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Investigation
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October 27, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination, in the
Less-Than-Fair-Value Investigation of Mattresses from Malaysia

I. SUMMARY

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

II. BACKGROUND

On March 31, 2020, Commerce received an antidumping duty (AD) petition concerning imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey (Turkey), and the Socialist Republic of Vietnam (Vietnam); and we also received a countervailing duty (CVD) petition concerning imports of mattresses from China, filed in proper form on behalf of Brooklyn Bedding; Corsicana Mattress Company; Elite Comfort Solutions; Future Foam Inc.; FXI, Inc.; Innocor, Inc.; Kolcraft Enterprises Inc.; Leggett & Platt, Incorporated; the International Brotherhood of Teamsters; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (USW) (collectively, the petitioners).¹ On April 20, 2020, Commerce initiated the

¹ See Petitioners’ Letter, “Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Antidumping and Countervailing Duty Petitions,” dated March 31, 2020 (the Petition).



LTFV investigation on mattresses from Malaysia.² Commerce also initiated all other LTFV and CVD investigations on mattresses.³

In the *Initiation Notice*, Commerce stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States subheadings listed in the “Scope of the Investigations,” in the appendix.⁴ Accordingly, Commerce released the CBP entry data to interested parties under an administrative protective order and requested comments regarding the data and respondent selection.⁵ On April 29, 2020, Commerce received comments on behalf of the petitioners and Far East Foam Industries Sdn Bhd (Far East Foam).⁶

On May 13, 2020, Commerce selected Delandis Furniture (M) Sdn Bhd (Delandis) and Far East Foam for individual examination as mandatory respondents in this investigation.⁷ Delandis and Far East Foam are the two producers and/or exporters accounting for the largest volume of the subject merchandise from Malaysia during the period of investigation (POI), based on the CBP data.⁸ Accordingly, we issued the AD questionnaire to Delandis and Far East Foam.⁹ On May 15, 2020, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of mattresses from Malaysia.¹⁰

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the appropriate physical characteristics of mattresses to be reported in response to Commerce’s AD questionnaire.¹¹ Between May 11, 2020, and May 21, 2020, we received comments and rebuttals thereto concerning product characteristics from the petitioners and the producers and/or exporters of mattresses from various countries, *i.e.*, Cozy Comfort LLC (Cozy Comfort), PT Zinus Global Indonesia (Zinus) and PT Graha Seribusatu Jaya (PT Graha).¹² On June 1, 2020,

² See *Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

³ *Id.*; see also *Mattresses from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 22998 (April 24, 2020).

⁴ See *Initiation Notice* at 23006.

⁵ See Memorandum, “Antidumping Duty Petition on Mattresses from Malaysia: Release of Customs Data from U.S. Customs and Border Protection,” dated April 14, 2020.

⁶ See Petitioners’ Letter, “Mattresses from Malaysia: Mattress Petitioners’ Comments on US Customs and Border Protection Data,” dated April 29, 2020; see also Far East Foam’s Letter, “Mattresses from Malaysia: Comments on CBP Data and Respondent Selection,” dated April 29, 2020.

⁷ See Memorandum, “Less-Than-Fair-Value Investigation of Mattresses from Malaysia: Respondent Selection,” dated May 13, 2020 (Respondent Selection Memo).

⁸ See Memorandum, “Antidumping Duty Petition on Mattresses from Malaysia: Release of Customs Data from U.S. Customs and Border Protection,” dated April 14, 2020; see also Respondent Selection Memo.

⁹ See Commerce’s Antidumping Duty Questionnaire, dated May 14, 2020.

¹⁰ See *Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam Investigation* Nos. 701-TA-645 and 731-TA-1495-1501 (Preliminary), 85 FR 30984 (May 21, 2020).

¹¹ See *Initiation Notice* at 23004.

¹² See Petitioners’ Letter, “Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners’ Product Characteristic Comments,” dated May 11, 2020; see also Cozy Comfort’s Letter, “Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Comments on Product Characteristics,” dated May 11, 2020; Zinus’ Letter, “Mattresses from

Commerce officials spoke via telephone with counsel for the petitioners regarding the petitioners' product characteristics comments and rebuttal comments.¹³ On June 4, 2020, Commerce determined the product characteristics applicable to this investigation.¹⁴ On June 4, 2020, Delandis failed to meet the deadline to submit its response to section A of Commerce's AD questionnaire. On June 5, 2020, Delandis informed Commerce of its withdrawal from participation in the investigation.¹⁵ Subsequently, on June 15, 2020, Commerce selected Vision Foam Ind. Sdn Bhd (Vision Foam) as an additional mandatory respondent in the investigation and issued the AD questionnaire to Vision Foam.¹⁶ On July 7, 2020, Vision Foam also failed to meet the deadline to submit its response to section A of Commerce's AD questionnaire.

In June and July 2020, Far East Foam submitted initial responses to sections A, B, C, and D of Commerce's AD questionnaire, *i.e.*, the sections relating to general information, home market sales, U.S. sales, and cost of production (COP), respectively.¹⁷ From July to August 2020, Commerce issued supplemental questionnaires to Far East Foam.¹⁸ We received responses to the sections A and C supplemental questionnaires in July 2020.¹⁹ The petitioners submitted comments on Far East Foam's questionnaire responses in June and July, 2020.²⁰

Indonesia, Cambodia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Zinus' Product Characteristics Comments," dated May 11, 2020; PT Graha's Letter, "Mattresses from Indonesia, Cambodia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: PT Graha Seribusatu Jaya Rebuttal Comments on Product Characteristics," dated May 21, 2020; Petitioners' Letter, "Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Product Characteristics Rebuttal Comments," dated May 21, 2020; Cozy Comfort's Letter, "Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Rebuttal Comments on Product Characteristics," dated May 21, 2020; and Zinus' Letter, "Mattresses from Indonesia, Cambodia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Zinus' Rebuttal Product Characteristics Comments," dated May 21, 2020.

¹³ See Memorandum, "Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam Antidumping Duty Investigations: Phone Call with Counsel to Petitioners," dated June 1, 2020.

¹⁴ See Commerce's Letter, "Product Characteristics for the Antidumping Duty Investigation of Mattresses from Malaysia," dated June 4, 2020.

¹⁵ See Delandis' Letter, "Mattresses from Malaysia: Notice of Withdrawal from Investigation," dated June 5, 2020 (Delandis Withdrawal).

¹⁶ See Commerce's Antidumping Duty Questionnaire, dated June 15, 2020.

¹⁷ See Far East Foam's June 22, 2020, Section A Questionnaire Response (Far East Foam's AQR)); *see also* July 13, 2020, Section B Questionnaire Response (Far East Foam's BQR); July 2, 2020, Section C Questionnaire Response; and July 20, 2020 (Far East Foam's CQR), Section D Questionnaire Response (Far East Foam's DQR).

¹⁸ See Commerce's July 8, 2020 Section A Supplemental Questionnaire; *see also* Commerce's July 21, 2020 Section C Supplemental Questionnaire; Commerce's August 10, 2020 Section B Supplemental Questionnaire and Second Section A Supplemental Questionnaire; and Commerce's August 20, 2020 Section D Supplemental Questionnaire.

¹⁹ See Far East Foam's July 16, 2020, Section A Supplemental Questionnaire Response (Far East Foam's SAQR); *see also* July 15, 2020, Section C Supplemental Questionnaire Response (Far East Foam's SCQR).

²⁰ See Petitioners' Letters, "Mattresses from Malaysia: Mattress Petitioners' Deficiency Comments Concerning Far East Foam's Section A Questionnaire Response," dated June 29, 2020; "Mattresses from Malaysia: Mattress Petitioners' Deficiency Comments Concerning Far East Foam's Section C Questionnaire Response," dated July 10, 2020; "Mattresses from Malaysia: Mattress Petitioners' Rebuttal Factual Information Concerning Far East's Section A Supplemental Questionnaire Response and Additional Examples of Failure to Act to the Best of Their Ability," dated July 20, 2020 (Rebuttal Factual Information); "Mattresses from Malaysia: Mattress Petitioners' Deficiency Comments Concerning Far East Foam's Section A Supplemental Questionnaire Response," dated July 28, 2020; and "Mattresses from Malaysia: Mattress Petitioners' Deficiency Comments Concerning Far East Foam's Section B Questionnaire Response," dated July 30, 2020.

On August 11, 2020, based on a request from the petitioners,²¹ Commerce postponed the preliminary determination of this investigation by 50 days, to October 27, 2020, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).²² On September 2, 2020, Far East Foam informed Commerce of its withdrawal from participation in the investigation.²³

On September 14, 2020, Far East Foam requested that Commerce remove the business proprietary information (BPI) which Far East Foam had placed on the record of this investigation.²⁴ On October 14, 2020, Commerce granted this request and required other interested parties with access to this BPI to certify in writing that they had destroyed the BPI information provided by Far East Foam.²⁵ Stork Craft Manufacturing (USA) Inc. (Stork Craft) and the petitioners certified the destruction of Far East Foam's BPI information on October 16, 2020, and October 19, 2020, respectively.²⁶

On September 30, 2020, the petitioners requested that, in the event of a negative preliminary determination in this investigation, Commerce postpone its final determination and extend the provisional measures from four to six months in accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i).²⁷

On September 30, 2020, the petitioners submitted comments for consideration in Commerce's preliminary determination.²⁸

On October 16, 2020, Far East Foam requested that Commerce postpone its final determination by 60 days and extend provisional measures from a four-month period to a period not to exceed six months in accordance with 19 CFR 351.210(b)(2)(ii)(e) and 19 CFR 351.210(e)(2),

²¹ See Petitioners' Letter, "Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Request to Extend Preliminary Results and Align the Countervailing Duty Investigation with the Concurrent Antidumping Duty Investigations," dated July 30, 2020.

²² See *Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 48505 (August 11, 2020); see also Petitioners' Letter, "Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Request to Extend Preliminary Results and Align the Countervailing Duty Investigation with the Concurrent Antidumping Duty Investigations," dated July 30, 2020.

²³ See Far East Foam's Letter, "Antidumping Duties on Imports of Mattresses from Malaysia: Far East Foam Industries Withdrawal from the Investigation," dated September 2, 2020.

²⁴ See Far East Foam's Letter, "Antidumping Duties on Imports of Mattresses from Malaysia: Far East Foam Industries Request for Destruction of BPI Material," dated September 14, 2020.

²⁵ See Commerce's Letter, "Less-Than-Fair-Value Investigation of Mattresses from Malaysia: Request for Removal of Business Proprietary Information from the Record," dated October 14, 2020.

²⁶ See Stork Craft's Letter, "Mattresses from Malaysia: Certification of APO Destruction," dated October 16, 2020; see also Petitioners' Letter, "Mattresses from Malaysia: Mattress Petitioners' Certification of Destruction of Far East Foam's Business Proprietary Information," dated October 19, 2020.

²⁷ See Petitioners' Letter, "Mattresses from Cambodia: Mattress Petitioners' Request to Postpone Final Determination," dated September 30, 2020; see also Petitioners' Letter, "Mattresses from Cambodia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners' Revised Request to Postpone Final Determination," dated October 15, 2020.

²⁸ See Petitioners' Letter, "Mattresses from Malaysia: Mattress Petitioners' Comments in Advance of the Preliminary Determination," dated September 30, 2020.

respectively.²⁹

III. PERIOD OF INVESTIGATION

The POI is January 1, 2019 through December 30, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was March 2020.³⁰

IV. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

As noted above, Commerce selected Delandis, Far East Foam, and Vision Foam as mandatory respondents in this investigation. Delandis and Vision Foam received our AD questionnaire and did not submit timely responses to it. Far East Foam initially submitted responses to sections A, B, C and D of the AD questionnaire as well as responses to supplemental questionnaires regarding sections A and C of the AD questionnaire, but subsequently informed Commerce of its withdrawal from participating in the investigation and failed to respond to our section B, second section A and section D supplemental questionnaires. Further, Far East Foam requested, and Commerce agreed, to remove from the record the BPI submitted by Far East Foam as part of its questionnaire responses. For the reasons stated below, we determine that the use of facts otherwise available with an adverse inference is appropriate for the preliminary determination with respect to Delandis, Far East Foam, and Vision Foam.

A) Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by the Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

²⁹ See Far East Foam's Letter, "Antidumping Duties on Imports of Mattresses from Malaysia: Request to Extend Final Determination," dated October 16, 2020.

³⁰ See 19 CFR 351.204(b)(1).

Delandis and Vision Foam did not respond to our request for information or otherwise participate in this investigation. The deadlines for the submissions of Delandis's and Vision Foam's responses to section A of the questionnaire were June 4, 2020, and July 7, 2020, respectively.³¹ Commerce received no questionnaire response from Delandis or Vision Foam on the respective deadline date. Delandis then informed Commerce that it withdrew from participating in this investigation, stating that it did not have the resources available at present to participate.³²

Far East Foam responded to sections A, B, C and D of Commerce's questionnaire as well as to Commerce's sections A and C supplemental questionnaires.³³ However, Far East Foam failed to respond to Commerce's section B, second section A, and section D supplemental questionnaires prior to its withdrawal from the investigation. Further, Far East Foam requested, and Commerce agreed, to remove from the record the BPI submitted by Far East Foam as part of its questionnaire responses. Accordingly, the information provided by Far East Foam is insufficient to calculate a preliminary estimated weighted-average dumping margin.

As a result, we preliminarily find that the necessary information is not available on the record of this investigation, that Delandis, Far East Foam and Vision Foam withheld information Commerce requested, that they failed to provide information by the specified deadlines, and that they significantly impeded the proceeding. As Delandis and Vision Foam failed to provide any information, section 782(e) of the Act is not applicable.

Far East Foam submitted initial responses to the AD questionnaire. However, Far East Foam's responses were insufficient and Commerce had to seek additional information and clarifications from Far East Foam in its section B, second section A, and section D supplemental questionnaires. Far East Foam failed to submit its responses to Commerce's section B, second section A, and section D supplemental questionnaires before it withdrew from participating in the investigation. Accordingly, Commerce finds Far East Foam's submitted information to be so incomplete that it cannot be used as a reliable basis for reaching a preliminary determination. Further, Far East Foam requested, and Commerce agreed, to remove from the record the BPI submitted by Far East Foam as part of its questionnaire responses. Accordingly, there is no information on the record to calculate an estimated weighted-average dumping margin for Far East Foam. Accordingly, section 782(e) of the Act is also not applicable for Far East Foam.

Pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine the preliminary estimated weighted-average dumping margins for Delandis, Far East Foam and Vision Foam.

B) Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts

³¹ See Delandis AD Questionnaire and Vision Foam AD Questionnaire.

³² See Delandis Withdrawal.

³³ See Far East Foam's AQR; see also Far East Foam's BQR; Far East Foam's CQR; Far East Foam's DQR; Far East Foam's SAQR; and Far East Foam's SCQR.

otherwise available.³⁴ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³⁵ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁶ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.³⁷ It is Commerce’s practice to consider, in employing AFA, the extent to which a party may benefit from its own lack of cooperation.³⁸

We preliminarily find that Delandis, Far East Foam, and Vision Foam have not acted to the best of their abilities to comply with Commerce’s requests for information. Delandis and Vision Foam failed to respond to Commerce’s questionnaire entirely. Far East Foam initially submitted a response to Commerce’s questionnaire, but failed to submit its response to Commerce’s supplemental questionnaires and withdrew from participating in the investigation. Further, Far East Foam requested, and Commerce agreed, to remove from the record the BPI submitted by Far East Foam as part of its questionnaire responses. The failure of Delandis, Far East Foam, and Vision Foam to participate fully in this investigation and respond to Commerce’s questionnaires has precluded Commerce from performing the necessary analysis to calculate estimated weighted-average dumping margins for them based on their own data. Accordingly, Commerce concludes that Delandis, Far East Foam, and Vision Foam failed to cooperate to the best of their abilities to comply with a request for information by Commerce. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.³⁹

³⁴ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

³⁵ See section 776(b)(1)(B) of the Act.

³⁶ See SAA, H.R. Doc. 103-316, vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

³⁷ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); see also *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*), 62 FR at 27340.

³⁸ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at 4; unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

³⁹ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at 7-11; unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

C) Preliminary Estimated Weighted-Average Dumping Margin Based on Adverse Facts Available

Section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁴⁰ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴¹ Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.⁴²

As explained above, Commerce selected three respondents for individual examination and issued questionnaires seeking the information necessary for calculating a dumping margin. Delandis and Vision Foam failed to respond to Commerce's questionnaire entirely. Far East Foam's response to Commerce's questionnaire was deficient and necessitated issuance of supplemental questionnaires. However, Far East Foam failed to submit its response to Commerce's supplemental questionnaires and withdrew from participating in the investigation, as well as had its BPI removed from the investigation record. Because each of the three mandatory respondents in this investigation failed to provide Commerce with necessary information for determining their estimated weighted-average dumping margin based on their own data, the only information on the record is the dumping margin alleged in the Petition. Accordingly, based on its evaluation of facts available with an adverse inference, Commerce has selected the only dumping margin alleged in the Petition, *i.e.*, 42.92 percent, as the AFA rate applicable to Delandis, Far East Foam and Vision Foam in this investigation.

D) Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁴³ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value,⁴⁴ although Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁴⁵ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although

⁴⁰ See also 19 CFR 351.308(c).

⁴¹ See SAA at 870.

⁴² See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

⁴³ See SAA at 870.

⁴⁴ See SAA at 870; see also 19 CFR 351.308(d).

⁴⁵ See section 776(c)(2) of the Act.

Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁴⁶

Thus, because the AFA rate applied to Delandis, Far East Foam, and Vision Foam, the mandatory respondents in this investigation, is derived from the Petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable. In this case, the information on the record is limited because all three Malaysian companies selected for individual examination failed to cooperate, withdrew from participating in this investigation, and/or effectuated the removal of their BPI from the investigation record. Accordingly, after considering the limited information available on this record, we determined that the margin in the Petition is reliable where, to the extent appropriate information was available on the record of this investigation, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.⁴⁷

Specifically, we examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margin alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the alleged dumping margin calculation, *i.e.*, export price (EP) and normal value (NV).⁴⁸ Further, we examined information from various independent sources provided either in the Petition or, based on our request, in the supplement to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive the dumping margin alleged in the Petition.⁴⁹

Based on our examination of the information, as discussed in detail in the Malaysia Initiation Checklist, we consider the EP and NV calculations from the Petition to be reliable. Specifically, because we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the EP and NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petition to be reliable. Additionally, because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margin alleged in the Petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margin alleged in the Petition is reliable for the purpose of assigning it as an AFA rate to the mandatory respondents in this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. Because there are no remaining participating cooperative respondents in this investigation, we relied upon the dumping margin alleged in the Petition. The petitioners

⁴⁶ See section 776(d)(3) of the Act.

⁴⁷ See Antidumping Duty Investigation Initiation Checklist: Mattresses from Malaysia (April 20, 2020) (Malaysia Initiation Checklist).

⁴⁸ *Id.*

⁴⁹ *Id.*

derived this dumping margin by basing EP on the average unit values of imports from Malaysia according to official U.S. import statistics and NV on constructed value calculated using the production costs of a U.S. producer of mattresses with production processes similar to those used in Malaysia. Accordingly, we find that the petitioners' margin calculation methodology is reasonable in light of information available on the record and supports the relevance aspect of corroboration.

Accordingly, Commerce preliminarily determines that the only dumping margin alleged in the Petition has probative value. Commerce has corroborated the AFA rate of 42.92 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation and for purposes of this preliminary determination (and there is no record information indicating otherwise); and (2) is relevant to the uncooperative mandatory respondents.⁵⁰

V. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁵⁰ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.