UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-560-830
Investigation
Public Document
E&C/Office VII: ML/AC

October 19, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of the Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the Less-Than-Fair Value Investigation of Biodiesel from Indonesia

---

I. SUMMARY

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

II. BACKGROUND

On March 23, 2017, the Department received an antidumping duty (AD) petition covering imports of biodiesel from Indonesia,[1] which was filed by the National Biodiesel Board Fair Trade Coalition and its members (collectively, the petitioner). On March 28, 2017, and April 4, 2017, the Department issued supplemental questionnaires to the petitioner.[2] Between

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Biodiesel from Argentina and Indonesia, dated March 23, 2017. (the Petition).
[2] *See* Department Letter, "Petition for the Imposition of Antidumping Duties on Imports of Biodiesel from Indonesia: Supplemental Questions," dated March 28, 2017; *see also* Memorandum, "Antidumping Duty Petition on Biodiesel from Indonesia: Additional Supplemental Question," dated April 4, 2017.

March 31, 2017, and April 4, 2017, the petitioner filed supplemental questionnaire responses regarding the Petition.[3] The Department initiated this investigation on April 12, 2017.[4]

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.[5] Accordingly, on April 14, 2017, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection. On April 21, 2017, PT Musim Mas (Musim Mas) submitted comments concerning the CBP entry data.[6]

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of biodiesel to be reported in response to the Department's AD questionnaire.[7] The Department did not receive any comments relating to the scope of the investigation; therefore, the Department is preliminarily not modifying the scope language, and it remains the same as it appeared in the *Initiation Notice*.[8]

On May 2, 2017, the Department received comments from the petitioner relating to the physical characteristics of biodiesel to be reported in response to the AD questionnaire.[9] On May 12, 2017, LDC Argentina S.A. and Louis Dreyfus Company Claypool Holdings LLC (collectively "LDC"), a mandatory respondent in the LTFV investigation of biodiesel from Argentina, submitted comments to rebut the petitioner's May 2, 2017, submission.[10] After meeting with the Department,[11] the petitioner submitted further information relating to Renewable Identification Numbers (RINs), and eligibility for the blender's tax credit (BTC).[12] On May 19, 2017, the Department finalized the product characteristics, and other information relating to model matching, for the LTFV investigations of biodiesel from Argentina and Indonesia.[13]

On May 3, 2017, the Department limited the number of mandatory respondents selected for individual examination to the two largest publicly-identifiable producers or exporters of the

---

[3] *See* Petitioner's March 31, 2017 Amendment of Petitions and Response to the Department's Supplemental Questionnaires; *see also* petitioner's April 4, 2017 Errata to the Response of National Biodiesel Board Fair Trade Coalition to the Department's Supplemental Questionnaire.
[4] *See Biodiesel from Argentina and Indonesia: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 18428 (April 19, 2017) (*Initiation Notice*).
[5] *Id.* at 18431.
[6] *See* Musim Mas' Letter, "Biodiesel from Indonesia: Respondent Selection Comments," dated April 21, 2017.
[7] *See Initiation Notice*, 82 FR at 18428-18429.
[8] *Id.* at 18432 (Appendix I).
[9] *See* Petitioner's Letter, "Biodiesel from Argentina and Indonesia: Petitioner's Comments on Model Matching and Request for Additional Information in Questionnaires," dated May 2, 2017.
[10] *See* LDC's Letter, "Biodiesel from Argentina and Indonesia: Model Match Rebuttal Comments," dated May 12, 2017.
[11] *See* Memorandum, "Biodiesel from Argentina and Indonesia Antidumping Duty Investigations: Meeting with Counsel for Petitioner," dated May 15, 2017.
[12] *See* Petitioner's Letter, "Biodiesel from Argentina and Indonesia: Petitioner's Supplemental Comments Regarding Collection of Additional Information for Antidumping Questionnaires," dated May 17, 2017.
[13] *See* Memorandum, "Product Characteristics and Other Information," dated May 19, 2017.

subject merchandise by volume. Accordingly, we selected Musim Mas and Wilmar Trading PTE Ltd. (Wilmar) as mandatory respondents in this investigation.[14]

On May 8, 2017, 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 biodiesel from Indonesia.[15]

On May 5, 2017, the Department issued section A of the AD questionnaire to Musim Mas and to Wilmar. On May 16, 2017, the Department issued sections B-E of the AD questionnaire to both respondents. On June 2, 2017, Musim Mas and Wilmar each submitted timely responses to section A of the Department's AD questionnaire (*i.e.*, the section relating to general information), and in June and July 2017, both companies responded to sections B, C, and D of the Department's AD questionnaire (*i.e.*, the sections relating to home market and U.S. sales, and cost of production (COP) information). In July and August 2017, the Department issued supplemental questionnaires to Musim Mas and Wilmar, and we received timely responses to these supplemental questionnaires. On October 3, 2017, the Department issued an additional supplemental section D questionnaire to Wilmar, and received a response on October 13, 2017. We will consider that supplemental response for the final determination.

On July 6, 2017, the petitioner filed a request to fully postpone the preliminary determination.[16] On August 8, 2017, the Department fully extended the deadline for this preliminary determination.[17]

On July 25, 2017, the petitioner filed a particular market situation (PMS) allegation with respect to the respondents' home market sales prices and reported costs of production.[18] On August 4, 2017, both Musim Mas and Wilmar filed rebuttal comments concerning the petitioner's PMS allegation.[19] On August 11, 2017, the Government of Indonesia also submitted rebuttal comments with regard to the petitioner's PMS allegation.[20]

---

[14] *See* Memorandum, "Antidumping Duty Investigation of Biodiesel from Indonesia: Respondent Selection," dated May 3, 2017, at 3-5.
[15] *See Biodiesel from Argentina and Indonesia: Determinations*, Investigation Nos. 701–TA–571-572 and 731–TA–1347–1348 (Preliminary), 82 FR 22155 (May 12, 2017).
[16] *See* Petitioner's Letter, "Re: Biodiesel from Argentina and Indonesia: Request to Extend Deadline for Alleging Particular Market Situation and Request for Postponement of the Preliminary Determination," dated July 6, 2017.
[17] *See Biodiesel from Argentina and Indonesia: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 82 FR 38670 (August 15, 2017).
[18] *See* Petitioner's Letter, "Biodiesel from Indonesia: Petitioner's Particular Market Situation Allegation Regarding Respondents' Home Market Sales and Costs of Production," dated July 25, 2017 (Petitioner's PMS Allegation).
[19] *See* Musim Mas' Letter, "Biodiesel from Indonesia: Response to Petitioner's Particular Market Situation Allegation," (Musim Mas' PMS Rebuttal) dated August 4, 2017; *see also* Letter from Wilmar, "Biodiesel from Indonesia – Response to Petitioner's Particular Market Situation Allegation," (Wilmar's PMS Rebuttal) dated August 4, 2017.
[20] *See* The Government of Indonesia's Letter, "Biodiesel from Indonesia – Response to Petitioner's Particular Market Situation Allegation," (The GOI's PMS Rebuttal) dated August 11, 2017.

On September 1, 2017, the Department requested comments and factual information concerning constructed value (CV) profit and selling expenses for this investigation.[21] On September 18, 2017, Musim Mas and Wilmar filed a joint response containing factual information concerning CV profit and selling expenses.[22] Also on September 18, 2017, the petitioner submitted the requested CV profit and selling expenses information.[23] On September 26 and 27, 2017, the petitioner and Wilmar both rebutted each-other's submissions of CV profit and selling expenses information.[24]

On September 19, 2017, Musim Mas and Wilmar each requested, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), that, contingent upon an affirmative preliminary determination of sales at LTFV, the Department postpone the final determination, and that provisional measures be extended to a period not to exceed six months.[25] The Department is considering these requests, and will notify parties in the event of postponement of the final determination.

The petitioner filed comments in advance of this preliminary determination on September 28, 2017.[26] Wilmar filed rebuttal comments on October 6, 2017.[27] To the extent possible, we have considered these comments in making this determination. On October 4, 2017, Musim Mas filed comments to rebut the petitioner's September 28, 2017 submission. However, the Department rejected Musim Mas' submission, as it contained untimely new factual information (NFI), and retained the rejected submission on the record in accordance with 19 CFR 351.104(a)(2)(ii)(A).[28]

We are conducting this investigation in accordance with section 733(b) of the Act.

---

[21] *See* Department Letter, "Antidumping Duty Less Than Fair Value Investigation of Biodiesel from Indonesia," dated September 1, 2017.
[22] *See* Musim Mas and Wilmar's Letter, "Biodiesel from Indonesia: Submission of Factual Information on Profit and Selling Expenses," (Respondents' CV Profit Submission) dated September 18, 2017.
[23] *See* Petitioner's Letter, "Biodiesel from Argentina and Indonesia: Petitioner's Submission of Factual Information Concerning CV Profit and Selling Expenses," (Petitioner's CV Profit Submission) dated September 18, 2017.
[24] *See* Petitioner's Letter, "Biodiesel from Argentina & Indonesia: Petitioner's Rebuttal of Respondents' Factual Information Concerning CV Profit," (Petitioner's CV Rebuttal) dated September 26, 2017; *see also* Letter from Wilmar, "Biodiesel from Indonesia: Rebuttal Factual Information on CV Profit and Selling Expenses," (Wilmar's CV Rebuttal) dated September 27, 2017.
[25] *See* Wilmar's Letter, "Biodiesel from Indonesia: Request for Extension of Final Determination," dated September 19, 2017; *See* Musim Mas' Letter, "Biodiesel from Indonesia; Request to Extend Final Determination," dated September 19, 2017.
[26] *See* Petitioner's Letter, "Biodiesel from Indonesia: Petitioner's Pre-Preliminary Determination Comments," dated September 28, 2017, (Petitioner's Pre-Preliminary Determination Comments).
[27] *See* Wilmar's Letter, "Biodiesel from Indonesia: Pre-Preliminary Comments," dated October 6, 2017.
[28] *See* Department Letter, "Biodiesel from Indonesia: Request for Removal of Untimely New Factual Information," dated October 10, 2017; *see also* Memorandum, "Biodiesel from Indonesia: Reject and Retain October 4, 2017 Submission," dated October 10, 2017.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2016, through December 31, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2017.[29]

IV. USE OF FACTS AVAILABLE AND ADVERSE FACTS AVAILABLE

A. Legal Authority

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: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (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.

Section 776(b) of the Act provides that the Department may use an adverse inference in selecting the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested

[29] *See* 19 CFR 351.204(b)(1).

party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[30] Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[31]

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.

B. Application of Facts Available to Musim Mas

The Department's standard questionnaire instructs respondents to provide a home market sales reconciliation which ties the sales in its home market database to its general ledger. Musim Mas' response to the initial questionnaire pointed to an exhibit which contained only one page, which reported the "total reported sales in section C database for AD submission."[32] We repeated the question in a supplemental questionnaire, specifically requesting that Musim Mas tie the reported home market sales volumes and values back to its general sales ledger, and those amounts to the financial statements provided with the company's Section A response.[33] In its response to our supplemental questionnaire, Musim Mas pointed to an exhibit that appears to report the volume of domestic and export sales in the POI.[34] The chart in this exhibit does not show any sales values, and does not provide any information that could be tied to its general ledgers.[35]

Additionally, we twice instructed Musim Mas to report its production quantities on a control number (CONNUM)-specific basis in its cost database.[36] However, Musim Mas continued to report the total biodiesel production quantity in each CONNUM-specific field. Musim Mas has

---

[30] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. At 870 (1994) (SAA).
[31] *See*, *e.g.*, *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).
[32] *See* Musim Mas' June 29, 2017 Sections B and C Questionnaire Response (Musim Mas' June 29, 2017 BCQR) at Exhibit 2.
[33] *See* Department Letter, "Biodiesel from Indonesia: P.T. Musim Mas – Supplemental Questionnaire Sections B and C," dated August 10, 2017 (Musim Mas Supplemental B and C Questionnaire) at questions B-1 and C-2.
[34] *See* Musim Mas' August 24, 2017 Supplemental Sections B and C Response (Musim Mas' August 24, 2017 Supplemental BCQR) at Exhibit 1.
[35] *Id*.
[36] *See* Department Letter, "re: Antidumping Duty Questionnaire," dated May 18, 2017 (Initial Sections B-E Questionnaire) at D-17; *see also* Department Letter, "re: Antidumping Duty Less Than Fair Value Investigation of Biodiesel from Indonesia," dated August 7, 2017 (Musim Mas' Supplemental Section D Questionnaire) at 10.

also not explained why they were not able to report their production quantities on a CONNUM-specific basis, despite our supplemental questioning.[37]

Finally, the original section B questionnaire instructed Musim Mas to provide the value of the RINs included with each sale of biodiesel to the U.S. market.[38] RINs are credits issued by the Environmental Protection Agency (EPA), that have fluctuating values, and can be traded and sold on the open market.[39] The questionnaire also stated that if Musim Mas did not know the value of the RINs, then to "report an estimated value and explain how this was obtained."[40] Musim Mas originally omitted this column in the sales database stating, "the RIN was issued by an unaffiliated importer, so we do not know the RIN value of the shipment."[41] In a supplemental questionnaire, we again asked Musim Mas to provide an estimated RIN value for each U.S. sale. Musim Mas responded that they "cannot estimate the RIN value."[42] Musim Mas should have been able to at least provide the Department with an estimate as to the value of the RINs attached to their sales of biodiesel to the United States during the POI. We note that the other mandatory respondent, Wilmar, was able to estimate the RIN values as to its U.S. sales without difficulty.[43] Moreover, counsel for Musim Mas stated at the ITC staff conference, "the price includes the liquid. It includes the RIN. It includes a tax credit. No matter how many ways you slice it, it's all built into the product."[44] We find that this statement further supports that Musim Mas took the value of the RINs into account when negotiating its U.S. sales prices and should have been able to provide the RIN values, as requested.

Accordingly, we find that necessary information is missing from the record within the meaning of section 776(a)(1) of the Act. Specifically, there is no usable home market sales reconciliation on the record, Musim Mas has not reported its production quantities on a CONNUM-specific basis, and information regarding the value of the RINs included with each sale of biodiesel to the United States are absent from the record. Furthermore, we find that Musim Mas withheld information that had been requested by the Department, and significantly impeded the proceeding under sections 776(a)(2)(A) and (C) of the Act, respectively. In addition, because the missing information involves Musim Mas' home market sales quantities and values, its production quantities, and information related to its U.S. sales prices, we note that this information is core to the Department's ability to calculate Musim Mas' dumping margin. The information that is missing renders the information that Musim Mas has provided to the Department too incomplete to serve as a reliable basis for our preliminary dumping margin analysis.[45] Consequently, we will rely on the facts available to determine Musim Mas' estimated

---

[37] *See* Musim Mas' Supplemental Section D Questionnaire at 10.
[38] *See* Musim Mas' June 29, 2017 BCQR at 34-35.
[39] *See e.g.*, the Petition at 104.
[40] *See* Musim Mas' June 29, 2017 BCQR at 34-35.
[41] *Id*. at 35.
[42] *See* Musim Mas' August 24, 2017 Supplemental BCQR at 10.
[43] *See* Wilmar's July 5, 2017, Section C Questionnaire Response (Wilmar's July 5, 2017 SCQR) at 11-12 and exhibit C-5.
[44] *See* Petitioner's Letter, "Biodiesel from Indonesia: Petitioner's Deficiency Comments Regarding PTMM's Incomplete Disclosures Concerning its Home Market Sales Reconciliation, Sales to PSO Customers, and RIN Values," dated September 13, 2017 (Petitioner's September 13, 2017 Deficiency Comments) at 8 and Exhibit 2.
[45] *See Grain-Oriented Electrical Steel from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014), and accompanying Issues and Decision Memorandum at

weighted-average dumping margin for this preliminary determination.

C. Use of Adverse inferences

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit ("CAFC") clarified that the "best of its ability" standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.[46] We note that the information in question is the type of information that a large international company such as Musim Mas should reasonably be able to provide. We further note that, in accordance with section 782(d) of the Act, the Department provided Musim Mas, through its supplemental questionnaires, an opportunity to remedy each of these three significant deficiencies.[47] Since we do not have a sufficient home market sales reconciliation, we cannot verify the accuracy of Musim Mas' books and records. Moreover, Musim Mas' failure to provide production quantities on a CONNUM-specific basis in its cost-of-production data precludes the Department from verifying its allocation of costs. Finally, Musim Mas' refusal to estimate the value of the RINs generated by its sales of biodiesel to the United States further shows that it did not put forth maximum effort to cooperate with the Department. We find that Musim Mas would have been able to provide this information if it had made the appropriate effort when it received the Department's antidumping duty questionnaire, and was notified that it was required to report its home market sales reconciliation, its CONNUM-specific production quantities, and at least an estimated value for the RINs generated by its U.S. sales.[48] Musim Mas' failure to provide a usable home market sales reconciliation, and its failure to provide accurate cost and U.S. sales information demonstrates that it has failed to cooperate to the best of its ability. Therefore, and pursuant to section 776(b) of the Act, we find that the application of adverse inferences is appropriate in selecting from among the facts available to determine Musim Mas' dumping margin.

D. Selection and Corroboration of AFA Rate

Where the Department uses AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.[49] In selecting a rate based on adverse facts available, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[50] Under section 776(d)(1)(B) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse

---

Comment 1.

[46] *See Nippon Steel*, 337 F.3d at 1382.

[47] *See* Musim Mas' August 24, 2017 SBCQR at 1 and 10-11; *see also* Musim Mas' August 23, 2017 Supplemental Section D Questionnaire Response (Musim Mas' August 23, 2017 SDQR) at 28.

[48] *See Nippon Steel*, 337 F.3d at 1382-83 (explaining that while the "best of its ability" standard "does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping," and also holding that "'inadequate inquiries' may suffice" to evince a failure to cooperate).

[49] *See also* 19 CFR 351.308(c)(l) & (2).

[50] *See* SAA at 870.

inference, including the highest of such margins. The Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.[51] We preliminarily apply the estimated weight-averaged dumping margin calculated for Wilmar, which is 50.71 percent, as Musim Mas' AFA rate.

Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition), rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[52] Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[53] To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.[54] Nonetheless, under section 776(c)(2) of the Act, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[55] Nonetheless, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[56]

However, because the AFA rate applied to Musim Mas is a rate calculated in the course of this investigation, it is not secondary information. Therefore, it is unnecessary for the Department to corroborate.[57] In sum, the Department has preliminarily assigned the calculated estimated weighted-average dumping margin calculated for Wilmar, 50.71 percent, to Musim Mas as an AFA rate.

V. AFFILIATION AND COLLAPSING

Section 771(33) of the Act identifies persons that shall be considered "affiliated" or "affiliated persons," as:

---

[51] *See, e.g., Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.
[52] *See also* 19 CFR 351.308(d).
[53] *See* SAA at 870.
[54] *Id.*
[55] *See Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination*, 81 FR 61186 (September 6, 2016), and accompanying Preliminary Decision Memorandum at "4. Selection and Corroboration of the AFA Rate," *unchanged in Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017), and accompanying Issues and Decision Memorandum.
[56] *See* section 776(d)(3)(B) of the Act.
[57] *See* section 776(c) of the Act; *see also* SAA at 870 (providing examples of secondary information). *see also Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016), and accompanying Issues and Decision Memorandum (*Uncoated Paper from Indonesia*) at Comment 1.

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
(B) Any officer or director of an organization and such organization.
(C) Partners.
(D) Employer and employee.
(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
(G) Any person who controls any other person and such other person.

Section 771(33) of the Act further states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The Department's regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.[58]

Section 19 CFR 351.401(f) of the Department's regulations outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings:

(1) In general. In an antidumping proceeding under this part, the {Department} will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.

(2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the {Department} may consider include:

(i) The level of common ownership;
(ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
(iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[59]

[58] *See also Preamble*, 62 FR at 27298.
[59] *See* 19 CFR 351.401(f).

The Department "need not find all of the factors in the regulation present to find a significant potential for manipulation of price or production."[60] Instead, the factors are considered by the Department in light of the totality of the circumstances, meaning that "'no one factor is dispositive in determining whether to collapse the producers.'"[61]

The Department has long recognized that it is appropriate to treat certain groups of companies as a single entity, and to determine a single weighted-average dumping margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.[62] While section 19 CFR 351.401(f) explicitly applies to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed, and has used the criteria outlined in the regulation in its analysis.[63]

A. Wilmar

We preliminarily determine that the selected mandatory respondent Wilmar Trading PTE Ltd. (Wilmar Trading) is affiliated with Indonesian biodiesel producers PT Wilmar Bioenergi Indonesia (WBI), PT Wilmar Nabati Indonesia (WINA), and PT Multi Nabati Sulawesi (MNS), pursuant to section 771(33)(F) of the Act, and that these companies should be treated as a single entity for AD purposes pursuant to 19 CFR 351.401(f). Wilmar Trading states in its Section A questionnaire response that it is a trading company incorporated in Singapore that markets and exports a wide range of agricultural and consumer products worldwide, including biodiesel to the United States. Wilmar Trading is a wholly owned subsidiary of Wilmar International Limited (Wilmar International), a Singaporean investment holding company that provides management services to over 500 affiliated companies in the group.[64] Wilmar reports that WBI, WINA and MNS are also wholly owned subsidiaries of Wilmar International, through a series of affiliated holding companies.[65] Although all three of these companies produce and sell biodiesel, only WBI produces the specific subject merchandise sold in the United States that is qualified under the U.S. Renewable Fuel Standard (RFS).[66] Sales of the merchandise under consideration in the United States were purchased by Wilmar Trading from WBI, and sold to unaffiliated customers in the United States, or through its U.S. affiliated trading company Wilmar Oleo North America LLC (WONA).[67] Similar to Wilmar Trading and the producing companies identified above,

---

[60] *See United States Steel Corp. v. United States*, 179 F. Supp. 3d 1114, 1139 (CIT 2016); *see also Preamble*, 62 FR at 27346.
[61] *Zhaoqing New Zhongya Aluminum Co. v. United States*, 70 F. Supp. 3d 1298, 1304 (CIT 2015) (citation omitted).
[62] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 5.
[63] *See, e.g., Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 1458, 1461-62 (January 10, 2012), *unchanged in Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012); *Shrimp from Brazil*, 69 FR at 76910, and accompanying Issues and Decision Memorandum at Comment 5. The Court of International Trade (CIT) has held that collapsing exporters is consistent with a "reasonable interpretation of the {antidumping} statute." *See Hontex Enters. v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004).
[64] *See* Wilmar's May 15, 2017 Section A Questionnaire Part 1 Response (Wilmar SAQR Part 1) at A-1.
[65] *See* Wilmar's June 5, 2017 Section A Questionnaire Part 2 Response (Wilmar SAQR Part 2) at A-5.
[66] *See* Wilmar SAQR Part 2 at A-3 to A-5.
[67] *See* Wilmar SAQR Part 1 at A-3 to A-5.

WONA is also a wholly-owned subsidiary of Wilmar International. These companies are under common control of the same parent holding company and, therefore, are affiliated in accordance with section 771(33)(F) of the Act.

As discussed above, while 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis. As also discussed above, we find Wilmar Trading, WBI, WINA and MNS to be affiliated companies. We preliminarily determine that there is a significant potential for the manipulation of price among these companies, as evidenced by the level of common ownership and the intertwined nature of the operations of these companies.[68] Therefore, in accordance with 19 CFR 351.401(f) and the Department's practice,[69] we are treating Wilmar Trading, WBI, WINA and MNS as a single entity for the purposes of this preliminary determination.[70]

VI. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Wilmar's sales of the subject merchandise were made at less than fair value, the Department compared the export price (EP) or constructed export price (CEP) to the normal value (NV) as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

1. *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method), unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department 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)(l)(B) of the Act.

In recent investigations, the Department 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)(l)(B) of the Act.[71]

---

[68] *See* Memorandum, "Antidumping Duty Investigation of Biodiesel from Indonesia: Wilmar Trading PTE Ltd. Preliminary Determination Analysis" dated October 19, 2017 (Wilmar Preliminary Calculation Memorandum).
[69] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636, 60637 n.4 (October 25, 2007), and accompanying Issues and Decision Memorandum; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223, 59223 n.1 (September 27, 2010), and accompanying Issues and Decision Memorandum.
[70] *See* Wilmar Preliminary Calculation Memorandum.
[71] *See, e.g., Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*

The Department finds that 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. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods. 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 differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip code or city and state names) 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 period of investigation 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 (*i.e.*, CONNUM) and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department 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.

Value, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 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, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department 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 these preliminary results, including arguments for modifying the group definitions used in this proceeding.

2. *Results of the Differential Pricing Analysis*

For Wilmar, based on the results of the differential pricing analysis, the Department preliminarily finds that 55.98 percent of the value of U.S. sales pass the Cohen's *d* test,[72] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department preliminarily determines that there is no meaningful difference between the average-to-average method and the mixed method. Thus, for this preliminary determination, the Department is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for Wilmar.

[72] *See* Wilmar Preliminary Calculation Memorandum.

VII. PRODUCT COMPARISONS

As explained below, we based NV on CV because, although Wilmar's home market is viable, we preliminarily determine that a particular market situation exists in the Indonesian market for biodiesel, precluding the use of Wilmar's home market sale prices, as all such sale prices are outside the ordinary course of trade.

As discussed below, CV is based on COP reported by Wilmar by the product CONNUM. CONNUMs are defined by the reported physical characteristics established by the Department for biodiesel: feedstock, blend, grade, sulfur level, cold soak, monoglyceride, and cloud point.[73] We first attempted to compare products sold in the U.S. to CV for identical products but, where an identical comparison was not possible, we compared U.S. products with the CV of the most similar merchandise, as reported in Wilmar's COP database.

VIII. DATE OF SALE

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[74] Further, the Department 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.[75]

Wilmar reported the earlier of invoice date or shipment date for all its U.S. sales.[76] For this preliminary determination, we have relied on the dates of sale as reported by Wilmar, consistent with our practice.

IX. EXPORT PRICE AND CONSTRUCTED 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 (c)."

---

[73] *See* AD Questionnaire; *see also* Memorandum "Product Characteristics and Other Information," dated May 19, 2017.

[74] *See* 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sales are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date").

[75] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11*; see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum, at Comment 2.

[76] *See* Wilmar SAQR Part 2 at A-17, and Wilmar SCQR at C-16.

Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." As explained below, we based the U.S. price on the EP and CEP for Wilmar.

For Wilmar's channel 1 sales to the United States, the Department calculated EP in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the unaffiliated purchaser in the United States, and because CEP was not otherwise warranted. We made deductions from the starting price, where applicable, for any movement expenses, in accordance with section 772(c)(2)(A) of the Act; these expenses included, where appropriate, certain expenses associated with handling the product for export, international freight and marine insurance.[77]

For its channel 2 sales to the United States, WBI sold subject merchandise to Wilmar Trading, which in turn, exported the subject merchandise to its U.S. affiliate, WONA, for sale to unaffiliated U.S. customers. We have preliminarily found these companies to be affiliated, and therefore, based the price of Wilmar's channel 2 U.S. sales of subject merchandise on CEP, as defined in section 772(b) of the Act, for the subject merchandise sold, before importation, by a seller affiliated with the producer to unaffiliated purchasers in the United States. We designated the starting price for the U.S. sale as the price reported by Wilmar, and made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act. These expenses included, where appropriate, Indonesian handling expenses, international freight, marine insurance, U.S. brokerage and handling, and U.S. duties. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct and indirect selling expenses. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.[78]

X. NORMAL VALUE

Section 773(a)(1)(B)(i) of the Act defines NV as "the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the {EP} or {CEP}." Alternatively, section 773(a)(1)(B)(ii) of the Act provides that NV may be based on "the price at which the foreign like product is sold (or offered for sale) for consumption in a country other than the exporting country or the United States." Section 773(a)(4) of the Act provides that if the Department determines that NV cannot be determined under section 773(a)(1)(B)(i), "then, notwithstanding section

[77] *See* Wilmar Preliminary Calculation Memorandum.
[78] *Id*.

773(a)(1)(B)(ii)," NV may be based on CV under section 773(e) of the Act.

A. Home Market Viability

Where there are home market sales, the Department normally determines whether a sufficient volume of sales of biodiesel exists 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 compared Wilmar'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 section 773(a)(1)(C) of the Act. When sales in the home market are not viable, section 773(a)(1)(B)(ii) of the Act provides that sales to a third-country market may be utilized if: (1) the prices in such market are representative; (2) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (3) the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the U.S. price.

We compared Wilmar's volume of home market sales of biodiesel to the volume of U.S. sales of biodiesel during the period of investigation. Based on this comparison, we determined that Wilmar's aggregate home market sales of biodiesel were greater than five percent of the aggregate volume of U.S. sales.[79] Accordingly, we found the home market to be viable in this investigation. However, as noted in the "Particular Market Situation" section below, we preliminarily determine that a PMS exists in Indonesia, and for the reasons explained therein, we are not using Wilmar's sale prices in the home market as a basis for NV. Furthermore, as discussed below, because the Department determines that a PMS exists, the Department is relying on CV as the basis for calculating NV, in accordance with section 773(a)(4) of the Act. As a result, the Department has not evaluated the viability of Wilmar's third-country market sales.

XI. PARTICULAR MARKET SITUATION

A. Background

On July 25, 2017, the petitioner alleged that a PMS exists with respect to the respondents' home market sales prices and reported costs of production.[80] The petitioner contends that this PMS renders the respondents' home market prices unsuitable for comparison to U.S. prices and distorts their costs, thereby compelling the Department to use an alternative calculation methodology for this preliminary determination. In addition, the petitioner alleged that the price of biodiesel in the United States contains significant elements of value that do not exist in Indonesian biodiesel prices, which affects a proper comparison of EP or CEP with NV, and that constitutes a PMS in the U.S. market.[81] On August 4, 2017, both Musim Mas and Wilmar filed

[79] *See* Wilmar SAQR Part 2 at Exhibit A-1.
[80] *See* Petitioner's PMS Allegation.
[81] In particular, the petitioner alleged that the unique U.S. biodiesel regulatory framework, through a tradeable credit system whereby Renewable Identification Number credits (RIN credits) are generated with the production and

rebuttal comments concerning the petitioner's PMS allegation.[82] On August 11, 2017, the Government of Indonesia (GOI) also submitted rebuttal comments with regard to the petitioner's PMS allegation.[83]

B. Interested Parties' Arguments

The petitioner asserts that a PMS exists in Indonesia because the GOI: sets low mandatory prices and sales quotas for biodiesel in the home market through its Public Service Obligation (PSO) program such that home market prices are not competitively set; and restrains the exports of crude palm oil (CPO) with an export tax and levy, thereby pushing the respondents' reported raw material CPO costs in Indonesia well below world market CPO prices.[84]

The petitioner urges the Department to disregard the mandatory respondents' home market PSO sales based on a finding that they are significantly distorted by government intervention, which also impacts the respondents' other sales that are made outside the PSO program.[85] The petitioner also asserts that the Department should make an adjustment for CPO purchased from domestic suppliers, which, the petitioner contends, is the primary feedstock for the production of biodiesel in Indonesia.[86] The petitioner adds that the Department has recognized the distortion in CPO costs in the companion countervailing duty (CVD) investigation on biodiesel from Indonesia for the subsidies of CPO for less than adequate remuneration (LTAR), and the petitioner relies on *OCTG from Korea* in support of its contention that distorted raw material costs can be considered a PMS.[87]

---

importation of biodiesel, and the federal BTC scheme, creates a particular market situation that must be adjusted for to address its effects on U.S. pricing and comparability. *See* Petitioner's PMS allegation at 15-27. In rebuttal, Wilmar and Musim Mas contend that differences in the regulatory regimes in the United States and Indonesia, namely, the RIN credits and BTC scheme, do not create a PMS in the home market. The mandatory respondents also contend that the petitioner is essentially arguing that there is a PMS in the United States, which is not permitted by the statute. *See* Musim Mas' PMS Rebuttal at 8-13; *see also* Wilmar's PMS Rebuttal at 8-13; *see also* the GOI's PMS Rebuttal at 6-9.

In its pre-preliminary comments, the petitioner refined its view to argue that because the scope of this investigation "covers biodiesel, not RINs," the Department must exclude the value of RINs from the U.S. price for biodiesel. The petitioner also contends that there is insufficient information on the record to adjust U.S. price for the BTC. *See* Petitioner's Pre-Preliminary Determination Comments at 15-27.

As discussed further below, pursuant to 773(a)(6)(C)(iii) of the Act, we have preliminarily applied a circumstance of sale (COS) adjustment to CV. *See* "Circumstance of Sale Adjustment" section, below. Therefore, for this preliminary determination, we are not considering whether the price differences in the United States and Indonesia caused by different regulatory frameworks also constitute a PMS. Regardless, we find that applying a circumstance of sale adjustment renders this issue moot.

[82] *See* Musim Mas' PMS Rebuttal; *see also* Wilmar's PMS Rebuttal.

[83] *See* The GOI's PMS Rebuttal.

[84] *See* Petitioner's PMS Allegation at 11-15, 27-31.

[85] *Id*. at 14.

[86] *Id*. at 27.

[87] *Id*. at 29-30 (*citing Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017), and accompanying Issues and Decision Memorandum (*OCTG from Korea*) at Comment 3).

In rebuttal, and with regard to their home market sale prices of biodiesel, Wilmar and Musim Mas both argue that the GOI calculates the price paid by PSO-customers based on market prices, and that the total compensation that each respondent received for the biodiesel (*i.e.*, payments from PSO-customer and the Fund Management Agency) reflects the full market value of its biodiesel.[88] Further, Wilmar and Musim Mas each argue that they have sufficient non-PSO biodiesel sales to make the home markets viable for each of them.[89] Wilmar adds that there is no correlation between its volume of PSO and non-PSO sales, which demonstrates that PSO sales do not influence non-PSO sales.[90] The GOI supports the mandatory respondents' arguments, emphasizing that biodiesel producers selling through the PSO program receive the full competitive price of biodiesel, but simply receive the full price through two separate invoices.[91]

With regard to their costs of production, Wilmar and Musim Mas argue that: (1) lower prices for CPO are an insufficient basis to substantiate a PMS claim; (2) the lower CPO prices are due to the efficient structure of sourcing raw materials from their own facilities; (3) the petitioner mischaracterizes jurisprudence relating to PMS, including *OCTG from Korea* because, there, the Department made its PMS finding in that case based on a CVD order that was already in place on the material input, and here, there is no CVD order in place in the companion CVD investigation of biodiesel from Indonesia; and (4) the appropriate and only remedy for GOI intervention should be dealt with in the CVD investigation.[92] Musim Mas also contends that applying the CVD subsidy rate to the calculation of dumping margins constitutes a double-remedy.[93]

The GOI supports the respondents' COP arguments by highlighting that there were more CPO exports in 2016 than there was consumption in Indonesia, and claiming that it is difficult for the GOI to comprehend how such export tariffs and levies on CPO functioned as a restraint on exports that distorted the respondents' CPO costs.[94] The GOI also notes that the CPO benchmark used by the petitioner is untenable because it includes export taxes, transportation and other costs, and the petitioner's proposal could lead to inappropriate double-remedies, which the GOI contends the Department has avoided imposing in other comparable contexts.[95]

C. Analysis

As noted above, section 773(a)(1)(B)(i) of the Act defines NV as "the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the

---

[88] *See* Musim Mas' PMS Rebuttal at 5-6; *see* also Wilmar's PMS Rebuttal at 5-6.
[89] *See* Musim Mas' PMS Rebuttal at 7; *see* also Wilmar's PMS Rebuttal at 7.
[90] *See* Wilmar's PMS Rebuttal at 8.
[91] *See* The GOI's PMS Rebuttal at 3.
[92] *See* Musim Mas' PMS Rebuttal at 13-19; *see* also Wilmar's PMS Rebuttal at 14-18.
[93] *See* Musim Mas' PMS Rebuttal at 18-19 (citing *GPX Int'l Tire Corp. v. United States*, 666 F.3d 732 (Fed. Cir. 2011)).
[94] *Id*. at 4.
[95] *Id*. at 4-6 (citing *Notice of Final Results of Antidumping Administrative Review: Low Enriched Uranium from France*, 69 FR 46501, 46506 (August 3, 2004) (*Uranium from France*); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005), and accompanying Issues and Decision Memorandum (*Softwood Lumber from Canada*) at Comment 5; *U.S. Steel Group v. United States*, 15 F. Supp. 892, 900 (CIT 1998) (*U.S. Steel Group*)).

exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the {EP} or {CEP.}" Pursuant to sections 771(15) and 773(a)(1)(C)(iii) of the Act, the Department shall find sale prices to be "outside the ordinary course of trade" in situations in which it "determines that the particular market situation prevents a proper comparison with the export price or constructed export price." Section 504 of the Trade Preferences Extension Act of 2015 (TPEA)[96] added the concept of "particular market situation" in the definition of the term "ordinary course of trade." The TPEA also added language to section 773(e) of the Act to state that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology."

The statute does not define "particular market situation," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."[97] Additionally, in the *Salmon from Chile LFTV*, which pre-dated the TPEA, the Department determined that a PMS exists because "home market sales were incidental to the Chilean salmon industry, which is export oriented."[98] In *Pasta from Italy*, the Department determined that a PMS existed because the respondent had a single third country sale "which prevents a proper comparison."[99] More recently, in *OCTG from Korea*, the Department determined a PMS existed in Korea which distorted OCTG COP.[100]

As discussed above, the petitioner alleged that a PMS exists in Indonesia, which distorts the home market sale prices of biodiesel, as well as for their biodiesel costs of manufacture (COM).[101] After analyzing the petitioner's allegation, and the factual information and comments subsequently submitted by all interested parties, the Department preliminarily determines that a PMS exists in Indonesia which distorts the Indonesian home market prices for purposes of NV, and biodiesel COP for purposes of CV. For these reasons, we will not rely on Wilmar's home market sale prices as a basis for NV; and we will adjust Wilmar's reported CPO costs when determining the COP for biodiesel. We consider each of the petitioner's PMS allegations below.

1. A PMS renders Wilmar's home market sale prices as outside the ordinary course of trade

Based on the facts on the record, the Department finds that the GOI's pervasive regulation of the domestic biodiesel market amounts to a PMS that renders Wilmar's home market sale prices outside the ordinary course of trade. The record of this investigation shows that the GOI mandates producer-specific minimum sale quantity requirement for PSO sales, specifying, for each six-month period, the minimum quantity of biodiesel that participating producers must sell

[96] *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).
[97] *See* SAA at 822.
[98] *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411 (June 9, 1998) (Salmon from Chile LTFV);
[99] *See Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007) (*Pasta from Italy*).
[100] *See OCTG from Korea Issues and Decision Memorandum* at Comment 3
[101] *See* Petitioner's PMS Allegation at 1.

to the PSO-customers.[102] The record also supports that the GOI sets the prices for these PSO sales. [103] We note in particular, that PSO sales comprise the vast majority of Indonesian biodiesel consumption at the country-wide level,[104] with a significant portion allocated to Wilmar.[105]

In addition to the fact that the GOI controls the pricing of biodiesel in Indonesia under the PSO program, we also determine that the GOI does not establish PSO prices based on a "market price" for biodiesel. Rather, the GOI establishes the PSO prices paid to Indonesian biodiesel producers on a quarterly basis, based on a reference price for petrodiesel, and the product cost of petrodiesel in Indonesia.[106] The price for petrodiesel is significantly lower than the cost of raw materials used to produce biodiesel.[107] The GOI's Fund Management Agency (FMA) makes an additional payment to biodiesel producers, to allegedly make them "whole" for PSO sales, whose prices are determined by the GOI under the PSO program.[108] Wilmar claims that the additional payment makes up the difference between "the market value of petrodiesel and the higher market value of biodiesel plus logistics."[109] Nonetheless, the fact that the GOI needs to further intervene in the market by making an additional payment to supplement the prices Wilmar receives under the PSO program, signals that the PSO sales price is not competitively set by the GOI. Furthermore, this additional payment under the Biodiesel Subsidy Fund (BSF) is not based on market prices for biodiesel. Rather, the Directorate General of New Renewable Energy and Energy Conversion determines the payment based on the price for CPO, adding a $125 conversion cost, and logistics costs.[110] Finally, notwithstanding Wilmar's argument that its "total compensation" for PSO sales reflects a market price for biodiesel, our analysis indicates that it cannot be considered a "market" price.[111]

Moreover, we find Wilmar's arguments with respect to its non-PSO sales unpersuasive. As an initial matter, the fact that GOI-controlled PSO sales account for vast majority of Indonesian biodiesel consumption is a clear indication that all Indonesian biodiesel prices are similarly distorted by the PMS resulting from the PSO. Moreover, the fact that Wilmar's PSO and non-PSO sales are each based on distorted CPO input prices (see below), which accounts for the vast majority of the cost to produce biodiesel in Indonesia,[112] is a further indication that the prices of

---

[102] See Wilmar Supplemental B-C Response, dated August 18, 2017, (Wilmar's Supplemental BCR) at 5 and Exhibit S-6.
[103] Presidential Regulation No. 61/2015 establishes how the GOI determines the price of PSO sales. The price for biodiesel is based on the reference price for petrodiesel as determined by the Directorate General for Oil and Gas (DGOG) on a quarterly basis. The DGOG relies on the price for petrodiesel reported in the Means of Platts Singapore (MOPS) and the production cost of petrodiesel in Indonesia. *See* Petitioner's PMS allegation at Exhibit 1.
[104] *See* Petition at Exhibit GEN-31.
[105] *See* Wilmar Preliminary Calculation Memorandum.
[106] *See* Petitioner's PMS allegation at Exhibit 1.
[107] *See* Petition at Exhibit CVD-IND-01.
[108] *See* Petitioner's PMS Allegation at 13 and footnote 38.
[109] *See* Wilmar Supplemental Section A Response dated August 11, 2017, (Wilmar's Supplemental AQR) at 36; *see also* The GOI's PMS Rebuttal comments at 3.
[110] *See* Wilmar Supplemental AQR at 35-36.
[111] Given that our additional analysis of Wilmar's PSO sales discusses Wilmar's business proprietary information, *see* Wilmar Preliminary Calculation Memorandum for a further discussion of our findings.
[112] *See* Petitioner's PMS Allegation at 2.

both types of home market sales are distorted. We also compared Wilmar's weighted-average price for non-PSO sales to the world market price of $681.06 per metric ton for CPO. Because this information is business proprietary, we have provided details of this additional analysis in Wilmar's Preliminary Calculation Memorandum as a basis to find Wilmar's non-PSO sales to be outside the ordinary course of trade.[113]

In sum, we find that a PMS exists that affects home market prices for biodiesel in Indonesia, and, accordingly, that all sales of biodiesel in the home market are outside the ordinary course of trade. For this reason, we will not rely on Wilmar's home market sale prices in this preliminary determination as a basis for NV. As a result, as mentioned above, we have concluded that the viability analysis is therefore not a reliable basis to determine whether NV should be based on the home market in this investigation.

In addition, while the Department has in the past turned to third-country markets as a result of a PMS, even when the home market is viable, the revised language of the TPEA makes it clear that home market sales considered to be non-comparable because of a PMS are outside the ordinary course of trade. Thus, we think it is appropriate to follow our long-standing practice of turning to CV when there are no sales within the ordinary course of trade in the home market.[114] Furthermore, section 773(a)(4) of the Act provides that if the Department determines that NV cannot be determined under section 773(a)(1)(B)(i), "then, notwithstanding section 773(a)(1)(B)(ii)," (which allows the Department to rely on a third-country market) NV may be based on CV under section 773(e) of the Act. Finally, prior to the TPEA, section 773(a)(1)(B)(ii)(III) of the Act provided that the Department would rely on a third-country market if "the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price or constructed export price." (emphasis added). The TPEA removed reference to "in such other country" from this provision. Therefore, we find that if the Department has determined that a PMS exists in the home market, it is not required to examine third-country market sales, and may instead rely on CV.

We therefore will rely on CV as NV in this investigation.

2. A PMS distorts the prices of CPO as included in the COP for purposes of CV

The GOI imposes export taxes and levies on CPO that are significantly higher than those imposed on biodiesel. The GOI has stated that "export taxes on primary commodities can be used to reduce the domestic price of primary products in order to guarantee supply of intermediate inputs at below world market prices for domestic processing industries."[115]

---

[113] *See* Wilmar Preliminary Calculation Memorandum.

[114] For example, when sales in the home market are excluded pursuant to the sales-below cost test, "the Department has had a long-standing practice of basing normal value on constructed value." *See* Import Administration Policy Bulletin, "Basis for Normal Value When Foreign Market Sales Are Below Cost," Number 98.1, February 23, 1998. *See also* section 773(b)(1)(B) of the Act: "Whenever {sales below cost} are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise."

[115] *See* Petition at Exhibit CVD-IND-28 at Article 1.13.

The distortive effects of the export tax and levy on domestic CPO prices are demonstrated by the record. On average, data on the record indicates that, during the POI, the world market price for CPO was $681/MT, while the average price in Indonesia was $649/MT.[116] Indonesian CPO prices were below world market prices in each month since the imposition of the levy (including each month of the POI).

Thus, the GOI's export tax and levy lowers the cost of CPO for the production of biodiesel by increasing the supply of CPO available in the domestic market. We have compared the prices paid by Wilmar for Indonesian CPO to the world market price, and determined that such a price differential exists.[117]

We disagree with the respondents' arguments that "distorted" CPO prices can only be remedied through countervailing duties.[118] As noted above, section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology." In addition, we find that the GOI's references[119] to *Uranium From France* and *Softwood Lumber From Canada* are not on point for establishing that a double remedy would occur. In those proceedings, the issue was whether the Department should adjust EP or CEP for countervailing duties as a cost under section 772(c)(2)(A) of the Act. The Department declined to do so based on its explanation that countervailing duties are not ordinary import duties for purposes of that provision, and "to make such a deduction effectively would collect the CVDs a second time."[120] Here, the Department is not adding countervailing duties to U.S. price, or deducting countervailing duties from CV. Instead, the Department is substituting a world market price for CPO for Wilmar's cost for CPO to correct for a PMS that distorts Wilmar's COM.

The Department finds that a PMS exists with regard to the cost of CPO as a factor of COM. Therefore, we will adjust Wilmar's COM to account for the distorted domestic Indonesian prices for CPO, by substituting a market determined price[121] for the price that Wilmar actually paid for CPO in Indonesia.[122]

XII. CALCULATION OF NORMAL VALUE BASED ON CONSTRUCTED VALUE

[116] *See* Petition at Exhibit CVD-IND-35
[117] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Wilmar Trading Pte. Ltd.," dated October 19, 2017, (Wilmar Preliminary Cost Calculation Memo).
[118] *See* Musim Mas' PMS Rebuttal at 13-19; *see* also Wilmar's PMS Rebuttal at 14-18.
[119] *See* The GOI's PMS Rebuttal at 5-6; citing *Uranium From France*, 69 FR at 46504-08; *further citing Softwood Lumber From Canada*, 70 FR at 73437, and accompanying Issues and Decision Memorandum at Comment 5; The CIT sustained Commerce's position not to deduct countervailing duties as a cost under section 772(c)(2)(A) of the Act. *See U.S. Steel Group*, 15 F. Supp. at 900
[120] *Id*.
[121] Moreover, Musim Mas's contention that applying the CVD rate to the calculation of an AD margin constitutes a double-remedy is moot, as we have not adjusted Wilmar's COM by a CVD rate.
[122] *See* Wilmar Preliminary Cost Calculation Memo.

As noted in the "Particular Market Situation" section above, we preliminarily determine that a PMS exists in Indonesia, and thus we have found that biodiesel sales in the home market are not within the ordinary course of trade. Accordingly, we have preliminarily used CV as the basis for NV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Wilmar's cost of materials and fabrication employed in producing the subject merchandise, plus amounts for general and administrative (G&A) expenses, interest, profit, selling expenses, and U.S. packing costs. We calculated the cost of materials and fabrication, G&A expenses, and interest based on information submitted by Wilmar in their original and supplemental questionnaire responses, except in instances where we determined that a PMS exists regarding Wilmar's costs for CPO, as described below.

In accordance with section 773(b)(2)(A)(ii) of the Act, we requested COP information and examined Wilmar's cost data, and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data. We relied on Wilmar's submitted COP and CV data, except as follows:

- We adjusted the reported cost of CPO to account for a PMS discussed above.
- We revised the G&A expense rates to include the expenses incurred by its parent company on behalf of the respondent, and to exclude certain business proprietary gains/losses. [123]

As explained above, Wilmar's home market sales are not within the ordinary course of trade due to a PMS in Indonesia for biodiesel; thus, NV may be based on CV, in accordance with section 773(a)(4) of the Act. In the absence of a comparison market, we are unable to calculate CV profit using the preferred method under section 773(e)(2)(A) of the Act (*i.e.*, based on the respondent's own home market or third country sales made in the ordinary course of trade). When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale in the foreign country of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) in connection with the production and sale of the foreign like product, in the ordinary course of trade country, for consumption in the foreign country; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.,* the "profit cap").

We note that the statute does not establish a hierarchy for selecting among these alternatives for calculating CV profit. However, through our practice, we have favored using an alternative method that most closely corresponds to the preferred method, although we may not be able to

[123] For further discussion, *see* Wilmar Preliminary Cost Calculation Memo.

find a source for CV profit that reflects both (1) production and sales in the foreign country, and (2) the same merchandise under consideration.

In *Color TVs from Malaysia*, the Department set out four criteria for choosing among surrogate financial statement data under section 773(e)(2)(B)(iii) of the Act: 1) the similarity of the potential surrogate companies' business operations and products to the respondent's; 2) the extent to which the financial data of the surrogate company reflects sales in the home market and does not reflect sales to the U.S.; 3) the contemporaneity of the data to the POI; and, 4) the extent to which the customer base of the surrogate and the respondent were similar (e.g., OEM vs retailers).[124] These four criteria have been followed in subsequent cases to assess the appropriateness of using the various financial statements on the record of a given case under (iii). Additionally, there may be other reasons to discount surrogate financial statements, which are discussed below, i.e., our practice is not to base CV profit on non-profitable companies' information.

On September 1, 2017, we sent a letter to all interested parties providing an opportunity to comment and submit new factual information on CV profit and selling expenses.[125] On September 18, 2017, Wilmar, Musim Mas, and the petitioner submitted factual information.[126] On September 27, 2017, Wilmar and the petitioner submitted rebuttal comments and information.[127] Interested parties placed the financial statements of the following entities on the record as potential sources for CV profit and selling expenses: First Resources Limited (First Resources); Genting Plantations (Genting); Verbio Biofuels and Technology (Verbio); Energy Absolute Public Company Limited (Energy Absolute); São Martinho; Thai Agro Energy Public Company (Thai Agro); Golden Agri-Resources Ltd. (Golden Agri); Felda Global Ventures Holdings Berhad (Felda); and, Sime Darby Berhad Group (Sime Darby).

For this preliminary determination, we have considered the options advocated by interested parties for CV profit in this investigation. We find that, for various reasons, most of them are not viable sources for CV profit. For instance, some of the entities' financial statements either demonstrate that they experienced a loss, and did not earn a profit during the fiscal period[128] (*i.e.*, First Resources, Genting and Felda); do not provide evidence of biodiesel production (*i.e.*, São Martinho and Thai Agro); reflect primarily the results of operations for products other than biodiesel (*e.g.*, Sime Darby); or are biodiesel producers in Indonesia where we find that a PMS exists that affects home market prices, and thus also affects the CV profit (*i.e.*, First Resources and Golden Agri).

---

[124] *See Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004), and accompanying Issues and Decision Memorandum (*Color TVs from Malaysia*) at Comment 26.
[125] *See* Department Letter, "Antidumping Duty Less Than Fair Value Investigation of Biodiesel from Indonesia," dated September 1, 2017.
[126] *See*, respectively, Respondents' CV Profit Submission; and Petitioner's CV Profit Submission.
[127] *See*, respectively, Wilmar's CV Rebuttal; and Petitioner's CV Rebuttal.
[128] *See e.g.*, *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 76 FR 56396 (September 13, 2011) and accompanying Issues and Decision Memorandum at Comment 1.B; *Certain Fresh Cut Flowers from Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 18878, 18883 (April 16, 1999).

Out of all of the potential sources for CV profit, in accordance with section 773(e)(2)(B)(iii) of the Act, we have preliminarily determined to use the profit earned by Verbio, a German producer of biodiesel, and Energy Absolute, a Thai producer of biodiesel.[129] We consider the Verbio and Energy Absolute financial statements to be the best sources available on the record for determining CV profit in this investigation. Both sets of financial statements are contemporaneous with the POI, and reflect the results of biodiesel production. Further, more than half of both Verbio's and Energy Absolute's sales revenues were generated from sales of biodiesel.

We are unable to calculate the amount realized by exporters or producers in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category of products as the subject merchandise (*i.e.,* the "profit cap"), in accordance with section 773(e)(2)(B)(iii) of the Act. In this investigation, as noted above, we have determined to rely on CV for NV for Wilmar because of the existence of a PMS in the home market, and, further, have exercised the Department's discretion under the statute to not examine third-country market sales. Thus, we have no comparison market sales of biodiesel, nor do any of the CV profit sources placed on the record by interested parties show "the amount realized by exporters or producers in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category of products as the subject merchandise." Moreover, the record of this investigation does not contain any information regarding profits earned on Indonesian sales of products in the same category of merchandise as biodiesel. Given this lack of evidence, the SAA makes clear that the Department might have to apply alternatives (iii) on the basis of facts available.

With respect to CV selling expenses, because we have exercised the Department's discretion under the statute to not examine third-country market sales, the Department does not have comparison market selling expenses to use in its calculations, as directed by section 773(e) of the Act. As noted above, interested parties placed the same financial statements on the record as potential sources for CV selling expenses. Accordingly, for this preliminary determination, to calculate selling expenses the Department has used the same financial statements that it used to calculate CV profit, in accordance with section 773(e)(2)(B)(iii) of the Act.

Accordingly, under section 776(a)(1) of the Act, as neutral facts available, the Department has used the same financial statements that it used to calculate CV profit and selling expenses to calculate an average CV profit cap, in accordance with option (iii) of section 773(e)(2)(B) of the Act. Thus, for this preliminary determination, we based Wilmar's CV profit on the simple-average rate of 4.21 percent, as determined based on the Verbio and Energy Absolute financial statements.[130]

With respect to CV selling expenses, we also determined rates based on information found in the statements of Verbio and Energy Absolute for direct and indirect selling expenses, and credit expenses, which we based on the turnover rate of trade receivables. For commissions, commission offsets, and inventory carrying costs, because no adequate information was available

[129] *See* Petitioner's CV Profit Submission at Exhibits 3-A and 4-A.
[130] *See* Wilmar Preliminary Cost Calculation Memo at Attachment 5.

in any of the financial statements submitted by interested parties for purposes of calculating these expenses, we determined rates using information provided by the respondents, as it provided the only reasonable method available for determining these expenses on the record of this investigation.[131]

XIII. CIRCUMSTANCE OF SALE

In order to achieve its renewable fuel volume targets, the EPA requires an "obligated party," a term which encompasses producers and importers of gasoline or diesel fuel, to meet an annual renewable volume obligation (RVO).[132] The EPA ensures compliance with the RVOs through the use of a tradeable credit system under which obligated parties must submit to the EPA RINs that equal the number of gallons of renewable fuel in their RVO. RINs are generated through either U.S. production or importation of biodiesel. Under the RFS program, biodiesel produced domestically or imported into the United States generates RINs.[133] These RINS may be used by the party that generates them to satisfy its own RVO or traded and sold on a secondary market so that other obligated parties may buy RINs and use them to satisfy their RVOs. Once detached, RINs can be freely traded to anyone that is registered with EPA as a RIN owner.[134] In addition, pursuant to the federal BTC administered by the Internal Revenue Service, fuel blenders can claim a credit against their U.S. federal tax liability for every gallon of pure biodiesel that it physically blends with petroleum diesel.[135] The record shows that there is no comparable regulatory scheme in Indonesia comparable to the EPA's RFS with its RINs or the BTC.[136]

The record demonstrates that biodiesel prices in the United States are reflective of the full value of the associated RINs. In particular, the record indicates exporters of biodiesel themselves consider U.S. prices to be reflective of RIN values. For example, one foreign exporter of biodiesel informed the ITC: "The price includes the liquid. It includes the RIN. It includes a tax credit. No matter how many ways you slice it, it's all built into the product."[137] Another exporter explained that, "If a given RIN has a value of $0.50, one would multiply that value by 1.5, as each gallon of biodiesel generate 1.5 RINs under the RFS rules. So, as such, if a given RIN has a value of $0.75, it would add $0.75 to a gallon biodiesel. . . . {In this example,} in which the RIN value is $0.75 per gallon, industry participants generally assume that a gallon of RINless B100 should be $0.75 per gallon less expensive than a gallon of B100 with K1 RINs attached."[138] Thus, according to this example, the full RIN value, once adjusted to a per-gallon basis, is included in U.S. price.

Both mandatory respondents recognize that biodiesel prices in the United States are reflective of

---

[131] For an explanation of how these expense ratios were calculated, *see* Wilmar Preliminary Cost Memorandum.
[132] *See* AD Indonesia Petition at 100-104.
[133] *Id*.
[134] *Id*.
[135] *Id*. at 105-106.
[136] *See, e.g.*, The GOI's PMS Rebuttal at 7-9.
[137] *See* ITC Hearing Transcript, "In the Matter of: Biodiesel from Argentina and Indonesia," Investigation Nos.: 701-TA-571-572 and 731-TA-1347-1348 (Preliminary) at 248 (placed on the record by the petitioner in Petitioner's PMS Allegation at Exhibit 6).
[138] Wilmar's August 11, 2017 QR at 21.

the value of fuel, RINs, and BTCs to some extent.[139] The record shows that Wilmar sold biodiesel in the United States with and without RINs.[140] Wilmar has reported actual or estimated RIN values for all of its sales of biodiesel in the United States.[141] Thus, there is sufficient information on the record to calculate the price premium associated with Wilmar's "RIN-inclusive" sale prices.[142]

The Department determines that the record shows that there is a recognized and quantifiable imbalance in the comparison of U.S. price with NV, which results from the RINs, and thus, a circumstance of sale (COS) adjustment is appropriate to account for the inclusion of RINs in the U.S. price. Pursuant to section 773(a)(6)(C)(iii) of the Act, we have preliminarily applied a COS adjustment to NV based on the price premium associated with Wilmar's "RIN-inclusive" sales, in order to balance the comparison between U.S. price and NV.[143]

As noted above, the petitioner requested an adjustment for BTCs in its PMS allegation,[144] but subsequently claimed that there was insufficient information on the record to quantify an adjustment for BTC.[145] While all of the B100 biodiesel that Wilmar sold to unaffiliated customers in the United States had the value of the BTC embedded in its price, Wilmar's affiliate in the United States, who blended B100 imports with petrodiesel, claimed the BTC on its CEP sales of B99 biodiesel.[146] Thus, the BTC appears to be an inducement to demand for B100 biodiesel from blenders, that is not detachable from the biodiesel in the same way RINs are. Therefore, there does not appear to be sufficient information on the record to calculate any adjustment associated with the BTC.

XIV. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion CVD proceeding, in accordance with section 772(c)(1)(C), when CVD provisional measures are in effect. In the preliminary determination of the companion CVD investigation, the Department found no countervailable export subsidies.[147]

---

[139] *See, e.g.,* Petitioner's Pre-Preliminary Determination Comments at 15-27 and Wilmar's June 29, 2017 B&CQR at C-21.
[140] *See* Wilmar Supplemental BCR at 16.
[141] *Id.* at 17-18:
[142] *See* Wilmar SCQR at 21; *see also* Wilmar's Supplemental BCR at 18.
[143] *See* Wilmar Preliminary Calculation Memorandum.
[144] *See* Petitioner's PMS Allegation
[145] *See* Petitioner's Pre-Preliminary Determination Comments.
[146] *See* Wilmar Supplemental BCR at 16.
[147] *See Biodiesel from the Republic of Indonesia: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 40746 (August 28, 2017), and accompanying Preliminary Decision Memorandum.

Therefore, we preliminarily determine not to adjust the cash deposit rates in this preliminary determination.

XV. CURRENCY CONVERSION

We have not made any currency conversions into U.S. dollars pursuant to section 773A(a) of the Act, as Wilmar reported that its functional currency is the U.S. dollar, and its accounting system and financial statements report all amounts in U.S. dollars.[148] Wilmar noted that sales and expenses invoiced or paid in local currencies are translated immediately and automatically into U.S. dollars when recorded in its system.[149]

XVI. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

☑ ☐

Agree Disagree

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

[148] *See* Wilmar Supplemental BCR at 1.
[149] *Id.*