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DATE: October 24, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Sugar from Mexico

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that sugar from Mexico 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 margins of sales at LTFV for (1) Fondo De Empresas Expropiadas Del Sector Azucarero (FEESA), and (2) Ingenio Tala S.A. de C.V. (Tala) and certain affiliated companies of Grupo Azucarero Mexico S.A. de C.V. (collectively, the GAM Group),¹ are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 28, 2014, the Department received an antidumping duty (AD) petition concerning imports of sugar from Mexico,² which was filed in the proper form by the American Sugar Coalition and its members (collectively, Petitioners).³ Supplements to the Petition are described

¹ GAM Group consists of the following companies: Tala; Ingenio El Dorado S.A. de C.V. (El Dorado); Ingenio Lázaro Cardenas S.A. de C.V. (Lázaro Cardenas); Organizacion Cultiba, S.A.B. de C.V. (Cultiba); Grupo Azucarero Mexico S.A. de C.V. (GAM); ITLC Agricola Central S.A. de C.V. (ITLC); Tala Electric S.A. de C.V. (Tala Electric); Empresas y Servicios Organizados S.A. de C.V. (ESOSA); and Proveedora de Alimentos Mexico, S.A. de C.V. (PAM).

² See Sugar from Mexico; Antidumping and Countervailing Duty Petitions (March 28, 2014) (Petition).

³ The members of the American Sugar Coalition include: American Sugar Cane League, American Sugar Refining, Inc., American Sugarbeet Growers Association, Florida Sugar Cane League, Hawaiian Commercial and Sugar Company, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and United States Beet Sugar Association.

in the *Initiation Notice* and the accompanying Initiation Checklist.⁴ On April 24, 2014, the Department published notice of the initiation of the AD investigation of sugar from Mexico in the *Federal Register*.⁵ The Department subsequently fully postponed the deadline for issuing the preliminary determination in this investigation to no later than 190 days after the date on which it initiated this investigation.⁶

As stated in the Respondent Selection Memorandum, the Department based its selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁷ The Department released the CBP entry data under administrative protective order (APO) on April 25, 2014.⁸ Subsequently, Petitioners and Camara Nacional de Las Industrias Azucarera y Alcoholera (Mexican Sugar Chamber) (Camara) filed comments and rebuttals regarding the CBP entry data and the respondent selection methodology.⁹ Additionally, Batory Foods Inc. (Batory), Ingenio San Nicolas S.A. de C.V., and Domino Comercio, S.A. de C.V. filed timely voluntary respondent requests, then later withdrew them.¹⁰

On June 11, 2014, the Department selected FEESA and Tala as mandatory respondents.¹¹ On the same day, the Department issued initial questionnaires to FEESA and Tala.¹² Between June 25, 2014, and August 5, 2014, both respondents submitted timely responses to sections A, B, C and D of the Department's questionnaire.¹³ Tala submitted questionnaire responses on behalf of itself and other members of the GAM Group. Additionally, both respondents have timely

⁴ See *Sugar From Mexico: Initiation of Antidumping Duty Investigation*, 79 FR 22795 (April 24, 2014) (*Initiation Notice*).

⁵ See *id.*

⁶ See *Sugar From Mexico: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 79 FR 49497 (August 21, 2014).

⁷ See Memorandum to Christian Marsh, "Antidumping Duty Investigation of Sugar from Mexico: Respondent Selection," June 11, 2014, at 5-7 (Respondent Selection Memorandum).

⁸ See Memorandum to the File, "Release of Customs Entry Data for Respondent Selection in the Antidumping and Countervailing Duty Investigations of Sugar from Mexico," April 25, 2014.

⁹ See Letter from Petitioners, "Sugar from Mexico: Comments on Respondent Selection," May 5, 2014; see also Letter from Camara, "Sugar from Mexico – Comments on CVP Data for Respondent Selection," May 5, 2014; Letter from Petitioners, "Sugar from Mexico: CBP Entry Data Rebuttal Comments," May 12, 2014; Letter from Camara, "Antidumping Duty Investigation of Sugar from Mexico Rebuttal Comments Regarding Respondent Selection," May 12, 2014.

¹⁰ See Letter from Batory, "Investigation of Sugar from Mexico: Request for Voluntary Respondent Treatment," April 18, 2014; see also Letter from Ingenio San Nicolas S.A. de C.V. and Domino Comercio, S.A. de C.V., "Request for Voluntary Respondent Treatment," April 21, 2014; Letter from Batory, "Investigation of Sugar from Mexico: Withdrawal of Request for Voluntary Respondent Treatment," May 7, 2014; Letter from Ingenio San Nicolas S.A. de C.V. and Domino Comercio, S.A. de C.V., "Withdrawal of Request for Voluntary Respondent Treatment: Antidumping Duty Investigation of Sugar from Mexico," May 20, 2014.

¹¹ See Respondent Selection Memorandum.

¹² See Letters to FEESA and Tala, "Antidumping Duty Questionnaire," June 11, 2014 (Initial Questionnaire).

¹³ See FEESA June 25, 2014, Partial Section A Initial Questionnaire Response; see also GAM Group June 25, 2014, Partial Section A Initial Questionnaire Response; FEESA July 14, 2014, Section A Initial Questionnaire Response; GAM Group July 14, 2014, Section A Initial Questionnaire Response; FEESA August 5, 2014, Sections B-D Initial Questionnaire Response; GAM Group August 5, 2014, Sections B-D Initial Questionnaire Response.

responded to all supplemental questionnaires issued by the Department.¹⁴ Between June 30, 2014, and October 17, 2014, Petitioners submitted timely comments on the respondents' aforementioned questionnaire responses.¹⁵

In the Petition, Petitioners made a country-wide allegation that home market sales were made below the cost of production (COP).¹⁶ As stated in the *Initiation Notice*, the Department initiated a country-wide sales-at-below-COP analysis.¹⁷ Further discussion is provided in the "Cost of Production" section, below.

On October, 10, 2014, Petitioners filed comments for the Department to consider in its preliminary determination.¹⁸ On October 17, 2014, FEESA and GAM Group filed rebuttal comments.¹⁹

On October 16, 2014, FEESA, the GAM Group, and Camara requested a postponement of the final determination and an extension of provisional measures in the event of an affirmative preliminary determination.²⁰

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2013, through December 31, 2013. This period corresponds to the four most recent fiscal quarters prior to the month in which the Petition was filed.²¹

¹⁴ See FEESA August 1, 2014, Section A Supplemental Questionnaire Response; see also GAM Group August 1, 2014, Section A Supplemental Questionnaire Response; FEESA September 19, 2014, Section D Supplemental Questionnaire Response; GAM Group September 19, 2014, Section D Supplemental Questionnaire Response; FEESA September 30, 2014, Sections A-C Supplemental Questionnaire Response; GAM Group September 30, 2014, Sections A-C Supplemental Questionnaire Response.

¹⁵ See Letter from Petitioners, "Sugar from Mexico: Petitioners' Comments Regarding Responses to Section A Questionnaire, Questions 2(a) and 2(e) through 2(g)," June 30, 2014; see also Letter from Petitioners, "Sugar from Mexico: Petitioners' Comments Regarding the Response of Tala to the Department's Section A Questionnaire," July 23, 2014; Letter from Petitioners, "Sugar from Mexico: Petitioners' Comments Regarding the Response of FEESA to the Department's Section A Questionnaire," July 24, 2014; Letter from Petitioners, "Sugar from Mexico: Petitioners' Comments Regarding the Response of Tala to the Department's Sections B, C, and D Questionnaire," August 22, 2014; Letter from Petitioners, "Sugar from Mexico: Petitioners' Comments Regarding the Response of FEESA to the Department's Sections B, C, and D Questionnaires," August 22, 2014; Letter from Petitioners, "Sugar from Mexico: Petitioners' Comments Regarding the Responses of FEESA to the Department's Supplemental Sections A through C Questionnaire and Supplemental D Questionnaire," October 17, 2014; Letter from Petitioners, "Sugar from Mexico: Petitioners' Comments Regarding the Response of Tala to the Department's Supplemental Questionnaires," October 17, 2014.

¹⁶ See Petition at 66-67.

¹⁷ See *Initiation Notice*, 79 FR at 22798.

¹⁸ See Letter from Petitioners, "Sugar from Mexico: Petitioners' Comments in Advance of the *Preliminary Determination*," October 10, 2014.

¹⁹ See Letter from FEESA, "Sugar from Mexico – *Rebuttal to Petitioners' Pre-Preliminary Comments*," October 17, 2014; see also Letter from GAM Group, "Sugar from Mexico – *Rebuttal to Petitioners' Pre-Preliminary Comments*," October 17, 2014.

²⁰ See Letter from FEESA and GAM Group, "Sugar from Mexico – *Request for Postponement of Final Determination*," October 16, 2014.

²¹ See 19 CFR 351.204(b)(1).

IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on October, 16, 2014, FEESA, the GAM Group, and Camara requested that the Department postpone the final determination and extend the provisional measures from four months to six months.²² In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporters and producers account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and postponing the final determination until no later than 135 days after the publication of the accompanying preliminary determination notice in the *Federal Register*. Moreover, we are extending provisional measures from four months to a period not to exceed six months. The suspension of liquidation described in the accompanying preliminary determination notice will be extended accordingly.

V. SCOPE OF THE INVESTIGATION

The product covered by this investigation is sugar derived from sugar cane or sugar beets. Sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked via their anomeric carbons. The molecular formula for sucrose is C₁₂H₂₂O₁₁, the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C12H22O11/c13-1-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1, the InChI Key for sucrose is CZMRCDWAGMRECN-UGDNZRGBSA-N, the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988, and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.

Sugar within the scope of this investigation includes raw sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of less than 99.5 degrees) and estandar or standard sugar which is sometimes referred to as “high polarity” or “semi-refined” sugar (sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of 99.2 to 99.6 degrees). Sugar within the scope of this investigation includes refined sugar with a sucrose content by weight in a dry state that corresponds to a polarimeter reading of at least 99.9 degrees. Sugar within the scope of this investigation includes brown sugar, liquid sugar (sugar dissolved in water), organic raw sugar and organic refined sugar.

Inedible molasses is not within the scope of this investigation. Specialty sugars, *e.g.*, rock candy, fondant, sugar decorations, are not within the scope of this investigation. Processed food products that contain sugar, *e.g.*, beverages, candy, cereals, are not within the scope of this investigation.

Merchandise covered by this investigation is typically imported under the following headings of the Harmonized Tariff Schedule of the United States (HTSUS): 1701.12.1000, 1701.12.5000,

²² See Letter from FEESA and GAM Group, “Sugar from Mexico – Request for Postponement of Final Determination,” October 16, 2014.

1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1025, 1701.99.1050, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

VI. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period for interested parties to raise issues regarding product coverage.²³ The Department specified that any such comments were due by May 7, 2014, which was 20 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by May 14, 2014.²⁴

CSC Sugar LLC (CSC), an interested party, submitted comments on May 7, 2014, requesting that the Department clarify that raw sugar imported by licensed refiners participating in the U.S. Department of Agriculture (USDA) re-export program, typically classified under HTSUS subheadings 1701.13.2000 and 1701.14.2000, is not within the scope of this investigation.²⁵ CSC emphasized that, while the applicable HTSUS numbers were listed in the scope language proposed in the Petition, specific reference to raw sugar imported for re-export as refined sugar or in processed foods containing sugar was removed from the scope language that appeared in the *Initiation Notice*.²⁶ Furthermore, CSC argued that the re-export program is for the benefit of the domestic sugar industry, represented by Petitioners.²⁷

Batory, an interested party, submitted comments on May 7, 2014, requesting that the Department clarify that the following products are expressly excluded from the scope of the investigation: (1) powdered sugar containing at least three percent starch and no more than 97 percent sucrose, by dry weight, typically imported under HTSUS subheading 1701.99.5010; (2) drink mixes and blends containing no more than 87 percent sucrose, by dry weight, typically imported under HTSUS subheading 1701.91.8000; and (3) other drink mixes and baking mixes, such as cocoa powder, cereals, flour, starch, bakers' supplies, and fruit and vegetable preparations, typically imported under HTSUS heading 1821.²⁸ Batory emphasized that, while the applicable HTSUS numbers were listed in the scope language proposed in the Petition, specific references to the aforementioned products were removed from the scope language that appeared in the *Initiation Notice*.²⁹ Furthermore, Batory argued that inclusion of these products would undermine the Department's analysis of Petitioners' standing in this proceeding.³⁰

²³ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997).

²⁴ See *Sugar from Mexico: Initiation of Antidumping Duty Investigation*, 79 FR 22795, 22796 (April 24, 2014).

²⁵ See Letter from CSC, "Sugar from Mexico – CSC Sugar LLC Comments on Scope," May 7, 2014 (CSC Scope Comments).

²⁶ *Id.* at 3-5.

²⁷ *Id.* at 5-8.

²⁸ See Letter from Batory, "Investigation of Sugar from Mexico: Scope Comments," May 7, 2014 (Batory Scope Comments).

²⁹ *Id.* at 3.

³⁰ *Id.* at 3-4.

The Government of Mexico (GOM), a respondent in this proceeding's companion countervailing duty investigation, submitted comments on the scope on May 7, 2014.³¹ The GOM's scope comments, however, were based on an earlier version of the scope and addressed language that did not appear in the scope published in the *Initiation Notice*.

Petitioners submitted rebuttal comments on May 14, 2014.³² In response to the CSC Scope Comments, Petitioners argued that, although the HTSUS numbers included in the proposed scope language "for convenience and customs purposes" were revised prior to initiation, such changes do not determine whether Petitioners intended to exclude certain products from the scope of the investigation.³³ Petitioners indicated that they did not intend to exclude raw sugar imported under the USDA's re-export program from the scope of this investigation, specifically because the re-export program allows licensed importers to export domestic sugar as a substitute for the raw sugar actually imported.³⁴ Petitioners emphasized that the scope language is intended to cover all sugar that is not explicitly excluded.³⁵

Similarly, in response to the Batory Scope Comments, Petitioners argued that, although the proposed scope language was revised prior to initiation, such changes are not indicative of whether Petitioners intended to exclude certain products from the scope of the investigation.³⁶ As stated above, Petitioners emphasized that the scope language is intended to include all sugar that is not explicitly excluded.³⁷ Petitioners expressed further concern that any exclusion for mixtures containing a certain percentage of "other products" would "invite evasion."³⁸

Finally, in response to the GOM Scope Comments, Petitioners pointed out that the GOM's comments were based on an earlier version of the proposed scope language and argued that, due to subsequent revisions, such comments were no longer applicable to the scope of this investigation.³⁹

In addition to the scope comments discussed above, on August 5, 2014, Glinso Foods, LLC (Glinso) requested that we clarify that a dry blend consisting of refined sugar and at least one percent cocoa powder, typically imported under HTSUS subheading 1806.10.5500, is not included within the scope of this investigation.⁴⁰ Glinso argued that the relevant HTSUS number is not listed in the scope of the investigation, as published in the *Initiation Notice*, and that the refined sugar component of such blends does not originate in Mexico.⁴¹ On August 19, 2014,

³¹ See Letter from the GOM, "Brief Submission of the Government of Mexico," May 7, 2014 (GOM Scope Comments).

³² See Letter from Petitioners, "Sugar from Mexico: Petitioners' Rebuttal Scope Comments," May 14, 2014.

³³ *Id.* at 4.

³⁴ *Id.* at 4-5.

³⁵ *Id.* at 4.

³⁶ *Id.* at 3.

³⁷ *Id.* at 3.

³⁸ *Id.* at 3.

³⁹ *Id.* at 7-8.

⁴⁰ See Letter from Glinso, "Sugar from Mexico: Scope Clarification Request of Glinso Foods," August 5, 2014 (Glinso Scope Clarification Request).

⁴¹ *Id.* at 3-4.

Petitioners submitted comments on the Glinso Scope Clarification Request.⁴² Petitioners insisted that the Department needs more information in order to properly analyze Glinso’s request and also reiterated that the scope language is intended to include all sugar that is not explicitly excluded.

The Department is continuing to analyze the comments received from parties regarding the scope of this investigation. We will issue a decision memorandum after considering these comments further, allowing parties the opportunity to include comments in their case and rebuttal briefs on our preliminary scope decisions before the final determination. For purposes of collecting cash deposits pursuant to this affirmative preliminary antidumping duty determination, the Department will continue to rely on the scope description above, unchanged from the initiation determination.

VII. RESPONDENT SELECTION

Section 777A(c)(1) of the Act directs the Department to determine an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters or producers under section 777A(c)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual weighted average dumping margins because of the large number of exporters and producers involved in the investigation.

After careful consideration, as noted above, the Department determined that it was not practicable to examine more than two respondents in this investigation.⁴³ Based upon CBP data, the Department selected the producers/exporters accounting for the largest volume of subject merchandise exported from Mexico during the POI: FEESA and Tala.⁴⁴

VIII. AFFILIATION AND COLLAPSING

A. Legal Standard

Affiliation

The Act requires the Department to consider certain persons affiliated. Specifically, section 771(33) of the Act, provides that:

The following persons shall be considered to be “affiliated” or “affiliated persons”:

- (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.

⁴² See Letter from Petitioners, “Sugar from Mexico: Petitioners’ Comments on Glinso Foods’ Scope Clarification Request,” August 19, 2014.

⁴³ See Respondent Selection Memorandum.

⁴⁴ *Id.*

- (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.

Regarding control, section 771(33) of the Act 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 Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) further explains that control may be found to exist within corporate groupings.⁴⁵ 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.

Collapsing

The Department's regulations at 19 CFR 351.401(f) state that the Department will treat affiliated producers as a single entity where producers have production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities and there is a significant potential for manipulation of price or production.⁴⁶ 19 CFR 351.401(f) further states that, in identifying a significant potential for manipulation, the Department may consider factors including: (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) 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. The Department also previously explained its practice of collapsing affiliated companies:

Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department normally examines

⁴⁵ See SAA, H.R. Doc. 103-316 (1994), at 838, *reprinted in* 1994 U.S.C.C.A.N. 4040 *et seq.* (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

⁴⁶ While 19 CFR 351.401(f) uses the term "producers," the Department's practice is to apply this regulation to resellers and other affiliated companies as well. See, e.g., *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (August 19, 1996) (citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988) (*Colombian Flowers*)).

the question of whether reviewed companies “constitute separate manufacturers or exporters for purposes of the dumping law.”⁴⁷

The court has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.⁴⁸

We examined the record evidence to determine whether affiliations with any of the following entities existed during the POI between FEESA or the GAM Group, respectively, and: (1) other producers or exporters of subject merchandise, (2) suppliers of inputs used to produce the subject merchandise, (3) reported home market customers, and (4) reported U.S. customers. As explained below, we preliminarily determine that FEESA and the GAM Group, respectively, are affiliated with certain entities. We also examined all three factors contained in 19 CFR 351.401(f)(2) with respect to the significant potential for manipulation and preliminarily determine to collapse and treat as a single entity certain entities within the GAM Group for AD purposes.

B. FEESA

FEESA is comprised of the expropriated assets of nine sugar mills: Fideicomiso Ingenio El Modelo, Fideicomiso Ingenio San Cristobal, Fideicomiso Ingenio Plan De San Luis, Fideicomiso Ingenio San Miguelito, Fideicomiso Ingenio La Providencia, Fideicomiso Ingenio Atencingo, Fideicomiso Ingenio Casasano, Fideicomiso Ingenio El Potrero, and Fideicomiso Ingenio Emiliano Zapata (collectively, the FEESA mills).⁴⁹ As noted in the Respondent Selection Memorandum, “[t]he expropriation decree, as a matter of Mexican law, combined the assets of the FEESA mills into a single producer/exporter.”⁵⁰ Furthermore, as indicated in FEESA’s questionnaire responses, there are three additional entities under FEESA: Nacional Financiera, Sociedad Nacional de Crédito (NAFIN), Promotora Azucarera S.A. de C.V. (PROASA), and Fideicomiso Administrador y Financiero (FAF).

We preliminarily find that FEESA, NAFIN, PROASA, and FAF are affiliated. FEESA has administrative rights over NAFIN, such that by law it may direct NAFIN’s operations.⁵¹ As a consequence, we preliminarily find FEESA and NAFIN affiliated pursuant to section 771(33)(G) of the Act. NAFIN, in turn, owns 98 percent of the shares of PROASA.⁵² As a result, we preliminarily find that NAFIN and PROASA are affiliated pursuant to section 771(33)(E) of the Act. PROASA is responsible for appointing a technical committee to administer each of the FEESA mills and also provides certain support services, such as selling sugar on behalf of those

⁴⁷ *Colombian Flowers*, 53 FR at 24337.

⁴⁸ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007), citing *Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 10.

⁴⁹ See Respondent Selection Memorandum at 6.

⁵⁰ *Id.* at 6.

⁵¹ See FEESA June 25, 2014, Partial Section A Initial Questionnaire Response at Exhibit 2.

⁵² See, e.g., *id.* FEESA owns the remaining 2 percent of PROASA’s shares.

mills.⁵³ As a result, we preliminarily find that PROASA has control over the FEESA mills by virtue of its ability to direct the operations of those mills, including the ability to impact decisions regarding the production, pricing, and cost of the subject merchandise and foreign like product. Accordingly, we find that PROASA is affiliated with FEESA within the meaning of section 771(33)(G) of the Act. FAF is a private trust that was created by, and continues to be controlled by, PROASA and NAFIN, as settlor/trustor and trustee, respectively.⁵⁴ FAF provides certain administrative support services related to administrative, financial, legal, tax, accounting, and treasury functions, to all of the FEESA mills.⁵⁵ As such, FAF is affiliated with PROASA and NAFIN under section 771(33)(G) of the Act. Taken together, we preliminarily find that NAFIN, PROASA, and FAF are affiliated through the common control of FEESA, under section 771(33)(G) of the Act.

C. The GAM Group

Affiliation

In its questionnaire responses, the GAM Group has provided information which indicates that Tala is affiliated with a variety of entities involved in the production of sugar. As an initial matter, GAM owns 99.9 percent of Tala's shares.⁵⁶ GAM's shares, in turn, are 99.9 percent owned by Cultiba.⁵⁷ In addition to Tala, GAM holds a 99.9 percent of the shares of two other sugar mills, El Dorado and Lázaro Cardenas,⁵⁸ and a 49 percent of the shares of another sugar mill, Benito.⁵⁹ GAM is also the sole shareholder of three non-mill subsidiaries that are involved in the production and sale of sugar: ITLC, a sugar cane producer which sells its products to the GAM-owned mills; PAM, a trading company which facilitates sale of the GAM-owned mills' product in the Mexican home market; and ESOSA.⁶⁰

Tala has one wholly-owned subsidiary, Tala Electric, which produces and sells electricity to Tala, as well as to Cultiba and to the national power grid.⁶¹

In light of the corporate relationships described above and pursuant to section 771(33)(E) of the Act, we find that Tala, Tala Electric, GAM, El Dorado, Lázaro Cardenas, Benito, ITLC, PAM, and ESOSA are affiliated with Cultiba because Cultiba directly or indirectly owns 5 percent or more of the outstanding voting of these entities. In addition, we find that Tala, Tala Electric, GAM, El Dorado, Lázaro Cardenas, Benito, ITLC, PAM, and ESOSA are affiliated with each other pursuant to section 771(33)(F) of the Act because they are directly or indirectly controlled by, their parent, Cultiba, which owns 99.9 percent of GAM.

⁵³ See FEESA June 25, 2014, Partial Section A Initial Questionnaire Response at 2-3.

⁵⁴ *Id.* at 3.

⁵⁵ *Id.* at 4.

⁵⁶ See GAM Group June 25, 2014, Partial Section A Initial Questionnaire Response at Exhibit 3.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 3.

⁶¹ *Id.*

Collapsing

Of its affiliates described above, the GAM Group reported that Tala, El Dorado, and Lázaro Cardenas produced subject merchandise during the POI.⁶² Thus, we find that Tala, El Dorado, and Lázaro Cardenas have production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities. In addition, we find that there is significant potential for manipulation. In regards to 19 CFR 351.401(f)(2)(i) (common ownership), as noted above, all three mills are nearly wholly owned by GAM (which owns 99.9 percent of all three mills). In regards to 19 CFR 351.401(f)(2)(iii), Tala, El Dorado, and Lázaro Cardenas have intertwined operations. For example, all three are dependent on the coordination of PAM for the vast majority of their home market sales.⁶³ Furthermore, these three GAM Group mills share the same administrative and sales offices in Mexico City.⁶⁴ All three companies purchase sugar cane from the same affiliated producer, ITLC, and administrative services from the affiliated company, ESOSA.⁶⁵ Each company is part of a chain of transactions requiring extensive coordination of sales and production decisions (*e.g.*, price negotiations, production planning, and shipping) and the sharing of sales information.⁶⁶

Therefore, in accordance with 19 CFR 351.401(f), we are treating Tala, El Dorado, and Lázaro Cardenas as a single entity for purposes of this preliminary determination.

While GAM holds a 49 percent interest in Benito, Benito shares only a minority of board members with other members of the GAM Group, and there is no evidence of intertwined operations between Benito and other members of the GAM Group. In light of the totality of the circumstances, we find that the record evidence does not indicate that there is a significant potential for the manipulation of price or production in regards to Benito.⁶⁷ In particular, there is no evidence that Benito and other members of the GAM Group share information or coordinate production or pricing decisions. Furthermore, Benito and other members of the GAM Group do not share officers, employees, facilities, suppliers, or books and records; and, in the Department's view, there is not significant overlap between the customers they service. As such, we are not treating Benito as part of the single entity comprised of Tala, El Dorado, and Lázaro Cardenas.

IX. DISCUSSION OF METHODOLOGY

A. Fair Value Comparisons

To determine whether sales of sugar from Mexico to the U.S. were made at LTFV, we compared the export prices (EP) to the normal value (NV), as described in the "Export Price" and "Normal

⁶² *Id.* at 2-3.

⁶³ *Id.*

⁶⁴ See Memorandum to the File, "Antidumping Duty Investigation of Sugar from Mexico: GAM Group Preliminary Analysis Memorandum," dated concurrently with this memorandum, at Attachment 5 (GAM Group Preliminary Analysis Memorandum).

⁶⁵ See GAM Group June 25, 2014, Partial Section A Initial Questionnaire Response at Exhibit 3.

⁶⁶ *Id.* at 2.

⁶⁷ *Id.* at Exhibit 3.

Value” sections of this memorandum. As explained below, the Department preliminarily determines that the use of constructed export prices (CEPs) are not warranted.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by FEESA and the GAM Group in the home market during the POI that fit the description in the “Scope of the Investigation” section of this memorandum to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we matched foreign like products based on the physical characteristics established by the Department and reported by the respondents in the following order of importance: grade, certification, form, polarity, color, and packaging.⁶⁸ The goal of the product characteristic hierarchy is to identify the best possible matches with respect to the characteristics of the merchandise. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in products in and of themselves. As the Department noted, “. . . selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess” and “differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department’s model-match of characteristics which a respondent claims to be the cause of such differences.”⁶⁹

C. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average or A-to-A method), unless the Secretary determines that another method is appropriate in a particular situation. The Department's regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to EPs (or CEPs) of individual transactions (average-to-transaction or A-to-T method).⁷⁰ In recent AD investigations, the Department applied a “differential pricing” (DP) analysis for determining whether application of the A-to-A comparison method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).⁷¹ The Department may

⁶⁸ See Initial Questionnaire at Section B.

⁶⁹ See *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum, at Model Match Comment 1.

⁷⁰ See 19 CFR 351.414(b)(1)-(2).

⁷¹ See, e.g., *Xanthan Gum From Austria: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2251 (January 10, 2013), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) (*Xanthan Gum From Austria*), and accompanying Issues and Decision Memorandum at 2.

determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the A-to-T method. The Department will continue to develop its approach in this area based on comments received in this investigation and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

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

In the first stage of the DP analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data 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 net prices to a particular purchaser, region or time period differ significantly from the net 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. Of these thresholds, the large threshold (*i.e.*, 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales were found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the A-to-T method to all sales as an alternative to the A-to-A 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 A-to-T method to those sales identified as passing the Cohen's *d* test as

an alternative to the A-to-A method, and application of the A-to-A 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 A-to-A 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 EPs that differ significantly, such that an alternative comparison method should be considered, then in the second stage of the DP analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative 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 A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative 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 margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

Results of the DP Analysis

Based on the results of the DP analysis, the Department finds that 66.13 percent of FEESA's and 75.15 percent of the GAM Group's U.S. sales pass the Cohen's *d* test, and confirm the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers or time periods.⁷² Further, the Department finds that the A-to-A method appropriately accounts for such differences because there is not a meaningful difference in the weighted-average dumping margins calculated for FEESA and the GAM Group when calculated using the A-to-A method and the A-to-T method applied to all U.S. sales. Accordingly, the Department has determined to use the A-to-A method for all U.S. sales to calculate the preliminary weighted-average dumping margin for both FEESA and the GAM Group.⁷³

⁷² In its August 5, 2014, Section B-D Initial Questionnaire Response at C-32, FEESA indicated that all of its U.S. sales were shipped to destinations in Mexico. Similarly, in its August 5, 2014, Section B-D Initial Questionnaire Response at C-42, the GAM Group indicated that U.S. sales for all but one customer were shipped to destinations in Mexico. Therefore, for purposes of our DP analysis, we were unable to conduct the Cohen's *d* test in regards to region.

⁷³ See Memorandum to the File, "Antidumping Duty Investigation of Sugar from Mexico: FEESA Preliminary Analysis Memorandum," dated concurrently with this memorandum (FEESA Preliminary Analysis Memorandum) and GAM Group Preliminary Analysis Memorandum (collectively, Preliminary Analysis Memoranda).

D. Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the U.S. to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the U.S., as adjusted under subsection (c).” In accordance with section 772(a) of the Act, we used the EP methodology for both FEESA and the GAM Group because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted.

For FEESA, we calculated EP based on the sales price to unaffiliated purchasers in Mexico. These companies resell FEESA’s products to U.S. customers with FEESA’s knowledge. We made adjustments, where appropriate, from the starting price for billing adjustments. We also made deductions, where applicable, for any movement expenses (*e.g.*, foreign inland freight, port charges, export processing fees, international freight, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act.⁷⁴

For the GAM Group, we calculated EP based on the sales price to unaffiliated purchases in the U.S. We made adjustments, where appropriate, from the starting price for billing adjustments and recovered costs. We also made deductions, where applicable, for any movement expenses (*e.g.*, foreign inland freight, port charges, export processing fees, international freight, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act.⁷⁵

E. Normal Value

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales),⁷⁶ we compared FEESA and the GAM Group’s home market sales to the volume of each respondents’ respective U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that both FEESA and the GAM Group’s aggregate volume of home market sales of the foreign-like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise.⁷⁷ Therefore, we used home market sales as the basis for NV for both FEESA and the GAM Group, in accordance with section 773(a)(1)(B) of the Act.

⁷⁴ See FEESA Preliminary Analysis Memorandum.

⁷⁵ See GAM Group Preliminary Analysis Memorandum.

⁷⁶ See 19 CFR 351.404(b)(2).

⁷⁷ See Preliminary Analysis Memoranda.

2. Particular Market Situation

In response to the Department's Initial Questionnaire, FEESA argued that, due to ongoing price controls, the viable Mexican market should not be used as the comparison market in this investigation.⁷⁸ As an alternative, FEESA proposed use of its third-country sales database, which includes sales to multiple countries.⁷⁹ Under section 773(a)(1)(C)(iii) of the Act, the Department may rely on third-country sales when the "particular market situation" in the exporting country does not permit a proper comparison of U.S. and home market sales. The SAA adds that a "particular market situation" may exist "where there is government control over pricing to such an extent that home market prices cannot be considered to be competitively set."⁸⁰ The *Preamble* to the Department's regulations explains that a party making such a claim bears the burden of making an adequate allegation that demonstrates a reasonable basis for believing that a particular market situation exists.⁸¹

The Department has determined that FEESA did not make an adequate allegation, such that there is a reasonable basis for belief that a particular market situation exists, to support the use of third-country sales in this investigation. FEESA submitted no information or evidence to support its argument. Instead, FEESA simply states: "Imports and exports of sugar are managed through quotas, and sales of sugar in Mexico are based on a government-determined base price as published in SNIIM (Sistema Nacional de Integracion e Informacion de Mercados). . . ." FEESA's argument does not elaborate on exactly how the SNIIM reference price results in prices that are not market determined, such as by providing the relevant legal authority that establishes the SNIIM reference price and demonstrating its effect on FEESA during the POI. It also provides no details regarding the import and export quotas nor does it cite to any evidence on the record which lends support to these arguments.

3. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the SAA,⁸² to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP sales. Pursuant to 19 CFR 351.412(c)(1)(iii), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on constructed value (CV), the starting price of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁸³ we consider the starting prices before any adjustments. For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.⁸⁴

⁷⁸ See FEESA August 5, 2014, Sections B-D Initial Questionnaire Response at B-2.

⁷⁹ *Id.*

⁸⁰ See SAA, H.R. Doc. 103-316 at 822.

⁸¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27,357 (May 19, 1997).

⁸² See SAA, H.R. Doc. 103-316 at 829-831.

⁸³ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive SG&A expenses and profit for CV, where possible.

⁸⁴ See 19 CFR 351.412(c)(1)(i).

To determine whether comparison market sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.⁸⁵ If the comparison market sales are at a different LOT and the difference affects price comparability, as described in 19 CFR 351.412(d) and as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Both FEESA and the GAM Group reported that all home market and U.S. sales were made at the same LOT, and neither party claimed a LOT adjustment. The Department determines there are no significant differences in selling and marketing practices among the various distribution channels in the home market and the United States and that a single LOT exists in each market for each respondent.⁸⁶ In the case of FEESA, it has reported three types of customers in the home market (distributors, trading companies, and end users) and two types of customers in the U.S. market (distributors and trading companies), whereas the GAM Group reported that it has two types of customers in both markets (industrial and wholesaler).⁸⁷ According to the Department's review of the respondents' questionnaire responses, selling and marketing practices do not vary significantly among these different distribution channels. The differences, in fact, are limited to arranging more freight and warehousing for sales to certain customers than for others. Accordingly, we preliminarily find both FEESA and the GAM Group's sales in the U.S. to be at the same LOT as sales in the home market.

4. Cost of Production

As stated in the *Initiation Notice*, the Department initiated a country-wide cost investigation on sales of Sugar from Mexico.⁸⁸

a. *Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and packing costs.⁸⁹ We examined the 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, as adjusted below.⁹⁰

We relied on FEESA and the GAM Group's submitted COP data except as follows:

⁸⁵ 19 CFR 351.412(c)(2).

⁸⁶ See GAM Group August 5, 2014 Sections B-D Initial Questionnaire Responses at B-15, C-14; see also FEESA August 5, 2014 Sections B-D Initial Questionnaire Responses at B-16, C-15.

⁸⁷ *Id.*

⁸⁸ See 79 FR at 22798; see also "Background," *supra* at 3.

⁸⁹ See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

⁹⁰ See, e.g., *Xanthan Gum From Austria* and accompanying Issues and Decision Memorandum at 9.

FEESA excluded certain expenses incurred by each of the FEESA mills from the reported costs. We have disallowed these exclusions and have reclassified these expenses as general and administrative (G&A) because they relate to the general operations of the FEESA mills. Accordingly, we revised the numerator of each of the FEESA mills' G&A expense rate calculation to include these expenses.⁹¹ We also revised the numerator of the G&A expense rate calculation to capture the actual amounts each of the FEESA mills paid for administrative services provided by FAF, rather than the expenses incurred by FAF in providing those services.⁹² In addition, we revised the cost of sales denominators used in the G&A and financial expense rate calculations to ensure that they are on the same basis as the cost of manufacture (COM) to which they are applied.⁹³

For the GAM Group, we adjusted the transfer prices of inputs obtained from an affiliated party to reflect the higher of the affiliated party's COP or fair market values pursuant to section 773(f)(2) and (3) of the Act.⁹⁴ We limited the reported byproduct offsets to the quantities of byproducts generated during the POI and to the associated revenues recorded in the GAM Group's accounting records.⁹⁵ We disallowed the other income offset to the cost of manufacturing because we find that the activities that generated the income relate to other products.⁹⁶ We also disallowed the interest income offset to cost of manufacturing because we are relying instead, consistent with our practice, on the net financial expenses of the GAM Group's parent company.⁹⁷ We revised the reported financial expense ratio to reflect the net interest expenses and cost of sales reported in the consolidated financial statements of the GAM Group's parent company.⁹⁸

Finally, we note that packaging is a physical characteristic defined by the Department. The Department defines packaging as either industrial or retail packaging.⁹⁹ The GAM Group reported packaging expenses as packing expenses. According to the GAM Group, all packaging used for sales in the comparison and U.S. markets is industrial packaging.¹⁰⁰ Because there are no differences in the packaging types among products, we have not revised the GAM Group's COP to include packaging expenses.

⁹¹ For further discussion, *see* Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Fondo de Empresas Expropiadas del Sector Azucarero," dated concurrently with this memorandum.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ For further discussion, *see* Memorandum entitled "Cost of Production and Constructed Value Adjustments for the Preliminary Determination for GAM Group" dated concurrently with this memorandum, which is hereby incorporated by reference.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *See* Initial Questionnaire at Sections B and C.

¹⁰⁰ *See* GAM Group August 5, 2014, Sections B-D Initial Questionnaire Response at B-12 and C-11; *see also* FEESA August 5, 2014, Sections B-D Initial Questionnaire Response at B-13.

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling expenses. The prices were net of billing adjustments, movement charges, and direct and indirect selling expenses, where appropriate.¹⁰¹

c. Results of the COP Test

Section 773(b)(1) provides that where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time”, the Department may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities” (*i.e.*, where less than 20 percent of sales of a given product were at prices less than the COP). We disregarded below-cost sales when they were made in substantial quantities (*i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP or where “the weighted average per unit price of the sales . . . is less than the weighted average per unit COP for such sales”).¹⁰² Finally, based on our comparison of prices to the weighted-average COPs for the POI, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.¹⁰³

Based on the analysis described above, we disregarded below-cost sales of a given product control number (CONNUM) where they were made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time and used the remaining sales of that CONNUM as the basis for determining NV, in accordance with section 773(b)(1) of the Act.¹⁰⁴

5. Calculation of NV Based on Comparison Market Prices

We calculated NV for FEESA based on the reported ex-factory and ex-warehouse prices to unaffiliated comparison market customers. Where appropriate, we made circumstance-of-sale adjustments (*i.e.*, credit expenses and bank charges) for FEESA, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.¹⁰⁵

For the GAM Group, we calculated NV based on the reported prices to affiliated and unaffiliated comparison market customers. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit expenses

¹⁰¹ See Preliminary Analysis Memoranda.

¹⁰² See section 773(b)(2)(C)(i) and (ii) of the Act.

¹⁰³ See section 773(b)(2)(D) of the Act.

¹⁰⁴ See Preliminary Analysis Memoranda.

¹⁰⁵ See FEESA Preliminary Analysis Memorandum.

and bank charges). We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.¹⁰⁶

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, for FEESA and the GAM Group, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign-like product and subject merchandise.¹⁰⁷ For detailed information on the calculation of NV, see the Preliminary Analysis Memoranda.

F. Date of Sale

19 CFR 351.401(i) states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁰⁸ The Court of International Trade (CIT) stated that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisfy' the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."¹⁰⁹ Alternatively, the Department may exercise its discretion to rely on a date other than invoice date if the Department "provides a rational explanation as to why the alternative date 'better reflects' the date when 'material terms' are established."¹¹⁰ The date of sale is generally the date on which the parties establish the material terms of the sale,¹¹¹ which normally includes the price, quantity, delivery terms, and payment terms.¹¹²

FEESA

For home market and U.S. sales, FEESA stated that it was using the date the contract and production specifications were finalized as the date of sale for certain home-market and U.S. sales and, for the remaining sales, relying on the invoice date as the date of sale.¹¹³ After reviewing the information provided by FEESA, we preliminarily determine that material terms of sale change after signature of contract (*e.g.*, price may be changed after the date of the contract and certain production specifications are not finalized until the date of invoice).¹¹⁴

¹⁰⁶ See GAM Group Preliminary Analysis Memorandum.

¹⁰⁷ See 19 CFR 351.411(b).

¹⁰⁸ See 19 CFR 351.401(i); *see also Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001).

¹⁰⁹ *Allied Tube*, 132 F. Supp. at 1090 (brackets and citation omitted).

¹¹⁰ *SeAH Steel Corp. v. United States*, 25 CIT 133, 135 (CIT 2001).

¹¹¹ 19 CFR 351.401(i).

¹¹² See *USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).

¹¹³ See, *e.g.*, FEESA August, 5, 2014, Sections B-D Initial Questionnaire Response at B-16.

¹¹⁴ See FEESA Preliminary Analysis Memorandum.

Thus, because the material terms of sale are not established until the invoice date, we are relying on the date of invoice as the date of sale for all home market and U.S. sales.¹¹⁵

The GAM Group

With respect to the GAM Group, the respondent has reported all dates of sale for home market and U.S. sales as the invoice date, regardless of whether it is a contract or spot sale.¹¹⁶ We have reviewed the information submitted by the GAM Group and have confirmed that the material terms of sale are set at the invoice date. Therefore, we preliminarily determine to use the GAM Group's invoice date as the date of sale for all home market and U.S. sales.¹¹⁷

G. Currency Conversion

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

X. U.S. INTERNATIONAL TRADE COMMISSION NOTIFICATION

In accordance with section 733(f) of the Act, we will notify the U.S. International Trade Commission (ITC) of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this investigation available to the ITC. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 735(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of sugar from Mexico before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

XI. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹¹⁸ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues

¹¹⁵ *Id.*

¹¹⁶ *See, e.g.*, GAM Group August 5, 2014, Sections B-D Initial Questionnaire Response at B-17.

¹¹⁷ *See* GAM Group Preliminary Analysis Memorandum.

¹¹⁸ *See* 19 CFR 351.224(b).

raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.¹¹⁹

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹²⁰ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹²¹ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using IA ACCESS.¹²² Electronically filed documents must be received successfully in their entirety by 5:00 PM Eastern Time,¹²³ on the due dates established above.

XII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify information relied upon in making our final determination.

¹¹⁹ See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

¹²⁰ See 19 CFR 351.309(c)(2) and (d)(2).

¹²¹ See 19 CFR 351.310(c).

¹²² See 19 CFR 351.303(b)(2)(i).

¹²³ See 19 CFR 351.303(b)(1).

XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 OCTOBER 2014
Date