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Investigation
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April 25, 2022

MEMORANDUM TO: Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Emulsion Styrene-Butadiene Rubber from Italy: Decision
Memorandum for the Preliminary Affirmative Determination of
Sales at Less-Than-Fair-Value

I. SUMMARY

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

II. BACKGROUND

On November 15, 2021, Commerce received an antidumping duty (AD) petition concerning ESBR from Italy, filed in proper form, on behalf of Lion Elastomers LLC (the petitioner).¹ Commerce initiated this investigation on December 6, 2021.²

In the *Initiation Notice*, Commerce noted that there is only one producer of ESBR in Italy, as identified in the petition.³ As a result, Commerce issued its AD questionnaire via Federal Express to the sole producer/exporter identified in the petition, Versalis S.p.A (Versalis) on

¹ See Petitioner’s Letter, “Petition (Vol. I-IV) for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy, and Russia,” dated November 12, 2021 (the Petition); see also Memorandum, “Decision Memorandum Concerning the Filing Date of the Petitions,” dated November 15, 2021, deeming the filing date of the Petition as November 15, 2021.

² See *Emulsion Styrene-Butadiene Rubber from the Czech Republic, Italy, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations*, 86 FR 70447 (December 10, 2021) (*Initiation Notice*).

³ *Id.*, 86 FR at 70450.

December 17, 2021.⁴ On January 7, 2022, Versalis submitted a letter of nonparticipation for this investigation.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 ESBR to be reported in response to Commerce's AD questionnaire.⁶ On January 10, 2022, we received timely-filed comments from the petitioner regarding product characteristics.⁷ We received no rebuttal comments regarding product characteristics.

On December 30, 2021, the U.S. International Trade Commission determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of ESBR from Italy.⁸

Commerce is conducting this investigation in accordance with section 733(b) of the Act.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is October 1, 2020, through September 30, 2021. This period corresponds to the most recently completed fiscal quarters as of the month prior to the month of the filing of the petition, which was November 2021.⁹

IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,¹⁰ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, the scope, of ESBR.¹¹ On January 10, 2022, we received timely-filed comments from the petitioner regarding the scope of this investigation that affirmed the scope published in the *Initiation Notice*.¹² We received no rebuttal comments regarding the scope of the investigation. Thus, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.

V. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, *see* the accompanying *Federal Register*

⁴ See Commerce's Letter, "Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from Italy: Request for Information," dated December 17, 2021; *see also* Memorandum, "Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from Italy: Initial Questionnaire," dated December 27, 2021, confirming Federal Express delivery of the questionnaire.

⁵ See Versalis's Letter, "Emulsion Styrene-Butadiene Rubber from Italy: Notification of Non-Participation in Investigation," dated January 7, 2022.

⁶ See *Initiation Notice*.

⁷ See Petitioner's Letter, "Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy and Russian Federation: Petitioner's Comments on Scope and Product Characteristics," dated January 10, 2022.

⁸ See *Emulsion Styrene-Butadiene Rubber from Czechia, Italy, and Russia*, 87 FR 478 (January 5, 2022).

⁹ See 19 CFR 351.204(b)(1).

¹⁰ See *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹¹ See *Initiation Notice*, 86 FR 70447.

¹² See Petitioner's Letter, "Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy and Russian Federation: Petitioner's Comments on Scope and Product Characteristics," dated January 10, 2022.

Notice at Appendix I.

VI. USE OF FACTS AVAILABLE WITH ADVERSE INFERENCES

As noted above, Versalis is the sole mandatory respondent in this investigation. The company received Commerce's AD questionnaire and informed Commerce that it would not participate in this investigation. For the reasons stated below, we determine that the use of facts otherwise available with adverse inferences is appropriate for the preliminary determination with respect to Versalis.

A. Application of Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the AD statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Versalis did not respond to Commerce's AD questionnaire or otherwise participate in this investigation. As a result, we preliminarily find that necessary information is not available on the record of this investigation, that Versalis withheld information that Commerce requested, that it failed to provide information by the specified deadlines, and that it significantly impeded this proceeding.¹³ Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine Versalis'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.¹⁴ In doing so, and under section 776(d)(3) of the Act, as enacted by the *TPEA*,¹⁵ 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. 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."¹⁶

¹³ Given Versalis did not submit any information in this proceeding, section 782(e) of the Act is not applicable.

¹⁴ See 19 CFR 351.308(a); see also *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).

¹⁵ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (*TPEA*); see also section 776(b)(1)(B) of the Act.

¹⁶ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act (SAA), H. Rep. No.

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.¹⁷ It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.¹⁸

We preliminarily determine that Versalis did not act to the best of its ability to comply with Commerce's request for information because the company did not respond to Commerce's AD questionnaire or otherwise participate in this investigation. The failure of Versalis to participate in this investigation and respond to Commerce's questionnaire precluded Commerce from performing the necessary analysis to calculate a weighted-average dumping margin for Versalis based on its own data. Accordingly, Commerce concludes that Versalis failed to cooperate to the best of its ability with a request for information from Commerce. Based on the above, 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.¹⁹

C. Selection and Corroboration of the AFA Rate

Relying on an adverse inference in selecting from the facts available may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. Section 776(c) of the Act provides that when Commerce relies on secondary information (such as the petition) in making an adverse inference, rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁰ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary

103-316, vol. 1 (1994) at 870, reprinted in 1994 U.S.C.C.A.N. 4040, 4199; see also *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1338 (Fed. Cir. 2016) (*Nan Ya Plastics Corp.*).

¹⁷ 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); and *Preamble*, 62 FR at 27340

¹⁸ 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 at page 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).

¹⁹ 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 Preliminary Decision Memorandum at pages 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); and *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 adverse facts available (AFA) when the respondent failed to respond to the antidumping questionnaire).

²⁰ See SAA at 870.

information used has probative value.²¹ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an “alleged commercial reality” of the party.²² Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. If Commerce is unable to corroborate the highest petition margin using individual-transaction specific margins, it may use the component approach.²³

In this investigation, the dumping margin calculated for ESBR from Italy in the petition is 28.97 percent.²⁴ We have preliminarily determined that this margin is reliable and where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination.²⁵

We examined evidence on the record supporting the calculations in the petition to determine the probative value of the dumping margin for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export price (EP) and constructed value (CV) calculations to derive the alleged dumping margin.²⁶ We also examined information from various independent sources provided either in the petition or, on our request, in the supplements to the petition that corroborate key elements of the EP and CV calculations used in the petition to derive the dumping margin alleged there.²⁷

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the petitioner’s EP and CV information and calculations to be reliable.²⁸ Having obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the EP or CV calculations provided in the petition, based on our examination of the aforementioned information, we preliminarily determine the EP

²¹ *Id.*

²² See section 776(d)(3) of the Act; see also, 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).

²³ See, e.g., *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

²⁴ See Petitioner’s Letter, “Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy, and Russian Federation: Response to Issues Raised in November 30, 2021 Phone Call with Counsel to Petitioner,” dated December 1, 2021 at 2 and Exhibits 3SIII-17; see also Checklist, “Antidumping Duty Investigation Initiation Checklist: Emulsion Styrene-Butadiene Rubber from Italy,” dated December 6, 2021 (Initiation Checklist) at 7.

²⁵ See Initiation Checklist.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

and CV calculations from the petition to be reliable. Due to the fact that we confirmed the accuracy and validity of the information underlying the derivation of the dumping margin alleged in the petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the dumping margin calculated for the purposes of this investigation in the petition is reliable.

In determining the relevance aspect of corroboration, Commerce will consider reasonably available information to determine whether there are circumstances that would render a rate not relevant. Because there are no other participating cooperative respondents in this investigation, we relied on the data used in calculating the dumping margin alleged in the petition, which is the only information regarding the ESBR industry reasonably at Commerce's disposal. Furthermore, as noted in *GOES from China*, in which the only 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."²⁹

Accordingly, Commerce preliminarily determines that a dumping margin based on the data used in calculating the dumping margin alleged in the petition has probative value. We have corroborated the petition rate to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the information used in 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 to the uncooperative mandatory respondent.³⁰ As such, in accordance with Commerce's application of AFA methodology discussed above, Commerce has preliminarily assigned the petition rate of 28.97 percent to Versalis.

VII. ALL-OTHERS RATE

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually investigated. Pursuant to section 735(c)(5)(A) of the Act, this 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 zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Section 735(c)(5)(B) of the Act elaborates that, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As noted above, Versalis is the only mandatory respondent in this investigation, and the estimated dumping margin assigned to it is determined entirely under section 776 of the Act. As a result, the dumping margin for this preliminary determination is entirely based on information used in the alleged petition dumping margin. Commerce's practice under these circumstances is

²⁹ 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 Issues and Decision Memorandum at Comment 2.

³⁰ See section 776(c) of the Act; see also 19 CFR 351.308(c)-(d).

to assign, as the all-others rate, a simple average of the petition rates.³¹ As the petition contained only one dumping margin, consistent with Commerce’s practice, we are using the sole alleged margin from the petition, 28.97 percent, as the all-others rate assigned to companies not individually examined in this investigation.³²

VIII. VERIFICATION

Given that the mandatory respondent in this investigation has not provided the necessary information requested by Commerce and that Commerce preliminarily determines that the mandatory respondent has been uncooperative, we do not intend to conduct verification.

IX. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

4/25/2022

X



Signed by: LISA WANG

Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

³¹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *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 Issues and Decision Memorandum at Comment 2.

³² See Petitioner’s Letter, “Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy, and Russian Federation: Response to Issues Raised in November 30, 2021 Phone Call with Counsel to Petitioner,” dated December 1, 2021 at 2 and Exhibits 3SIII-17; see also *Certain Oil Country Tubular Goods from Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487, 10488 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 41978, 41979 (July 18, 2014).