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Investigation  
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October 27, 2020

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Affirmative  
Determination in the Less-Than-Fair-Value Investigation of  
Mattresses from the Republic of Turkey

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## **I. SUMMARY**

The Department of Commerce (Commerce) preliminarily determines that mattresses 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 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins of sales are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice. We preliminarily determine that critical circumstances do not exist for BRN Yatak Baza Ev Tekstili Insaat Sanayi Ticaret A.S. (BRN).

## **II. BACKGROUND**

On March 31, 2020, Commerce received an antidumping duty (AD) petition concerning imports of mattresses from Turkey, filed in proper form by Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International



Union, AFL-CIO (collectively, the petitioners), domestic producers of mattresses.<sup>1</sup> On April 20, 2020, Commerce initiated the AD investigation on mattresses from Turkey.<sup>2</sup>

In the *Initiation Notice*, Commerce notified the public that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the “Scope of the Investigations.”<sup>3</sup> On April 14, 2020, Commerce released CBP import data to interested parties.<sup>4</sup> On April 29, 2020, Commerce received comments on the CBP data from the petitioners.<sup>5</sup>

On May 15, 2020, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of mattresses from Turkey.<sup>6</sup>

Between May 11 and 21, 2020, we received timely-filed comments and rebuttals thereto concerning product characteristics from the petitioners and the following interested parties: PT Zinus Global Indonesia (Zinus), PT Graha Seribusatu Jaya (PT Graha), and Cozy Comfort LLC (Cozy Comfort).<sup>7</sup> On June 1, 2020, Commerce officials spoke via telephone with counsel for the petitioners regarding the petitioners’ product characteristics comments and rebuttal comments.<sup>8</sup>

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<sup>1</sup> See Petitioners’ Letter, “Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Antidumping and Countervailing Duty Petitions,” dated March 31, 2020.

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

<sup>3</sup> *Id.* at 23006.

<sup>4</sup> See Memorandum, “Antidumping Duty Petition on Mattresses from the Republic of Turkey: Release of Customs Data from U.S. Customs and Border Protection,” dated April 14, 2020.

<sup>5</sup> See Petitioners’ Letter, “Mattresses from Turkey: Mattress Petitioners’ Comments on US Customs and Border Protection Data,” dated April 29, 2020.

<sup>6</sup> See *Investigation Nos. 701-TA-645 and 731-TA-1495-1501 (Preliminary) Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam*, 85 FR 30984 (May 21, 2020) (*Prelim ITC Notice*).

<sup>7</sup> See Petitioners’ Letter, “Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners’ Product Characteristic Comments,” dated May 11, 2020; Cozy Comfort’s Letter, “Mattresses From Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Comments on Product Characteristics,” dated May 11, 2020; PT Zinus Global Indonesia’s Letter, “Mattresses from Indonesia, Cambodia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People’s Republic of China: Zinus’ Product Characteristics Comments,” dated May 11, 2020; Petitioners’ Letter, “Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Product Characteristics Rebuttal Comments,” dated May 21, 2020; Cozy Comfort’s Letter, “Mattresses From Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Rebuttal Comments on Product Characteristics,” dated May 21, 2020; Zinus’ Letter, “Mattresses from Indonesia, Cambodia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People’s Republic of China: Zinus’ Rebuttal Product Characteristics Comments,” dated May 21, 2020; and PT Graha’s Letter, “Mattresses from Indonesia, Cambodia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: PT Graha Seribusatu Jaya Rebuttal Comments on Product Characteristics,” dated May 21, 2020.

<sup>8</sup> See Memorandum, “Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam Antidumping Duty Investigations: Phone Call with Counsel to Petitioners,” dated June 1, 2020.

On June 4, 2020, Commerce determined the product characteristics applicable to this investigation.<sup>9</sup>

On May 8, 2020, we selected BRN as the mandatory respondent because, based on CBP data, it accounts for the largest volume of exports of subject merchandise during the period of investigation (POI).<sup>10</sup> Accordingly, on May 11, 2020, we issued the AD questionnaire to BRN.<sup>11</sup>

In June 2020, BRN submitted timely responses to Commerce's AD questionnaire for section A (*i.e.*, the section relating to general information) and sections C and D (*i.e.*, the sections relating U.S. sales and cost of production).<sup>12</sup> On June 16, 2020, the petitioners submitted market viability comments.<sup>13</sup> On July 16, 2020, we requested BRN's section B (*i.e.*, the section relating to third-country sales) response based on BRN's sales to Ireland,<sup>14</sup> and on September 2, 2020 we requested a revised section A response based on BRN's sales to Ireland.<sup>15</sup> On August 4, 2020, BRN submitted a timely response to section B.<sup>16</sup> On September 16, 2020 BRN submitted a revised section A response that included its sales information from Ireland.<sup>17</sup> From June 2020 through October 2020, Commerce issued supplemental questionnaires to BRN.<sup>18</sup> We received timely responses to these supplemental questionnaires from June 2020 through October 2020.<sup>19</sup> The petitioners submitted comments with respect to the responses submitted by BRN.<sup>20</sup>

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<sup>9</sup> See Commerce's Letter, "Product Characteristics for the Antidumping Duty Investigation of Mattresses from Turkey," dated June 4, 2020 (Commerce's Product Characteristics Letter).

<sup>10</sup> See Memorandum, "Less-Than-Fair-Value Investigation of Mattresses from the Republic of Turkey: Respondent Selection," dated May 8, 2020.

<sup>11</sup> See Commerce's Initial Antidumping Duty Questionnaire, dated May 11, 2020.

<sup>12</sup> See BRN's Letters, "Mattresses from the Republic of Turkey; Section A Response," dated June 11, 2020 (BRN June 11, 2020 AQR); "Mattresses from the Republic of Turkey; Section C Response," dated July 1, 2020 (BRN July 1, 2020 CQR); and "Mattresses from the Republic of Turkey; Section D Response," dated July 8, 2020.

<sup>13</sup> See Petitioners' Letter, "Mattresses from Turkey: Market Viability Comments," dated June 19, 2020 (Market Viability Comments).

<sup>14</sup> See Commerce's Second Section A and First Section C Supplemental Questionnaires, dated July 16, 2020 (BRN July 16, 2020 SQ).

<sup>15</sup> See Commerce's Letter, "Requesting Revised Section A Questionnaire Response," dated September 2, 2020.

<sup>16</sup> See BRN's Letter, "Mattresses from the Republic of Turkey; Section B Response," dated August 4, 2020 (BRN August 4, 2020 BQR).

<sup>17</sup> See BRN's Letter, "Mattresses from the Republic of Turkey; Revisions to Section A Response," dated September 16, 2020.

<sup>18</sup> See Commerce's First Section A Supplemental Questionnaire dated June 23, 2020 (BRN June 23, 2020 SQ); BRN July 16, 2020 SQ; First Section D Supplemental Questionnaire, dated July 29, 2020; Third Section A, First Section B, and Second Section C Supplemental Questionnaires, dated August 28, 2020; and Second Section D Supplemental Questionnaire, dated October 7, 2020.

<sup>19</sup> See BRN's Letters, "Mattresses from the Republic of Turkey; Section A Supplemental Response," dated July 10, 2020 (BRN July 10, 2020 SQR); "Mattresses from the Republic of Turkey; Section D Supplemental Response," dated August 12, 2020 (BRN August 12, 2020 SQR); "Mattresses from the Republic of Turkey; Second Sections A and C Supplemental Response," dated August 13, 2020 (BRN August 13, 2020 SQR); "Mattresses from the Republic of Turkey; Revisions to Section A Response," dated September 16, 2020 (BRN September 16, 2020 SQR); "Mattresses from the Republic of Turkey; Sections A, B, and C Supplemental Response," dated September 18, 2020 (BRN September 18, 2020 SQR); and "Mattresses from the Republic of Turkey; 2nd Section D Supplemental Response," dated October 16, 2020 (BRN October 16, 2020 SQR).

<sup>20</sup> See Petitioners' Letters, "Mattresses from Turkey: Mattress Petitioners' Deficiency Comments Concerning BRN's Section A Questionnaire Response," dated June 24, 2020; "Mattresses from Turkey: Mattress Petitioners' Deficiency Comments Concerning BRN's Section C Questionnaire Response," dated July 14, 2020; "Mattresses

On August 11, 2020, Commerce postponed the preliminary determination of this investigation by 50 days, to October 27, 2020, pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e).<sup>21</sup>

On September 30, 2020, the petitioners requested that, in the event of a negative preliminary determination in this investigation, Commerce postpone its final determination and extend the provisional measures from four to six months in accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i).<sup>22</sup> On October 8, 2020, BRN requested that, in the event of an affirmative preliminary determination in this investigation, Commerce postpone its final determination in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month period to a six-month period.<sup>23</sup>

On October 7, 2020, the petitioners filed an allegation of critical circumstances with respect to mattresses from Turkey pursuant to section 733(e) of the Act and 19 CFR 351.206.<sup>24</sup> On October 8, 2020, we requested monthly quantity and value shipment data from BRN.<sup>25</sup> On October 15, 2020, BRN reported their monthly quantity and value shipment data.<sup>26</sup>

### **III. PERIOD OF INVESTIGATION**

The POI is January 1, 2019 through December 31, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition on March 31, 2020.<sup>27</sup>

### **IV. APPLICATION OF FACTS AVAILABLE**

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from Turkey: Mattress Petitioners' Rebuttal Factual Information Concerning BRN's Section C Questionnaire Response and Deficiency Comments on the Section A Supplemental Questionnaire Response," dated July 15, 2020 (SQRAC Comments); "Mattresses from Turkey: Mattress Petitioners' Deficiency Comments Concerning BRN's Section D Questionnaire Response," dated July 22, 2020; "Mattresses from Turkey: Mattress Petitioners' Rebuttal Factual Information in Response to BRN's Section B Questionnaire Response," dated August 18, 2020; "Mattresses from Turkey: Mattress Petitioners' Deficiency Comments Concerning BRN's Section B Questionnaire Response," dated August 25, 2020; and "Mattresses from Turkey: Petitioners' Comments Concerning the Preliminary Determination," dated October 2, 2020.

<sup>21</sup> See *Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 48505 (August 11, 2020).

<sup>22</sup> See Petitioners' Letter, "Mattresses from Cambodia: Mattress Petitioners' Request to Postpone Final Determination," dated September 30, 2020. See also Petitioners' Letter, "Mattresses from Cambodia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners' Revised Request to Postpone Final Determination," dated October 15, 2020.

<sup>23</sup> See BRN's Letter, "Mattresses from the Republic of Turkey; Request to Extend Final Determination," dated October 8, 2020.

<sup>24</sup> See Petitioners' Letter, "Mattresses from Turkey: Mattress Petitioners' Allegation of Critical Circumstances," dated October 7, 2020 (Critical Circumstances Allegation).

<sup>25</sup> See Commerce Letter, "Antidumping Duty Investigation of Mattresses from Turkey: Request for Monthly Quantity and Value Shipment Data," dated October 8, 2020.

<sup>26</sup> See BRN's Letter, "Mattresses from Turkey; Quantity and Value Response," dated October 15, 2020 (BRN's Q&V Response).

<sup>27</sup> See 19 CFR 351.204(b)(1).

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

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

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

#### U.S. Destination Code

BRN reported that it only delivers subject merchandise to the port of export and is not involved in the further transport because all sales are on a free-on-board basis.<sup>28</sup> Thus, for some U.S. sales, BRN was unable to provide the U.S. destination. Therefore, in accordance with section 776(a)(1) of the Act, we used facts available to assign a destination code for some of BRN's U.S. sales for purposes of conducting the differential price analysis (*see* section VIII below).<sup>29</sup>

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

As stated above, the petitioners submitted information alleging that, pursuant to section 733(e) of the Act and 19 CFR 351.206, critical circumstances exist with respect to imports of mattresses from Turkey.<sup>30</sup>

#### Background

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<sup>28</sup> See BRN August 13, 2020 SQR at 15.

<sup>29</sup> See Memorandum, "Mattresses from the Republic of Turkey – Preliminary Determination Analysis Memorandum for BRN Yatak Baza Ev Tekstili Insaat Sanayi Ticaret A.S.," dated concurrently with this memorandum (Preliminary Analysis Memorandum), at 3.

<sup>30</sup> See Critical Circumstances Allegation.

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted 20 days or more before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that we will preliminarily determine that critical circumstances exist in an AD 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 accordance with 19 CFR 351.206, imports must increase by at least 15 percent during the “relatively short period” to be considered “massive” and a “relatively short period” is defined as normally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.<sup>31</sup> The regulations also provide, however, that, if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.<sup>32</sup>

#### History of Dumping and Material Injury / Knowledge of Sales below Fair Value and Material Injury

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, we generally consider current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.<sup>33</sup> Commerce has not previously issued an AD order on mattresses from Turkey. Moreover, there are no current AD orders imposed by other World Trade Organization members against mattresses from Turkey that Commerce is aware of, and the petitioners do not cite any such orders in their allegation. Therefore, there is no history of dumping of subject merchandise exported from Turkey. As a result, we do not find that there is a history of injurious dumping of mattresses from Turkey, and therefore the statutory criterion of section 733(e)(1)(A)(i) of the Act has not been met.

To determine whether importers knew or should have known that exporters were selling at less than fair value, we typically consider the magnitude of dumping margins, including margins

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<sup>31</sup> See 19 CFR 351.206(i).

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

<sup>33</sup> See, e.g., *Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

alleged in petitions.<sup>34</sup> We normally consider margins of 25 percent or 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>35</sup> The dumping margin of 20.03 percent preliminarily determined for BRN's EP sales and all others, however, is not above this threshold. Accordingly, we preliminarily determine that critical circumstances do not exist for BRN and all other companies.

To determine whether importers knew or should have known that there was likely to be material injury, we typically consider the preliminary injury determinations of the ITC.<sup>36</sup> If the ITC finds material injury (rather than the threat of injury), we normally find that the ITC's determination provided importers with sufficient knowledge of injury. Here, the Commission's finding that "there is a reasonable indication that an industry in the United States is materially injured by reason of imports of mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam" is sufficient to impute knowledge of the likelihood of material injury.<sup>37</sup>

### Massive Imports

As described above, there is no history of dumping or knowledge of sales at less than fair value in this investigation, and therefore we preliminarily determine that critical circumstances do not exist. However, for the sake of completeness, we have also analyzed whether there were massive imports over a relatively short period. In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, we normally compare the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition *i.e.*, the "comparison period"). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

Thus, in order to determine whether there has been a massive surge in imports for BRN, we compared the total volume of shipments during the six-month period April 2020 through September 2020 (all months for which data was available) with the volume of shipments during preceding six-month period October 2019 through March 2020.<sup>38</sup> After examining the data provided by BRN,<sup>39</sup> we preliminarily find that the volume of U.S. imports for BRN did not increase by 15 percent from the base period to the comparison period.<sup>40</sup>

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<sup>34</sup> See, e.g., *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002), unchanged in the final determination.

<sup>35</sup> *Id.*; see also section 733(e)(1)(A)(ii) of the Act.

<sup>36</sup> See, e.g., *Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010), unchanged in *Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry*, 75 FR 30377 (June 1, 2010).

<sup>37</sup> See *Prelim ITC Notice*.

<sup>38</sup> See BRN's Q&V Response.

<sup>39</sup> *Id.*

<sup>40</sup> See Memorandum, "Mattresses from Turkey: Critical Circumstances Analysis," dated concurrently with this memorandum.

To determine whether there are “massive imports” over a “relatively short period” for “all other producers and exporters,” Commerce started with U.S. import data sourced from Global Trade Atlas (GTA) for the HTSUS subheadings identified in the scope of the investigation for the periods April 2020 through August 2020 (the last month for which U.S. import data is currently publicly available), and November 2019 through March 2020, the preceding five-month period.<sup>41</sup> We then subtracted from the U.S. import data shipments reported by BRN for these same periods. However, because the quantity of imports shown in the GTA data is smaller than that of BRN for the period under consideration, we find the normal method of subtracting the mandatory respondent’s data from the GTA data to be an unreliable indicator of the experience of the all-others companies for purposes of the “massive” determination.<sup>42</sup> Under these circumstances, because we find the GTA data are an unreliable indicator, for all other companies, we cannot find that there are “massive imports” over a “relatively short period.”

## Conclusion

Based on the criteria and findings discussed above, for BRN and all other companies we preliminarily determine that critical circumstances do not exist because both of the requirements in section 733(e)(1) of the Act have not been met.

## **VI. DISCUSSION OF THE METHODOLOGY**

### A. Comparisons to Normal Value

To determine whether sales of mattresses from Turkey to the United States were made at LTFV, we compared the EPs to the normal value (NV), as described in the “U.S. Price”, and “Normal Value” sections of this memorandum.

#### **1. Determination of Comparison Method**

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

In numerous investigations, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>43</sup> Commerce finds that

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<sup>41</sup> Commerce gathered GTA data under the following harmonized tariff schedule numbers: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087.

<sup>42</sup> See Critical Circumstances Memorandum.

<sup>43</sup> See, *e.g.*, *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less*



the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

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

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the

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*Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

## 2. Results of the Differential Pricing Analysis

For BRN, based on the results of the differential pricing analysis, Commerce preliminarily finds that 68.15 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>44</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the estimated weighted-average dumping margin for BRN.

### B. Product Comparisons

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<sup>44</sup> See Preliminary Analysis Memorandum at 2.

As stated above, Commerce gave parties an opportunity to comment on the appropriate hierarchy of physical characteristics used to define each product, including for model matching purposes, within a certain deadline.<sup>45</sup> We considered the comments that were submitted and established the appropriate product characteristics to use as a basis for defining the product control numbers of mattresses in this AD investigation. Commerce identified twelve criteria for physical characteristics of the subject merchandise: (1) Coil Type, (2) Coil Count, (3) Mattress Size, (4) Nominal Height, (5) Foam Layers, (6) Type & Amount of Foam, (7) Foam Additives, (8) Memory Foam Density, (9) Other Foam Density (other foam is all foam other than memory foam), (10) Quilting, (11) Ticking, and (12) Sensor.<sup>46</sup> BRN was instructed to use these product characteristics in its responses to the AD questionnaires issued in this investigation.<sup>47</sup>

### C. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>48</sup> Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.<sup>49</sup>

BRN contended that there were no material changes (*e.g.*, price and quantity) between the purchase order date and the commercial invoice date, and initially reported order date as the date of sale.<sup>50</sup> The petitioners provided documentation that BRN's sales do have material changes between the purchase order date and the commercial invoice date.<sup>51</sup> We examined the information on the record and preliminarily find that the material terms of BRN's U.S. sales were subject to change after the date of the original purchase order. Specifically, the record shows that the prices and quantities for certain sales of mattresses invoiced during the POI changed after the date of the original purchase order, as a result of clerical errors, non-application of an agreed-upon discount, changes in freight costs, supply chain problems, or shipment optimization.<sup>52</sup> BRN reported that its commercial invoices are issued at the same time the goods are shipped from the factory to the Turkish port of export.<sup>53</sup> Therefore, we

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<sup>45</sup> See *Initiation Notice*, 85 FR at 19445.

<sup>46</sup> See Commerce's Product Characteristics Letter. The last three product characteristics were for additional information not to be used as part of the control number.

<sup>47</sup> *Id.*

<sup>48</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>49</sup> See, *e.g.*, *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

<sup>50</sup> See BRN June 11, 2020 SQR at 3 and 11-12.

<sup>51</sup> See Market Viability Comments at 2-5 and Exhibit 1; see also SQRAC Comments at Exhibit 1.

<sup>52</sup> See BRN July 10, 2020 SQR at 2; see also BRN August 13, 2020 SQR at 9 and Exhibit 11.

<sup>53</sup> See BRN June 11, 2020 AQR at 13.

preliminarily used the commercial invoice date as the date of sale for U.S. and third-country sales, in accordance with our regulation and practice.

#### D. Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under subsection 772(c) of the Act.

In accordance with section 772(a) of the Act, we calculated EP for all of BRN’s U.S. sales where subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. We calculated EP based on the packed prices that BRN charged to the first unaffiliated purchaser in the United States. We made deductions, where appropriate for movement expenses, *i.e.*, foreign inland freight, inland freight insurance, and foreign brokerage and handling, in accordance with section 772(c)(2)(A) of the Act.

#### E. Normal Value

##### 1. Comparison Market Viability

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

BRN initially reported that its sales, based on order date, did not meet the five percent threshold for sales of the foreign like product in the home market or its third-country market (*i.e.*, Ireland).<sup>54</sup> As discussed above, BRN contended that there were no material changes (*e.g.*, price and quantity) between the order date and the commercial invoice date.<sup>55</sup> The petitioners provided documentation that BRN’s sales do have material changes between the order date and the commercial invoice date.<sup>56</sup> We requested BRN to submit the quantity and value of its U.S. and Irish sales based on purchase order date and the commercial invoice date, and account for any material changes that occur between the purchase order and commercial invoice.<sup>57</sup> As discussed

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<sup>54</sup> See BRN June 11, 2020 AQR at 3 and Exhibit 1.

<sup>55</sup> *Id.* at 3 and 11-12.

<sup>56</sup> See Market Viability Comments at 2-5 and Exhibit 1; and SQRAC Comments at Exhibit 1.

<sup>57</sup> See BRN June 23, 2020 SQ.

above, we determined there are material changes between the purchase order date and the commercial invoice date.<sup>58</sup>

We determined that BRN's aggregate volume of third-country sales of the foreign like product to Ireland, based on commercial invoice date, was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.<sup>59</sup> Therefore, we preliminarily used third-country sales to Ireland as the basis for NV, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

## 2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>60</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>61</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices),<sup>62</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>63</sup>

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>64</sup>

In this investigation, we obtained information from BRN regarding the marketing stages involved in making the reported third-country market and U.S. sales, including a description of

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<sup>58</sup> See BRN July 10, 2020 SQR at 2; *see also* BRN August 13, 2020 SQR at 9 and Exhibit 11.

<sup>59</sup> See BRN July 10, 2020 SQR at Exhibit 1.

<sup>60</sup> See 19 CFR 351.412(c)(2).

<sup>61</sup> *Id.*; *see also* *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999, 51001 (August 18, 2010) (*Orange Juice from Brazil*), and accompanying Issues and Decision Memorandum (IDM) at Comment 7.

<sup>62</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

<sup>63</sup> *See Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>64</sup> *See, e.g., Orange Juice from Brazil* IDM at Comment 7.

the selling activities performed for each channel of distribution.<sup>65</sup> Our LOT findings are summarized below.

BRN reported that it is not claiming a LOT adjustment.<sup>66</sup> We compared BRN's EP LOT to the comparison market LOT and found that the selling functions BRN performed for its EP sales are very similar to those it performed for comparison market sales and performed at the same relative level of intensity. Therefore, we preliminarily determine that sales to the United States and third-country market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

### 3. Cost of Production Analysis

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

#### a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses.<sup>67</sup> We relied on the COP data submitted by BRN except for the G&A and interest expense rate where we excluded the packing expenses from the cost of goods sold denominator used to calculate the rates. In addition, we denied the startup adjustment requested by BRN as the company failed to meet at least one of the two criteria in the two-pronged test required under section 773(f)(1)(c)(ii) of the Act.

#### b. Test of Comparison Market Sales Prices

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

#### c. Results of the COP Test

In determining whether to disregard home market or comparison market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a

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<sup>65</sup> See BRN September 16, 2020 SQR at 1-3 and Exhibit 1.

<sup>66</sup> See BRN August 4, 2020 BQR at 27; BRN July 1, 2020 CQR at 27; and BRN September 16, 2020 SQR at 1-3 and Exhibit 1.

<sup>67</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

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

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

#### F. Calculation of NV Based on Comparison-Market Prices

We calculated NV for BRN based on packed prices to unaffiliated customers in Ireland. We made appropriate deductions from the starting price for movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which included, where appropriate, foreign inland insurance. We made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act by deducting comparison market direct selling expenses (*i.e.*, bank charges, other direct selling expenses, and imputed credit expenses) and adding U.S. direct selling expenses (*i.e.*, bank charges and imputed credit expenses), where appropriate. We also deducted comparison-market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

### VII. CURRENCY CONVERSION

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

## VIII. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

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Agree

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\_\_\_\_\_  
Disagree

X 

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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance