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Investigation
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September 18, 2024

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

FROM: Scot Fullerton
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Melamine from the Netherlands

I. SUMMARY

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

II. BACKGROUND

On February 14, 2024, Commerce received an antidumping duty (AD) petition concerning imports of melamine from the Netherlands filed in proper form on behalf of Cornerstone Chemical Company (the petitioner), a domestic producer of melamine.¹ On March 5, 2024, Commerce initiated the LTFV investigation on melamine from the Netherlands.²

The Petition identified only one producer and exporter of the subject merchandise in the Netherlands: OCI Nitrogen B.V. (OCI Nitrogen).³ We stated in the *Initiation Notice* that

¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping Duties: Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago,” dated February 14, 2024 (Petition).

² See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 17413 (March 11, 2024) (*Initiation Notice*); see also Checklist, “Melamine from the Netherlands,” dated March 5, 2024 (Initiation Checklist).

³ See Petition, Volume 1 at 13-14.



because we knew of no additional producers or exporters of melamine in the Netherlands, we intended to individually examine all known producers and exporters (*i.e.*, OCI Nitrogen).⁴

On April 4, 2024, the U.S. International Trade Commission (ITC) preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of melamine from the Netherlands.⁵

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of melamine to be reported in response to Commerce's AD questionnaire.⁶ No parties filed comments on the scope of the investigation. On March 25, 2024, Commerce received timely filed comments concerning the physical characteristics of the subject merchandise from the petitioner.⁷ On April 4, 2024, we received rebuttal comments from OCI Nitrogen.⁸ On April 5, 2024, Commerce invited interested parties to comment on the proposed physical characteristics.⁹ On April 9, 2024, we received comments from the petitioner and Gujarat State Fertilizers and Chemicals Limited (GSFCL), a melamine producer in India.¹⁰ On April 15, 2024, Commerce determined the physical characteristics applicable to this investigation.¹¹

On March 22, 2024, Commerce issued the AD questionnaire to OCI Nitrogen.¹² On April 19, 2024, we received OCI Nitrogen's response to section A of the AD questionnaire.¹³ On May 8, 2024, OCI Nitrogen informed Commerce that it was withdrawing its participation in the LTFV investigation.¹⁴

On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.¹⁵ The deadline for the preliminary determination is now September 18, 2024.

⁴ See *Initiation Notice*, 89 FR at 17417.

⁵ See *Melamine from Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago; Determinations*, 89 FR 23610 (April 4, 2024).

⁶ See *Initiation Notice*, 89 FR at 17413-14.

⁷ See Petitioner's Letter, "Comments on Product Characteristics," dated March 25, 2024.

⁸ We note that OCI Nitrogen submitted rebuttal comments on April 4, 2024. However, we identified certain bracketed language that did not appear to be business proprietary. We requested OCI Nitrogen to revise its submission to remove such bracketing, to which OCI Nitrogen complied. See Commerce's Letter, "Rebuttal Comments to Petitioner's Comments on Product Characteristics," dated April 11, 2024. OCI Nitrogen submitted its revised letter on April 12, 2024. See OCI Nitrogen's Letter, "Revised Bracketing for Rebuttal Comments to Petitioner's Comments on Product Characteristics," dated April 12, 2024 (OCI Nitrogen Letter).

⁹ See Memorandum, "Proposed Product Characteristics," dated April 5, 2024.

¹⁰ See GSFCL's Letter, "Comments on Product Characteristics" and Petitioner's Letter, "Comments on Proposed Characteristics," dated April 9, 2024.

¹¹ See Memorandum, "Finalized Product Characteristics," dated April 15, 2024.

¹² See Commerce's Letter, "Request for Information," dated March 22, 2024.

¹³ See OCI Nitrogen Letter, "OCI Nitrogen's Section A Initial Questionnaire Response," dated April 19, 2024.

¹⁴ See OCI Nitrogen Letter, "OCI Nitrogen Withdrawal of Participation," dated May 8, 2024 (OCI Nitrogen Withdrawal Letter).

¹⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

III. PERIOD OF INVESTIGATION

The POI is January 1, 2023, through December 31, 2023. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, February 2024.¹⁶

IV. APPLICATION OF FACTS AVAILABLE, USE OF ADVERSE INFERENCE, AND CALCULATION OF ALL-OTHERS RATE

As noted above, OCI Nitrogen is the mandatory respondent in this investigation. This company received Commerce's market economy AD questionnaire but did not submit a response to sections B-E of that questionnaire and instead indicated it was withdrawing from participation in this investigation.¹⁷ For the reasons stated below, we determine that the use of an adverse inference when selecting from among the facts otherwise available is appropriate for this preliminary determination with respect to OCI Nitrogen.

A. Application of Facts Available

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

As noted above, OCI Nitrogen submitted a response to section A of the AD questionnaire but failed to submit a response to sections B-E of the AD questionnaire and withdrew its participation from the investigation. As a result, we preliminarily find that necessary information is not available on the record of this investigation, that OCI Nitrogen withheld information Commerce requested, that it failed to provide information by the specified deadlines, and that it significantly impeded the proceeding. We note that because OCI Nitrogen failed to provide a response to sections B-E of the AD questionnaire, we find that the information it did provide is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination under section 782(e)(3) of the Act. Accordingly, pursuant to sections 776(a)(1) and

¹⁶ See 19 CFR 351.204(b)(1).

¹⁷ See OCI Nitrogen Withdrawal Letter.

776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine OCI Nitrogen's preliminary estimated weighted-average dumping margin.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.¹⁸ In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁹ In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁰ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.²¹ It is Commerce's practice to consider, in employing adverse facts available (AFA), the extent to which a party may benefit from its own lack of cooperation.²²

We preliminarily find that OCI Nitrogen has not acted to the best of its ability to comply with Commerce's request for information because the respondent failed to respond or submit a complete response to Commerce's original AD questionnaire. Therefore, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.²³

¹⁸ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

¹⁹ See section 776(b)(1)(B) of the Act.

²⁰ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. 1 (1994) (SAA) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

²¹ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

²² See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

²³ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying PDM at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

C. Preliminary Estimated Weighted Average Dumping Margin Based on AFA

Section 776(b) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.²⁴ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²⁵ Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition; or (2) the highest calculated rate of any respondent in the investigation.²⁶

In selecting among facts otherwise available, we have considered the circumstances surrounding the conduct of the respondent and the extent of information available on the record. As explained above, Commerce selected one respondent (OCI Nitrogen) for individual examination and issued a questionnaire seeking the information necessary for calculating an estimated weighted-average dumping margin. OCI Nitrogen failed to submit a complete response to Commerce's questionnaire. Because the respondent selected for individual examination in this investigation failed to provide Commerce with necessary information for determining an estimated weighted-average dumping margin based on its own data, the only information on the record is the dumping margins alleged in the Petition. The dumping margins alleged for subject merchandise from the Netherlands in the Petition are 34.84 and 72.16 percent.²⁷ In addition, because the mandatory respondent in this investigation failed to submit a complete response to our request for information, there are no rates calculated for any individually examined respondent. Thus, consistent with our practice, based on our evaluation of facts, we have assigned OCI Nitrogen the dumping margin of 72.16 percent, which was the highest alleged dumping margin for subject merchandise from the Netherlands in the Petition.²⁸

D. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁹ The SAA clarifies that "corroborate" means that

²⁴ See 19 CFR 351.308(c).

²⁵ See SAA at 870.

²⁶ See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

²⁷ See *Initiation Notice*, 89 FR at 17416; see also Checklist, "AD Investigation Initiation Checklist:" dated March 5, 2024 (Initiation Checklist); see also Petitioner's Letter, "Petitioner's Response to Volume V Supplemental Questionnaire (Netherlands Antidumping)," dated February 22, 2024 (Netherlands SQR)."

²⁸ See *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327 (March 14, 2016), and accompanying IDM at Comment 14.

²⁹ See SAA at 870.

Commerce will satisfy itself that the secondary information to be used has probative value,³⁰ Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.³¹ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.³²

Thus, because the AFA rate applied to OCI Nitrogen, the mandatory respondent in this investigation, is derived from the Petition, and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable.

We determined that the dumping margins in the Petition are reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during Commerce’s pre-initiation analysis and for purposes of this preliminary determination.³³ During our review, we did not identify any inaccuracies or discrepancies with respect to the information at issue.

Specifically, we examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged therein for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations, and the alleged dumping margins.³⁴ During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, upon our request, in the supplements to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive the dumping margins alleged therein.³⁵

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the petitioner’s EP and NV calculations to be reliable. Because we obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the EP and NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations in the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petition by examining source documents and affidavits, as well as publicly available information, we

³⁰ *Id.*; see also 19 CFR 351.308(d).

³¹ See section 776(c)(2) of the Act.

³² See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

³³ See Initiation Checklist.

³⁴ *Id.*

³⁵ *Id.*

preliminarily determine that the dumping margins alleged in the Petition are reliable for the purpose of this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a dumping margin not relevant. Because the respondent selected for individual examination withheld necessary information from Commerce, we relied upon the dumping margins alleged in the Petition, and supporting information from independent sources included therein, which is the only information regarding the melamine industry on the record. The information underlying the calculations of dumping margins alleged in the Petition is relevant to OCI Nitrogen because: (1) the export price was based on an average unit value derived from official import data for imports of melamine from the Netherlands into the United States during the POI; and (2) the normal value was based on constructed value.³⁶ The consumption rates utilized in calculating CV were based on the petitioner's own usage rates, which are relevant because the petitioner is a producer of melamine and uses a production process similar to that used by OCI Nitrogen.³⁷ The prices used to value the usage rates are relevant because they were based on publicly-available information in the Netherlands, including OCI Nitrogen's own financial statement.³⁸ Furthermore, as noted in *GOES from China*, in which the sole mandatory respondent also received AFA, "there was no need to review any additional documentation outside of what was submitted in the Petition considering such sources of information fulfill our requirements for corroboration of secondary information."³⁹

Accordingly, with respect to OCI Nitrogen, Commerce preliminarily determines that the highest dumping margin alleged in the Petition has probative value and has corroborated the AFA rate of 72.16 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and (2) is relevant.⁴⁰

E. All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "all-others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and

³⁶ See Initiation Checklist at 5-6. We note that the petitioner relied on constructed value because it was unable to obtain a selling price from melamine from the Netherlands in either the home market or comparison market.

³⁷ See Petition, Volume 5 at 3.

³⁸ See Initiation Checklist at 6.

³⁹ 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) (*GOES from China*), and accompanying IDM at 20; see also *KYD, Inc. v. United States*, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with Commerce that price quotes and third-party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that "{t}he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition").

⁴⁰ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying IDM at Comment 1; see also Initiation Checklist.

producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As indicated above, OCI Nitrogen is the only mandatory respondent in this investigation, and the estimated weighted-average dumping margin for OCI Nitrogen is determined entirely under section 776 of the Act. Consistent with section 735(c)(5)(B) of the Act, Commerce’s practice under these circumstances has been to assign, as the “all-others” rate, a simple average of the dumping margins alleged in the Petition.⁴¹ Consequently, and consistent with its practice, Commerce is using a simple average of the dumping margins alleged in the Petition, *i.e.*, 53.50 percent, as the all-others rate applicable to all other producers and exporters of subject merchandise.⁴²

V. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination. If this recommendation is accepted, we will publish the preliminary determination in the *Federal Register* and notify the ITC.

Agree

Disagree

9/18/2024

X



Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

⁴¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying IDM at Comment 2.

⁴² See Initiation Checklist.