitioner's Letter, "Methionine from Spain: Allegation of the Existence of Critical Circumstances," dated January 26, 2021.

merchandise produced and/or exported by Adisseo España or for all other producers and exporters.¹¹

We received no comments from interested parties regarding the preliminary determination of critical circumstances. In previous cases, Commerce has updated the data used in the critical circumstances analysis after the preliminary determination when additional data was available.¹² As such, we re-examined our preliminary determination of critical circumstances to include all months for which U.S. import data are available, with the exception of March 2021, as discussed below.

Section 735(a)(3) of the Act provides that where critical circumstances have been alleged under section 733(e) of the Act, Commerce will determine whether: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of subject merchandise, or (ii) the person by whom, or for whose account the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its normal value (NV) and that there would be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of Commerce's regulations provides that, in determining whether imports of the subject merchandise have been "massive," Commerce will normally examine the volume and value of the imports, seasonal trends, and the share of domestic consumption for which the imports accounted. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 206(i) of Commerce's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date on which the petition is filed) and ending at least three months later (*i.e.*, the comparison period). The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period).

In this final determination, we find that, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, critical circumstances exist with respect to imports of subject merchandise produced and/or exported by Adisseo España. The estimated weighted-average dumping margin determined for Adisseo España exceeds the threshold necessary to impute knowledge of dumping (*i.e.*, 25 percent for export price (EP) sales and 15 percent for constructed export price (CEP) sales) and the International Trade Commission's preliminary affirmative injury determination remains sufficient to impute knowledge of likely material injury.¹³ Moreover, we compared the quantity of Adisseo España's shipments of subject merchandise to the United States during the period January 2020 through July 2020 to the quantity of its shipments of subject merchandise to the United States from August 2020 through February 2021 to determine whether imports have been massive. We did not use March 2021 (the month of publication of

¹¹ See *Preliminary Determination PDM* at 4-9.

¹² 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), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

¹³ *Id.*

the preliminary determination) in our analysis because use of the data would be distortive as it reflects the impact of primary cash deposits collected on shipments during the greater part of that month following our affirmative preliminary determination published on March 4, 2021.¹⁴ The time periods we have used to make this final determination, *i.e.*, January 2020 through July 2020, and August 2020 through February 2021, are consistent with the time periods analyzed in the concurrent *Methionine from Japan* final determination.¹⁵ This comparison shows that there has been an increase of 15 percent or more of imports over the comparison period. Therefore, we find that there were “massive imports” of subject merchandise from Adisseo España into the United States over a relatively short period pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h)-(i).

To determine massive imports for non-individually investigated companies (*i.e.*, the all-others companies), Commerce’s normal practice is to subtract shipments reported by the cooperating mandatory respondent from shipment data of subject merchandise.¹⁶ We compared the quantity of imports into the United States under the Harmonized Tariff Schedule subheadings listed in the scope of this investigation, as reported by Global Trade Atlas (GTA) for the period January 2020 through July 2020 and August 2020 through February 2021, less the quantity of shipments of subject merchandise to the United States reported by Adisseo España for those periods. Because the quantity of imports shown in the GTA data is smaller than that in the respondent’s reported data, we find the normal method of subtracting the mandatory respondent’s data from the GTA data to be an unreliable indicator of the experience of the all-others companies for purposes of the “massive imports” determination. In accordance with our practice,¹⁷ we are basing our determination of whether imports were massive for the non-individually examined companies on the experience of Adisseo España. As a result, for this final determination, we find that all-other producers and exporters had massive imports pursuant to 19 CFR 351.206(h) and, as such, that critical circumstances exist for all other producers and exporters.

V. DISCUSSION OF THE ISSUES

Comment 1: Whether to Grant a Constructed Export Price Offset

Adisseo España’s Comments:

- Commerce’s preliminary determination is incorrect in concluding that the record lacks sufficient quantitative analysis to determine that the home market level of trade (LOT) is

¹⁴ See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2019), and accompanying IDM at Comment 22.

¹⁵ See *Methionine from Japan: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances (Methionine from Japan)*.

¹⁶ See, e.g., *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, China, Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015); *Certain Corrosion-Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016); and *Certain Corrosion-Resistant Steel Products from Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 3, 2016).

¹⁷ See *Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 83 FR 40745 (August 16, 2018), and accompanying IDM at 4.

at a different level than the U.S. LOT. Commerce should find the record supports a CEP offset adjustment.¹⁸

- The LOT analysis includes granting a CEP offset under section 773(a)(7)(B) of the Act where Commerce determines the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs affects comparability (*i.e.*, no LOT adjustment is possible).¹⁹ Under 19 CFR 351.412(c)(2), Commerce determines that sales are made at different levels of trade if the sales are made at different marketing stages (or their equivalent). Under section 772(d) of the Act, Commerce considers only the selling activities reflected in the price after the deduction of expenses and profit.²⁰
- Record evidence warrants a CEP offset. Adisseo España's selling function chart from its original section A response demonstrates that selling activities in the home market were at the same LOT, and this LOT was at a more advanced LOT than the sales activities in the U.S. market. For several selling functions, Adisseo España had no activity in the U.S. market.²¹
- Adisseo España revised its selling functions chart from a qualitative response to a quantitative response. In this revised chart, the home market customer categories were similar enough to constitute the same LOT. The U.S. market CEP sales are made at a similar LOT across all customer categories, which is a separate, less advanced LOT.²²
- Adisseo España's revised selling function chart clearly shows the home market LOT is at a more advanced level than the U.S. LOT after all necessary deductions are made. Thus, Commerce should find record evidence supporting a CEP offset.²³

Petitioner's Rebuttal Comments:

- Adisseo España never attempted to provide the quantitative analysis that Commerce requested. Due to this void in the record, Commerce's preliminary determination is correct and should be maintained for the final determination.²⁴
- Commerce instructed Adisseo España to provide a selling functions chart and a quantitative analysis that showed how expenses assigned to POI sales made at different levels of trade impacted price comparability. Commerce also requested an explanation supporting the claimed levels of intensity in the selling activities listed in the selling function chart. Adisseo elected not to answer these questions.²⁵

¹⁸ See Adisseo España's Case Brief at 1.

¹⁹ *Id.* at 1 (citing, *e.g.*, *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 32720 (July 9, 2019), and accompanying IDM at Comment 16; and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7).

²⁰ *Id.* (citing 19 CFR 351.412(c); *see also Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001) (*Micron Tech.*)).

²¹ *Id.* at 2 (citing Adisseo España's Letter, "Antidumping Investigation of Methionine from Spain: Response to Supplemental Section A of the Department's Questionnaire, dated December 2, 2020 at 3 (Adisseo España's December 2, 2020 Section A Supplemental Questionnaire Response)).

²² *Id.* at 2-3.

²³ *Id.* at 3.

²⁴ See Petitioner's Rebuttal Brief at 1-2.

²⁵ *Id.* at 2.

- Adisseo España's selling functions chart is qualitative (*i.e.*, a non-calculated number based on Adisseo España's subjective ranking) and lacks a list and description of what selling activities were included in each activity category. The revised selling function chart only differs by sales channels and the colors of columns. Nowhere does Adisseo España provide a quantitative analysis showing expenses for the fields, nor is there any explanation of how a quantitative analysis supports the qualitative figures in the chart.²⁶
- Commerce rejects the numbers in the selling functions chart representing to be quantitative analysis. Under 19 CFR 351.412(c)(2), "sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing."²⁷
- Commerce's current practice is to analyze the subjective qualitative differences claimed for different LOTs and requires a quantitative analysis of how these differences are reflected in prices.²⁸
- In *CWP from the UAE*,²⁹ Commerce correctly found that the respondent did not meet the burden of establishing its eligibility for an LOT adjustment or a CEP offset by failing to provide a quantitative analysis and rejected the claim that the selling functions chart was a substitute for the quantitative analysis. Similarly, Commerce correctly found the record lacked quantitative analysis.³⁰
- Commerce should continue to find that the record lacks necessary information to grant the CEP offset.³¹

Commerce's Position

We disagree with Adisseo España. We find that Adisseo España did not provide a quantitative analysis to support a CEP offset and, thus, we continue to find that Adisseo España's claim that it made home market sales at one LOT and U.S. sales at a different LOT is not supported by record evidence. Accordingly, for the final determination, Commerce has not granted Adisseo España's requested CEP offset.

Statutory Framework

As explained in the *Preliminary Determination*, section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same LOT as the U.S. sales.³² Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³³ Substantial differences in selling activities are a necessary, but not sufficient,

²⁶ *Id.* at 2-3.

²⁷ *Id.* at 3.

²⁸ *Id.* at 3.

²⁹ See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review*; 2017-2018, 85 FR 77159 (December 1, 2020) (*CWP from the UAE*), and accompanying IDM at Comment 3.

³⁰ *Id.* at 3-5.

³¹ *Id.* at 5.

³² See *Preliminary Determination* PDM at 15.

³³ See 19 CFR 351.412(c)(2).

condition for determining that there is a difference in the stages of marketing.³⁴ In order to determine whether the home market sales are at different stages in the marketing process than the U.S. sales, Commerce examines the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),³⁵ Commerce considers the starting prices before any adjustments. For CEP sales, Commerce considers only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³⁶

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³⁷

Furthermore, Congress has explained that:

there is no requirement for Commerce to make a LOT or offset adjustment in every case. Indeed, the express language of the statute and Statement of Administrative Action indicate that there are circumstances where neither adjustment is appropriate or permissible. For example, Commerce may only make a LOT adjustment where there are different levels of trade and where that difference is shown to affect price comparability. Commerce's analysis of these issues must be based on the actual circumstances involved.³⁸

³⁴ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice*

of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010) (*2007-2008 OJ from Brazil*), and accompanying IDM at Comment 7.

³⁵ Where NV is based on constructed value, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for constructed value, where possible. See 19 CFR 351.412(c)(1).

³⁶ See *Micron Tech*, 243 F.3d at 1314-16.

³⁷ See, e.g., *2007-2008 OJ from Brazil* IDM at Comment 7.

³⁸ See Senate Remarks on the Uruguay Round Agreements Act, Congressional Record —Senate, S5516 (April 6, 1995).

Accordingly, Commerce will make an LOT or CEP adjustment following an analysis of the case-specific information and if the record supports such an adjustment.³⁹ Further, Commerce's LOT analysis is holistic and evaluates the seller's marketing scheme as a whole.⁴⁰

Record Evidence Does Not Support a Finding that Adisseo España Made Sales at More than One LOT and Lacks Sufficient Evidence to Support a CEP Offset.

We find Adisseo España's claim that it made home market sales at one LOT and U.S. sales at a different LOT is not supported by record evidence. Further, we find that the record lacks the quantitative information necessary to complete the analysis needed to determine if there are different levels of trade and whether this difference affects price comparability. Specifically, Commerce explained in the *Preliminary Results* that, during the instant proceeding, Commerce requested quantitative information related to Adisseo España's claimed LOTs in the home market and U.S. market, including, *inter alia*, a request for Adisseo España to demonstrate how selling activities varied by the different LOTs claimed.⁴¹ In response to this request for quantitative information, Adisseo España provided no quantitative analysis to support its claimed home market and U.S. market LOTs in its submissions of its selling functions charts organized by channel of distribution and by customer category. Accordingly, we preliminarily found that Adisseo España's claim that it made home market sales at one LOT and U.S. sales at a different LOT is not supported by record evidence. Further, because we preliminarily found that the record lacked sufficient information required to determine whether the CEP LOT is at a different level than the home market LOT, we preliminarily found that all home market and U.S. market sales are at the same LOT.⁴²

Because there have been no changes since the *Preliminary Determination* regarding the information on the record, a CEP offset is not warranted. We continue to find that Adisseo España has not demonstrated a quantitative analysis to support a CEP offset. In Commerce's antidumping order on *CWP from the UAE*, Commerce explained that quantitative analyses were "implemented in 2018 to enhance Commerce's ability to determine whether reported differences in selling functions are substantial enough to warrant a finding that sales were made to different LOTs."⁴³ Commerce considers, *inter alia*, quantitative data which show: "(1) how expenses assigned to POR sales made at different claimed LOTs impact price comparability functions; (2) a demonstration of how indirect selling expenses vary by different LOT claimed; and (3) an explanation of how the quantitative analysis by the respondent supported its claimed levels of

³⁹ See *Pasta Zara SpA v. United States*, 703 F. Supp. 2d 1317, 1327 (CIT 2010) ("The *Preamble* draws a distinction between mere differences in selling activities and differences in selling activities that establish a separate selling function ... {.}") (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27371 (May 19, 1997) (*Preamble*)).

⁴⁰ See *Preamble*, 62 FR at 27371 ("{A}n analysis of selling activities alone is insufficient to establish the LOT. Rather, {Commerce} must analyze selling functions to determine if levels of trade identified by a party are meaningful. In situations where some differences in selling activities are associated with different sales, whether that difference amounts to a difference in the levels of trade will have to be evaluated in the context of the seller's whole scheme of marketing.")

⁴¹ See *Preliminary Determination* PDM at 16.

⁴² See *Preliminary Determination* PDM at 16 (citations omitted).

⁴³ See *CWP from the UAE* IDM at Comment 3.

intensity for the reported selling activities.”⁴⁴ For instance, in *ESB Rubber from Brazil*, Commerce found that the record lacked sufficient quantitative evidence to support the existence of different LOTs or grant a CEP offset.⁴⁵

Because Adisseo España’s selling functions chart with selling activities by customer category is not a quantitative analysis itself, we find that there is insufficient record evidence of a quantitative analysis to support the LOT claims made by Adisseo España.⁴⁶

In light of the foregoing, Commerce continues to find that Adisseo España has not met its burden to establish its eligibility for an LOT adjustment or a CEP offset. Section 351.401(b)(1) of Commerce’s regulations states that “{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment.” Adisseo España has not shown that it made sales in the home market at more than one LOT because it has not demonstrated that its LOT claims are supported by quantitative evidence. Thus, an LOT adjustment is not warranted. Furthermore, under 19 CFR 315.412(f)(ii), because the record does not establish that Adisseo España’s NV is at a more advanced LOT than the LOT of the CEP, a CEP offset is not warranted. Accordingly, for the final determination, we continue to determine not to provide Adisseo España with either an LOT adjustment or CEP offset.

Comment 2: Whether Certain Sales are Outside the Normal Course of Trade

Adisseo España’s Comments:

- Record evidence shows that certain sales are outside the normal course of trade and should be excluded from Adisseo España’s dumping margin calculation.⁴⁷
- The statute defines “ordinary course of trade” as “the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.”⁴⁸ Commerce may use its discretion to determine other circumstances that render a sale outside the ordinary course of trade.⁴⁹ The purpose of the ordinary course of trade provision is the “prevent dumping margins from being based on sales which are not

⁴⁴ See *Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Ukraine: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 35272 (July 2, 2021), and accompanying IDM at Comment 2 (citing *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020), and accompanying IDM at Comment 4).

⁴⁵ See *Emulsion Styrene-Butadiene Rubber from Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 38847 (June 29, 2020) (*ESB Rubber from Brazil*), and accompanying IDM at Comment 1.

⁴⁶ For instance, as we stated in our initial antidumping questionnaire as an example, if the respondent arranged freight services for sales of subject merchandise, it may consider in that analysis the expenses incurred for arranging freight services in its level of trade analysis, but should not consider the per-unit inland freight expenses reported to Commerce in its sales databases. The respondent may not include selling activities performed by affiliated parties located in the United States in the analysis. See Commerce’s Letter, “Antidumping Duty Questionnaire,” dated September 15, 2020.

⁴⁷ See Adisseo España’s Case Brief at 4.

⁴⁸ *Id.* at 4 (citing section 771(15) of the Act).

⁴⁹ *Id.* at 4 (citing *Mitsubishi Heavy Indus., Ltd. v. United States*, 15 F. Supp. 2d 807, 830 (CIT 1998)).

representative” of the home market.⁵⁰ Commerce should evaluate certain sales by all circumstances including “aberrational prices,” “abnormally high profits,” and “unusual terms of sale” among others.⁵¹

- Certain transactions represent unusual terms of sale because the method of payment differs from Adisseo España’s other sales of merchandise. For Adisseo España’s other sales occurring in its ordinary course of business, Adisseo España is paid in cash and uses customer-specific contracts. These sales are booked as revenue-generating sales. The certain transactions in question do not use cash payments, and invoices are offset. This exchange is unlike any other sale of Adisseo España’s subject merchandise to customers in Spain.⁵²
- Commerce has stated that unusual terms of an agreement for a sale of subject merchandise can factor into finding the sales are outside the normal course of trade.⁵³ Adisseo España’s unusual terms of sale constitute a reason for excluding certain transactions from Commerce’s dumping calculation.
- While Adisseo España’s ordinary sales generally reflect market prices for the product, the annual price for certain sales is based on an adjustment established several years before the POI.⁵⁴ Although Commerce is correct in its assertion that the invoice prices of certain sales are all within the range of other home market invoice prices, there is a significant difference between the weighted-average prices of certain sales and ordinary home market sales. Further, this difference remains conservative, as it does not account for the higher level of effort required for selling all other home sales.⁵⁵ Thus, Commerce should consider the net basis of the price when comparing the price of certain transactions to Adisseo España’s ordinary sales. On a net basis, Commerce should consider transport, technical services, insurance, rebates, warehousing, and billing adjustments.⁵⁶ On a net basis, the difference becomes even greater between the two prices. Aberrational prices should be a factor weighting in favor of finding certain sales outside the ordinary course of trade.⁵⁷
- The profit rate earned on certain transactions is different than that of Adisseo España’s ordinary sales. The logistical terms of these certain transactions are unique based on the timing of the change in title and responsibility of insurance, and the timing of delivery.⁵⁸
- The totality of circumstances indicate certain transactions are outside the normal course of trade.⁵⁹
- In Commerce’s Preliminary Analysis Memorandum,⁶⁰ Commerce erroneously overstated the amount of production of certain sales each year. While Adisseo España did not

⁵⁰ *Id.* at 4 (citing *Monsanto Co. v. United States*, 698 F. Supp. 275, 278 (CIT 1988)).

⁵¹ *Id.* at 4 (citing 19 CFR 351.102(b)(35)).

⁵² *Id.* at 5.

⁵³ *Id.* at 5 (citing *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom*, 58 FR 2253, 3256-57 (January 8, 1993)).

⁵⁴ *Id.* at 6.

⁵⁵ *Id.* at 6.

⁵⁶ *Id.* at 6.

⁵⁷ *Id.* at 6.

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* at 8.

⁶⁰ See Memorandum, “Methionine from Spain: Preliminary Determination Analysis Memorandum for Adisseo España S.A.,” dated February 24, 2021 at 2 (Preliminary Analysis Memorandum) at 2.

provide annual production records, Adisseo España did provide its POI production volume. Using this value as a proxy for annual production, it demonstrates that the annual production of certain sales is much smaller than Commerce stated.⁶¹

Petitioner's Rebuttal Comments:

- The record supports Commerce's preliminary determination that found all home market sales are within the *ordinary* course of trade.⁶²
- Commerce explained that sales outside the ordinary course of trade are not sales that are "of a type of 'condition or practice' that is 'normal in the trade under consideration, ' especially if such sales are done on a regular and continuous basis."⁶³ The Court of International Trade (CIT) agrees with this principle⁶⁴ and the relevancy of sales in the ordinary course of trade taking place "for a number of years."⁶⁵
- Commerce has shown that it is also difficult to show that sales of a significant volume are outside the ordinary course of trade.⁶⁶
- Adisseo España's certain sales are unlike those that Commerce typically finds outside the ordinary course of trade (*i.e.*, a few unusual sales). Commerce does not allow respondents to pick and choose which sales are used to calculate its NV if they make up a typical part of its trade.⁶⁷
- Adisseo España's certain sales do not differ in considerable ways from Adisseo España's other home market sales.⁶⁸
- Commerce recognizes non-cash payments as payments. Based on definitions of a "sale" in *NSK Ltd. v. United States*⁶⁹ citing Webster's Dictionary, the CIT found that "'price' is not necessarily limited to a 'sum of money.'"⁷⁰ Thus, a price being paid is not just an exchange of money, but can be the exchange of any consideration. Here, Adisseo España's receives a consideration that can serve as an exchange of money.⁷¹ Thus, Adisseo España's payment method is within the ordinary course of trade.⁷²
- Adisseo España's claim that Commerce should evaluate prices on a "weighted average basis" for comparison is not supported by Commerce's practice or any supporting authority. This suggestion is not practical as half of the "average" of every group sale would be prices above the average, creating extraordinary prices. Commerce is looking for "aberrational" prices, which Adisseo España's certain transactions do not demonstrate.⁷³

⁶¹ See Adisseo España's Case Brief at 9.

⁶² See Petitioner's Rebuttal Brief at 6.

⁶³ *Id.* at 6 (citing *Koyo Seiko Co. v. United States*, 26 C.I.T. 170, 187 (2002) (*Koyo Seiko Co.*)).

⁶⁴ *Id.*

⁶⁵ *Id.*, 26 C.I.T. at 187, fn.7.

⁶⁶ *Id.* at 6-7 (citing *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review*, 65 FR 8935, 8938 (February 23, 2000)).

⁶⁷ *Id.* at 7-8.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.* at 9; see also *NSK Ltd. v. United States*, 115 F.3d 965, 974 (Fed. Cir. 1997) (*NSK Ltd. v. United States*).

⁷⁰ *Id.* at 9 (quoting *NTN Bearing Corp. of Am. v. United States*, 155 F. Supp. 2d 715, 737 (CIT 2001), *rev'd for other reasons sub nom. Fag Italia S.p.A. v. United States*, 402 F.3d 1356 (Fed. Cir. 2005)).

⁷¹ *Id.* at 10.

⁷² *Id.* at 11.

⁷³ *Id.* at 11.

- Adisseo España's argument to analyze prices on a "net basis" is unsupported and does not demonstrate that the price the sale is made at is irrelevant. Adisseo España only produces one type of subject merchandise for all home market sales, so the cost of goods sold is the same for each sale. Thus, the price comparison is for profitability. Adisseo España's sales profits for the sales at issue are not unusual and they are not priced in a meaningfully different way than Adisseo España's other home market sales.⁷⁴
- Adisseo España's argument regarding Commerce's overstatement of Adisseo España's production volume of sales at issue is clearly a misstatement. In addition, Adisseo España's production argument is irrelevant.⁷⁵
- Commerce should continue to find these transactions in the NV calculation to be in Adisseo España's ordinary course of trade.⁷⁶

Commerce's Position

We disagree with Adisseo España. We find that the transactions in question are not outside of the ordinary course of trade and, therefore, we have included them in our calculations for the final determination. For additional analysis of record evidence, including a discussion of proprietary information, please see the Final Analysis Memorandum.⁷⁷

Ordinary Course of Trade

Section 771(15) of the Act defines the "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." The Statement of Administrative Action⁷⁸ provides several examples of types of sales which could be considered as outside the ordinary course of trade:

Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market. Examples of such sales or transactions include merchandise produced according to unusual product specifications, merchandise sold at aberrational prices, or merchandise sold pursuant to unusual terms of sale. As under existing law, amended section 771(15) does not establish an exhaustive list, but the Administration intends that Commerce will interpret section 771(15) in a manner which will avoid basing NV on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results.

⁷⁴ *Id.* at 11-13.

⁷⁵ *Id.* at 14.

⁷⁶ *Id.* at 14.

⁷⁷ See Memorandum, "Final Determination in the Antidumping Duty Investigation of Methionine from Spain: Final Determination Analysis Memorandum," dated concurrently with this memorandum (Final Analysis Memorandum) at 2-4.

⁷⁸ See the Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. No. 103-316, vol. 1 at 656 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4171 (SAA).

Pursuant to 19 CFR 351.102(b)(35), to determine whether a sale is outside the “ordinary course of trade,” Commerce evaluates the transactions based on all of the circumstances particular to the sales in question. Where Commerce finds that such sales or transactions have characteristics that are extraordinary for the market in question, we will determine that the sale is outside the ordinary course of trade.⁷⁹ In addition, the CIT has held that, for sales to qualify as being outside the ordinary course of trade, they should possess unique or unusual characteristics which make them unrepresentative of home market sales.⁸⁰

Under 19 CFR 351.102(b)(35), sales made outside the ordinary course of trade have characteristics that make them extraordinary for the market in question. Examples of such sales could be sales of: (1) off-quality merchandise or merchandise produced according to unusual product specifications; (2) merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale; or (3) merchandise sold to an affiliated party at a non-arm’s length price.

Certain of Adisseo España’s Transactions are Within the Ordinary Course of Trade

We disagree with Adisseo España that certain of its transactions include unusual terms of sale. Under 19 CFR 351.102(43), a sale includes a contract to sell and a lease that is equivalent to a sale. In *NSK Ltd. v. United States*, the U.S. Court of Appeals for the Federal Circuit considered the ordinary meaning of the term “sale” and consulted the term’s dictionary definition as “the act of selling; a contract transferring the absolute or general ownership of property from one person ... to another for a price (as a sum of money or any other consideration.)”⁸¹ The Court held that consideration is a necessary element of a sale and “{c}onsideration generally requires a bargained-for exchange.”⁸² A promise to perform based solely on a whim does not serve as consideration.⁸³ The CIT also determined that Commerce accurately found that “price” was not limited to a “sum of money.”⁸⁴ Certain of Adisseo España’s transactions are not unusual in their terms of sale because they have not taken place on a whim.⁸⁵ Thus, these sales have occurred on a regular and continuous basis for “a number of years,” and would not be considered outside the ordinary course of trade, under the Court’s ruling in *Koyo Seiko Co.*⁸⁶

Additionally, Adisseo España has not provided support for its contention that Commerce should compare prices on a net basis. Commerce’s standard practice is to compare net prices for NV and CEP.⁸⁷ However, as certain transactions and other home market sales involve the same product, we find it reasonable to compare the gross unit prices. Further, we do not agree that

⁷⁹ See 19 CFR 351.102(b)(35).

⁸⁰ See, e.g., *NSK Ltd. v. United States*, 245 F. Supp. 2d 1335, 1360-61 (Ct. Int’l Trade 2003) (citing *NSK Ltd. v. United States*, 217 F. Supp. 2d 1291, 1315 (Ct. Int’l Trade 2002); *NTN Bearing Corp. of Am. v. United States*, 905 F. Supp. 1083, 1091 (Ct. Int’l Trade 1995)).

⁸¹ See *NSK Ltd.*, 115 F.3d at 974 (quoting Webster’s Third New International Dictionary 2003 (1986)).

⁸² See *NSK Ltd.*, 115 F.3d at 974-75 (quoting, e.g., 3 Williston on Contracts, § 7:2 at 18-19 (4th ed. 1992)).

⁸³ *Id.* at 975.

⁸⁴ *NTN Bearing*, 155 F. Supp. 2d at 687.

⁸⁵ See Adisseo España’s October 16, 2020 Section A Questionnaire Response at A-3-A-5 and Exhibit A-2.

⁸⁶ See *Koyo Seiko Co.*, 26 C.I.T. at 187-88, n.7 (2002) (citing *Torrington Co. v. United States*, 146 F. Supp. 2d 845 (2001); and *NTN Bearing Corp. Of Am. v. United States*, 924 F. Supp. 200 (1996); *NSK Ltd. v. United States*, 825 F. Supp. 315 (1993)).

⁸⁷ See 19 CFR 351.401(a) and 19 CFR 351.401(c).

Adisseo España's prices are aberrational because the percentage difference between the prices of certain transactions and prices of Adisseo España's other home market sales are not significantly different.⁸⁸ Furthermore, Adisseo España's profit rate is not abnormally high in comparison the profit rate of all other home market sales.⁸⁹ For further analysis regarding price and profit, please see the Final Analysis Memorandum. Because Adisseo España's prices and profits for certain sales are not significantly different than Adisseo España's other sales in the home market, we continue to find these certain transactions within the ordinary course of trade.

Lastly, Commerce misstated in the preliminary determination that the amount of Adisseo España's certain transactions was a percentage of annual production.⁹⁰ While the source of the volume (*i.e.*, production) was incorrectly referenced, the percentage of the sales referenced was correct.⁹¹ This percentage remains a factor in finding these sales within the ordinary course of trade.

Based on the totality of circumstances analyzed here and in the Final Analysis Memorandum, we continue to find that certain sales in Adisseo España's home market are within the ordinary course of trade because: (1) the merchandise is not off-quality merchandise or merchandise produced according to unusual product specifications; (2) the merchandise is not sold at aberrational prices or with abnormally high profits; or (3) it is not merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's-length price mentioned above.

Comment 3: Whether to Recalculate Indirect Selling Expenses (ISE)

Petitioner's Comments:

- Commerce should recalculate Adisseo España's ISEs using its standard methodology of all ISEs divided by total sales revenue rather than Adisseo España's methodology which allocated by product group.⁹²
- Adisseo España's allocates its total ISE by product group, and this allocation is based on staff surveys, which identify the time each staff member spends on each product. Commerce asked Adisseo in its ILOVQ to provide calculation worksheets and demonstrate how Adisseo España calculated per-unit amounts. Commerce instructed Adisseo España to provide source documents for each element of its calculation worksheets. Adisseo España failed to provide supporting documentation of the surveys used or show how the claimed surveys related to the ratios it used in its allocation methodology.⁹³
- Surveys are subjective and not based on accounting records. They do not address overhead expenses such as rent, taxes, and insurance, which do not vary by sales and

⁸⁸ See Final Analysis Memorandum at 3; *see also* Adisseo España's Letter, "Antidumping Investigation of Methionine from Spain: Responses to the Department's Second Supplemental Section B&C Questionnaires," dated January 26, 2021 (Adisseo España's January 26, 2021 Sections B&C Second SQR) at adisseo_sp03.

⁸⁹ See Final Analysis Memorandum at 3; *see also* Adisseo España's Rebuttal Brief at 7-8.

⁹⁰ See Preliminary Analysis Memorandum at 2.

⁹¹ See Adisseo España's December 2, 2020 Section A Supplemental Questionnaire Response.

⁹² See Petitioner's Case Brief at 1.

⁹³ *Id.* at 1-4.

would be misallocated by Adisseo España's methodology.⁹⁴

- Adisseo España failed to show that its methodology did not result in inaccuracies or distortions. The burden imposed by 19 CFR 351.401(g)(2) is placed on the party seeking to report an expense or price adjustment. Thus, Commerce should reject Adisseo España's ISE allocation and recalculate Adisseo España's ISEs by dividing total ISEs by total sales revenue.⁹⁵

Adisseo España's Rebuttal Comments:

- Adisseo España's allocation methodology is consistent with its normal books and records. The petitioner's allegation that Adisseo España failed to show percentages associated with each product family and failed to show the selected methodology is non-distortive is incorrect.⁹⁶
- Adisseo España's allocation methodology is non-distortive because it follows a similar methodology to that of another field, warehousing, in which Adisseo España's provided a full product-family specific expense calculation. Warehousing is shown in the same exhibit as ISE. It is allocated based on product group because Commerce requires the cost to be separately reported as a movement expense in the U.S. sales file. The petitioner had no concern about the result from the warehousing allocation.⁹⁷
- The petitioner's suggested allocation of total ISE being allocated equally among all products is distortive.⁹⁸
- The petitioner did not explain why Adisseo España's allocation methodology for ISE was any less accurate or less reasonable than the allocation methodology used for warehousing expenses.⁹⁹
- The total allocated selling, general, and administrative (SG&A) (and SG&A depreciation) expenses in the ISE exhibit match the SG&A and SG&A depreciation expense totals in Adisseo USA's financial statement. Adisseo España's provided its SAP system's actual allocated totals by account. Adisseo España's has the reasonable expectation that reporting the actual allocated totals and tying them to the financial statement is more useful than dividing two numbers.¹⁰⁰
- Adisseo España's methodology is reasonable, consistent with its normal books, non-distortive, and supported by record evidence, therefore, Commerce should reject the petitioner's request to change the methodology for its ISE allocation.¹⁰¹

Commerce's Position

We agree with the petitioner that Adisseo España has not demonstrated that its allocation methodology is accurate and non-distortive. Commerce requested Adisseo España to report its indirect selling expenses field for each sales trace and instructed Adisseo España that "each

⁹⁴ *Id.* at 4.

⁹⁵ *Id.* at 7.

⁹⁶ *See* Adisseo España's Rebuttal Brief at 1.

⁹⁷ *Id.* at 2.

⁹⁸ *Id.* at 3.

⁹⁹ *Id.* at 3.

¹⁰⁰ *Id.* at 3.

¹⁰¹ *Id.* at 3.

element of the calculation worksheet must be supported by source documents” in its verification letter.¹⁰² Adisseo España’s verification response narrative states that its indirect selling expenses are “allocated to each product according to the amount of time spent on each product according to annual survey taken at Adisseo USA.”¹⁰³ However, these surveys were not provided in Adisseo España’s verification response and are not on the record of this investigation.

Under 19 CFR 351.401(g)(2), Commerce generally accepts allocation methodologies when transaction-specific reporting is not feasible and if the party has demonstrated its allocation methodology does not cause inaccuracies or distortions. Because Adisseo España failed to provide the requested source documents (*i.e.*, its staff surveys, *etc.*) to support its allocation of ISE, Adisseo España has not met its burden to demonstrate that its proposed methodology is non-distortive.

We disagree with Adisseo España’s contention that its ISE allocation followed a similar methodology to its warehousing field (USWAREHU). Although a warehouse value was broken out by product family, and this line item is shown in the same exhibit as the ISE calculation,¹⁰⁴ this warehousing cost is not included in the ISE calculation.¹⁰⁵ Further, the allocation of this warehousing expense did not rely on the staff surveys.¹⁰⁶ Therefore, Adisseo España’s suggestion that Commerce use the warehouse allocation methodology to support the ISE allocation methodology is not applicable.

We also disagree that Adisseo España’s allocation by product group is supported by Adisseo USA’s internal financial statements. The allocation by product groups are shown in a supplementary worksheet, which are not part of the financial statement. Thus, Adisseo USA’s financial statements cannot be relied upon as supporting documentation to corroborate its ISE allocation methodology. Likewise, Adisseo USA’s SAP system screenshots demonstrate a reconciliation¹⁰⁷ to the total ISE amount but do not provide supporting documentation of the allocation between product group to justify the allocation methodology. Based on the information that Adisseo España reported, the staff surveys are the only documents that support the product group expense allocation, and these documents are not on the record.

Commerce has discretion in choosing methodologies for calculating ISE and is not obligated by the statute to calculate ISEs in any particular way. Commerce generally allocates ISE by multiplying each gross sales price by the ratio of total ISE to total sales revenue.¹⁰⁸ Because

¹⁰² See ILOVQ at 5.

¹⁰³ See Adisseo España’s Verification Response at 22.

¹⁰⁴ See Adisseo España’s Letter, “Antidumping Investigation of Methionine from Spain: Response to the Department’s Supplemental Section C Questionnaire,” dated December 23, 2020 at Exhibit SC-14.

¹⁰⁵ See Adisseo España’s Verification Response at 22.

¹⁰⁶ *Id.*; see also Adisseo España’s Letter, “Antidumping Investigation of Methionine from Spain: Responses to the Department’s Second Supplemental Section B&C Questionnaires,” dated January 26, 2021 at 17-18 and Exhibit 2SC-7.

¹⁰⁷ See Adisseo España’s Verification at VER-INDIRSU-3.

¹⁰⁸ See *Dupont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338, 1352 (CIT 2014); see also *Diamond Sawblades Mfrs. Coal v. United States*, No. 06-00248, 2013 WL 5878684 at *3 n.4 (CIT 2013), 2013 LEXIS 137 at *13 n.4 (CIT2013).

Adisseo España has not demonstrated that its ISE allocation methodology is non-distortive, for the final determination, we have recalculated ISE using the above ratio.¹⁰⁹

Comment 4: Whether to Apply Adverse Facts Available (AFA) on Certain Fields

Petitioner's Comments:

- Adisseo España failed to provide full verification responses for fields INFLWCU (inland freight to customer), CREDITU (credit expenses), INDIRSU (indirect selling expenses), COMMU (commissions) and TECHSERU (technical services). Because these fields cannot be verified, Commerce should apply partial AFA to these expenses.¹¹⁰
- Adisseo España has significantly impeded this investigation by expecting Commerce to search through thousands of pages of documents with no clear explanation of how to find certain exhibit pages or explain how certain exhibit pages relate to Commerce's questions.¹¹¹
- It is the respondent's responsibility to answer a question, not Commerce's responsibility to extensively search through documents. Commerce is fully justified in only examining what is answered and applying AFA to partially unanswered elements.¹¹²
- Adisseo España also failed to provide necessary calculations for inland freight to customer, credit expenses, commissions, and technical services for all U.S. sales. Although Commerce may be able to recreate these missing calculations, it is not Commerce's role to answer questions that the respondent fails to answer.¹¹³
- For TECHSERU, Adisseo España references an unclear exhibit and Commerce cannot be expected to search through verification questions on behalf of a respondent that did not answer it. Thus, all of the above expenses are unverified.¹¹⁴
- Adisseo España's failure to verify these fields creates a gap in the record per section 776(a)(1)(D) of the Act. The application of AFA is appropriate under section 776(b)(1) of the Act, because Adisseo España failed to cooperate to the best of its ability. Commerce should apply the highest reported values of each field to all sales that report positive expenses for CREDITU, COMMU and TECHSERU or the average of Adisseo's reported INFLWCU U.S. sales with positive values.¹¹⁵

Adisseo España's Rebuttal Comments:

- The petitioner is selectively reading Adisseo España's ILOVQ response. This ILOVQ response does not exist in a vacuum and is part of the larger record.¹¹⁶
- The petitioner clearly labeled its exhibits, and the petitioner's claim that Adisseo España provided no guidance is not supported by the record.¹¹⁷ Adisseo España gave each sales trace as its own exhibit.¹¹⁸

¹⁰⁹ See Final Analysis Memorandum at 4-5.

¹¹⁰ See Petitioner's Case Brief at 7-8.

¹¹¹ *Id.* at 8.

¹¹² *Id.* at 8.

¹¹³ *Id.* at 9.

¹¹⁴ *Id.* at 10-11.

¹¹⁵ *Id.* at 11-12.

¹¹⁶ See Adisseo España's Rebuttal Brief at 4.

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.* at 5.

- The exhibit pages for commissions are clearly labeled and the fact that the petitioner was able to find details including the customer name, posting period and title of the SAP screen shot while missing the page label is credulous. The information from the general ledger account ties to the U.S. sales listing.¹¹⁹
- For credit expenses, Adisseo España's shipment date, payment date, short-term borrowing, early payment discount, billing adjustments, and invoice price are all defined. These are the only fields needed to calculate credit expenses, and the formula used for this calculation has not changed since the original Section C response. Commerce provided the borrowing rate to use, and the only other number needed for the calculation is the number of days in a year. Adisseo España demonstrates that using information from its verification exhibits, the calculation of CREDITU is correct.¹²⁰
- For technical services, Adisseo España recognizes that it identified the incorrect exhibit. However, the exhibit for the sales trace contains a clearly labeled "Technical Services" page that shows the values used for technical services. This value is then calculated on a per-kilogram basis. The typographic error does not change the substance of the exhibit, and any error Adisseo España made is to over-report the cost by nearly double the amount.¹²¹
- For inland freight to customer, Adisseo España provided the calculation for this field in the first transaction. The other transactions follow the same format.¹²²
- Commerce should not take any action because the information on the record is correct and clear.¹²³

Commerce's Position

We disagree with the petitioner's contention that Adisseo España failed to provide full verification responses for inland freight to customer, credit expenses, commissions, indirect selling expenses, and technical services. Adisseo España provided sufficient information that allowed Commerce to examine the accuracy of each field, which we were able to do.

Accordingly, we have determined record evidence does not warrant applying any part of section 776(a) of the Act to fields INLFWCU, CREDITU, COMMU, INDIRSU, and TECHSERU. For additional analysis of record evidence, including a discussion of proprietary information, please see the Final Analysis Memorandum.¹²⁴

Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the

¹¹⁹ *Id.* at 5-7.

¹²⁰ *Id.* at 7-9.

¹²¹ *Id.* at 9.

¹²² *Id.* at 9-12.

¹²³ *Id.* at 12.

¹²⁴ *See* Final Analysis Memorandum at 4-7.

information cannot be verified as provided in section 782(i) of the Act, Commerce shall select from, subject to section 782(d) of the Act, among the facts otherwise available on the record in reaching the applicable determination.

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

Section 782(d) of the Act states that if Commerce “determines that a response to a request for information {...} does not comply with the request,” it “shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews {...}.”

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

For inland freight to customer, credit expenses, commissions, indirect selling expenses, and technical services, Adisseo España provided information that we were able to use to determine how Adisseo España calculated each field for its sales traces.

INLFWCU

We were able to calculate inland freight for all sales traces using the calculation ratio provided in the first sales trace.¹²⁵ We located the necessary information for the calculation ratio in the sales trace exhibits,¹²⁶ and we were able to calculate value that matched the values provided in the sales traces. For further analysis including proprietary information, *see* the Final Analysis Memorandum.¹²⁷

COMMU

For Commissions, we used sales documents from Adisseo España’s verification exhibit and Adisseo España’s commissions agreement to calculate the value that matched the sales trace.¹²⁸ For further analysis including proprietary information, *see* the Final Analysis Memorandum.¹²⁹

¹²⁵ *See* Adisseo España’s Verification Response at VER-USATRACE-2.

¹²⁶ *Id.* at VER-USA-2a, VER-USA-2b, VER-USA-2c, and VER-USA-2d.

¹²⁷ *See* Final Analysis Memorandum at 4-5.

¹²⁸ *Id.* at VER-USATRACE-2, VER-USA-2a; *see also* Adisseo España’s Letter, “Response of Adisseo España S.A. of Section C Questionnaire Response in Methionine from Spain,” dated November 2, 2020 at C-15a (Adisseo España’s November 2, 2020 Section C Questionnaire Response).

¹²⁹ *See* Final Analysis Memorandum at 5.

TECHSERU

Adisseo España notes that technical services are on a contract basis detailed at Exhibit 2SB-13, which is the incorrect exhibit.¹³⁰ However, the exhibit Adisseo España notes is clearly a misstatement as TECHSERU is for technical services occurring in the U.S. market, and exhibit 2SB-13 refers to an exhibit for the home market. We located the correct exhibit at SC-13.¹³¹ We used this exhibit, Adisseo España's narrative for the technical services expense and the verification exhibit to find the corresponding customer code.¹³² Because Adisseo España calculates its technical services by customer code,¹³³ we matched the applicable technical services expense from SC-13 to the technical service expense value in the sales trace using customer code.¹³⁴ For further analysis including proprietary information, *see* the Final Analysis Memorandum.¹³⁵

CREDITU

Adisseo España provides the values of gross unit price, billing adjustment, early payment discounts, shipment date, and payment date, as applicable, in CREDITU for every sales trace in its verification responses.¹³⁶ We instructed Adisseo España to recalculate the credit expense using the POI average of the weighted average rates of outstanding variable, and Adisseo España provided the new credit expense calculation.¹³⁷ Using the credit expense calculation provided in Adisseo España's original section C response¹³⁸ with this new rate, we inputted the fields for each sales trace into this calculation to calculate the credit expenses. The values we calculated match the values provided in the sales traces. For further analysis including proprietary information, *see* the Final Analysis Memorandum.¹³⁹

INDIRSU

In regard to indirect selling expenses, selection from among the facts otherwise available to determine this is not warranted because we determine that necessary information is not missing

¹³⁰ *Id.* at 9.

¹³¹ *See* Adisseo España's Letter, "Antidumping Investigation of Methionine from Spain: Response to the Department's Supplemental Section C Questionnaire," dated December 23, 2020 (Adisseo España's December 23, 2020 Section C SQR) at SC-13.

¹³² *See* Adisseo España's December 23, 2020 Section C SQR at SC-13; *see also* Adisseo España's Verification Response at VER-USA-2a; Adisseo España's January 26, 2021 Sections B&C Second SQR at 20-21; and Adisseo España's Letter, "Antidumping Investigation of Methionine from Spain: Responses to the Department's Fifth Supplemental Section B&C Questionnaire," dated February 17, 2021 (Adisseo España's February 17, 2021 Fifth BC SQR) at 6-7 and Exhibit 5SC-2.

¹³³ *See* Adisseo España's February 17, 2021 Fifth BC SQR at 6 and Exhibit 5SC-2.

¹³⁴ *See* Adisseo España's December 23, 2020 Section C SQR at SC-13; *see also* Adisseo España's Verification Response at VER-USA-2a and VER-USATRACE-2.

¹³⁵ *See* Final Analysis Memorandum at 6.

¹³⁶ *See* Adisseo España's Verification Response at VER-USATRACE-2, VER-USA-2a, VER-USA-2b., VER-USA-2c., and VER-USA-2d.

¹³⁷ *See* Adisseo España's December 23, 2020 SQR at 17, Attachment 1, and Exhibit SC-12.

¹³⁸ *See* Adisseo España's November 2, 2020 Section C Questionnaire Response at C-35.

¹³⁹ *See* Final Analysis Memorandum at 6-7.

from the record. We are basing indirect selling expenses on record information provided by Adisseo España.¹⁴⁰

For further analysis of fields INLFWCU, COMMU, TECHSERU, and CREDITU that includes proprietary information, please *see* the Final Analysis Memorandum. Adisseo España submitted sufficient information for Commerce to draw methodological conclusions for the final determination, and because we determine that none of the provisions under section 776(a) of the Act apply, there is no basis to resort to selection from among the facts otherwise available on the record under section 776(a) of the Act, and therefore no basis to resort to section 776(b) of the Act. Therefore, we have determined not to rely on the facts otherwise available to determine inland freight to customers, credit expenses, commissions, indirect selling expenses, and technical services.

VI. RECOMMENDATION

We recommend approving the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.




Agree



Disagree

7/19/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

¹⁴⁰ As explained in Comment 3, we find that Adisseo España failed to meet the burden for its allocation method.