



A-489-837  
Investigation  
POI: 04/01/2018-03/31/2019  
**Public Document**  
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April 27, 2020

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

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

**SUBJECT:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Antidumping Duty Investigation of Certain  
Quartz Surface Products from the Republic of Turkey

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## I. SUMMARY

The Department of Commerce (Commerce) determines that certain quartz surface products (quartz surface products) from the Republic of Turkey (Turkey) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2018 through March 31, 2019.

Below is a complete list of issues in this administrative review for which we received comments from interested parties.

- Comment 1: Industry Support for the Petition
- Comment 2: Application of Adverse Facts Available (AFA) to Belenco
- Comment 3: Whether Belenco Attempted to Change Reported Cost Information at Verification Without Alerting Commerce to the Change
- Comment 4: Affiliation Between Belenco and its Home Market Customer, SRA Dış Ticaret (SRA)
- Comment 5: Belenco's Discounts and Rebates in the U.S. and Home Markets
- Comment 6: Inclusion of Product Grade as a Control Number (CONNUM) Characteristic for Belenco
- Comment 7: Belenco's Proof of Payment for Home Market Sales
- Comment 8: Belenco's Shipment Date and Payment Date Methodology for U.S. Sales
- Comment 9: Programming Errors with Respect to Home Market Advertising Expense (ADVERTH) and Certain Duplicated Surrogate Costs for Belenco
- Comment 10: Whether Commerce Must Address Ermaş's Missing Information or Apply AFA
- Comment 11: Differential Pricing Analysis for Ermaş

Comment 12: The Inclusion of Sample Sales for Little or No Compensation in the Determination of Normal Value for Ermaş

Comment 13: Ermaş's Cost of Production for Sample Slabs Sold in the Home Market

Comment 14: The Applicable Interest Rate in Ermaş's Credit Adjustment

Comment 15: Other Adjustments to Ermaş's Reported Costs

## II. BACKGROUND

On December 13, 2019, Commerce published the *Preliminary Determination* of sales at LTFV in this investigation.<sup>1</sup> This investigation covers two producers and exporters of the subject merchandise, Belenco dis Tikaret A.Ş. (Belenco) and Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş). The POI is April 1, 2018 through March 31, 2019.

During January 2020, we conducted verification of the sales and cost of production (COP) data reported by Belenco and Ermaş, in accordance with section 782(i) of the Act.<sup>2</sup> We invited parties to comment on our *Preliminary Determination*.<sup>3</sup> Parties submitted case and rebuttal briefs on March 24 and April 2, 2020.<sup>4</sup>

On April 1, 2020, Commerce notified Ermaş of its untimely inclusion of new factual information (NFI) in its March 24, 2020 case brief, and we requested it to redact and resubmit its case brief without the new factual information.<sup>5</sup> Ermaş did not refile its case brief by the applicable

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<sup>1</sup> See *Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 68111 (December 13, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memoranda, "Verification of Belenco dis Tikaret A.A. in the Antidumping Duty Investigation of Certain Quartz Surface Products from Turkey," dated March 10, 2020 (Belenco Cost Verification Report); "Verification of the Cost Response of Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş) in the Antidumping Duty Less Than Fair Value Investigation of Certain Quartz Surface Products from Turkey," dated March 10, 2020 (Ermaş Cost Verification Report); "Antidumping Duty Investigation of Certain Quartz Surface Products from the Republic of Turkey: Sales Verifications of Belenco Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi," dated March 13, 2020 (Belenco's Sales Verification Report); and "Antidumping Duty Investigation of Certain Quartz Surface Products from the Republic of Turkey: Sales Verifications of Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş)," dated March 16, 2020 (Ermaş's Sales Verification Report).

<sup>3</sup> See *Preliminary Determination*, 84 FR at 68113.

<sup>4</sup> See Petitioner's Letter, "Certain Quartz Surface Products from Turkey: Petitioner's Case Brief," dated March 24, 2020 (Petitioner's Case Brief); see also Belenco's Letter, "Antidumping Duty Investigation of Certain Quartz Surface Products from Turkey: Belenco's Case Brief," dated March 24, 2020 (Belenco's Case Brief); Ermaş's Letter, "Certain Quartz Surface Products from Turkey (A-489-837): Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş), Case Brief," dated March 24, 2019 (Ermaş's Case Brief); Domestic Interested Parties' Letter, "Certain Quartz Surface Products from Turkey: Letter in Lieu of Case Brief of Arizona Tile LLC and MS International, Inc.," dated March 24, 2019 (Domestic Interested Parties' Letter in Lieu of Case Brief); Petitioner's Letter, "Certain Quartz Surface Products from Turkey: Petitioner's Rebuttal Brief," dated April 2, 2020 (Petitioner's Rebuttal Brief); Belenco's Letter, "Antidumping Duty Investigation of Certain Quartz Surface Products from Turkey: Belenco's Rebuttal Brief," dated April 2, 2020 (Belenco's Rebuttal Brief); and Ermaş's Letter, "Certain Quartz Surface Products from Turkey (A-489-837): Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş), Rebuttal Brief," dated April 2, 2020 (Ermaş's Rebuttal Brief).

<sup>5</sup> See Commerce's Letter, "Antidumping Duty Investigation of Certain Quartz Surface Products from Turkey: Reject New Factual Information Contained in Ermaş's March 24, 2020, Case Brief," dated April 1, 2020; see also

deadline. Therefore, on April 6, 2020, Commerce requested the petitioner to redact any references to the NFI in Ermaş's case brief from its rebuttal brief, and to resubmit the rebuttal brief on the record.<sup>6</sup> On April 8, 2020, the petitioner redacted and resubmitted its rebuttal brief without references to Ermaş's case brief.<sup>7</sup>

On April 8, 2020, officials from Commerce held a meeting by teleconference with counsel to MSI and Arizona Tile to discuss issues raised in its letter in lieu of case brief.<sup>8</sup> Therefore, we did not otherwise hold a hearing in this proceeding.

### **III. SCOPE COMMENTS**

During the course of this investigation, Commerce received scope comments from interested parties. We issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in case and rebuttal briefs.<sup>9</sup> We did not receive scope case briefs from interested parties. Thus, for this final determination, we have made no changes to the scope of this investigation, as published in the *Preliminary Determination*.

### **IV. SCOPE OF THE INVESTIGATION**

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

### **V. FINAL NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES**

Sections 733(e)(1) and 735(a)(3) of the Act provide that Commerce determines that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (A)(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether the knowledge standard pursuant to sections 733(e)(1)(A)(ii) and 735(a)(3)(A)(ii) of the Act has been met, Commerce normally considers margins of 25 percent or

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Memorandum, "Antidumping Duty Investigation of Certain Quartz Surface Products from Turkey: Reject and Retain Documents in ACCESS," dated April 1, 2020.

<sup>6</sup> *See* Commerce's Letter, "Antidumping Duty Investigation of Certain Quartz Surface Products from Turkey: Request to Redact and Resubmit Petitioner's Rebuttal Brief," dated April 6, 2020; *see also* Memorandum, "Reject and Retain Documents in ACCESS," dated April 14, 2020.

<sup>7</sup> *See* Petitioner's Rebuttal Brief.

<sup>8</sup> *See* Memorandum, "Teleconference with Counsel to M S International, Inc. and Arizona Tile LLC," dated April 17, 2020.

<sup>9</sup> *See* Memorandum, "Certain Quartz Surface Products from India and Turkey: Preliminary Scope Decision Memorandum," dated December 4, 2019 (Preliminary Scope Memorandum).

more for export price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute importer knowledge of sales at LTFV.<sup>10</sup> Because our *Preliminary Determination* calculated weighted-average dumping margins on EP sales for Belenco and Ermaş (and, thus, all other producers and exporters in Turkey) lower than 25 percent, we preliminarily determined that the knowledge standard was not met and critical circumstances did not exist with respect to Belenco, Ermaş, or all other producers and exporters in Turkey.<sup>11</sup>

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

## **VI. CHANGES SINCE THE PRELIMINARY DETERMINATION**

We calculated EP, CEP, and normal value (NV) using the same methodology as the *Preliminary Determination*,<sup>12</sup> with the following exceptions:

- We revised the cost of manufacturing, general and administrative expenses (GNA) and interest expenses (INTEX) for Belenco.<sup>13</sup>
- We revised the determination of NV for Belenco to include home market advertising expense (ADVERTH) in the calculation of home market direct selling expenses (HMDSELL).<sup>14</sup>
- We revised the gross unit price (GRSUPRU) in U.S. dollars (USD) for Belenco's U.S. Pre-Selected Sale #4 to account for a minor correction reported at verification.<sup>15</sup>
- We revised the calculation of U.S. credit to apply as adverse facts available (AFA) the longest verified period for which payment was outstanding to all U.S. sales.<sup>16</sup>

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<sup>10</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422, 17425 (March 26, 2012).

<sup>11</sup> See PDM at 20-22.

<sup>12</sup> See PDM.

<sup>13</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Belenco dis Tikaret A.S. (Belenco) and its Affiliates," dated concurrently with this memorandum.

<sup>14</sup> See Comment 9.

<sup>15</sup> See Belenco's Letter, "Antidumping Duty Investigation of Certain Quartz Surface Products from Turkey: Belenco Sales Verification Minor Corrections," dated January 22, 2020; see also Belenco's Sales Verification Report at 3; and Memorandum, "Analysis for the Final Determination in the Investigation of Certain Quartz Surface Products from the Republic of Turkey: Belenco dis Tikaret A.Ş.," dated concurrently with this memorandum (Belenco's Final Analysis Memorandum).

<sup>16</sup> See Comment 8.

- We revised the determination of NV and U.S. price for Ermaş to account for minor corrections to the response presented at verification.<sup>17</sup>
- We removed home market sales made for little or no compensation from the determination of NV for Ermaş.<sup>18</sup>
- We revised the application of the G&A and financial expense rates to the extended CONNUM-specific manufacturing costs, and revised the calculation of revised raw material and discount adjustments based on the findings of the cost verification.<sup>19</sup>

## VII. DISCUSSION OF THE ISSUES

### Comment 1: Industry Support for the Petition

#### *Arizona Tile and MSI's Comments*<sup>20</sup>

- Commerce's statute requires that a petition be filed on behalf of a U.S. industry, and Commerce is directed to look to U.S. producers and workers as a whole that produce the domestic like product. Commerce accepted that the domestic like product is coextensive with the scope of the investigation, which covers not only "slabs" but also "other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles."<sup>21</sup> Thus, the domestic like product includes fabricated slabs, which are products manufactured by U.S. fabricators, who purchase quartz surface slabs and then further process them into fabricated quartz surface products, like countertops and backsplashes.
- Commerce erroneously disregarded the views of U.S. fabricators at initiation, who challenged the definition of the domestic industry. Commerce determined that U.S. fabricators were not members of the domestic industry for industry support purposes because they did not "perform sufficient production-related activities." However, evidence on the record indicates that fabricators constitute an important part of the U.S. industry. Further, the views of the domestic industry as a whole must be considered unless producers are related to foreign producers or are importers. Commerce did not make a finding at initiation that U.S. fabricators fall into either of those categories.
- Commerce neglected its obligation under the Act to poll the industry or determine support among U.S. fabricators. Thus, Commerce initiated this investigation contrary to the wishes

<sup>17</sup> See Ermaş's Letter, "Certain Quartz Surface Products from Turkey (A-489-837): Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş), Sales Verification Minor Corrections," dated February 3, 2020; *see also* Ermaş's Sales Verification Report at 2-6, and Memorandum, "Analysis for the Final Determination in the Investigation of Certain Quartz Surface Products from the Republic of Turkey: Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi," dated concurrently with this memorandum (Ermaş's Final Analysis Memorandum).

<sup>18</sup> See Comment 12; *see also* Ermaş's Final Analysis Memorandum.

<sup>19</sup> See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi," dated concurrently with this memorandum (Ermaş's Final Cost Analysis Memorandum).

<sup>20</sup> See Domestic Interested Parties' Letter in Lieu of Case Brief at 2-7.

<sup>21</sup> See Antidumping Duty Investigation Initiation Checklist: Certain Quartz Surface Products from Turkey, dated May 28, 2019 (Initiation Checklist) at Attachment I.

of the majority of the industry, and the investigation should be terminated or suspended pending Commerce's polling of the industry.

*Petitioner's Rebuttal Comments*<sup>22</sup>

- The statute prohibits Commerce from reconsidering industry support after the initiation of an AD or countervailing duty investigation, which the CIT has recognized.<sup>23</sup>
- Commerce rejected similar arguments by Arizona Tile and MSI in *Quartz Surface Products from China AD*, explaining that "Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation."<sup>24</sup>
- Assuming Commerce is able to reconsider its industry support determination, Commerce properly rejected Arizona Tile and MSI's challenge at initiation and nothing in the companies' case brief warrants a change to Commerce's analysis.
- There was no need for Commerce to poll the industry, as Commerce properly found that the Petition was supported by domestic producers and workers which account for more than 50 percent of the total production of the domestic like product.

**Commerce's Position:**

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

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. *After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.*<sup>25</sup>

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation.<sup>26</sup> As a result, we continue to rely on our determination of industry support provided in the Initiation Checklist.<sup>27</sup>

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<sup>22</sup> See Petitioner's Rebuttal Brief at 2-7.

<sup>23</sup> See *P.T. Pindo Deli Pulp & Paper Mills v. United States*, 825 F. Supp. 2d 1310, 1323 (CIT 2012).

<sup>24</sup> See *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Quartz Surface Products from China AD*) and accompanying IDM at Comment 1.

<sup>25</sup> See section 732(c)(4)(E) of the Act (emphasis added); see also *Certain Uncoated Groundwood Paper from Canada: Final Determination of Sales at Less Than Fair Value*, 83 FR 39412 (August 9, 2018) and accompanying IDM at Comment 1.

<sup>26</sup> See, e.g., *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 11953 (February 28, 2020) and accompanying IDM at Comment 1.

<sup>27</sup> See Initiation Checklist at Attachment II.

As we stated in the Initiation Checklist:

Sections 702(c)(4)(D) and 732(c)(4)(D) of the Act require Commerce to poll the industry or rely on other information to determine industry support if the petition does not establish support of domestic producers accounting for more than 50 percent of the total production of the domestic like product. For the Turkey Petitions, the petitioner did not establish the support of domestic producers accounting for more than 50 percent of the total production of the domestic like product. Therefore, we have relied on other information to determine industry support for the Turkey Petitions, pursuant to sections 702(c)(4)(D)(i) and 732(c)(4)(D)(i) of the Act.<sup>28</sup>

Further, with respect to the inclusion of fabricators, Commerce addressed MSI and Arizona Tile's arguments in detail at the initiation stage of the investigation.<sup>29</sup> Specifically, we stated:

{W}e have analyzed the information provided by the petitioner and find that there is reason to again conclude that fabricators do not perform sufficient production-related activities to be included in the domestic industry for industry support purposes. The petitioner provided detailed information to support its argument that fabricators should not be considered part of the domestic industry for standing, making it clear that there are significant differences in the level of complexity and capital investment, employment, training and technical expertise, production processes, and type of equipment, between quartz surface product slab producers and fabricators.<sup>30</sup> Based on the information provided by the petitioner, quartz slab production involves highly complex and interconnected machinery and engineering processes, and, as a result, requires specialized equipment dedicated to quartz surface products production and a significantly greater amount of capital investment, training and technical expertise, and number of employees than the fabrication process.<sup>31</sup> In contrast, information provided by the petitioner indicates that the fabrication process requires limited equipment that is not dedicated solely to quartz surface products, fewer employees, much less technical expertise, and significantly less capital investment.<sup>32</sup> Information provided by the petitioner further indicates that the fabrication process does not change the fundamental physical characteristics imparted during the slab production process, as fabricators simply convert an existing slab into a geometrical form for its end use or application.<sup>33</sup> In addition, many fabricators rely on imported slabs to produce final fabricated products.<sup>34, 35</sup>

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<sup>28</sup> *Id.* at Attachment II, p. 7.

<sup>29</sup> *Id.* at Attachment II, pp. 14-16.

<sup>30</sup> See Petitioner's Letter, "Certain Quartz Surface Products from India and the Republic of Turkey: Petitioner's Response to MSI's Comments on Standing," dated May 28, 2019, at 4-18 and Exhibits 2-8.

<sup>31</sup> *Id.* at 6-12 and Exhibits 2-8.

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

<sup>33</sup> *Id.* at 6 and Exhibit 2.

<sup>34</sup> *Id.* at 13, 20, and Exhibit 7.

<sup>35</sup> See Initiation Checklist at Attachment II, p. 14.

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

## **Comment 2: Application of Adverse Facts Available (AFA) to Belenco**

### *Petitioner's Comments*<sup>36</sup>

- Commerce lacks product-specific cost data and, therefore, must apply AFA to Belenco because:
  - Belenco repeatedly failed to fully cooperate to its maximum ability because it failed to provide product-specific costs that correspond to the physical characteristics defined by Commerce.
  - Belenco has not reported product-specific costs because it has allocated the control number (CONNUM)-specific total cost of manufacturing to the Commerce-defined categories of materials, labor, variable and fixed overhead using average percentages from an analysis of all products' actual costs for the last quarter of the POI. The allocation of total cost to the different categories of costs that make up the total cost does not reflect individual physical differences between CONNUMs.
  - Failure to provide costs (*i.e.*, materials, labor, and overhead) that are accurate reflections of physical differences is not an inconsequential failure, even if Belenco accurately reported the total costs.
  - Belenco has not cooperated to the best of its ability and failed to provide requested product-specific costs that correspond to the physical characteristics defined by Commerce, because it did not use the January to March 2019 Detailed Cost Analysis Report from its Enterprise Resource Planning (ERP) system, which provided product-specific cost information for virtually all of its production.
  - Alternatively, Belenco could have provided reasonable product-specific cost reporting from the bills of materials (BOM) in its records for all the CONNUMs.
- Commerce should determine Belenco's margins in accordance with section 776 of the Act, because it was unable to verify the information submitted in Belenco's home market and U.S. sales responses. Specifically:
  - Belenco failed to provide proof of payment for its home market sales.
  - Belenco failed to provide accurate information regarding U.S. price, date of shipment, date of payment, date of delivery, place of delivery and/or accurate information concerning rebates and discounts for four of its five pre-selected U.S. sales.
  - Belenco's arguments that it did not have to provide proof of payment for its home market sales because: (1) it could not link specific payment checks to specific home market sales; and (2) the balance of the account for distributor payments never reaches zero, meaning Belenco always has payment for its sales, are not credible arguments. Belenco provided a payment date analysis for sales made after the POI.
- Belenco attempted to change the cost documentation that it submitted without alerting Commerce to the change.

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<sup>36</sup> See Petitioner's Case Brief at 3-26.



*Belenco's Rebuttal Comments*<sup>37</sup>

- Belenco's reported costs are accurate and product specific.
  - The allocation ratio was used to apportion the actual product-specific costs to each of their constituent elements (*i.e.*, direct material, direct labor, variable overhead and fixed overhead).
  - Belenco's system tracks product-specific costs by product code, and the product code includes all the relevant physical characteristics.
  - The statute permits Commerce to accept a respondent's costs "based on the company's normal books and records, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production of the merchandise."<sup>38</sup> There is no requirement that "a particular methodology be followed" as long as the actual selected methodology is reasonable.<sup>39</sup>
  - According to the petitioner, the majority of Belenco's CONNUM-specific products have some production in 2019.<sup>40</sup> This underscores the reasonableness of using Belenco's 2019 production cost experience to allocate the product-specific total manufacturing cost to Commerce's cost categories using its actual cost experience from the first quarter of 2019 for products produced in the last three quarters of 2018 for which Belenco only maintained the product-specific total cost of manufacturing in its ERP system.
  - Belenco has been entirely forthright and has cooperated to the best of its ability throughout this investigation.
  - Using the BOM to report product-specific costs would not have yielded actual product-specific production costs because that would be merely an alternative allocation methodology based on different criteria.<sup>41</sup>
- Commerce fully verified Belenco's U.S. and home market prices:
  - Belenco disagrees with the petitioner's contention that because the balance of the account for payments from Belenco's home market distributor SRA never reaches zero means that: (1) Belenco's home market prices are higher than reflected on its invoices; and, (2) Belenco's reported home market prices were unverifiable.
  - Rather, Belenco reported the home market prices recorded on its invoices. However, given the check endorsement methodology that Belenco explained in great detail, it is impossible for payment receipts and invoices to match.
  - Belenco's U.S. prices were fully verified despite an acknowledged error reported for U.S. Pre-Selected Sale #4 reported in the minor corrections to the response, and an inadvertent error reported in the place of delivery for U.S Pre-Selected Sale #5. In addition, the gross unit prices were correctly reported for U.S. Pre-Selected Sale #1 and U.S. Pre-Selected Sale #2 based on USD per square meter (SQM), whereas prices on the invoice were reported on a per-piece basis.
- Thus, Commerce should dismiss the petitioner's arguments for the application of AFA to Belenco for the final determination.

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<sup>37</sup> See Belenco's Rebuttal Brief at 10-14.

<sup>38</sup> *Id.* at 7 (citing section 773(f)(1)(A) of the Act).

<sup>39</sup> See *Bethlehem Steel Corp. v. United States*, 24 CIT 375, 378 (CIT 2000).

<sup>40</sup> See Petitioner's Case Brief at 16.

<sup>41</sup> See Belenco's Rebuttal Brief at 7.

### Commerce's Position:

We disagree with the petitioner. According to section 776(a) of the Act, Commerce shall use the facts otherwise available in reaching a determination if:

- 1) necessary information is not available on the record, or
- 2) an interested party or any other person-
  - A) withholds information that has been requested by the administering authority or the Commission under this title,
  - B) 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,
  - C) significantly impedes a proceeding under this title, or
  - D) provides such information but the information cannot be verified as provided in section 782(i).

Further, 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, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available.

In this case, we disagree that application of AFA under section 776(b) of the Act, let alone application of facts available under section 776(a) of the Act, is warranted. In particular, we find that all necessary information is available on the record of this investigation, and Belenco has not withheld information, failed to provide information within established time limits, significantly impeded this proceeding, or provided information that cannot be verified. We find that, throughout the course of this investigation, Belenco has demonstrated its willingness to cooperate with Commerce's requests for information, and it has answered each request for information to the best of its ability. Therefore, we find no basis to apply facts available or facts available with an adverse inference in this case.

In accordance with section 773(f)(1)(A) of the Act, Commerce will normally calculate costs based on the records of the producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise.<sup>42</sup> Belenco reported its costs according to its normal books and records which follows the Turkish GAAP.<sup>43</sup> Hence, the issue at hand is whether Belenco's reported CONNUM-specific costs reasonably reflect the costs associated with the production of quartz surface products. As background, Belenco's cost accounting system, a component of its ERP system, accounts for the total cost of manufacturing at its internal product code level.<sup>44</sup> The product code includes all the relevant physical characteristics defined by

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<sup>42</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Light-Weight Rectangular Pipe and Tube from Mexico*, 73 FR 35649 (June 24, 2008) and accompanying IDM at Comment 10.

<sup>43</sup> See Belenco's Cost Verification Report at 4-5.

<sup>44</sup> *Id.* at 5.

Commerce, and each product code produced is tied to a unique job order number and its bill of materials.<sup>45</sup> The BOM is akin to a recipe to make the specific product which incorporates all the relevant physical characteristics identified by Commerce. The costs of these product codes are weight averaged, by quantity produced, into control numbers, or CONNUMS, based on Commerce's physical characteristics.

The petitioner acknowledges that Belenco reported accurate cost of manufacturing information for each product code, but argues that the allocation of the product-specific total cost of manufacturing among the various cost components (*i.e.*, materials, labor, variable and fixed overhead) using an overall average ratio results in costs that are not reflective of the individual differences in the physical characteristics between different CONNUMs.<sup>46</sup> In this regard, we note that Belenco's cost accounting system did not have the capability in 2018 to break down the total cost of manufacturing into the broad cost components of materials, labor and overhead.<sup>47</sup> Belenco upgraded the capabilities of its reporting system in 2019 to give it the capability to segregate the product code-specific cost of manufacturing into the various cost components.<sup>48</sup> It used the report generated from the upgraded reporting tool to analyze the data for the first three months of 2019 and calculated the ratio that materials, labor, variable overhead and fixed overhead represented of the total cost of manufacturing.<sup>49</sup> Belenco used these ratios to allocate the product code-specific total cost of manufacturing to each of Commerce's cost database fields (*i.e.*, materials, labor, variable overhead, and fixed overhead). Belenco's use of its percentage allocation based on its analysis of data in 2019 is reasonable, and we verified the underlying data used in coming up with those percentages.<sup>50</sup> As these ratios are applied to the product codes within a CONNUM which themselves are reflective of the actual product-specific cost of manufacture of each product code, we find the resulting CONNUM materials, labor, variable, and fixed overhead costs are reflective of Commerce's physical characteristics and, therefore, reasonably reflect the CONNUM-specific cost to produce quartz surface products.

In sum, Belenco's reported costs are reasonable, product-specific, rely on the normal books and records, and reconcile to Belenco's audited financial statements, which are prepared in accordance with Turkish GAAP. Belenco responded to all our requests for information in a timely manner and participated fully at verification. Belenco did not withhold information that we requested or in any way impede this investigation. Rather, we have used the complete, accurate, and verified data on the record to calculate Belenco's estimated weighted-average dumping margin for the final determination.

At verification, we confirmed that Belenco receives payment from its customers on a rolling basis through a series of endorsed checks, which it in turn endorses and hands over to its suppliers in payment for raw materials.<sup>51</sup> No payment changes hands for either of these transactions, and the accounts receivable and payable accounts for endorsed checks are kept on a

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

<sup>46</sup> See Petitioner's Case Brief at 14.

<sup>47</sup> See Belenco's Cost Verification Report at 6.

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

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

<sup>50</sup> See Belenco's Cost Verification Report at 6.

<sup>51</sup> See Belenco's Sales Verification Report at 3, 13-14.

rolling basis.<sup>52</sup> Thus, Belenco's statement that it cannot associate any given check with any given sale is accurate based on our experience at its sales verification. Belenco demonstrated at verification that the value of the endorsed checks received exceeds the value of the merchandise sold at all times, so that the all home market merchandise was paid for as reported.<sup>53</sup> Therefore, AFA is not warranted with respect to Belenco's reported home market sales.

We also agree that AFA is not warranted for Belenco's U.S. sales, since we were able to confirm the accuracy of its U.S. prices and adjustments, with the exception of the error presented in its minor corrections to the response.<sup>54</sup> We have amended our margin calculations to account for this error.<sup>55</sup> Therefore, AFA is not warranted with respect to Belenco's reported U.S. sales.

### **Comment 3: Whether Belenco Attempted to Change Reported Cost Information at Verification Without Alerting Commerce to the Change**

#### *Petitioner's Comments*<sup>56</sup>

- The financial expenses worksheet Belenco provided at Exhibit SD3-1 is different from the cost verification exhibit at CVE-12. Belenco omitted reporting the expenses for the month of November in exhibit SD3-1 but it included November in its CVE-12. The overall financial expenses ratio, however, does not change.<sup>57</sup>
- Belenco did not submit any minor correction prior to verification and did not alert Commerce to the fact that the calculation it provided for review at the verification is not the same as it had previously submitted.<sup>58</sup>

#### *Belenco's Rebuttal Comments*<sup>59</sup>

- Verification Exhibit CVE-12 simply separates out November data that were inadvertently aggregated into the December data in Exhibit SD3-1. There is no change to the underlying reported financial expenses; the data remain the same from year-end.<sup>60</sup>
- While Belenco initially overlooked the aggregation of the November and December data, the verifiers recalculated the monthly indexed financial expense ratio during the verification. Belenco took no unilateral action to change the document.<sup>61</sup>

**Commerce's Position:** We disagree with the petitioner. First, at verification, Commerce found that Belenco had made a clerical error in Exhibit SD3-1, where it had combined financial expenses for November and December in the December column.<sup>62</sup> At our request, Belenco submitted a corrected worksheet that isolated the November data so that each month, November

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at Exhibit SVE-18, "Endorsed Cheques."

<sup>54</sup> See Belenco's Sales Verification Report at 3, 14-18.

<sup>55</sup> See Belenco's Final Analysis Memorandum.

<sup>56</sup> See Petitioner's Case Brief at 24-27.

<sup>57</sup> *Id.* at 25-27.

<sup>58</sup> *Id.* at 26.

<sup>59</sup> See Belenco's Case Rebuttal Brief at 21-22.

<sup>60</sup> *Id.* at 21.

<sup>61</sup> *Id.* at 22.

<sup>62</sup> See Belenco's Cost Verification Report at 15.

and December, reflected the correct monthly data.<sup>63</sup> We find these items to be minor classification differences rather than substantial revisions that call into question the integrity of Belenco's submissions. Further, the correction resulted in no change to the financial expense ratio reported.

#### **Comment 4: Affiliation Between Belenco and its Home Market Customer, SRA Dış Ticaret (SRA)**

##### *Petitioner's Comments*<sup>64</sup>

- Commerce should find that that Belenco is affiliated with its sole home market customer, SRA because:
  - Belenco's distribution agreement with SRA grants Belenco extensive control over SRA, including the ability to control SRA's prices. As a consequence, Belenco can manipulate its own home market prices, and therefore, the dumping margin that Commerce calculates.
  - Commerce has previously explained that when a relationship places one party in a unique position to exercise restraint or direction over the other, then there is the type of control that creates affiliation under the statute.
  - The Act grants Commerce the ability to treat two companies as affiliated even outside traditional indicators of affiliation, such as ownership, so that Commerce can address all the instances of control that can affect its antidumping determinations.
  - For purposes of examining affiliation, the focus is on potential, not actual, control.
  - If Commerce finds that Belenco is affiliated with SRA, it should apply total AFA to Belenco, because Belenco refused to submit downstream sales information despite Commerce's express instruction to do so.

##### *Belenco's Rebuttal Comments*<sup>65</sup>

- The petitioner provided the same affiliation facts and arguments that it made prior to the *Preliminary Determination* and that Commerce rejected. The petitioner has not offered any additional record evidence to support its claims. Thus, Commerce should continue to find that there is no affiliation between Belenco and SRA.
- Prior to the *Preliminary Determination*, Commerce issued an affiliation questionnaire. Belenco responded and demonstrated that it was not affiliated with SRA, and that the factors for determining a "close supplier relationship" were not present. As a consequence, Commerce stated in the *Preliminary Determination* that there was no evidence on the record indicating that Belenco and SRA were affiliated. Commerce should continue to find Belenco and SRA unaffiliated for the final determination.

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

We agree with Belenco that the petitioner has presented no new information or argument that would cause us to reconsider our determination in the *Preliminary Determination* that SRA is

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

<sup>64</sup> See Petitioner's Case Brief at 26-30.

<sup>65</sup> See Belenco's Case Brief at 2-4.

affiliated with Belenco. When the petitioner raised these arguments prior to the *Preliminary Determination*,<sup>66</sup> we issued a supplemental questionnaire addressing the affiliation between Belenco, Peker Yüzey, and SRA.<sup>67</sup> Belenco responded to that questionnaire on November 18, 2019.<sup>68</sup> Commerce determined that Belenco and Peker Yüzey were affiliated,<sup>69</sup> and that Belenco and SRA were not affiliated, for the *Preliminary Determination*.<sup>70</sup> In addition, we observed nothing at verification that would lead us to reconsider the affiliation between Belenco and SRA,<sup>71</sup> and the petitioner cited none. Therefore, we continue to regard Belenco and SRA as unaffiliated parties for the final determination, and we continue to use Belenco's sales as reported in the sections B, C and D databases for the margin calculations in the final determination.

## **Comment 5: Belenco's Discounts and Rebates in the Home Market**

### *Petitioner's Comments*<sup>72</sup>

- Commerce should reject Belenco's reporting of home market discounts and rebates, since Belenco has repeatedly failed to submit supporting documentation for its reported discounts and rebates. Specifically, Belenco failed to:
  - report its two discounts in separate fields;
  - provide agreements establishing the various discounts, claiming that it establishes quality-based discounts on a transaction-by-transaction basis;
  - submit supporting documentation for its reported discounts and rebates.
- Commerce should disallow post-sale adjustments such as rebates where the terms of the rebate are not known to the customer at the time of the sale.

### *Belenco's Rebuttal Comments*<sup>73</sup>

- Belenco contends that it disclosed the discount policy for all home market sales in its questionnaire response and at verification. In addition, it provided a copy of its distribution agreement in both its questionnaire response and in each home market sales trace package at verification.
- Commerce verified Belenco's home market discounts and rebates on an aggregate basis and traced them to Belenco's books and records and to its audited financial statements, which confirmed that Belenco: (1) provided volume-based rebates to its U.S. customers; (2) grants U.S. customers discounts for defective merchandise; (3) cannot tie the credit notes issued for defective merchandise back to a specific transaction or shipment; and (4)

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<sup>66</sup> See Petitioner's Letter, "Certain Quartz Surface Products from the Republic of Turkey: Deficiency Comments and Rebuttal Information on Belenco's B-D," dated September 20, 2019, at 2-11.

<sup>67</sup> See Commerce's Letter, "Certain Quartz Surface Products from Turkey: Third Supplemental Questionnaire," dated November 6, 2019.

<sup>68</sup> See Belenco's Letter, "Certain Quartz Surface Products from Turkey: Response to 3rd Supplemental Questionnaire," dated November 18, 2019.

<sup>69</sup> See PDM at 5-7.

<sup>70</sup> See Memorandum, "Analysis for the Preliminary Determination in the Investigation of Certain Quartz Surface Products from the Republic of Turkey: Belenco dis Tikaret A.Ş.," dated December 4, 2019, at 3-4.

<sup>71</sup> See generally Belenco's Sales Verification Report.

<sup>72</sup> See Petitioner's Case Brief at 30-37.

<sup>73</sup> See Belenco's Rebuttal Brief at 14-21.

allocated these expenses on a customer-specific basis during the POI. Commerce selected a transaction and traced it to proof of payment, finding no discrepancies.

- The post-sale rebate is a legitimate price adjustment in the home market for which Belenco's distributor agreement spells out the terms. Therefore, at the time of the sale, the customer (*i.e.*, distributor) knew the terms and conditions of the rebates, which are recorded on the invoice, and granted monthly and quarterly. Belenco has a similar program for its U.S. customers, where the customers knew the rebate structure in advance, but were paid at the end of the year, and the petitioner did not challenge the validity of such rebates paid in the United States.

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

We agree that, upon initial review, Belenco did not separately report its discounts and rebates consistent with Commerce's preference that parties report each type of discount and rebate in a separate field to facilitate the trace to proof of payment into the company's books and records. Belenco simply did not facilitate the verification in that manner.

However, Commerce officials were able to examine Belenco's reported discounts and rebates at verification.<sup>74</sup> Further, we examined Belenco's discounts in the context of the pre-selected sales, and found no errors or discrepancies with the information that it provided for home market sales.<sup>75</sup>

We agree with Belenco that, in this case, the post-sale rebate is a legitimate price adjustment in the home market for which Belenco's distributor agreement spells out the terms.<sup>76</sup> Therefore, at the time of the sale, the customer (*i.e.*, distributor) knew the terms and conditions of the rebates, which are recorded on the invoice, and which were granted either monthly and quarterly, if the customer met the terms and conditions for receiving the rebate.<sup>77</sup>

We note that, although the terms and conditions of Belenco's rebates changed in May 2018, and that the terms and conditions of the contract included in Belenco's questionnaire responses<sup>78</sup> and provided at verification<sup>79</sup> did not cover the full POI, our verification of the proof of payment for the reported expenses covered the full POI.<sup>80</sup> And, as we noted above, we found no errors and/or discrepancies in our trace of these expenses through proof of payment.

Therefore, we find that Belenco accurately reported the rebates and discounts that it paid. It used a reasonable allocation methodology to allocate the discounts and rebates to the appropriate sales, and Commerce found no errors or discrepancies with the information that Belenco

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<sup>74</sup> See Belenco's Sales Verification Report at 21-22.

<sup>75</sup> *Id.* at 14-19.

<sup>76</sup> See Belenco's Letter, "Certain Quartz Surface Products from Turkey: Section A Questionnaire Response," dated July 31, 2019 (Belenco's AQR), at Exhibit A-10, "Home Market Distribution Agreement."

<sup>77</sup> *Id.*; see also Belenco's Sales Verification Report at Verification Exhibits SVE-27 through SVE-31.

<sup>78</sup> See Belenco's Letter, "Certain Quartz Surface Products from Turkey: Section A Questionnaire Response," dated July 31, 2019 (Belenco's AQR), at Exhibit A-10, "Home Market Distribution Agreement."

<sup>79</sup> See Verification Exhibits SVE-27 through SVE-31, covering Home Market Pre-Selected Sales #1 through #5.

<sup>80</sup> See Belenco's Sales Verification Report at 14-19 covering the U.S. and home market sales examined at verification, and at 21-22 covering rebates and discounts, respectively.

reported. Therefore, for the final determination, we continue to base our margin calculations on the verified rebates and discounts recorded in Belenco's questionnaire responses and its home market sales database.

#### **Comment 6: Inclusion of Product Grade as a Control Number (CONNUM) Characteristic for Belenco**

##### *Belenco's Comments*<sup>81</sup>

- Administrative and case law precedent requires the model match methodology to account for differences in prices and costs.<sup>82</sup> Commerce can revise its model match methodology when it has compelling reasons to do so.<sup>83</sup>
- In its Sections B, C and D responses, Belenco proposed using an alternative CONNUM (CONNUM2) that includes QUALITY as a matching characteristic, in addition to Commerce's defined physical characteristics (*i.e.*, level of fabrication, thickness, slab, size, size of fabricated product, design, and surface finish), that reflects the significant differences in physical characteristics, prices, and costs of production of quartz products.<sup>84</sup> Commerce did not address this proposal in the *Preliminary Determination*.
- Commerce should base its final margin calculation on Belenco's CONNUM2 for the following reasons.
  - Belenco classifies its quartz surface products as grade A, B, C, Z and W, by quality based on their relative stain tolerance, number of moires (flaws in the finish) contained, pattern disorder, impurities (soft or hard materials contained), gloss, micro-porosity and cracking status, as well as broken areas on the edge.
  - The cost of the raw materials and variable overhead differ by quality for the identical products based on Commerce's CONNUM-based model match methodology. As a consequence, the cost test yields distortive results that the use of CONNUM2 would resolve.
  - The differences in selling prices associated with different grades of product eclipse the referenced cost differences because the lower grade products feature surface flaws that render parts of the produce unusable.

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<sup>81</sup> See Belenco's Case Brief at 2-9.

<sup>82</sup> See Belenco's Case Brief at 2-4 (citing *SKF USA, Inc. v. United States*, 537 F. 3d 1373 (Fed. Cir. 2008) (*SKF*); *Pastificio Lucio Garofalo, S.p.A. v. United States*, 783 F. Supp. 2d 1230 (CIT 2011) (*Pastificio Lucio Garofalo*); *New World Pasta Co. v. United States*, 28 CIT 290 (2004) (*New World Pasta*); and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 10587 (March 1, 2016) and accompanying PDM at 10).

<sup>83</sup> See Belenco's Case Brief at 4-5 (citing *Fagersta Stainless AB v. United States*, 577 F. Supp. 2d 1270, 1276 (2008) (*Fagersta Stainless*); *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014) and accompanying IDM at Comment 1; *Bohler Bleche GMBH & Co. v. United States*, 324 F. Supp. 3d 1344, 1354 (2018) (Bohler I), *affirmed* in *Bohler Bleche GMBH & Co. v. United States v. United States*, 362 F. Supp. 3d 1377 (CIT 2019) (Bohler II); *Pastificio Lucio Garofalo*, 783 F. Supp. 2d at 1243.

<sup>84</sup> See Belenco's Case Brief at 2 (citing Belenco's Section B response at B-11 to B-12; Section C response at C-8 to C-9; and Section D response at D-30 to D-31. Belenco also cites to the provision of its CONNUM2 in its Section B database, Section C database, and Section D database).



- Because of the wide range of cost and price differences in identical and similar models, the current comparison of “similar” products reflects suggests that the current model match methodology matches products that are not similar.

#### *Petitioner’s Rebuttal Comments*<sup>85</sup>

- Commerce should reject Belenco’s proposal to include quality as a product characteristic because it was untimely.
- Further, Belenco’s cost reporting prevents Commerce from making meaningful product comparisons of any product characteristic, much less determining whether the inclusion of quality as a product characteristic creates significant cost differences, as Belenco implies.
- However, Belenco’s reported cost differences are not due to differences in physical characteristics, but rather, result from Belenco’s cost allocation methodology.
- Although Commerce can modify model match criteria later in an investigation or in later reviews of an order where appropriate, it is Commerce’s practice to determine the model match criteria at the beginning of the proceeding and to allow parties to comment, and the party who wishes to change the model-match criteria bears the burden of timely demonstrating that a revision is warranted.

#### **Commerce’s Position:**

We agree with the petitioner that Belenco’s request to revise its CONNUM structure and, hence, its model match strategy, was untimely. It is our practice to determine the product characteristics early in the investigation. The *Initiation Notice* specified that the deadline for providing model match comments was June 17, 2019, 20 calendar days from the signature date of the *Initiation Notice*.<sup>86</sup> The petitioner was the only party to provide model match comments.<sup>87</sup> As a consequence, we determined the product characteristics based on the petitioner’s comments and issued the AD questionnaire in this investigation.<sup>88</sup>

Belenco raised this issue late in the investigation in the context of reporting its product characteristics in its sections B and C questionnaire responses.<sup>89</sup> Because Belenco raised this issue late in the investigation and did not frame its request in terms of any applicable industry-wide standards, it precluded appropriate comment.<sup>90</sup>

Further, Belenco argues that Commerce should base its calculations on its revised CONNUM because slab surface quality has a significant impact on both the cost of production and sales

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<sup>85</sup> See Petitioner’s Rebuttal Brief at 5-19.

<sup>86</sup> See *Certain Quartz Surface Products from India and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 25529, 25531 (June 2, 2019) (*Initiation Notice*).

<sup>87</sup> See Petitioner’s Letter, “Certain Quartz Surface Products from India and Turkey: Comments on Model Match Methodology,” dated June 17, 2019.

<sup>88</sup> See Commerce’s Letter, “Certain Quartz Surface Products from Turkey: Questionnaire,” dated July 3, 2019, at B-10 and C-9-10.

<sup>89</sup> See Belenco’s BQR at B-11 - B-12 and CQR at C-8 - C-9.

<sup>90</sup> See *Fagersta Stainless*, 577 F. Supp. 2d at 1279 (where Commerce rejected, and the CIT upheld, the respondent’s claim that its grading system was “commercially significant” where it was not reflected in commercial standards for that product).

prices.<sup>91</sup> While Belenco argues that Commerce has changed the model match criteria when it has compelling reasons to do so, Belenco proposed that Commerce consider revising its CONNUM and model match methodology for Belenco, only based on considerations of Belenco's own experience.<sup>92</sup> However, as stated in *Pasta from Italy*, revising the model match characteristics based on a respondent's own production or selling experience, rather than on industry-wide standards would be "contrary to Commerce's long-standing practice of using consistent and uniform physical characteristics for all respondents in an antidumping duty proceeding, which helps prevent individual respondents from reporting company-specific physical characteristics that may be used to manipulate the matching of normal values with U.S. sale prices of subject merchandise."<sup>93</sup> Thus, for purposes of the final determination, we have based our margin calculations on Belenco's reported CONNUM structure and Commerce's standard model-match methodology determined early on in this investigation, in consultation with all parties.

### **Comment 7: Belenco's Proof of Payment for Home Market Sales**

#### *Belenco's Comments*<sup>94</sup>

- Belenco's Sales Verification Report explains that Belenco was unable to provide contemporaneous proof of payment for its home market sales during the POI because it did not retain copies of the endorsed checks that it receives, further endorses and transfers to raw material suppliers in payment for their goods and services.
- However, Belenco's Sales Verification Report also establishes the following:
  - Belenco books the endorsed checks it receives into "checks received," then endorses them forward to suppliers, with appropriate accounting entries.
  - Belenco provided a list of the endorsed checks it received from a specific customer during the first quarter (1Q) 2019.
  - Belenco selected contemporaneous examples of lists of endorsed checks received, a list of checks provided by a certain customer, a check receipt report, and a contemporaneous check.
- Thus, Belenco's accounting treatment of the "checks received" and its subsequent treatment of the checks upon endorsement to its suppliers provides ample evidence of proof of payment for Belenco's home market sales.

#### *Petitioner's Rebuttal Comments*<sup>95</sup>

- At verification, Commerce found that Belenco was unable to provide contemporaneous documentation including copies of the endorsed checks that its customers used to pay for home market sales.
- Commerce did not ask Belenco to provide full documentation for only *part* of the POI, but rather, Commerce requires parties to provide at verification purchase agreements and payment records for costs, charges and expenses for the entire POI.

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<sup>91</sup> *Id.*

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

<sup>93</sup> See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2714 (January 16, 2020) (*Pasta from Italy*) and accompanying IDM at Comment 1.

<sup>94</sup> See Belenco's Case Brief at 9-11.

<sup>95</sup> See Petitioner's Rebuttal Brief at 19-21.

- The Courts and Commerce’s practice hold that the “best of its ability” standard for cooperation requires a respondent to take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable company should anticipate being called upon to produce.

### **Commerce’s Position:**

Although Belenco is not able to tie its endorsed checks to specific sales, we are satisfied with Belenco’s demonstration that the balance of checks received, and shipments made never reaches zero represents proof of payment for all of Belenco’s home market sales.<sup>96</sup> Belenco placed copies of sample endorsed checks on the record,<sup>97</sup> as well as a list of checks detailing the source of each check and to whom it was endorsed.<sup>98</sup> Our verification report does not indicate that we had any difficulties confirming the prices that Belenco’s customers paid for their merchandise at verification.<sup>99</sup> Therefore, we accept them as verified, and continue to use Belenco’s home market prices as verified in our margin calculations for the final determination.

### **Comment 8: Belenco’s Shipment Date and Payment Date Methodology for U.S. Sales**

#### *Belenco’s Comments<sup>100</sup> and Rebuttal Comments<sup>101</sup>*

- Commerce should accept Belenco’s methodology for reporting both the date of shipment and the date of payment for its U.S. sales as reasonable, methodologically consistent, timely explained, and verified.
  - In its questionnaire responses, Belenco reported the date of shipment for U.S. sales as the invoice date, and the date of payment as 15 days after the date of sale based on a sales turnover methodology.
  - Belenco’s date of shipment methodology is consonant both with Commerce’s practice and with the International Financial Reporting Standard (IFRS) that govern the preparation of Belenco’s audited financial statements.
- As a consequence, statements in the verification report that the bill of lading onboard dates did not match the date of U.S. shipment are not relevant. Further, the proof of payment documentation that Belenco provided for certain transactions in its second supplemental questionnaire response and for all the U.S. sales traces that Commerce examined at verification confirm that Belenco’s reported date of payment is consistent with its commercial experience.

#### *Petitioner’s Rebuttal Comments<sup>102</sup>*

- Commerce should reject the methodology that Belenco used for reporting the date of shipment and the date of payment for U.S. sales.

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<sup>96</sup> See Belenco’s Sales Verification Report at Verification Exhibit SVE-18.

<sup>97</sup> See Belenco’s Letter, “Certain Quartz Surface Products from Turkey: Response to Sections A, B and C First Supplemental Questionnaire,” dated November 12, 2019 (2nd SQR (ABC)) at Exhibit SA-17b.

<sup>98</sup> *Id.* at Exhibit SA-17a.

<sup>99</sup> See Belenco’s Sales Verification Report at 18-19.

<sup>100</sup> See Belenco’s Case Brief at 11-13.

<sup>101</sup> See Belenco’s Rebuttal Brief at 11-12.

<sup>102</sup> See Petitioner’s Rebuttal Brief at 21-24.

- Commerce instructs companies to report the actual date that it receives payments from its customers, and to use an accounts receivable methodology only if it is unable to identify transaction-specific payments dates from its records.<sup>103</sup> In addition, Commerce requires respondents to submit actual shipment dates as shown in their records, and to reject the use of invoice dates where the respondent could have reported actual shipment dates.<sup>104</sup>
- Belenco did not claim that it was unable to determine either the actual shipment or payment dates from its records. At verification, Commerce was able to identify sales-specific shipment and payment dates for all of the U.S. sales it examined.
- Because Belenco disregarded Commerce’s instructions to report transaction-specific shipment and payment dates, but rather put forth a minimum effort to report all of its dates of shipment as invoice date, and all of its dates of payment using an accounts receivable turnover methodology, Belenco failed to put forth its maximum effort to cooperate with Commerce in this investigation. Therefore, the application of total AFA to Belenco is warranted.

### Commerce’s Position:

According to section 776(a) of the Act, Commerce shall use the facts otherwise available in reaching a determination if:

- 1) necessary information is not available on the record, or
- 2) an interested party or any other person-
  - A) withholds information that has been requested by the administering authority or the Commission under this title,
  - B) 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,
  - C) significantly impedes a proceeding under this title, or
  - D) provides such information but the information cannot be verified as provided in section 782(i).

Further, 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, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available.

In this instance, Commerce requested Belenco to report its actual dates of shipment and payment in its Initial Questionnaire.<sup>105</sup> The questionnaire also explains that “{i}f you are unable to determine actual payment dates from your records, you may base the calculation on the average

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<sup>103</sup> *Id.* at 22 (citing Commerce’s Letter, “Certain Quartz Surface Products from Turkey: Initial Questionnaire,” dated July 3, 2019 (Initial Questionnaire), at C-11 and C-24.)

<sup>104</sup> *Id.* at 23 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017) and accompanying IDM at Comment 4).

<sup>105</sup> See Initial Questionnaire at B-13, C-11 and C-12.

age of accounts receivable.”<sup>106</sup> However, although Belenco’s questionnaire response explained that it reported the date of payment for U.S. sales as 15 days after the date of sale based on a turnover analysis, and its date of shipment as the invoice date, Belenco failed to explain in either instance that it could not determine the date of shipment or the date of payment for specific sales.<sup>107</sup>

In addition, our review of the company’s recordkeeping in the normal course of business at verification demonstrated the following:

- Belenco had the bill of lading dates for all U.S. sales at its disposal,<sup>108</sup> and that the actual dates of shipment varied widely from the information reported in the U.S. sales database.<sup>109</sup>
- Belenco receives payment for its U.S. sales through bank receipts in an account,<sup>110</sup> so it has the information available to attribute payments received directly to all applicable U.S. sales,<sup>111</sup> and the actual payment for the pre-selected sales examined at verification shows that the actual date of payment varied widely from the dates of payment that Belenco reported using its accounts receivable turnover methodology.<sup>112</sup>

Therefore, because of Belenco’s chosen reporting methodology, the necessary information is not available on the record to calculate a transaction-specific credit adjustment based on information in the company’s books and records. In addition, Belenco withheld information that had been requested by Commerce, and failed to use the information at its disposal to accurately report the dates of shipment and payment for its U.S. sales. Therefore, because we do not have the information required to calculate Belenco’s credit adjustment, we are resorting to the facts available pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we find that Belenco failed to cooperate to the best of its ability in providing us with this information, pursuant to section 776(b)(1)(A) of the Act. In particular, we find that Belenco made “inadequate inquiries” and was “inattentive” with respect to providing this information.<sup>113</sup> Therefore, we find it appropriate to apply adverse inferences in selecting from among the facts otherwise available. As AFA, we are revising Belenco’s credit calculation to apply the longest verified period for which payment was outstanding to all U.S. sales.<sup>114</sup>

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<sup>106</sup> *Id.* at B-22 and C-24.

<sup>107</sup> See Belenco’s BQR at B-20-B-21, and Belenco’s CQR at C-18-C-19.

<sup>108</sup> See Belenco’s Sales Verification Report at 14-18.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

<sup>114</sup> See Belenco’s Final Analysis Memorandum; see also *Pasta from Italy* and accompanying IDM at Comment 3 (where we applied longest period between payment date and shipment date for transactions where we were not able to verify payment dates for the purposes of determining imputed credit.)

### **Comment 9: Programming Errors with Respect to Home Market Advertising Expense (ADVERTH) and Certain Duplicated Surrogate Costs for Belenco**

#### *Belenco's Comments*<sup>115</sup>

- Commerce failed to account for Belenco's reported home market advertising expenses (ADVERTH) in the determination of normal value for the *Preliminary Determination*. Commerce should thus revise its margin calculations for the final determination by including Belenco's advertising expenses in the standard variable for home market direct selling expenses (HMDSELL) and subtracting them from gross unit price.
- Commerce inadvertently created multiple surrogate costs for 13 line items in the COP database that were sold, but not produced, during the POI. This caused a SAS merge error and created duplicate records for some U.S. sales. Commerce should correct this error for the final determination. In addition, Commerce should also correct an overwriting error for the variable "PERIOD" to ensure that no U.S. sales are missing costs.

No other party provided comments on this issue.

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

We agree that we erroneously failed to include Belenco's home market advertising costs in our margin calculations. Belenco's Section B response explains clearly that Belenco incurred advertising expenses on behalf of its home market customer.<sup>116</sup> Therefore, Belenco appropriately classified advertising expenses as direct selling expenses. As a result, we have revised our margin calculation to include ADVERTH in HMDSELL and deduct it directly from gross unit price.<sup>117</sup>

We carefully examined the computer program for multiple surrogate costs for 13 line items in the COP database that were sold but not produced during the POI. We determined that we identified the "no production" database incorrectly in the "home market program."<sup>118</sup> Although we do not agree with Belenco's proposed programming language, we have eliminated any duplicates of surrogate costs for no production from this program.<sup>119</sup>

### **Comment 10: Whether Commerce Must Address Ermaş's Missing Information or Apply AFA**

#### *Petitioner's Comments*<sup>120</sup>

- Ermaş reports contradictory information regarding the usable portion of its non-prime Quality B, or C slabs produced and sold during the POI. For example:

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<sup>115</sup> See Belenco's Case Brief at 13-14.

<sup>116</sup> See Belenco's BQR at B-37.

<sup>117</sup> See Belenco's Final Analysis Memorandum.

<sup>118</sup> See Memorandum, "Analysis for the Preliminary Determination in the Investigation of Certain Quartz Surface Products from the Republic of Turkey: Belenco dis Tikaret A.Ş.," dated December 4, 2019 (Preliminary Analysis Memorandum).

<sup>119</sup> See Belenco's Final Analysis Memorandum.

<sup>120</sup> See Petitioner's Case Brief at 38-43.

- Ermaş originally reported that certain portions of grade B and grade C slabs can be used effectively (cut to size) and the remaining pieces of the slab go to scrap.<sup>121</sup>
- However, Ermaş's 1<sup>st</sup> SQR reported that: (1) slabs with fewer defects and more useful area are classified as "Quality B;" (2) slabs with more defects and even less useful area are classified as "Quality C;" and, (3) slabs with full usable area are classified "Quality A."<sup>122</sup>
- Ermaş did not provide actual per-meter-square (MSQ) prices for its non-prime merchandise; had it reported quantities for partial useable slabs, the per-MSQ prices would vary significantly, and reflect the varying useable portions of slabs.
  - Ermaş reported prices for non-prime sales in its databases based on full-slab quantities. The quantities reported for all of the non-prime products, when divided by the area of slab produced during the POR, produce values that are unusually consistent.<sup>123</sup> If Ermaş's reported quantities reflected only the useable area of a slab of non-prime products, then the reported quantities would not be consistent and would reflect only the useable portions of the slabs.
  - If Ermaş has reported actual values for the sales of non-prime products while reporting full-slab quantities, then the per-MSQ prices that it has reported are inaccurate.
  - Ermaş does not report an adjustment to its reported quantities that reflects non-useable portions of non-prime products. In the sales verification "Minor Corrections," Ermaş identified certain home market and U.S. sales which had been incorrectly identified as non-prime merchandise, but which were, in fact, prime merchandise. Ermaş requested a minor correction changing QUALITYH/U values from the non-prime value to the "A" Value. Ermaş did not assert that the quantities reported for these transactions needed to be altered.
- If Ermaş has not reported accurate quantities and sales values for its non-prime sales, Commerce should use AFA to determine Ermaş's dumping margin.<sup>124</sup>
- If Commerce does not apply total AFA to Ermaş's non-prime products, Commerce should correct the reported prices for "B" quality products by a factor of .50 percent and "C" quality products by factor of .25 for non-prime products. These factors would account for the percentage of useable product, based on the useable areas reported in Ermaş's sections B and C responses.

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<sup>121</sup> *Id.* (citing Ermaş's Letter, "Certain Quartz Surface Products from Turkey (A-489-837): Section B Response of Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş), for AD Investigation," dated August 29, 2019 (Ermaş' s BQR) at 9).

<sup>122</sup> *Id.* (citing Ermaş's Letter, "Certain Quartz Surface Products from Turkey (A-489-837): Supplemental Section ABC Responses of Ermaş Madencilik Turizm Sanayi Ve Ticaret Anonim Şirketi (Ermaş), for AD Investigation," dated November 15, 2019 (Ermaş' s 1<sup>st</sup> SQR) at 9).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* (citing *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003)). The petitioner contends that Ermaş's failure to accurately report this information constitutes a "failure to provide information by the required deadlines and the provision of information that is not accurate cannot, of course, be verified," that Ermaş has failed to cooperate to the "best of its ability;" and that AFA is also warranted in the case of "carelessness" or "inattentiveness."

*Ermaş's Rebuttal Comments*<sup>125</sup>

- Ermaş correctly reported the actual quantity of product delivered and paid for by the customer; thus, none of the petitioner's proposed reductions or adjustments to quantity and value are needed.
  - Ermaş's invoicing and accounting systems reflect the fact that Ermaş only sells one size of product, full slabs. The petitioner's contentions about contradictory information concerning useable portions of Ermaş's non-prime slabs are based on Ermaş's initial "oversimplification" in its original sections B and C questionnaire responses, not on the clarification that Ermaş made in its 1<sup>st</sup> SQR.<sup>126</sup> Thus, there is no contradiction as the petitioner asserts, just a correction and expansion of Ermaş's earlier incorrect response, that was then confirmed at verification.<sup>127</sup>
  - The price and quantity are accurately reported in Ermaş's 1<sup>st</sup> SQR, and the quality difference between Grades A, B, and C is already reflected in the discounted price at which the non-prime sales are sold and is evident from the submitted data.<sup>128</sup>
  - The petitioner confuses quantity and quality; in the case of Quality B and C-grade products, Ermaş does not sell less of a product (as defects do not result in reduced weight or surface area), but rather non-prime products are reported exactly as invoiced and sold, with their reduced price (as the defects do not render the product unusable) but also with their full actual quantity.
- Commerce should reject any argument for imposing AFA on Ermaş as a result of its reported quantity for non-prime merchandise.
  - The petitioner's arguments for application of total AFA are based on its misunderstanding of Ermaş's quality reporting.<sup>129</sup>
  - The statute authorizes Commerce to "use the facts otherwise available" only where "an interested party: (1) withholds information requested by the Department; (2) fails to provide information in a timely manner or in the form requested; (3) significantly impedes a proceeding; or, (4) provides information that cannot be verified." Ermaş's quantity reporting does not meet any of these conditions.<sup>130</sup>
  - Ermaş did not withhold any information requested by Commerce, and Commerce confirmed Ermaş's reported quantities at verification.<sup>131</sup> Ermaş did not fail to make timely submissions. Ermaş did not impede the progress of the proceeding. Finally, Ermaş reported quantities that are accurate, reasonable, and tied directly to its actual sales records and information maintained in the ordinary course of business and are

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<sup>125</sup> See Ermaş's Rebuttal Brief at 2-5.

<sup>126</sup> *Id.* at 3 (citing to Ermaş's BQR at 9, and Ermaş's 1<sup>st</sup> SQR at 11). Ermaş explains that in its BQR, Ermaş erroneously stated a "Maximum 70% of a grade B slab and max. 50% of a grade C slab can be used effectively (cut to size) and the remaining pieces of the slab goes to scrap. For these reasons non-prime products are sold at a lower price than the prime products and without any warranty." However, Ermaş corrected this "oversimplification" in its 1<sup>st</sup> SQR, stating "B Quality Slabs (Non-Prime Products)...have minimum 70% usable area of gross slab size..." and "C Quality Slabs (Non-Prime Products):... have less than 70% usable area of gross slab size."

<sup>127</sup> *Id.* at 3-4 (citing to Ermaş's Cost Verification Report at 7, "In fact, Ermaş also stated that certain customers request only B and C grade slabs as it is able to obtain them at a more economical price.").

<sup>128</sup> *Id.* at 4 (citing to Ermaş's 1<sup>st</sup> SQR at Exhibit "Home Market Sales").

<sup>129</sup> *Id.* at 6 (citing to Petitioner's Case Brief at 43).

<sup>130</sup> *Id.* at 7 (citing to Section 776(a) of the Act).

<sup>131</sup> *Id.* (citing to Ermaş's Sales Verification at 12).



entirely verifiable. Thus, there is no reason to apply even partial adverse facts available.

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

We disagree that the application of AFA to Ermaş is warranted. The petitioner's arguments for the application of total AFA rest on three contentions: (1) that Ermaş inaccurately reported its quantity of non-prime merchandise produced and sold constituting a failure on the part of Ermaş to provide accurate information by the required deadlines; (2) that Ermaş has failed to cooperate to the "best of its ability;" and (3) that Ermaş was "careless" or "inattentive" in its reporting. However, Ermaş's questionnaire responses were all submitted within the applicable time limits, and it did not impede the proceeding.<sup>132</sup>

In addition, our review of Ermaş's Section B and Section C questionnaire responses and its 1<sup>st</sup> SQR supports Ermaş's contention that it initially misstated, and then corrected its reported quantity and quality of subject merchandise.<sup>133</sup> In addition, during both the sales and cost verifications, Commerce confirmed that Ermaş only sells non-prime merchandise in the form of B, or C quality grade full slabs.<sup>134</sup> This finding renders the petitioner's arguments for correcting the prices of non-prime products to account for the percentage of useable product moot, as all products, regardless of quality, are sold as full slabs.

Although Ermaş misstated the quantity of useable non-prime merchandise in its ABCQR, it submitted timely corrections in its 1<sup>st</sup> SQR.<sup>135</sup> We then confirmed at verification that Ermaş does, in fact, have only one type of subject merchandise: full slabs of varying quality.<sup>136</sup> These full slabs are deemed to be of "A," "B," or "C," quality based on their percentage of useable area, and the reported prices reflect these quality differences. Thus, because Ermaş properly reported its quantity and quality of subject merchandise, we have not applied AFA, as requested by the petitioner.

### **Comment 11: Differential Pricing Analysis for Ermaş**

#### *Petitioner's Comments*<sup>137</sup>

- Commerce has the statutory authority to determine whether subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the NV to the EP (or CEP) of individual transactions for comparable merchandise, if:
  - there is a pattern of EP (or CEP) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
  - the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) one of the standard comparison methodologies."

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<sup>132</sup> See Ermaş's ABCQR; see also Ermaş's 1<sup>st</sup> SQR.

<sup>133</sup> See Ermaş's BQR at 9, and Ermaş's 1<sup>st</sup> SQR at 11

<sup>134</sup> See Ermaş's Sales Verification Report at 8; see also, Ermaş's Cost Verification Report at 7.

<sup>135</sup> See Ermaş's 1<sup>st</sup> SQR.

<sup>136</sup> See Ermaş's Cost Verification Report at 7.

<sup>137</sup> See Petitioner's Case Brief at 45-48.

- In those instances where Commerce’s dumping calculations find that between 33 percent and 66 percent of U.S. sales exhibit a pattern of prices that differ significantly, Commerce relies on a mixed methodology to determine the weighted-average dumping margin.
- Should Commerce find that... “the quantity of differently-priced sales falls in the mid-range of the ratios of differently-priced sales to total sales.... it should ensure that it determines the most accurate margin by using state averages to identify differently-priced sales.”
- Commerce should define the time period for the Cohen’s *d* test based on the month of the U.S. sale.
  - Just as Commerce used monthly costs for its dumping analysis in order to “avoid the distortive effect of inflation in {Commerce’s} comparison of NV and EP...,” Commerce should rely on monthly prices for its pricing difference analysis, which would allow Commerce to find potential patterns of pricing hidden by month-to-month inflation.<sup>138</sup>
  - The use of quarterly time periods could lead to one month’s prices being “masked by prices in another month of the quarter,” and this possibility is “significantly increased by the pricing volatility produced by rapid inflation.”
    - Though it is standard practice for Commerce to used average quarterly prices when conducting the Cohen’s *d* test, there is one instance where Commerce has relied on monthly averages before.<sup>139</sup>
    - Should Commerce find that the “quantity of differently priced sales falls in the mid-range (between 33 percent and 66 percent) of the ratios of differentially priced sales to total sales,” Commerce “should ensure that it determines the most accurate margin by using monthly averages to identify as many differently-priced sales as possible.”
- Rather than use the default values for U.S. geographical regions, Commerce should use states for its regional analysis of pricing patterns in the Cohen’s *d* analysis because Ermaş’s U.S. sales data reports sales to so few states that a regional analysis does not “identify any patterns that may be obscured by the averaging of prices over the four regions.”

#### *Ermaş’s Rebuttal Comments*<sup>140</sup>

- During the preliminary stage of the investigation, Commerce considered the existence of differential pricing using its standard methodology and did not find evidence of “targeted” or masked dumping. The petitioner only seeks a deviation from Commerce’s standard practice because it is dissatisfied with that outcome.
- The petitioner’s citation to *Copper Pipe and Tube from China*, “does not help the petitioner’s cause, because {Commerce} has never followed that precedent in any other case.”

<sup>138</sup> *Id.* (citing Ermaş’s Preliminary Analysis Memorandum at 3).

<sup>139</sup> *Id.* (citing to *Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 23324 (April 28, 2014), and accompanying IDM at Comment 6.)

<sup>140</sup> See Ermaş’s Rebuttal Brief at 2-5.

## Commerce's Position:

We disagree with the petitioner's arguments that the standard definitions for time period and region in the Cohen's *d* test should be altered. The petitioner has failed to demonstrate how either time periods based on months rather than quarters, or regions based on individual states rather than the groups of states defined by the U.S. Census Bureau are determinative in setting Ermaş's U.S. sale prices.

The purpose of the first statutory requirement, section 777A(d)(1)(B)(i) of the Act, is to establish whether conditions exist whereby dumping may be "targeted" or masked.<sup>141</sup> As stated in the *Preliminary Determination*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise."<sup>142</sup> When conducting our preliminary margin analysis, we found that 30.02 percent of the value of U.S. sales passed the Cohen's *d* test.<sup>143</sup> Since less than 33 percent of sales passed the Cohen's *d* test, it did not "confirm the existence of a pattern of prices that differs significantly among purchasers, regions, or time periods;" thus, there was – and continues to be – no justification to further consider whether application of an alternative comparison methodology incorporating the average-to-transaction (A-to-T) method is warranted.<sup>144</sup>

Commerce finds unpersuasive the petitioner's argument that "one month's prices may be masked by prices in another month of the quarter ... {because of} the pricing volatility produced by rapid inflation."<sup>145</sup> The high level of inflation observed during the period of investigation existed in Ermaş's domestic (*i.e.*, Turkish) market.<sup>146</sup> The Cohen's *d* test examines whether there are significant differences in U.S. prices,<sup>147</sup> not Ermaş's prices in the Turkish market. The nominal value of Ermaş's home market sales, production costs and the relative value of the Turkish Lira are not relevant to the question of whether prices in the U.S. market differed significantly among time periods. The petitioner points to no record evidence which demonstrates that months rather than quarters are a more reasonable definition for time period in the Cohen's *d* test in the circumstances of this case.

The petitioner cites to *Copper Pipe and Tube from China*, as an instance where Commerce altered the standard definition of the time periods in the Cohen's *d* test and used the months of the U.S. sales rather than the quarters of the U.S. sales. In *Copper Pipe and Tube from China*, record evidence demonstrated that the respondent's U.S. sale prices were in part based on a

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<sup>141</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, vol. 1 (1994) at 842-43 (SAA).

<sup>142</sup> See PDM at 9.

<sup>143</sup> See Ermaş's Preliminary Analysis Memorandum at 2.

<sup>144</sup> See Ermaş's Final Analysis Memorandum at 2.

<sup>145</sup> See Petitioner's Case Brief at 47.

<sup>146</sup> See Belenco's Letter, "Quartz Surface Products from Turkey – Response of Belenco dis Tikaret A. Ş. Regarding Inflation," dated July 17, 2019; *see also*, Commerce's Letter, "Certain Quartz Surface Products from Turkey: High Inflation Cost of Production and Constructed Value Questionnaire," dated July 19, 2019.

<sup>147</sup> See section 777A(d)(1)(B)(i) of the Act ("a pattern of *export prices* (or *constructed export prices*) for comparable merchandise that differ significantly" (emphasis added)); *see also* section 772 of the Act for the definitions of "export price" and "constructed export price."

monthly price index. The change in the default definition for time period was: (1) based on the record evidence of *Copper Pipe and Tube from China*; and (2) warranted because a major portion of the price of subject merchandise was contractually determined by a monthly index.<sup>148</sup>

Similarly, in *Pasta from Italy 2015*, Commerce revised the definition of purchaser for a specific “consolidated customer” (*i.e.*, the default definition of purchaser) to be the individual customers reported by the respondent.<sup>149</sup> The respondent, Rummo, demonstrated how its U.S. sale prices were determined specific to individual customers for one “consolidated customer.” The change in the default definition for purchasers was: (1) based on the record evidence of *Pasta from Italy 2015*, and (2) warranted because of specific elements of U.S. price which were determined on a customer-specific based rather than for the consolidated customer as a whole.

Commerce finds the petitioner’s argument to modify the standard definition for “regions” in the Cohen’s *d* test to be without merit. When arguing for the use of states rather than the regions defined by the U.S. Census Bureau for Commerce’s Cohen’s *d* test, the petitioner argues that the number of states reported in Ermaş’s U.S. sales data provides too small a sample size for a regional analysis to adequately account for regional price differences or identify a pattern of regional pricing. However, the petitioner provides no evidence to establish how Ermaş’s U.S. prices are somehow distinguishable by state rather than by U.S. Census Bureau region. The petitioner’s only reason to support this change appears to be based on the results of the analysis and nothing related to Ermaş’s U.S. sale prices:

If Commerce compares pricing averages based on states rather than its four regions, it will identify any patterns that may be obscured by the averaging of prices over the four regions.<sup>150</sup>

Therefore, for the final determination, we do not find sufficient evidence to alter the terms of our standard definitions used in the Cohen’s *d* test.

## **Comment 12: The Inclusion of Sample Sales for Little or No Compensation in the Determination of Normal Value for Ermaş**

### *Petitioner’s Comments*<sup>151</sup>

- Commerce should not include home market sample sales in the sales database used for the margin calculations because this merchandise was produced for little or no compensation. Ermaş reports that home market sample sales are part of the sales negotiating process and represent an expense item provided “free of charge.”<sup>152</sup>
- It is standard practice for Commerce to exclude sales that are “off- quality merchandise or...sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale...”<sup>153</sup> Based on Ermaş’s description of its sample sales as outside

<sup>148</sup> See *Copper Pipe and Tube from China* and accompanying IDM at Comment 6.

<sup>149</sup> See *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 8604 (February 18, 2015) (*Pasta from Italy 2015*) and accompanying IDM at Comment 4.

<sup>150</sup> See Petitioner’s Case Brief at 48-49.

<sup>151</sup> See Petitioner’s Case Brief at 49-50.

<sup>152</sup> *Id.* at 49 (citing Ermaş’s 1<sup>st</sup> SQR at 16-17).

<sup>153</sup> *Id.* at 49 (citing 19 CFR 351.102(b)(35)).

of the “normal course of business,” Commerce should exclude them from the home market sales database and the determination of NV for the final margin calculations.

*Ermaş’s Rebuttal Comments*<sup>154</sup>

- Ermaş explained in both its responses and at verification that full-sized slabs are sold to its home market distributors for little or no compensation, and Ermaş reported them in its home market database provided in its 1st SQR, at Commerce’s request.
- Commerce’s standard computer program will find sales for little or no compensation to be below cost, thus no new programming is needed.

**Commerce’s Position:**

In determining whether subject merchandise is being, or is likely to be, sold at less than fair value in an AD determination, a fair comparison shall be made between the price of the merchandise in the United States (“export price” or “constructed export price”) and normal value.<sup>155</sup> The “normal value” is the price at which the foreign like product is first “sold” for consumption in the exporting country “in the usual commercial quantities and in the ordinary course of trade.”<sup>156</sup> Thus, the price of the merchandise is included in the margin calculation if, among other things, the merchandise is “sold” in the “ordinary course of trade.” If it is not “sold” or not sold in the “ordinary course of trade,” the merchandise is excluded from the normal value calculation.

The U.S. Court of Appeals for the Federal Circuit has held that the term “sold” requires: (1) a transfer of ownership to an unrelated party; and (2) consideration.<sup>157</sup> Because some of Ermaş’ sample sales were made for no compensation, we find that they lacked consideration, and thus, we have excluded those sales from the home market sales database.

For the sample sales made for “little compensation,” we have analyzed these sample sales to determine whether they are “outside of the ordinary course of trade.” “Ordinary course of trade,” in turn, is defined under section 771(15) of the Act as including “{s}ales disregarded under section 773(b)(1)” of the Act.<sup>158</sup> Section 773(b)(1) of the Act concerns sales below the cost of production. Because the sample sales for “little compensation” fall below cost under our test enumerated in section 773(b) of the Act, we have disregarded these sales as being outside the ordinary course of trade and have excluded them from the margin calculation.<sup>159</sup>

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<sup>154</sup> See Ermaş’s Rebuttal Brief at 12-14.

<sup>155</sup> See section 773(a) of the Act.

<sup>156</sup> See section 773(a)(1)(B)(i) of the Act.

<sup>157</sup> See *NSK Ltd. v. United States*, 115 F. 3d 965, 975 (Fed. Cir. 1997).

<sup>158</sup> See section 771(15)(A) of the Act.

<sup>159</sup> See Ermaş’s Final Analysis Memorandum.

### **Comment 13: Ermaş's Cost of Production for Sample Slabs Sold in the Home Market**

#### *Petitioner's Comments*<sup>160</sup>

- Commerce should not allocate costs to the slabs that were sold as samples since these sample slabs were sold for little or no compensation. Instead, the sample slab quantities should be excluded from Ermaş's production quantities and their reported costs should be allocated to all other slabs.

#### *Ermaş's Rebuttal Comments*<sup>161</sup>

- Regardless of the price at which they are sold, sample slabs were produced and should be allocated production costs. Furthermore, Commerce's cost test will likely find the home market sample sales to be sold below cost and alleviate the petitioner's concern that low-priced sales are in the home market sales database.
- Commerce does not require that products sold below cost be removed from the cost allocation and their costs allocated to all products not sold below cost. Such a methodology would result in a perversely circular exercise with spiraling costs causing a greater number of sales to fall below cost, which, in turn, call for more cost re-allocations.
- There is no difference between the sample and commercial slabs – they undergo the same production processes, they are indistinguishable as finished products, and they are allocated the same costs in Ermaş's normal books and records.

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

We disagree with the petitioner. For our final determination, we find that Ermaş's reported cost methodology, whereby full production costs are allocated to all slabs, including those that were sold as samples, is appropriate. In its normal books and records, Ermaş allocates full costs to all slab production, including those slabs that will ultimately be selected for use as samples.<sup>162</sup> Furthermore, at verification we confirmed that all of the slabs produced by Ermaş, which are initially classified into three internal quality grades, can be used in the same applications.<sup>163</sup> Thus, we do not find that Ermaş's allocation of full costs to all slabs produced, even those that are subsequently selected for use as samples, is unreasonable. Consequently, for this final determination, we have not adjusted Ermaş's reported costs with regard to sample slabs.

### **Comment 14: The Applicable Interest Rate in Ermaş's Credit Adjustment**

#### *Petitioner's Comments*<sup>164</sup>

- Ermaş incorrectly reported credit for U.S. sales using short-term interest rates applicable to foreign-currency transactions as reported in Exhibit C-8, "Average Interest Rates."<sup>165</sup> Ermaş reported its domestic sales for export recorded in Turkish Lira in Exhibit C-3,

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<sup>160</sup> See Petitioner's Case Brief at 51.

<sup>161</sup> See Ermaş's Rebuttal Brief at 13-14.

<sup>162</sup> See Ermaş's Cost Verification Report at 6-7.

<sup>163</sup> *Id.* at 7.

<sup>164</sup> See Petitioner's Case Brief at 51.

<sup>165</sup> *Id.* (citing Ermaş CQR at 34 and Exhibit C-8).

“Domestic Sales for Export.” However, Ermaş explained that it reported its credit expenses based on its short-term foreign currency interest rates.<sup>166</sup> Commerce should apply the interest rate applicable to Turkish Lira transactions to Ermaş’s domestic sales for U.S. export.

*Ermaş’s Rebuttal Comments*<sup>167</sup>

- Commerce should continue using the U.S. interest rate for domestic sales for export that were “denominated, invoiced, and paid” in U.S. dollars. Ermaş correctly calculated U.S. credit expense (CREDITU) for these transactions using the interest rate applicable to sales in U.S. dollars.<sup>168</sup>
- Commerce verified an example of this type of transaction and confirmed that it was correctly invoiced and paid.<sup>169</sup>

**Commerce’s Position:**

We disagree with the petitioner that we should use an interest rate applicable to Turkish Lira transactions for Ermaş’s domestic sales for U.S. export to calculate CREDITU. Policy Bulletin 98.2, “Imputed credit expenses and interest rates,” states:

For the purposes of calculating imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent’s weighted-average short-term borrowing experience in the currency of the transaction.<sup>170</sup>

Ermaş reported that it made sales to certain domestic customers who exported the subject merchandise to the United States, and it reported those sales in the U.S. sales database. At verification, Commerce examined a sample sales transaction between Ermaş and a domestic customer, who exported the subject merchandise to the United States, and confirmed that the sale was denominated in U.S. dollars.<sup>171</sup> Because we confirmed that these sales were denominated in U.S. dollars, and because Commerce requires the respondents to calculate the weighted-average short term rate based on the short term borrowing experience in the currency of the transaction, we have not used an interest rate applicable to Turkish Lira transactions for these sales.

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<sup>166</sup> *Id.* (citing Ermaş CQR at 34).

<sup>167</sup> See Ermaş’s Rebuttal Brief at 14-15.

<sup>168</sup> *Id.* at 14.

<sup>169</sup> See Ermaş’s Sales Verification Report at 16-17.

<sup>170</sup> See Policy Bulletin No. 98-2, “Imputed Credit Expenses and Interest Rates,” dated February 23, 1998 (Policy Bulletin 98-2).

<sup>171</sup> See Ermaş’s Sales Verification Report at 16 and Exhibit SVE-16.

## Comment 15: Other Adjustments to Ermaş's Reported Costs

### *Petitioner's Comments*<sup>172</sup>

- Commerce should make all changes that it has identified in this investigation including those listed in the cost verification report that are related to Ermaş's year-end discounts, financial expenses, and general and administrative (G&A) expenses.<sup>173</sup>

No other party provided comments on this issue.

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

For this final determination, we have adjusted Ermaş's reported costs to incorporate our verification findings with regard to year-end discounts, financial expenses, and G&A expenses.<sup>174</sup> Additionally, except where specifically noted in our final determination cost memorandum, we have continued to apply the cost adjustments that were applied in the *Preliminary Determination*.<sup>175</sup>

## **VIII. RECOMMENDATION**

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

☒

Agree

☐

Disagree

4/27/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>172</sup> See Petitioner's Case Brief at 52-53.

<sup>173</sup> *Id.* (citing the Ermaş Cost Verification Report).

<sup>174</sup> See the Ermaş Cost Verification Report at 2 and 18; and Ermaş Final Cost Memo at 1-2.

<sup>175</sup> See Ermaş Preliminary Cost Memo and Ermaş Final Cost Memo.