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DEPARTMENT OF COMMERCE

International Trade Administration

A-560-830

Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) preliminarily determines that biodiesel from Indonesia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2016, through December 31, 2016.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Alexander Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2371 or (202) 482-4956, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on April 19, 2017.<sup>1</sup> For a complete description of the events that followed the

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<sup>1</sup> See *Biodiesel from Argentina and Indonesia: Initiation of Less-Than-Fair Value Investigations*, 82 FR 18428 (April 19, 2017) (*Initiation Notice*).

initiation of this investigation, *see* the Preliminary Decision Memorandum.<sup>2</sup> A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

#### Scope of the Investigation

The product covered by this investigation is biodiesel from Indonesia. For a complete description of the scope of this investigation, *see* Appendix I.

#### Scope Comments

In accordance with the preamble to the Department's regulations,<sup>3</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>4</sup> No interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. Therefore, the Department is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice.

#### Methodology

The Department is conducting this investigation in accordance with section 731 of the

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<sup>2</sup> *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Biodiesel from Indonesia" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>3</sup> *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>4</sup> *See Initiation Notice*, 82 FR at 18428-29.

Act. The Department has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. In addition, the Department has relied on adverse facts available pursuant to sections 776(a) and (b) of the Act for PT Musim Mas (Musim Mas). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

#### Particular Market Situation

On July 25, 2017, the National Biodiesel Board Fair Trade Coalition (petitioner) filed a particular market situation (PMS) allegation with respect to the respondents' home market sales prices and reported costs of production.<sup>5</sup> The petitioner asserts that a PMS exists in Indonesia because the Government of Indonesia (GOI) sets low mandatory prices and sales quotas for biodiesel in the home market, and restrains the exports of crude palm oil (CPO) with an export tax and levy, thereby distorting the respondents' reported raw material CPO costs in Indonesia. The petitioner argues that the Department should disregard the respondents' home market sales based on a finding that they are significantly distorted by government intervention. The petitioner also urges the Department to make an adjustment for the cost of CPO purchased from domestic suppliers to address the distorted Indonesian market for CPO.

The respondents and the GOI argue that the prices set by the GOI are based on market prices, and the total compensation each respondent receives for sales of biodiesel in Indonesia reflects the full market value of its biodiesel. The respondents also contend that their sales that are not controlled by the government constitute a viable home market. Each respondent argues that the lower prices paid for CPO are not enough for a PMS finding, and that they should be

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<sup>5</sup> *See* Petitioner's Letter, "Biodiesel from Indonesia: Petitioner's Particular Market Situation Allegation Regarding Respondents' Home Market Sales and Costs of Production," dated July 25, 2017.

examined in the context of the concurrent countervailing duty (CVD) investigation.

Based on the facts on the record, the Department preliminarily finds that the GOI's regulation of the domestic biodiesel market amounts to a particular market situation in Indonesia that renders the home market prices of Wilmar Trading PTE Ltd. (Wilmar), the only respondent for which we are preliminarily calculating a weighted-average dumping margin, outside the ordinary course of trade. Therefore, the Department is preliminarily relying on constructed value (CV) as the basis for NV in this investigation for Wilmar. The Department also preliminarily finds that a PMS exists in Indonesia with regard to the cost of CPO as a component of the cost of manufacturing (COM) for biodiesel. Therefore, the Department has adjusted Wilmar's COM to account for the distorted cost of CPO. For a full description of the methodology underlying the PMS determination, *see* the Preliminary Decision Memorandum.

#### All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually examined. 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 rates that are zero, *de minimis*, or determined entirely on facts available under section 776 of the Act.

In this investigation, the Department preliminarily assigned a rate based entirely on facts available to Musim Mas. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Wilmar. Consequently, the rate calculated for Wilmar is also assigned as the rate for all-other producers and exporters.

### Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter or Producer	Estimated Weighted-Average Dumping Margin (percent)
Wilmar Trading PTE Ltd. <sup>6</sup>	50.71
PT Musim Mas	50.71
All-Others	50.71

### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for

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<sup>6</sup> The Department preliminarily determines that Wilmar Trading PTE Ltd., PT Wilmar Bioenergi Indonesia, PT Wilmar Nabati Indonesia, and PT Multi Nabati Sulawesi are affiliated pursuant to section 771(33)(F) of the Act and should be collapsed and treated as a single entity pursuant to 19 CFR 351.401(f). See Preliminary Decision Memorandum.

that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion CVD proceeding in accordance with section 772(c)(1)(C), when CVD provisional measures are in effect. Accordingly, where the Department preliminarily made an affirmative determination for countervailable export subsidies, the Department has offset the estimated weighted-average dumping margin by the appropriate CVD rate. In the preliminary determination in the companion CVD investigation, the Department found no countervailable export subsidies.<sup>7</sup> Therefore, we preliminarily determine not to adjust the cash deposit rates in the Preliminary Determination.

These suspension of liquidation instructions will remain in effect until further notice.

#### Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

#### Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last

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<sup>7</sup> See *Biodiesel from the Republic of Indonesia: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 40746 (August 28, 2017), and accompanying Preliminary Decision Memorandum.

verification report is issued in this investigation, unless the Secretary alters the time limit.

Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>8</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, 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, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

#### Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that the Department will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, the Department will make its final determination no later than 75 days after the signature date of this preliminary determination, unless extended.

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<sup>8</sup> See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

### International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

### Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 19, 2017

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

## **Appendix I**

### **Scope of the Investigation**

The product covered by this investigation is biodiesel, which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, including biologically based waste oils or greases, and other biologically-based oil or fat sources. The investigation covers biodiesel in pure form (B100) as well as fuel mixtures containing at least 99 percent biodiesel by volume (B99). For fuel mixtures containing less than 99 percent biodiesel by volume, only the biodiesel component of the mixture is covered by the scope of the investigation.

Biodiesel is generally produced to American Society for Testing and Materials International (ASTM) D6751 specifications, but it can also be made to other specifications. Biodiesel commonly has one of the following Chemical Abstracts Service (CAS) numbers, generally depending upon the feedstock used: 67784-80-9 (soybean oil methyl esters); 91051-34-2 (palm oil methyl esters); 91051-32-0 (palm kernel oil methyl esters); 73891-99-3 (rapeseed oil methyl esters); 61788-61-2 (tallow methyl esters); 68990-52-3 (vegetable oil methyl esters); 129828-16-6 (canola oil methyl esters); 67762-26-9 (unsaturated alkylcarboxylic acid methyl ester); or 68937-84-8 (fatty acids, C12-C18, methyl ester).

The B100 product subject to the investigation is currently classifiable under subheading 3826.00.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), while the B99 product is currently classifiable under HTSUS subheading 3826.00.3000. Although the HTSUS subheadings, ASTM specifications, and CAS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

## **Appendix II**

### **List of Topics Discussed in the Preliminary Decision Memorandum**

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Use of Facts Available and Adverse Facts Available
  - A. Legal Authority
  - B. Application of Facts Available to Musim Mas
  - C. Use of Adverse Inferences
  - D. Selection and Corroboration of AFA Rate
- V. Affiliation and Collapsing
  - A. Wilmar
- VI. Discussion of the Methodology
  - A. Comparisons to Fair Value
- VII. Product Comparisons
- VIII. Date of Sale
- IX. Export Price and Constructed Price
- X. Normal Value
  - A. Home Market Viability
- XI. Particular Market Situation
  - A. Background
  - B. Interested Parties' Arguments
  - C. Analysis
- XII. Calculation of Normal Value Based on Constructed Value
- XIII. Circumstance of Sale
- XIV. Adjustment to Cash Deposit Rate for Export Subsidies
- XV. Currency Conversion
- XVI. Conclusion

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