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Investigation
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March 4, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Less-Than-Fair-Value Investigation of Certain Polyethylene
Terephthalate (PET) Resin from India

I. SUMMARY

We analyzed the comments submitted by interested parties in the less-than-fair-value (LTFV) investigation of certain PET resin from India. As a result of our analysis and as discussed below, we have made changes to the weighted-average dumping margins assigned to two mandatory respondents, Ester Industries, Ltd., (Ester) and Reliance Industries, Ltd. (Reliance). We recommend that you approve the positions the Department of Commerce (the Department) set forth below in the "Discussion of Interested Party Comments" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments by parties:

General Issues

Comment 1: Whether Critical Circumstances Exist

Issues Pertaining to Ester

- Comment 2: Whether Ester Should Be a Participant in This Investigation
- Comment 3: Whether the Department Should Recalculate Imputed Credit
- Comment 4: Whether the Department Should Recalculate Home Market Inland Freight
- Comment 5: Whether the Department Should Make a Duty Drawback Adjustment
- Comment 6: Whether to Adjust Ester's G&A Ratio
- Comment 7: Whether to Adjust Ester's Financial Expense Ratio



Comment 8: Whether to Include Import Taxes in the Total Cost of Manufacture

Comment 9: Whether to Rely on Ester's Revised Packing Costs

Issues Pertaining to Reliance

Comment 10: Whether to Revise Reliance's COP Using Reliance's Verified Actual Chain Costs

Comment 11: Whether the Department Should Use its Differential Pricing Analysis in the Final Determination

Comment 12: Whether to Use Invoice Date as the Date of Sale in Both Markets

Comment 13: Whether to Resort to Adverse Facts Available for Reliance

- A. Whether Reliance Failed to Submit All Home Market Sales Subject to the Investigation
- B. Whether Reliance Provided a Complete Home Market Sales Listing for Contract Customers
- C. Whether Reliance Reported the Wrong Date as the Sale Date for U.S. Sales
- D. Whether Reliance Wrongly Submitted a Claim for a Duty Drawback Adjustment
- E. Whether Reliance Wrongly Submitted a Claim for an Adjustment for the Focus Product Scheme
- F. Whether the Department Failed to Verify Export Warranty Expenses
- G. Whether Reliance Incorrectly Included Third-Country Sales in its Home Market Sales Listing
- H. Whether Reliance Incorrectly Included Free Samples in its Home Market Sales Listing
- I. Whether Reliance Knowingly Withheld Its U.S. and Home Market Short-Term Interest Rates
- J. Whether Reliance Failed to Accurately Provide Its U.S. and Home Market Selling Functions
- K. Whether Reliance Incorrectly Offset General and Administrative Expenses
- L. Use of Total Adverse Facts Available

Issues Pertaining to Mandatory Respondents Who Failed to Respond

Comment 14: Proper Adverse Facts Available Rate

II. BACKGROUND

On October 15, 2015, the Department published in the *Federal Register* the preliminary determination in the LTFV investigation of certain PET resin from India.¹ In the *Preliminary Determination*, we postponed the final determination until no later than 135 days after the publication of the *Preliminary Determination* in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2)(ii) and invited parties to comment on our *Preliminary Determination*.

¹ See *Certain Polyethylene Terephthalate Resin From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 80 FR 62029 (October 15, 2015) (*Preliminary Determination*), and accompanying Issues and Decision Memorandum, (Preliminary Decision Memorandum).

The following events occurred since October 6, 2015, the day on which the *Preliminary Determination* was signed.

On November 6, 2015, Reliance submitted a response to additional Department requests for information. On November 9, 2015, Ester submitted a response to additional Department requests for information.

On November 16, 2015, DAK Americas LLC, M&G Chemicals, and Nan Ya Plastics Corporation (petitioners) submitted a request for a hearing. On January 12, 2016, petitioners withdrew that request.

Between October 26, 2015, and November 28, 2015, the Department conducted sales and cost verifications of both Ester and Reliance. The cost verification report of Ester is dated December 15, 2015 (Ester Cost Verification Report). The cost verification report of Reliance is dated December 21, 2015 (Reliance Cost Verification Report). The Department's sales verification reports for Ester and Reliance are both dated January 11, 2016 (Ester Sales Verification Report and Reliance Sales Verification Report, respectively).

On January 19, 2016, petitioners submitted a case brief on issues concerning Ester. On January 27, 2016, petitioners and Reliance submitted case briefs on issues concerning Reliance. On February 1, 2016, petitioners and Reliance submitted rebuttal briefs on issues concerning Reliance.²

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process. The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

² Ester submitted a rebuttal brief on February 8, 2016, but we rejected it as untimely on February 9, 2016, in accordance with 19 CFR 351.302(d)(i).

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review and analysis of the comments received from parties, minor corrections presented at verifications, and various errors identified during verifications, we made certain changes to the margin calculations for both respondents' margin calculations. Specifically:

1. We used the home market and U.S. sales listings Ester submitted on November 9, 2015, rather than the ones it submitted on September 23, 2015. *See* SAS programming contained in Ester Final Determination Analysis Memorandum.³
2. We used the home market and U.S. sales listings Reliance submitted on November 6, 2015, rather than the ones it submitted on September 25, 2015. *See* SAS programming contained in Reliance Final Determination Analysis Memorandum.⁴
3. We used the cost database Ester submitted on October 20, 2015, rather than the cost database it submitted on September 23, 2015.⁵
4. We made changes to the programming based on minor corrections Ester and Reliance presented on the first day of verification.⁶
5. We made other changes to the programming for Ester and Reliance based on the sales and cost verification findings. *See* Ester final determination analysis memorandum, Ester cost calculation memorandum,⁷ Reliance final determination analysis memorandum, and Reliance cost calculation memorandum.⁸
6. We recalculated Ester's U.S. imputed credit. *See* comment 3.
7. We did not make a duty drawback adjustment for either Ester or Reliance. *See* comment 5 and 13D.
8. We made an adjustment to Ester's general and administrative (G&A) expense ratio. *See* comment 6.
9. We made an adjustment to Ester's financial expense ratio. *See* comment 7.
10. We used Ester's reported packing variable inclusive of packing overhead for Ester's home market sales. *See* comment 9.
11. We used Reliance's actual costs in the calculation of cost of manufacture (COM). *See* comment 10.
12. We denied Reliance an adjustment for income obtained from India's focus product scheme. *See* comment 13E.
13. We removed Reliance's deemed export sales from its home market sales listing. *See* comment 13G.

³ *See* Memorandum to the File, "Subject: Analysis for the Final Determination of the Antidumping Duty Investigation of Certain Polyethylene Terephthalate (PET) Resin from India: Ester Industries, Ltd.," dated March 4, 2016 (Ester Final Determination Analysis Memorandum).

⁴ Memorandum to the File, "Subject: Analysis for the Final Determination of the Antidumping Duty Investigation of Certain Polyethylene Terephthalate (PET) Resin from India: Reliance Industries, Ltd.," dated March 4, 2016 (Reliance Final Determination Analysis Memorandum).

⁵ *See* Ester Final Determination Analysis Memorandum.

⁶ *See* Ester Final Determination Analysis Memorandum, and Reliance Final Determination Analysis Memorandum.

⁷ *See* Memorandum from Ernest Gziryan to Neal Halper, Subject: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Ester Industries, Ltd., dated March 4, 2016 (Ester Cost Calculation Memorandum).

⁸ *See* Memorandum from Laurens van Houten to Neal Halper, Subject: Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Reliance Industries, Ltd., dated March 4, 2016 (Reliance Cost Calculation Memorandum).

14. We removed Reliance's free sample sales from its home market sales listing. *See* comment 13H.
15. We applied facts available to Reliance's imputed credit and inventory carrying costs in both U.S. and home markets. *See* comment 13I.
16. We made an adjustment to Reliance's G&A expense ratio. *See* comment 13K.

VI. USE OF ADVERSE FACTS AVAILABLE

In the *Preliminary Determination*, we determined that JBF failed to respond to the Department's questionnaire. We also determined that Dhunseri had responded in part to the Department's questionnaire, but on June 29, 2015, informed the Department that it would no longer respond to the Department's requests for information. Therefore, we determine that these two companies withheld necessary information within the meaning of section 776(a) of the Act.⁹ Furthermore, because JBF did not submit any response to our requests for information and did not suggest alternative forms in which it could submit such responses, we preliminarily determined that sections 782(c)(1), (d), and (e) of the Act did not apply. Thus, in the *Preliminary Determination*, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we based the dumping margin on facts otherwise available for JBF and Dhunseri. Moreover, because JBF and Dhunseri failed to act to the best of their ability to comply with the Department's requests for information, we applied adverse facts available (AFA) to them in the *Preliminary Determination*, pursuant to section 776(b) of the Act.¹⁰

Because there have been no changes with respect to Dhunseri and JBF from the *Preliminary Determination*, pursuant to section 776 of the Act, the Department continues to find it appropriate to base Dhunseri's and JBF's rate on AFA. For this final determination, as in the preliminary determination, we have used the petition rate as the AFA rate. To corroborate this rate, we reviewed Ester and Reliance's margin programs, and found product-specific margins at or above the petition rate and, as a consequence, we find that the rate alleged in the petition is within the range of Ester and Reliance's product-specific margins, and is therefore corroborated.¹¹

VII. DISCUSSION OF INTERESTED PARTY COMMENTS

General Issues

Comment 1: Whether Critical Circumstances Exist

Reliance argues the Department should determine that critical circumstances do not exist. In support of this argument, it first cites to the Department's Preliminary Decision Memorandum which says:

⁹ *See Preliminary Determination*, and the accompanying Preliminary Decision Memorandum.

¹⁰ *See* section 776(b) of the Act; *see also* 19 CFR 351.308(c); and Statement of Administrative Action, H.R. Doc. No. 103-316, vol. I (1994) at 829-831.

¹¹ *See* Ester Final Determination Analysis Memorandum at Appendix II and Reliance Final Determination Analysis Memorandum at Appendix II.

In determining whether a history of dumping and material injury exists, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise. As indicated above, petitioners allege that there are AD orders on PET resin from India in Argentina and South Africa. Petitioners supported this assertion with documents from the website of Global Trade Alert, an independent organization that monitors international measures likely to impact world trade. We have reviewed these documents, and found them adequate to substantiate the assertions petitioners have made about AD orders in Argentina and South Africa. We therefore find that this statutory criterion for finding the existence of critical circumstances is met.¹²

Reliance argues that the existence of two previous antidumping orders does not meet the test of a “history of dumping.” Furthermore, it states that Argentina and South Africa are both extremely small and protected markets known for “liberal” interpretations of trade remedy rules.

Petitioners argue that Reliance is incorrect in asserting that the Department based its history-of-dumping determination on two previous antidumping orders. Rather, petitioners argue, the Department based its history-of-dumping determination on two currently-existing antidumping orders against Indian PET resin (*i.e.*, antidumping orders in Argentina and South Africa). Furthermore, petitioners state, based on Reliance submitted shipment volume and pursuant to section 773(e)(1) (B) of the Act, the Department found that massive imports from Reliance existed over a relatively short period of time. Therefore, petitioners state, the Department should affirm its finding of critical circumstances for the final determination.

Department’s Position

We agree with petitioners that, in this antidumping duty investigation, the statutory criteria for an affirmative finding of critical circumstances have been met. As explained in the Preliminary Decision Memorandum (quoted above), in making the history-of-dumping determination, the Department considers, *inter alia*, the current existence of antidumping duty orders in other countries on imports of subject merchandise. It is not the Department’s practice to consider the “liberalness” of the trade laws in the countries at issue,¹³ nor has Reliance cited to any evidence that the Department has ever done so. Further, Reliance has not cited any record evidence to substantiate its claim with respect to the nature of trade laws in either Argentina or South Africa. We note that both Argentina and South Africa are subject to the discipline of the World Trade Organization (WTO) agreements.

¹² See *Preliminary Decision Memorandum* at 19 (citations omitted).

¹³ See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People’s Republic of China*, 68 FR 23966, 23971 (May 6, 2003); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People’s Republic of China*, 68 FR 55589 (September 26, 2003) at Comment 1; see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

Moreover, Reliance has cited to no regulation or previous Departmental determination that the existence of antidumping duty orders in only two other countries is inadequate to substantiate a history-of-dumping determination. In past cases, the Department has found the existence of even a single antidumping order in only one country to be adequate to substantiate a history-of-dumping determination.¹⁴

Finally, Reliance has not even attempted to rebut the Department's preliminary finding that "massive imports of the subject merchandise over a relatively short period" have occurred.¹⁵ For these reasons we find that the statutory criteria for a finding of critical circumstances have been met, and affirm our preliminary finding.

Issues Pertaining to Ester

Comment 2: Whether Ester Should Be a Mandatory Respondent in This Investigation

Petitioners argue the Department should consider the overall implications of Ester's participation in the final determination. Specifically, petitioners argue that there is the potential for Ester to increase its production and export of sales of PET resin in the U.S. market in the event that it succeeds in obtaining a dumping margin that is lower than the AFA rate assigned to mandatory respondents who refused to respond. Petitioners object to this result for two reasons. First, Ester had a very small market share during the POI. Second, notwithstanding Ester's experience in antidumping, having participated for years in the PET film from India proceeding, the Department found there were numerous discrepancies in Ester's data even after it had submitted its minor corrections on the first day of the sales and cost verifications.

With respect to the latter point, petitioners cite to the following discrepancies:

- There were errors with respect to Ester's reported payment and sales terms for 19 sales traces.
- One home market sale on which the Department did a sales trace had an error with respect to the reported payment date, which resulted in an incorrect calculation of imputed credit.
- Two home market sales required a correction to the reported classification of the physical characteristic "copolymer/homopolymer," which had a significant impact on product matching and the resulting difference-in-merchandise adjustment.
- With respect to its duty drawback claim, Ester failed to substantiate that the import duties paid and the drawback received were directly linked to, and dependent upon, one another.

¹⁴ See, e.g., *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015), and accompanying Issues and Decision Memorandum at 28-29, where we found "history of dumping" based on a Brazilian antidumping order against Chinese exports of the merchandise at issue; unchanged with respect to "history of dumping" in *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893, (June 18, 2015).

¹⁵ See Section 733(e)(1)(B) of the Act and the Preliminary Decision Memorandum at 18-21.

- Ester understated its reported G&A ratio by improperly excluding relevant expenses and by making inappropriate offsets to those expenses it did report.
- Ester understated its financial expense ratio by inaccurately including long-term interest income as an offset to interest expenses.
- Ester could not satisfactorily respond to the verifiers' inquiry on its cost allocations and submitted reconciliation.
- Ester failed to reconcile its reported home market sales with its accounting records because it had to rely on "plug" numbers to reconcile reported discrepancies.

Petitioners state that it strains credulity that there could be so many problems in sales and cost data on the record, all of which would have significant impact on so many aspects of the Department's margin analysis, including product matching, the cost test, and the calculation of normal value and net U.S. price.

Based on the above factors, petitioners state that Ester's data are not reliable for the final determination. However, they state that if the Department does, nonetheless, use Ester's data in the final determination, it should adjust them by filling in the gaps using information available to the Department, based on the Department's verification findings.

Ester did not comment on this issue.

Department's Position

Petitioners' case brief does not specify exactly how they want us to treat Ester in this final determination. If they are arguing that Ester should not be a mandatory respondent, we disagree. The statute does not require that respondents selected for individual analysis represent any minimum level of market share.¹⁶ Ester qualifies for analysis in this final determination because it shipped merchandise subject to the investigation to the United States during the POI.¹⁷ Petitioners' argument that "there is the potential for Ester to increase its production and export of sales of PET resin in the U.S. market in the event that it succeeds in obtaining a dumping margin that is lower than the AFA rate," even if true, would not be a valid reason not to individually analyze Ester in this investigation.

With respect to the discrepancies the Department found at Ester's sales and cost verifications, we do not agree with petitioners that they were so pervasive as to disqualify Ester as a mandatory respondent.

First, we do not agree that Ester failed to reconcile its home market sales with its accounting records. At the sales verification, Department verifiers examined Ester's sales reconciliation, including the "plug" to which petitioners cite, which consisted of three reconciling items that the Department examined and discussed in its sales verification report. The Department found no errors in the reconciliation or the three reconciling items, nor have petitioners cited to any errors

¹⁶ See section 777A(c)(2) of the Act (permitting the Department to limit its examination to "exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined"). See also "Respondent Selection Memorandum for PET Resin from India," dated July 2, 2015, at 4-6.

¹⁷ *Id.*

in the three reconciling items.¹⁸ The Department concluded, “In reviewing this reconciliation, we noted no discrepancies.”¹⁹

Second, with respect to petitioners’ allegation that Ester could not satisfactorily respond to the verifiers’ inquiry on its cost allocations and submitted reconciliation, we disagree. Specifically, petitioners claim that Ester could not reconcile the total direct material costs per the “product-specific recipes and material consumption rates” to the trial balance, and simply “raised” the material costs by a certain percentage to make up the difference. Petitioners further assert that Ester increased its reported costs by ten percent to account for unexplained differences between its reported data and the same costs as maintained in its normal books and records. As the Department explained in the cost verification report, the adjustment to material costs referenced by petitioners represents the difference (*i.e.*, variance) between total material costs calculated by applying actual consumption rates to the standard usage factors, and the total actual material costs.²⁰ Similarly, the ten percent increase in the reported costs noted by petitioners was explained in detail in the cost verification report:

We discussed with company officials the issues raised by Petitioners in their pre-verification comments where Petitioners questioned unexplained changes in Ester’s reported costs between the initial section D response and the supplemental section D response. Company officials explained that in the initial section D response they allocated all conversion costs, including the cost of the SSP process, to all PET resin products by production quantity. In responding to the Department’s supplemental questionnaire, Ester separated costs attributable to the SSP²¹ process and allocated these costs only to products that used the SSP process. As a result, because the majority of products that used the SSP process were subject products, the total reported cost of subject products in the supplemental section D response increased by 10 percent (CVE 7).²²

Based on the above, we find that Ester’s reported cost data are reliable and can be used for calculating an antidumping margin.

We also determine, based on our review of the record, that none of the other reasons petitioners cite compel the conclusion that Ester cannot be individually analyzed in this investigation.

First, two of petitioners’ allegations are moot either because we have denied the adjustment in this final determination (*i.e.*, duty drawback) or because the information at issue was not used in the dumping calculations and, therefore, had no effect on the dumping margin (*i.e.*, payment terms and sales terms being incorrectly coded on the sales listings).

Second, the remainder of the discrepancies petitioners identified consists of adjustments and calculations that petitioners have correctly identified as errors, which the Department has

¹⁸ See Ester Sales Verification Report at 15-16.

¹⁹ See Ester Sales Verification Report at 16.

²⁰ See Ester Cost Verification Report at 12.

²¹ “SSP” refers to “solid-state polymerization.” *Id.* at 6.

²² *Id.* at 15.

addressed with revisions in its programming for this final determination as described further in the comments below. Such corrections do not bar the Department from individually examining Ester pursuant to 777A(c) of the Act.

Based on the above analysis, we determine that Ester's reported data are reliable, and can be used for calculating an antidumping margin. We further conclude there is no reason why Ester should not be analyzed as a mandatory respondent in this final determination.

Comment 3: Whether the Department Should Recalculate Imputed Credit

Petitioners argue that verification findings show that Ester misreported the terms of payment for both U.S. and home market sales. However, they state that the record does not contain complete information for the Department to make a comprehensive, sale-by-sale recalculation of imputed credit. Therefore, petitioners argue that the Department should use zero as the amount of imputed credit for all home market sales, and should use the highest reported U.S. credit expense for all U.S. sales.

Additionally, petitioners argue that, in the preliminary determination, the Department incorrectly made a currency conversion for the reported imputed credit for Ester's U.S. sales although no currency conversion was necessary. They state the Department should correct this error in the final determination.

Ester did not comment on these issues.

Department's Position

With respect to petitioners' argument that we should reject Ester's reported imputed credit expenses because of alleged misreporting of payment terms, we disagree. It is true that the sales verification report indicates that Ester incorrectly coded the payment terms (PAYTERMH and PAYTERMU) for numerous sales on its U.S. and home market sales listings, but PAYTERMH/U are not used in the calculation of imputed credit (CREDITH and CREDITU). Department verifiers noted only one instance of imputed credit having been calculated incorrectly, and in the sales verification report we noted that this error was attributed to a typographical error.²³ Therefore, in the SAS programming for this final determination we have corrected the one error discovered at verification and also the imputed credit errors Ester noted in its opening-day corrections, but find no reason to reject any of Ester's other imputed credit calculations.

Nevertheless, upon our review of Ester's calculation of imputed credit, we have determined that a recalculation is warranted with respect to Ester's U.S. sales because Ester incorrectly applied a dollar-denominated rate to rupee-denominated U.S. selling prices.²⁴ We disagree with

²³ See Ester Sales Verification Report at 23.

²⁴ See, e.g., for U.S. preselect 1, sales verification exhibit (VE) 23 at 63 (showing the calculation of imputed credit), and 5 (showing the sale price in dollars and rupees), and Ester's November 9, 2015, submission at Annexure EsterSupp19102015-4c at 36 (showing the exchanges rates used).

petitioners that sufficient information is not available on the record to perform this calculation.²⁵ Because we have performed this recalculation, we have removed the currency conversion to which petitioners cite.

Comment 4: Whether the Department Should Recalculate Home Market Inland Freight

Petitioners argue that, at the verification, the Department found discrepancies in Ester's reported terms of sale for several home market sales, and should consider adjusting Ester's reported unit inland freight for these sales accordingly.

Ester did not comment on this issue.

Department's Position

Petitioners are correct that our sales verification report indicates that for some home market sales the terms of sale as Ester reported them on its home market sales listing were not an identical match with the terms of sale as written on the associated sales documents. Nevertheless, we have also determined, based on our review of the relevant sales documents,²⁶ that the difference in wording between how Ester reported the terms of sale on its sales listing and how they are recorded in the sales documents are not substantive. Therefore, for this final determination, we have not changed Ester's reported inland freight expenses other than those it reported properly in its opening-day corrections.

Comment 5: Whether the Department Should Make a Duty Drawback Adjustment

Petitioners argue the Department should deny a duty drawback adjustment to Ester's U.S. sales. They give two reasons. First, verification findings show that the accounting entry for each U.S. sale states that the drawback was for PET film, and not PET resin. Second, Ester failed to meet the Department's two-pronged test for qualifying for a duty drawback adjustment. That test requires that the respondent demonstrate that (1) there is a sufficient link between the import duty and the rebate, and (2) there are sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product.²⁷ Petitioners assert that Ester failed to meet this test.

Ester did not comment on this issue.

Department's Position

We agree with petitioners that Ester has not met the Department's two-pronged test for qualifying for a duty drawback adjustment. In our September 16, 2015, supplemental questionnaire to Ester (at 4-5), we explained that to qualify for the duty drawback adjustment it must meet the two-pronged test, and we requested that it demonstrate that it did. In its

²⁵ See Ester Final Determination Analysis Memorandum for details of how the calculation was performed.

²⁶ See Ester's home market sales trace exhibits (*i.e.*, VE 17- 20, 22, 24-28).

²⁷ See *Stainless Steel Bar from India: Final Results of New Shipper Antidumping Duty Administrative Review*, 67 FR 69721 (November 19, 2002), and accompanying Issues and Decision Memorandum at Comment 3.

September 23, 2015, response, Ester responded (at 16), “There is no linkage of import duty paid or rebated. In fact, there may not be an import of the input to avail duty drawback.” It also explained that the drawback scheme in India “neutralizes the deemed customs duty paid in the input consumed in production of the exported product.” It stated that “whether Ester buys domestic PTA or imports PTA, the company suffers customs duty on PTA. The Govt. of India is merely rebating this customs duty by allowing a drawback.” Thus, Ester’s duty drawback claim is based only on “deemed” customs duties, and not on actual ones, and Ester made no actual attempt to show that the two prongs are met.

Furthermore, at Ester’s sales verification, the Department again raised the issue of the two-pronged test. The sales verification report states:

While discussing duty drawback, we asked Ester officials if they could establish that the import duty paid and the rebate payment were directly linked to, and dependent upon, one another. Ester officials stated that there was no linkage between exports and imports. They stated that under Indian law the only requirement to receive a duty drawback is to export a product and receive the remittance payment in a foreign currency. They referred us to their September 23, 2015, submission at 15-17 for further explanation.²⁸

Based on Ester’s explanation and our verification findings then, there is no link between imports and drawback received, and Ester did not attempt to demonstrate one. Therefore, for this final determination we have not made this duty drawback adjustment.

Comment 6: Whether to Adjust Ester’s G&A Ratio

Petitioners assert that during the cost verification the Department found that Ester excluded expenses related to “Donations” and “Loss on fixed assets sold/discarded” that, according to Ester, represents a loss on routine disposition of assets used in production. Petitioners argue that these expenses should be included in the G&A expenses because they relate to the general operations of the company.

Petitioners further claim that Ester incorrectly included “income from reversal of provisions no longer required” as an offset to G&A expenses. Petitioners note that at verification the Department found that this item was related to Ester’s selling activities, such as commissions on export sales and domestic and export freight. Therefore, petitioners argue, they were not related to Ester’s G&A activities during the POI, and should not be included in the G&A expense ratio calculation.

Ester did not comment on these issues.

²⁸ *Id.*

Department's Position

We agree with petitioners, and for the final determination, consistent with the Department's practice,²⁹ included "Donations" and "Loss on fixed assets sold/discarded" in the calculation of the G&A expenses because these expenses are period costs that relate to the general operations of the company as a whole. In addition, we excluded from the G&A expense calculation the "income from reversal of provisions no longer required." As an initial matter the income item is related to selling expenses, and not the general operations of the company as a whole. Moreover, in calculating the G&A expenses, we do not consider it appropriate to reduce Ester's current period expenses by its correction of an over estimated expense associated with a non-recurring provision from a previous period.

Comment 7: Whether to Adjust Ester's Financial Expense Ratio

Petitioners argue that Ester incorrectly included interest income earned on long-term deposits as an offset to interest expenses. They state that it is the Department's practice not to allow interest income related to long-term investment as an offset to interest expenses. Therefore, petitioners argue, the Department should disallow this offset, and recalculate Ester's financial expense ratio.

Ester did not comment on this issue.

Department's Position

We agree with petitioners. At verification we found that the interest income amount at issue represents interest income earned on long-term deposits. When calculating the financial expense ratio, it is the Department's long-standing practice to offset interest expense only with interest income earned on short-term investments of working capital.³⁰ As such, for the final determination we disallowed the offset to the financial expenses for the interest income earned on long-term deposits.

Comment 8: Whether to Include Import Taxes in the Total Cost of Manufacture

In its cost database, Ester reported import duties separately from the rest of the COM. Petitioners argue that because Ester received no rebate of import duties on its exports, and because import duties are an integral part of the cost of direct materials, the import duties should be added to Ester's reported COM.

Ester did not comment on this issue.

²⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24350 (May 6, 1999); see also *Notice of Final Determination of Sales At Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate Resin from Indonesia*, 70 FR 13456 (Mar. 21, 2005), and accompanying Issues and Decision Memorandum at Comment 13 (where the Department included gains and losses incurred on the routine disposition of fixed assets in the G&A expense rate calculation).

³⁰ See *Notice of Final Results of Antidumping Duty Administrative Review: Narrow Woven Ribbons With Woven Selvedge from Taiwan*, 80 FR 19635 (April 13, 2015), and accompanying Issues and Decision Memorandum at Comment 9.

Department's Position

We agree with petitioners that import duties are an integral part of the material cost; however, we disagree that duties reported by Ester in a separate column in the cost database should be added to the reported COM. In response to the Department's supplemental questionnaire Ester demonstrated that duties paid on imported materials are normally recorded as part of material cost, and the reported cost of materials includes import duties.³¹ In the same supplemental response, at the Department's request, Ester separately reported in the cost database the import duties paid, while also including them in the reported cost of materials.³² At verification, we confirmed that the reported material cost includes import duties.³³ Therefore, to avoid double counting import duties, we find that duties separately reported in the cost database should not be added to the reported costs because the record shows that the reported material cost already includes import duties paid on purchases.

Comment 9: Whether to Rely on Ester's Revised Packing Costs

In its most recent home market and U.S. sales listings, Ester included two calculations of packing. One included packing overhead, and the other did not. Petitioners argue the Department should use the calculation that included packing overhead because this is an integral part of the packing cost that Ester incurs. Petitioners contend there is no evidence that Ester reported the overhead elsewhere, either as part of fixed overhead or in G&A expenses in its calculation of total cost of production (COP).

Ester did not comment on this issue.

Department's Position

We agree with petitioners. In this final determination, we have revised the calculations to use the packing variable inclusive of packing overhead in both markets.

Issues Pertaining to Reliance

Comment 10: Whether to Revise Reliance's COP Using Reliance's Verified Actual Chain Costs

Reliance contends that the Department should use its submitted COP for PET resin products that reflects the actual cost to produce the raw material inputs (*i.e.*, purified terephthalic acid (PTA) and mono-ethylene glycol (MEG)) used in the production of PET resin, rather than the internal transfer prices between business units for these inputs. Reliance explains that in the preliminary determination, the Department used its submitted cost database that reflected the internal transfer

³¹ See Ester's October 20, 2015, submission, Re: Certain Polyethylene Terephthalate Resin From Canada, the People's Republic of China, India, and the Sultanate of Oman: Initiation of Less-Than-Fair-Value Investigations, at 19-22.

³² *Id.*

³³ See Ester Cost Verification Report at page 13.

prices between business units, based on prevailing market prices, for the inputs PTA and MEG. However, subsequent to the preliminary determination, in response to supplemental questions from the Department, Reliance revised its reported costs to reflect the actual costs of producing PTA and MEG.

Reliance states that it is a fully vertically integrated petroleum refining and petrochemical manufacturer that purchases crude oil and refines it into naphtha and many other intermediate products (*e.g.*, PTA and MEG). Reliance further explains that each product it manufactures is treated as a separate profit center in its cost accounting system to give management the ability to measure the profitability of each production unit independently. Accordingly, the intermediate products PTA and MEG used as inputs in PET resin production were transferred to the PET resin profit center at published market prices. Consequently, Reliance initially reported the PTA and MEG costs used as inputs in the production of PET resin at the internal divisional transfer prices.

However, according to Reliance, based on petitioners' comments and the Department's supplemental questionnaire, the company submitted a cost database that reports the PTA and MEG material costs based on the actual cost of producing the inputs (*i.e.*, chain costs), not at the internal transfer prices based on prevailing market prices. Reliance asserts that this database reflecting the actual costs for the material inputs is the appropriate database to use for the final determination. Moreover, according to Reliance, using the actual cost of the material inputs is in accordance with the Department's practice. Reliance also points out that while the use of transfer prices from intermediate production units may be useful for management purposes, they must be reversed in Reliance's financial statement to avoid distorting the actual profit calculation of the company. Accordingly, for the reasons stated above, Reliance asserts that, for the final determination, the Department should use the cost database for PET resin that reflects the actual material cost of the PTA and MEG inputs.

Petitioners argue that the Department should follow the antidumping statute, and rely on the costs reported in Reliance's original Section D response. According to petitioners, the statute requires the Department to rely on respondent's books and records, so long as those records are consistent with the home country's generally accepted accounting principles (GAAP).³⁴

Petitioners claim that Reliance is trying to mislead the Department into relying on so-called "chain costs," *i.e.*, costs that Reliance created for this investigation. According to petitioners, Reliance's chain costs significantly understate Reliance's actual costs by wrongly adjusting the costs in the audited unconsolidated financial statements by intercompany eliminations that are made in preparing the consolidated financial statements. Petitioners argue that there is no legal, precedential or accounting basis for such an adjustment, and, thus, the Department should reject Reliance's attempts to manipulate the Department's margin calculation and instead use the costs submitted in the original Section D for the final determination.

³⁴ Petitioners note that under section 773(f)(1)(A) of the Act, the Department must rely on the costs as recorded in the normal books and records of the producer so long as those records are kept in accordance with the GAAP of the exporting country, unless those costs do not reasonably reflect the cost of producing the merchandise. *See* Petitioners' February 2, 2016, submission, "Petitioners' Rebuttal Brief for Reliance Industries" (Petitioners' Rebuttal Brief for Reliance), at 5.

According to petitioners, the consolidated financial statements are only used for the interest expense calculations. Petitioners argue that under no circumstances does the Department use the value of intercompany eliminations made in preparing the consolidated financial statements to reduce the costs reported in the audited unconsolidated financial statements. Petitioners claim the chain costs are the result of Reliance reducing its PTA and MEG costs reported in its audited unconsolidated financial statements (the basis of the original Section D cost file) by the value associated with the eliminations for intercompany transactions that are made in preparing Reliance's consolidated financial statements. Petitioners claim that there is no GAAP that would allow such an adjustment. According to petitioners, only the intercompany eliminations associated with the consolidation of affiliated parties is allowable. In addition, petitioners argue that the chain costs cannot be reconciled to Reliance's unconsolidated financial statements.

For the reasons stated above, petitioners argue the Department should use Reliance's costs as submitted in the original Section D response for the final determination.

Department's Position

We agree with Reliance, and have used its PET resin cost database that reflects the actual material cost of producing PTA and MEG. As noted by Reliance, the costs reported in its initial section D questionnaire response were based on the cost in the PET resin profit center that started with that profit center's cost for MEG and PTA (*i.e.*, transfer prices from the PTA and MEG profit centers) and included an amount for the conversion costs incurred at the PET resin profit center to produce PET resin. Specifically, the MEG and PTA costs included in the PET resin profit center represented transfer prices for MEG and PTA, from those intermediate products' respective profit centers, obtained from the prior stages of production. Profit centers are normally used as a method to evaluate a division, product line, or other measurable unit's financial success as well as the performance of its manager. In determining the revenue stream for a profit center, a transfer price can be used, as it is here by Reliance, which allows management to measure the performance of different product lines at Reliance. However, the profit earned in each profit center is inter-divisional and does not reflect the profit earned on external sales. In other words, the inter-divisional profit in the profit centers is used for management purposes only, and is eliminated to arrive at the amount reported in the audited unconsolidated financial statement.³⁵ As such, in the instant case, if the Department used the cost database that reflected the transfer price for PTA and MEG in the PET resin cost, the PET resin cost would be overstated by the internal profit earned at the PTA and MEG profit centers and not reflect the actual cost incurred by Reliance to produce PTA and MEG.

At verification, the Department examined the calculation of the actual costs incurred by Reliance in producing PTA and MEG. These "chain costs," were not "created for this investigation" as claimed by petitioners. Rather, Reliance demonstrated at verification how it used its normal books and records to calculate the costs, beginning with the cost of crude oil and adding the conversion costs at each stage of production to calculate the cost for PTA and MEG, and finally PET resin.³⁶

³⁵ See Reliance Cost Verification Report at 5.

³⁶ *Id.* at 15, where the Department stated, "all elements of such costs can be reconciled to the general ledger of each production stage, beginning with the crude oil cost and adding conversion costs at each following stage. We noted

Regarding petitioners' argument that the chain costs are the result of Reliance reducing its PTA and MEG costs reported in its audited unconsolidated financial statements by the value associated with the eliminations for intercompany transactions that are made in preparing Reliance's consolidated financial statements, we disagree. Reliance's actual costs are based on the costs contained within Reliance's unconsolidated financial statement, not its consolidated financial statements. The consolidated financial statements were only used to calculate the financial expense ratio. As such, no inter-company eliminations were needed to reconcile Reliance's unconsolidated financial statements to its reported costs, based on the actual cost of producing PTA and MEG. However, the Department may have confused the issue by statements made in its verification report referring to intercompany transactions where we meant to say inter-divisional transactions. In the cost verification report we stated:

Reliance has 3 major business segments (*i.e.*, petrochemicals, refining, and oil and gas). PET resin is a profit center within the petrochemical division. Reliance publishes audited stand-alone segment information each quarter, which shows the revenue and results by segment (see CVE 2). The stand-alone segment information reflects the intercompany transactions at market price. Intercompany transfers are eliminated to arrive at the amount reported in the income statement. Because Reliance uses profit centers, it needs to eliminate the profit between profit centers to obtain the cost of manufacture.³⁷

In fact, the intercompany transactions noted above are the inter-divisional profits earned at each profit center that are eliminated to arrive at the amount reported in the audited unconsolidated income statement. The intercompany transactions, as described above, are not between related or affiliated companies, but transactions between profit centers (*i.e.*, inter-divisional) within Reliance's cost accounting system. Therefore, if the inter-divisional profits earned at each profit center were not eliminated to arrive at the appropriate cost of goods sold in the audited unconsolidated income statement, the financial statements would not be in accordance with GAAP.

For all of the above reasons, for the final determination, we have used Reliance's PET resin cost database that reflects the actual direct material cost of producing PTA and MEG.

Comment 11: Whether the Department Should Use its Differential Pricing Analysis in the Final Determination

Reliance states that to calculate the dumping margin in the preliminary determination the Department used the average-to-average methodology for all of Reliance's sales. Reliance argues that the methodology is excessively punitive in nature and has no justification in law. It also notes that the Department's policy of applying the methodology of zeroing negative antidumping duty margins has been found on numerous occasions to be inconsistent with the

that the methodology used by the company to calculate the actual MEG and PTA costs follows the methodology normally used to calculate the chain costs, which are audited by independent accountants and are reported to the government (CVE 5)."

³⁷ See Reliance Cost Verification Report at 5.

WTO Antidumping Agreement.³⁸ Therefore, Reliance states, for the final determination the Department should not use a differential pricing analysis.

Petitioners argue that Reliance is incorrect in its assertions about the Department's practice of zeroing and there being no justification in law for the practice of applying the average-to-average methodology. Petitioners state that in a recent review of large residential washing machines from the Republic of Korea, the Department rejected the respondent's argument that the Department's differential pricing methodology with respect to zeroing was inconsistent with the WTO.³⁹ Specifically, citing *Union Steel v. United States*, 713 F.3 1101, 1109 (Fed. Cir. 2013) (*Union Steel*), the Department stated:

The CAFC in *Union Steel* resolved the outstanding question of whether the Department's statutory interpretation is reasonable. The CAFC affirmed the Department's explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales with respect to the A-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-A comparison method in investigations. The CAFC also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews. Indeed, the CAFC noted that although the Department recently modified its practice "to allow for offsets when making A-A comparisons in administrative reviews . . . {t}his modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns." Likewise, in *US Steel Corp.*, the CAFC sustained the Department's decision to no longer apply zeroing when employing the A-A comparison method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances. Specifically, the CAFC recognized that the Department may use zeroing when applying the A-T comparison method where patterns of significant price differences are found.

Department's Position

We disagree with Reliance. Use of the average-to-average methodology, far from having "no justification in law," is specifically provided for in section 777A(d)(1)(A) of the Act, which says:

(A) IN GENERAL.—In an investigation under subtitle B, the administering authority shall determine whether the

³⁸ See Reliance's January 27, 2016, submission, Re: Polyethylene Terephthalate Resin from India; Reliance Industries, Ltd.'s Case Brief (Reliance Case Brief), at 8, citing Report of the Appellate Body, United States-Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R (February 4, 2009); *see also* Report of the Appellate Body, United States – Final Anti-Dumping Measures on Stainless Steel from Mexico, WT/DS344/AB/R (April 30, 2008).

³⁹ See Petitioners' Rebuttal Brief for Reliance, at 12, citing *Large Residential Washers From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 55595 (September 16, 2015), and accompanying Issues and Decision Memorandum at Comment 6.

subject merchandise is being sold in the United States at less than fair value—

(i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise

In addition, the regulations state, “In an investigation or review, the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case.”⁴⁰ Furthermore, Reliance has provided no evidence that use of this methodology is “excessively punitive” or otherwise contrary in some way to the Act or to the Department’s regulations.

Reliance’s comments regarding the Department’s zeroing methodology are all moot because the Department used the average-to-average methodology for Reliance in this final determination, which does not involve zeroing. In the same vein, to the extent that Reliance intends its argument to dispute the Department’s use of the differential pricing methodology to apply an alternative methodology, that argument is also rendered moot by the fact that the Department is using the average-to-average methodology for Reliance.

Comment 12: Whether to Use Invoice Date as the Date of Sale in Both Markets

Reliance argues the Department should use the invoice date as the date of sale in both its U.S. and home markets in the final determination as it did in the preliminary determination. Its basis for this argument is that there were changes to both the prices and quantities in both markets up to the date of invoice. To substantiate this argument it cites to evidence in the sales verification showing that such changes did occur.

With respect to U.S. sales, petitioners argue that if the Department calculates a margin for Reliance in the final determination,⁴¹ it should use the pro forma invoice date as the sales date for Reliance’s U.S. sales. They state that the Department’s practice is to use the earliest document that establishes the material terms of sale to designate the date of sale. In this case, petitioners argue, the record establishes that the earliest document that establishes the material terms of sale is the pro forma invoice, a document that precedes the commercial invoice. In support of its assertion, petitioners cite to U.S. “preselect 5,” a sale to which Reliance cited at the verification to support its contention that the commercial invoice date is the correct date of sale. Petitioners argue that the facts revealed in the sales trace (not susceptible to public summary) show that it was the date of the pro forma invoice on which the material terms of sale were first established.

With respect to Reliance’s home market sales, petitioners respond to Reliance’s argument only with respect to Reliance’s sales made pursuant to long-term contracts. Petitioners argue that the

⁴⁰ See CFR 351.414(c)(1).

⁴¹ As explained below, petitioners argue that the Department should assign an antidumping duty margin to Reliance based on total AFA.

record evidence shows that the correct date of sale is the date of contract because it is the date on which all material terms of sale are firmly established between Reliance and its home market contract customers.

Department's Position

We agree with Reliance that the commercial invoice date is the correct date of sale in both markets because it is consistent with our regulations and the record evidence. Our regulations state:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁴²

In the *Preamble* to the Department's regulations, the Department explained the exception to using the invoice date as the presumptive date of sale as follows:

If the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, the Department usually will use a date other than the date of invoice. However, the Department emphasizes that in these situations, the terms of sale must be firmly established and not merely proposed. A preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly "established" in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.⁴³

With respect to U.S. sales, we do not find the record evidence establishes (as required by the *Preamble* (above)) that the material terms of sale are "firmly established" in the minds of the buyer and seller on the pro forma invoice date. At the sales verification, Reliance presented evidence of changes to pro forma invoices in two of its non-U.S. export markets.⁴⁴ Even though these are not changes to U.S. sales, the examples Reliance cited do raise doubts about whether Reliance's pro forma invoices "firmly establish" the material terms of sale. Indeed, Reliance has stated that its sales process "is applicable to all class of customers in all the export markets."⁴⁵ Furthermore, in determining whether any particular agreed terms of sales are adequate to

⁴² See 19 CFR 351.401(i).

⁴³ See *Preamble, Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (*Preamble*).

⁴⁴ See Reliance Sales Verification Report at 12.

⁴⁵ See Reliance's July 24, 2015, submission, Re: Polyethylene Terephthalate Resin from India; Section A Questionnaire Response (Reliance Section A Response), at A-15.

establish the date of sale, the Court of International Trade (CIT) has stated that, “The question is could the terms be changed, or were they fixed at the time of the initial order.”⁴⁶ Here, we determine, based on the record evidence cited above, that the terms of sale could change following the pro forma invoice date. Therefore, in accordance with our regulatory presumption, we have continued to use the invoice date as the date of sale.

With respect to home market sales, petitioners have not challenged the correctness of the Department’s preliminary determination for Reliance’s non-contract customers, and we know of no reason to reconsider it. Petitioners have challenged the Department’s determination with respect to contract customers. As further explained in response to petitioners’ comments below in comment 13B, we continue to rely on invoice date for Reliance’s home market sales to contract customers.

Comment 13: Whether to Resort to Adverse Facts Available for Reliance

Petitioners argue that the cumulative weight of the factors discussed below justify the application of AFA for Reliance under section 776(a) of the Act, and that an adverse inference is warranted under section 776(b) of the Act.

A. Whether Reliance Failed to Submit All Home Market Sales Subject to the Investigation

Petitioners argue that the record establishes that Reliance did not report its home market sales of a product subject to the investigation called “REL PET Green.” Petitioners note that the Department first learned of this product when it was conducting a completeness test at the sales verification in which it randomly selected eight invoices for examination. Six of those invoices were for sales of REL PET Green. Reliance stated at the verification that those sales were not subject to the investigation because the word “Green” indicated the product was recycled PET resin. Petitioners argue in response that the scope of the investigation includes recycled PET resin containing fifty percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements of at least 0.70, but not more than 0.88, deciliters per gram. Petitioners state that if these six invoices really were outside of the scope of the investigation, the burden was on Reliance to demonstrate such using sales, inventory, and production records.⁴⁷ This, petitioners contend, Reliance did not do. In fact, petitioners state, Reliance (prior to the verification) never disclosed that it produced REL PET Green, never defined the product, and (as mentioned above) failed to show that it was outside the scope of the order. Furthermore, petitioners argue that the record shows that Reliance worked diligently to avoid providing any information about REL PET Green. Specifically:

- In its initial questionnaire response, Reliance submitted a key to its product codes in response to a question in the Department’s questionnaire that asked for “an explanation of the full range of prefixes, suffixes, or other notations that identify special features.” Reliance’s

⁴⁶ See *Thai Pineapple Canning Industry Corp., Ltd., v. United States*, 24 CIT 107, 109, n. 5 (2000).

⁴⁷ See *Ta Chen Stainless Steel Pipe, Inc., v. United States*, 298 F.3d 1330, 1336 (Fed. Cir. 2002) (“Ta Chen bore the burden of creating an accurate record”). See also *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993) (“The burden of production {belongs} to the party in possession of the necessary information”).

response did not mention RELPET Green. In a supplemental questionnaire, the Department asked Reliance to revise its product code key to “identify the meaning of every digit.” Petitioners state that the revised product code key again did not identify any RELPET Green products. Moreover, another product code key that Reliance submitted at the sales verification⁴⁸ also did not identify RELPET Green.

- Because the existence of RELPET Green was discovered at verification, it was too late for the Department to seek additional information through issuing any supplemental questionnaires.
- At no time in this investigation did Reliance report to the Department that its production process involved any production of recycled PET resin.

Petitioners conclude that Reliance appears to have purposely withheld information on the existence of RELPET Green products. They argue that given that this issue was discovered at verification, the Department should find that its discovery of RELPET Green products taints the reporting of all non-subject merchandise.

Furthermore, petitioners argue that there is evidence that Reliance failed to report other home market sales in addition to RELPET Green. Specifically, the Department’s sales verification report indicates that of the eight random home market invoices the Department selected for examination, one of them was for a product called RELPET B9845K. Petitioners state that the recipe for this product shows that it is subject to the investigation. Petitioners further state that even though it was a sample sale, Reliance did receive consideration for the sale, and title did pass to the customer. Therefore, petitioners state, Reliance should have reported this sale.

Moreover, petitioners also state that the invoice Reliance provided with respect to this sale⁴⁹ when the Department was performing completeness tests does not match with the additional sales documentation it provided for this sale⁵⁰ with respect to the identity of the customer, the customer correspondence, or the sales quantity. Petitioners argue this is another example of Reliance withholding information from the Department.

Petitioners conclude that due to Reliance not having reported its home market sales of RELPET Green and RELPET B9845K, its home market sales listing is not complete, and, therefore, the Department should assign Reliance an AFA margin in the final determination. Petitioners state that if the Department decides not to do that, it should at a minimum use the highest net home market price for the normal value used in the margin calculation.

Reliance argues that it properly excluded sales of RELPET Green from its home market sales listing. It notes first that in both its section A and section D responses, it stated that it produced recycled PET resin, a product it produced at its Nagothane plant. Furthermore, in the costs it reported in its section D response, it did not include any costs from the Nagothane plant. Thus, Reliance states, if petitioners had any questions about Reliance’s reporting of recycled PET resin, including RELPET Green, it had ample opportunity to raise issues related to Reliance’s Nagothane plant and its production of non-subject merchandise; yet, petitioners did not do so.

⁴⁸ See Reliance Sales VE 11.

⁴⁹ See Reliance Sales VE 15 at 22.

⁵⁰ See Reliance Sales VE 33.

Moreover, Reliance argues that, at the cost verification, Department verifiers closely examined the question of which facilities used which key ingredients such as MEG and PTA, both of which are used in subject PET resin, but not in recycled PET resin. Reliance cites to the cost verification report, which says in part:

We confirmed that no MEG was transferred to the Nagothane plant (see the MEG inventory movement schedule we obtain in CVE 6). The Nagothane plant did produce a small amount of MEG each month, but the total MEG produced was transferred to the Patalganga Plant (see the MEG inventory movement schedule in CVE 6).⁵¹

Thus, while MEG and PTA inputs were produced at multiple plants and can be moved, if necessary, to different locations, during the POI Reliance used in the PET resin production only inputs produced at the Hazira and Dahej plants. Accordingly, the company reported the cost of MEG and PTA produced only at these plants.⁵²

Reliance notes too that the cost verification report says that the Nagothane plant “also produced PET Resin, but which is non-MUC {*i.e.*, non-merchandise under consideration} as it uses only recycled inputs.”⁵³

Reliance concludes from the above statements (and others it cites from the cost verification report) that the record establishes that only recycled PET resin was made at the Nagothane plant. It argues that if the Nagothane plant did in fact produce any non-100 percent recycled PET resin, the plant would show up in the transfers of PTA or MEG.

Furthermore, Reliance disputes petitioners’ allegation that it worked diligently to avoid providing any information regarding RELPET Green. It argues that it was not required to provide detailed data on a product it knew to be not subject to the investigation. As such, it did not withhold information from the Department.

With respect to the sample sale of RELPET 9845K, Reliance first states that the product was part of a “pilot scale experiment.” Furthermore, it states, the sales verification report also contains correspondence showing that this product was a test product not yet in commercial production.⁵⁴

With respect to the sales documentation that petitioners allege does not match with the invoice Reliance provided for this sale, Reliance answers that the sales documentation was intended only to show that the product is marketed as a trial product.

With respect to petitioners’ argument that RELPET B9845K is subject to the investigation because of its composition, Reliance points out that it contains an additive that makes it a

⁵¹ See Reliance Cost Verification Report at 11.

⁵² *Id.* at 7.

⁵³ *Id.* at 11.

⁵⁴ See Reliance Sales Verification Report at 19.

different control number (CONNUM) and, therefore, not an identical match to the U.S. sales. Moreover, Reliance states, home market sales of this product are miniscule, whereas home market sales of the CONNUM identical to the U.S. product constitute a huge quantity. Therefore, Reliance concludes, home market sales of RELPET B9845K would never be used for purposes of calculating the antidumping duty margin.

Department's Position

We do not agree with petitioners that the sales Reliance did not report on its home market sales listing require the use of either total AFA or partial AFA, or even that all the sales that petitioners reference should have been reported.

First, RELPET Green is not subject to the investigation. As Reliance has argued, the cost verification report indicates that what little MEG was produced at Reliance's Nagothane plant (where RELPET Green was produced) was shipped to Reliance's Patalganga plant.⁵⁵ As such, RELPET Green could not have contained a virgin PET resin content of 50 percent or more, and would thus be not subject to the investigation. Furthermore, because it was not subject to the investigation, Reliance did not err by not including it on the product code lists it submitted. Moreover, we agree with Reliance that the record shows that Reliance was forthcoming about the fact that it produced recycled PET resin.⁵⁶ Therefore, we do not agree that the Department's discovery of this product at verification constitutes evidence that Reliance withheld information from the Department that it should have reported earlier.

With respect to RELPET B9845K, the physical characteristics of this product indicate that it should have been reported even though it is not an identical CONNUM match to Reliance's U.S. sales. However, documentation obtained about this product at the sales verification indicates that it was produced at Reliance's R&D facility⁵⁷ and the recipe indicates it was an experimental product.⁵⁸ Furthermore, our comparison of the total volume of this product that Reliance shipped during the POI⁵⁹ compared to its total home market sales quantity⁶⁰ substantiates Reliance's contention that the volume shipped was miniscule. In comparable situations where there was a question about whether a product needed to be reported and the sales volume was miniscule, the Department has not resorted to AFA.⁶¹ We find no compelling reason to do so here.

⁵⁵ See Reliance Cost Verification Report at 11.

⁵⁶ See Reliance Section A Response at A-26.

⁵⁷ See Reliance Sales Verification Report at 19 and sales VE 33 at 1.

⁵⁸ *Id.* at 4.

⁵⁹ See Reliance Sales VE 15 at 4.

⁶⁰ See Reliance's November 6, 2015, submission, Re: Polyethylene Terephthalate Resin from India; Reliance Industries, Ltd.'s Third Supplemental Sections A, B & C Questionnaire Response (Reliance's November 6, 2015, submission), at Exhibit 3S-19.

⁶¹ See *Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum at Comment 17 where the Department determined not to apply an adverse inference with respect to home market sales of "dog-eared fence pickets" because of the lack of clarity over whether it should have been reported and because of its miniscule sales volume.

B. Whether Reliance Provided a Complete Home Market Sales Listing for Contract Customers

Petitioners argue Reliance failed to report the correct universe of sales for home market sales made pursuant to long-term (annual) contracts, all of which are formula-based contracts. They argue that Reliance reported the wrong universe of such sales because Reliance used the wrong date as the date of sale. Reliance reported its contract sales using the shipment date as the date of sale. Petitioners argue that the correct date of sale for home market contracts is the date of the contract. They base this argument on their conclusion that the price and quantity are determined on the date of the contract.

With respect to price, petitioners cite to the fact that all prices are formula-based, and all prices are determined by a price list (not issued by Reliance) reflecting prevailing market prices across Asia that is published in various publications. Petitioners argue that when considering the price terms of a long-term contract, the Department's policy is to consider the price fixed at the date of contract as long as there is evidence of an agreement on a pricing mechanism that is outside the control of the parties to the contract that will be used to determine the price.⁶²

With respect to the quantity, petitioners cite to a clause in the single long-term contract that is on the record of this investigation.⁶³ The clause is not susceptible to public summary, but petitioners argue it clearly shows the quantity is established in the contract.

Petitioners state that by relying on the wrong date of sale for the long-term contract customers, Reliance (1) failed to report the actual date of sales, (2) failed to submit the population of home market sales that had contracts within the POI, and (3) distorted the Department's matching of U.S. sales to home market sales in the margin program. They argue that this fact, coupled with Reliance's failure to submit all home market sales, means the Department cannot rely on Reliance's submitted home market sales file.

Furthermore, petitioners argue that the development of the record regarding home market contract sales constitutes another instance in which Reliance withheld information until the Department made further inquiries. Specifically, Reliance provided no information about its contract sales in its initial questionnaire response. Thereafter, petitioners submitted copies of Reliance's price lists (used for non-contract sales) that referenced, *inter alia*, formula-based contracts. Reliance later submitted information about its various contracts, but only after the Department requested such information in a supplemental questionnaire. Petitioners conclude that use of total AFA is justified because Reliance (1) withheld information regarding contract sales until information was provided by petitioners that showed such sales, (2) failed to report all invoices with a date of contract in the POI, and (3) failed to report the date of contract as the date

⁶² See *Emulsion Styrene-Butadiene Rubber from Mexico: Final Determination of Sales at Less Than Fair Value*, 64 FR 14872 (March 29, 1999); *Brass Sheet and Strip from France: Final Determination of Sales at Less Than Fair Value*, 52 FR 812 (January 9, 1987); *Offshore Platform Jackets and Piles from Japan: Final Determination of Sales at Less Than Fair Value*, 51 FR 11788, 11793-94 (April 7, 1986),

⁶³ See Reliance Sales VE 10 at 5-7.

of sale. Petitioners state that, alternatively, if the Department decides not to apply total AFA, it should apply partial AFA by removing all contract sales from the analysis or rely on the highest reported net home market price as the normal value.

Reliance argues that in the preliminary determination the Department correctly used the date of invoice as the date of sale for Reliance's home market sales to contract customers. It argues that the terms of these formula-based contracts at issue are hardly air tight. Thus:

- The ultimate price is determined by factors not specified in the contract, such as exchange rates and quantity discounts.
- The contract provides that the customer should provide "projected quantities" each month, and order confirmations are required.
- The terms of the contract can apply to three different products.
- The contract states that the quantity can be shifted to one of the customer's affiliates.

Reliance argues that if all the essential terms of sale (*i.e.*, price, quantity, product, and ultimate customer) were set at the contract date, none of the above would be applicable.

With respect to petitioners' argument that Reliance withheld information about its formula-based contracts until the verification, Reliance states that it explained how these contracts worked, and provided a copy of the relevant contract, in its November 6, 2015, submission.

Furthermore, Reliance argues that it would be impractical to use the date of the contract as the date of sale because the period of the contract is January 1, 2014 to December 31, 2015. Thus, using petitioners' theory, even though the POI is 2014, Reliance would be reporting sales through Dec. 31, 2015, which is after verification is finished and the record is closed.

Finally, Reliance argues that the cases cited by petitioners do not match the fact patterns in this investigation. It states that cases closer to the fact pattern in this investigation show the Department did not find contract date as date of sale. For example, in the final determination of the *Citric Acid from the PRC* antidumping investigation, the Department rejected using contract date as the date of sale and stated as follows:

{The} prices variances are unknown when the sales contract is signed, and *while the adjustment for these aforementioned reasons may be laid out in the sales contract, the exact price a customer will be charged for merchandise is not known until the time of invoice.* Furthermore, the quantity shipped with each invoice does not appear to be determined when the sales contract is signed. Quantity and value are both material terms of sale. We do not consider that TTCA finalized these sales terms with the signing of the sales contract.⁶⁴

⁶⁴ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 Fed. Reg. 16838 (April 6, 2009), and accompanying Issues and Decision Memorandum at Comment 9 (emphasis added) (citation omitted) (*Citric Acid from the PRC*).

Department's Position

We agree with Reliance that the conditions as given in its long-term contracts do not establish that the material terms of sale are set on the contract date. Specifically:

- The price is not finalized until the customer places the order because only then do the parties know whether a quantity discount applies;⁶⁵
- The requirement that the customer provide monthly quantity projections implies that quantities are not finalized until an order is placed;⁶⁶
- The exact product ordered can vary.⁶⁷

Given the terms stipulated in these contracts, and following the precedent of *Citric Acid from the PRC*, we determine that the date of the invoice is the correct date of sale for the home market sales made pursuant to long-term contracts. Therefore, we conclude that Reliance reported the correct universe of sales to home market customers made pursuant to long-term contracts. There is therefore no reason to resort to AFA because of the allegation that Reliance reported the incorrect date as the date of sale or because it reported the wrong universe of sales.

Furthermore, although Reliance failed to report the requested information in its original questionnaire response, it did report it in response to the Department's supplemental questionnaire.⁶⁸ Therefore, we cannot determine that Reliance withheld information.

C. Whether Reliance Reported the Wrong Date as the Sale Date for U.S. Sales

Petitioners argue that Reliance incorrectly reported the commercial invoice date as the sales date for its U.S. sales. They state that the Department's practice is to use the earliest document that establishes the material terms of sale to designate the date of sale. In this case, petitioners argue the record establishes that the earliest document that establishes the material terms of sale is the pro forma invoice, a document that precedes the commercial invoice. In support of its assertion, petitioners cite to U.S. preselect 5, a sale to which Reliance cited at the verification to support its contention that the commercial invoice date is the correct date of sale. Petitioners argue that the facts revealed in the sales trace (not susceptible to public summary) show that the pro forma invoice date is the date on which the material terms of sale are first established.

Furthermore, petitioners argue that in light of this and the other deficiencies in Reliance's reporting, which show that Reliance did not act to the best of its ability in responding to the Department's requests for information, the Department should resort to AFA for Reliance in the final determination, rather than using the pro forma invoice date as the date of sale in the final determination.

⁶⁵ See Reliance Sales VE 10 at 6.

⁶⁶ *Id.*

⁶⁷ *Id.* at 5.

⁶⁸ See Reliance's November 6, 2015, submission at 19-20.

Reliance argues that the regulations and the Department's consistent practice is to use invoice date as the date of sale unless an alternative date is clearly established as more appropriate.⁶⁹ It cites to the Department's sales verification report for examples of instances in which the price and quantity of sales changed until the date of invoice, thus establishing that the invoice date, rather than the pro forma invoice date, is the correct date of sale.

Department's Position

We addressed this issue regarding the U.S. market in comment 12 (above). As we have determined that invoice date is the correct date of sale for both the home and U.S. markets, we do not find Reliance's date-of-sale reporting a reason to resort to AFA.

D. Whether Reliance Wrongly Submitted a Claim for a Duty Drawback Adjustment

Petitioners argue that the record establishes that Reliance is not eligible for a duty drawback adjustment, an adjustment that the Department made for Reliance in the preliminary determination. They state that to be eligible for a duty drawback adjustment, a respondent must show:

- 1) that the import duty paid and the rebate payment are directly linked to, and dependent upon, one another (or the exemption from import duties is linked to the exportation of subject merchandise); and,
- 2) that there were sufficient imports of the imported raw material to account for the drawback received upon the exports of the manufactured product.

Petitioners argue that for two reasons Reliance does not qualify for a duty drawback adjustment. First, it did not import PTA or MEG, or pay any import duties on them. Instead, it reported to the Department that it self-produced them. Second, petitioners state that Reliance explained at the verification that "the general rule in India is that a drawback claim is not tied to specific imports."⁷⁰

Additionally, petitioners argue that the Department should determine that Reliance's claim for a duty drawback offset was made without any basis. Therefore, petitioners state, the Department should view Reliance's claim as that of an uncooperative respondent as Reliance had the obligation to develop a complete and reliable record.

Reliance rebuts that the Department's questionnaire asked it to report any duty drawback received. Reliance states that it complied with the request, and explained that the drawback program was designed to neutralize the deemed customs duty paid in the input in the production of the exported product. It states that it also explained the basis for its claim at the verification. Therefore, it concludes, the Department should continue to grant the drawback adjustment.

⁶⁹ See 19 CFR 351.401(i).

⁷⁰ See Reliance Sales Verification Report at 33.

Department's Position

We agree with petitioners that Reliance has not met the Department's two-pronged test for qualifying for a duty drawback adjustment. In our September 16, 2015, supplemental questionnaire to Reliance (at 4-5), we explained that to qualify for the duty drawback adjustment Reliance must meet the two-pronged test (described above), and we requested that it do so. In its response, Reliance explained that the drawback scheme in India "neutralizes the deemed customs duty paid in the input consumed in production of the exported product."⁷¹ It stated that, "The Govt. of India is merely rebating this customs duty by allowing a drawback."⁷² Thus, Reliance's duty drawback claim is based on only "deemed" import duties. There is no record evidence that it incurred actual duties. In fact, Reliance stated with respect to the two main inputs, MEG and PTA, that it produces them itself, and does not purchase them.⁷³

Finally, the sales verification report states:

While discussing drawback, we asked Reliance why it was making a duty drawback claim for the inputs purified terephthalic acid (PTA) and ethylene glycol/monoethylene glycol (MEG) even though it did not import them. Reliance explained that the general rule in India is that a drawback claim is not tied to specific imports. It stated that it could not make that tie here.⁷⁴

Thus, as Reliance did not meet the Department's two-pronged test, we have disallowed the duty drawback claim for this final determination. However, we believe that where a respondent makes an insufficiently-supported claim for an adjustment, we need only deny the adjustment. The claim here does not satisfy the statutory requirements of section 776(b) of the Act, such that the Department would resort to AFA.

E. Whether Reliance Wrongly Submitted a Claim for an Adjustment for the Focus Product Scheme

Petitioners argue the Department should deny Reliance's claim for an upward adjustment to U.S. price for the "focus product scheme" (FPS). They state that the statute specifically enumerates the circumstances under which the Department will make an upward adjustment to U.S. price,⁷⁵ and the FPS does not meet the criteria. The FPS is applicable to only particular products that the Indian government designates. Petitioners assert that the U.S. statute does not provide for an increase to U.S. price for rebates associated with "infrastructural inefficiencies and other associated costs involved in marketing of these products," which is how Reliance described the focus product scheme.

⁷¹ See Reliance's September 28, 2015, submission, Re: Polyethylene Terephthalate Resin from India; Reliance Industries, Ltd.'s Second Supplemental Sections A, B & C Questionnaire Response, at 4.

⁷² *Id.*

⁷³ See Reliance's September 22, 2015, submission, Re: Polyethylene Terephthalate Resin from India; Reliance Industries, Ltd.'s Section D Questionnaire Response, at 5 and 10.

⁷⁴ See Reliance Sales Verification Report at 32-33.

⁷⁵ See section 772(c)(1) of the Act.

Furthermore, petitioners argue that because Reliance submitted a claim for an adjustment for the FPS without a basis for doing so, the Department should find that this is another reason for finding that Reliance has been an uncooperative respondent.

Reliance argues that it fully explained the nature of the FPS program and showed that the benefit was based on its exports to the United States. It states that the sales verification report shows there was no discrepancy between what Reliance reported and what was verified. It concludes that given the fact that the FPS benefit is tied to U.S. exports, the Department should continue to grant Reliance the upward adjustment for the FPS.

Department's Position

We agree with petitioners that Reliance is not entitled to an upward adjustment to its U.S. price for the FPS. Section 772(c) of the Act states:

The price used to establish export price and constructed export price shall be -

(1) increased by -

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition to placing the subject merchandise in condition packed ready for shipment to the United States.

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and

(C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy.

An adjustment to U.S. price such as India's FPS does not fall under any of the categories of upward adjustments provided for in this section of the statute, nor has Reliance cited to any other section of the statute under which the focus product scheme might qualify. Furthermore, we note that in other cases the Department has also denied a requested upward adjustment to U.S. price where it was not provided for in the statute.⁷⁶

⁷⁶ See, e.g., *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part*, 74 FR 44819, (August 31, 2009), and accompanying Issues and Decision Memorandum at Comment 12, where the Department capped the upward adjustment to U.S. price for freight revenue because, "Revenue received by a respondent on the service of freight and insurance is not included {in Section 772(c)(1) of the Act} as an upward adjustment to U.S. price."

However, we do not agree with petitioners that Reliance's claim for an adjustment for the FPS is a basis to resort to AFA. As explained above, we believe that where a respondent makes an insufficiently-supported claim for an adjustment, the proper response is to deny the adjustment.

F. Whether the Department Failed to Verify Export Warranty Expenses

Petitioners argue that the Department should determine that Reliance failed to cooperate with the Department by not allowing it to verify its export warranty expenses. In its section C response, Reliance did not report any U.S. warranty expenses. It responded "not applicable." It also did not submit its three-year warranty experience, by product, as requested by the questionnaire. Therefore, the Department requested this information in a supplemental questionnaire. In response, Reliance provided its three-year non-U.S. export warranty experience. At the sales verification, Reliance declined to have the Department verify these three-year data. Petitioners therefore argue that the Department should find that Reliance failed to cooperate at verification concerning its warranty expenses, and that this failure constitutes another example of uncooperative behavior. They state therefore that total AFA is warranted for Reliance.

Reliance argues it correctly reported to the Department that it incurred no warranty expenses on its U.S. sales, and that the Department confirmed at verification that "no U.S. sales involved warranty adjustments."⁷⁷ It further argues that warranty expenses are product- and market-specific.⁷⁸ Furthermore, Reliance argues, petitioners have cited to no precedent where the Department imputes non-existent U.S. warranty expenses based on sales to third countries.

Department's Position

We agree with Reliance that the Department does not impute warranty expenses to U.S. sales if none were incurred. Here, there is no record evidence that any warranty expenses were incurred for U.S. sales.⁷⁹ Even though Reliance failed to allow verification of the non-U.S. export warranty expenses it had previously placed on the record, we do not find that a reason to apply AFA because those warranty expenses would not have been used in the margin calculations.

G. Whether Reliance Incorrectly Included Third-Country Sales in its Home Market Sales Listing

Petitioners argue that Reliance incorrectly included third-country sales in its home market sales listing. Specifically, Reliance included a category of home market sales called "deemed export" sales, which are home market sales where Reliance knows the buyer intends to ship the

⁷⁷ See Reliance Sales Verification Report at 35.

⁷⁸ See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at 161 ("the Department tries to account for warranty expenses on a model-specific basis. Where such model-specific allocation is not possible within the constraints of the company's books and records, the Department's preference is for warranty expenses to be allocated across all sales of merchandise to the market in question").

⁷⁹ See Reliance's August 12, 2015, submission, Re: Polyethylene Terephthalate Resin from India; Sections B & C Questionnaire Response (Sections B and C Response), at C-34 and its November 6, 2015, submission at 22.

merchandise abroad. Petitioners state that the Department’s practice is to exclude such sales if there was sufficient evidence that, at the time of sale, the respondent had knowledge that the sales were destined for a third country. Petitioners argue therefore that these sales were improperly included in the home market sales listing, and that the Department should find that this is another example of the data Reliance submitted being unreliable.

Reliance argues that it properly included its deemed export sales on its home market sales listing. It states that petitioners have cited to no regulations or prior Departmental practice to substantiate its allegation that such sales are to be excluded. Therefore, Reliance states, petitioners’ assertion that the presence of these sales on the home market sales listing makes the listing unreliable is unfounded.

Department’s Position

We agree with petitioners that Reliance need not have reported its “deemed export” sales, but disagree that their presence on the sales listing contributes toward making the sales listing unreliable.

In *Welded Line Pipe from Korea*,⁸⁰ the Department cited the standard identified by the CIT stating, “if a company knew or should have known that, at the time of a particular sale, the product sold was destined for export, the particular sale should be considered an export sale.”⁸¹ Here the record indicates Reliance knew or should have known which home market sales were destined for export. Specifically, the sales verification report states, “Under Indian law the buyer is required to tell the seller it is for export, and the seller is required to record it as a deemed export sale.”⁸² Thus, because under Indian law Reliance would have known the sales were destined for export, in accordance with *Welded Line Pipe from Korea*, it need not have reported these sales on its home market sales listing.

Nevertheless, we do not find the presence of these sales on the home market sales listing makes the data Reliance submitted “unreliable,” as alleged by petitioners. The record of this investigation makes it possible to identify the deemed export sales, and remove them from the calculations. We have done so in this final determination.⁸³ Because we are able to remove the deemed export sales from the home market sales listing and use the remaining sales, we do not find Reliance’s reporting of its deemed export sales to be a reason to apply AFA.

H. Whether Reliance Incorrectly Included Free Samples in its Home Market Sales Listing

Petitioners state that Reliance incorrectly included free sample sales (*i.e.*, sales where no consideration is given) in its home market sales listing. Petitioners argue that if this were the

⁸⁰ *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 6 (*Welded Line Pipe from Korea*).

⁸¹ See *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322 -1345 (CIT 2000) (*Allegheny Ludlum*).

⁸² See Reliance Sales Verification Report at 28.

⁸³ See Reliance Final Determination Analysis Memorandum for details.

only issue before the Department, it could exclude from its final margin calculation all the free sample sales. Nevertheless, petitioners state that given that such sales do not constitute “sales” within the meaning of the Act, this inclusion of sample sales, when viewed in light of the record as a whole, is another example of Reliance’s uncooperative behavior, and justifies the application of total AFA.

Reliance did not comment on this issue.

Department’s Position

Petitioners are correct that sales for which the seller received no consideration are not used in antidumping calculations, and therefore Reliance need not have reported them. The antidumping questionnaire that we issued to Reliance on July 6, 2015, states (at I-14),

Sample sales will be excluded from the Department’s calculations as “outside the ordinary course of trade.” In order to conclude sales qualify as “sample sales,” the Department typically requires information demonstrating the sales were not for consideration (*i.e.*, the sales price net of movement expenses is not greater than zero) and not in commercial quantities.

Nevertheless, the record of this investigation makes it possible to remove the free samples from the home market sales listing and to use the remaining sales for purposes of calculating normal value. We have done so in this final determination. Furthermore, as stated above, Reliance’s overinclusion of data here does not justify the application of AFA. We find the relevant information is usable. We do not find it to be an example of “uncooperative behavior” as petitioners have argued.

I. Whether Reliance Knowingly Withheld its U.S. and Home Market Short-Term Interest Rates

Petitioners state that in multiple submissions Reliance stated that it relied on a published rupee-denominated short-term interest rate and a published U.S. dollar-denominated short-term interest rate in calculating imputed credit and inventory carrying costs (ICC) because it did not have any such borrowings of its own during the POI. However, at the sales verification, Reliance admitted that it did have those borrowings.⁸⁴ Petitioners state that for this reason the Department cannot rely on Reliance’s reported imputed credit or ICC. Furthermore, petitioners argue, if this were the only issue with Reliance’s data, the Department could assign partial facts available for imputed credit and ICC. Petitioners state, though, that this is not the only issue, and therefore the Department should view Reliance’s refusal to submit the U.S. dollar and rupee short-term interest rates as another example of Reliance’s uncooperative behavior of withholding information. Accordingly, petitioners insist, the Department should apply total AFA to Reliance for the final determination.

Reliance states that it misunderstood the question about interest rates in the Department’s questionnaire, that it acknowledged this fact at the sales verification, and that this was reflected

⁸⁴ See Reliance Sales Verification Report at 35.

in the sales verification report. It states, however, that the interest rate is largely immaterial because the number of days involved in credit expenses is minimal in both markets. Reliance argues that the Department should use facts available without adverse inferences as the interest rate in the final determination. It suggests that on the home market side the Department make no imputed credit adjustment, and that on the U.S. side it use as the interest rate either the rate verified at the cost verification or data supplied in the petition.

Department's Position

The record substantiates that in this investigation the Department twice requested Reliance to report and use its own short-term borrowing rates in calculating imputed credit and ICC in both markets, and both times Reliance indicated that it had no such borrowings.⁸⁵ Only at verification did Reliance acknowledge that it did have them. Section 776(a)(2)(A) of the Act states that the Department shall resort to facts otherwise available if an interested party “withholds information that has been requested by the administering authority or the Commission under this subtitle.” Furthermore, Section 776(b)(1)(a) of the Act states that the Department may, if it finds that a party has failed to act to the best of its ability, use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.

Given that Reliance twice certified to the accuracy of information it later acknowledged was incorrect, we have determined that Reliance did not act to the best of its ability in providing requested information, and have therefore determined to apply an adverse inference in selecting among facts available for imputed credit and ICC. In this final determination we have made no adjustment for imputed credit or ICC in the home market for any home market sales, and have used Reliance's highest reported imputed credit and ICC in the U.S. market for all U.S. sales.

We note, too, that the two rates Reliance suggested we use for neutral facts available for U.S. sales (*i.e.*, data from the petition or a rate verified at the cost verification) are not usable because they are rupee-denominated, rather than U.S. denominated rates, and thus are not suitable to apply to Reliance's reported U.S. gross unit prices.

J. Whether Reliance Failed to Accurately Provide Its U.S. and Home Market Selling Functions

Petitioners argue that Reliance failed to accurately provide its U.S. and home market selling functions. Specifically, petitioners state that Reliance provided inaccurate data for the following seven selling activities: personnel training, advertising, sales promotion, inventory maintenance, order input/processing, sales/marketing support, and market research. Petitioners' specific comments on Reliance's reporting of each of these categories are not subject to public summary, but its conclusion is that there is no difference between Reliance's U.S. and home market channels of distribution. Petitioners state that for this reason there is no basis to grant Reliance's request for a constructed export price (CEP) offset.

⁸⁵ See Reliance's Sections B and C Response at B-29 and C-32, September 28, 2015, submission at 7, and November 6, 2015, submission at 17.

Petitioners state that this failure to provide a selling functions chart is another example of how Reliance has failed to submit an accurate record to the Department in this investigation. This, petitioner maintain, constitutes still more grounds to reject Reliance's data and resort to AFA.

Reliance states that it never requested a CEP offset. It states that all of its sales were direct sales to unaffiliated customers in the United States, and that a CEP offset would therefore not be applicable.

Department's Position

We agree with Reliance that this issue is moot because Reliance did not make a claim for a CEP offset as all its U.S. sales were export price sales.

K. Whether Reliance Incorrectly Offset General and Administrative Expenses

Petitioners assert that at the verification the Department found that Reliance had incorrectly offset its G&A expenses with amounts "incurred for construction projects that were capitalized and did not relate to the general operations of the company."⁸⁶ According to petitioners, the Department found at verification that the "capitalized amounts were for a new plant for paraxylene (PX), a new plant to make rubber for tires, for polyester products, a new polymer line, etc."⁸⁷ Petitioners argue that this is yet another example of Reliance's consistent effort to mislead the Department, and therefore the Department should assign total AFA to Reliance.

Reliance asserts that transferred-to-development expenses were expenses incurred for construction projects that were capitalized and did not relate to the general operations of the company. Accordingly, they argue that there should be no adjustment.

Department's Position

We agree that Reliance's G&A expenses should not be offset by capitalized construction project costs. At the cost verification, the Department found that expenses Reliance had capitalized, associated with "Transferred to Development Expenditures" were inappropriately used as an offset to G&A expenses. These construction costs are expenses incurred for which the company will benefit in the future, and are therefore capitalized.⁸⁸ As such, the capitalized expenses are not included in the G&A expenses, and likewise should not be used to reduce Reliance's G&A expenses. Thus, for the final determination, we have disallowed the capitalized construction expense as an offset to G&A expense. Regarding petitioners' arguments for AFA, we have the necessary information to correct the G&A expense; therefore, AFA is not warranted.

⁸⁶ See Reliance Cost Verification Report at 23.

⁸⁷ *Id.*

⁸⁸ See Reliance Cost Verification Report at page 23, where the Department stated: "The transferred to development expense were expenses incurred for construction projects that were capitalized and did not relate to the general operations of the company. We obtained an account detail for the capitalized work-in-process (see CVE 2) which shows that the capitalized amounts were for a new plant for PX, a new plant to make rubber for tires, for polyester products, a new polymer line, etc."

L. Use of Total Adverse Facts Available

Petitioners conclude, based on the foregoing alleged deficiencies in Reliance’s responses, that the Department should calculate a margin based on total AFA. They first cite the statutory criteria for application of AFA at section 776(a) of the Act, which holds that the Department is required to resort to the factors otherwise available if:

- (1) necessary information is not available on the record, or
- (2) an interested party or any other person-
 - (A) withholds information that has been requested by the administering authority or the Commission under this subtitle,
 - (B) 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,
 - (C) significantly impedes a proceeding under this subtitle, or
 - (D) provides such information but the information cannot be verified in section 782(i) of this title...⁸⁹

Petitioners summarize Reliance’s deficiencies as follows:

- Reliance misreported or withheld data in its home market sales file, U.S. sales file, expenses and costs. Because the errors were discovered at verification, it is impossible for the Department to correct those errors at this point. For example, Reliance’s failure to report all home market sales cannot be corrected at this point. Thus, at a minimum, “necessary information is not available on the record” for the Department to calculate an accurate dumping margin.⁹⁰
- Reliance withheld from the Department information about the date of sale for long-term contracts with its largest home market customers, and also its U.S. dollar and Indian rupee short-term borrowing rates. This constitutes withholding required information as well as failing to timely provide information in the form and manner requested.⁹¹
- Reliance did not verify certain adjustments reported in the U.S. and home market sales files, thus leaving those elements unverified.⁹²

Therefore, petitioners state that given the number of reporting errors and the nature of those errors, the Department should find that Reliance has significantly impeded this proceeding.⁹³ To

⁸⁹ See section 776(a) of the Act.

⁹⁰ See Petitioners’ January 28, 2016, submission, “Petitioners’ Case Brief for Reliance Industries” (Petitioners’ Case Brief for Reliance), at 35, citing section 776(a)(1) of the Act.

⁹¹ *Id.*, citing section 776(a)(2)(A) and (B) of the Act.

⁹² *Id.*, citing section 776(a)(2)(D) of the Act.

use any portion of Reliance's responses to calculate a margin will require the Department to undertake a great deal of work that should have been done by Reliance.

Petitioners argue further that because discovery of these errors only occurred as a result of Commerce's retrieval of a large number of documents from verification, the Department has been prevented from fully analyzing the data or from seeking additional data. Thus, Reliance's information is unverifiable and cannot be used without undue difficulty. For these reasons, petitioners argue, the Department should base the final determination for Reliance on the facts available.

Furthermore, petitioners also argue that application of an adverse inference is warranted in this case because the breadth and nature of the problems discovered with Reliance's response, if not indicative of a concerted effort to manipulate the margins, unquestionably represent a failure by Reliance to cooperate with the Department to the best of its ability. The Department need not find that Reliance intended to misreport the data to make an adverse inference; it need only find that Reliance has not "put forth its maximum efforts to investigate and obtain the requested information from its records."⁹⁴ Petitioners state that based on the facts discussed above, no other reasonable conclusion can be drawn from this record.

Moreover, petitioners state that to reject Reliance's responses and apply total AFA, the Department would normally consider the provision of section 782(e) of the Act, which prevents the Department from rejecting information if:

- 1) the information is submitted by the deadline established for that information;
- 2) the information can be verified;
- 3) the information is not so incomplete as to be unreliable;
- 4) the interested party demonstrated that it has acted to the best of its ability in meeting the Department's requirements for the information; and,
- 5) the information can be used without undue difficulty.

Petitioners state that Reliance's response does not meet any of these criteria, much less all of them. They state that the lack of information on the record to correct the home and U.S. sales files - foundational elements of the dumping margin calculation - by itself means that Section 782(e) of the Act does not apply to this case. The record built by Reliance is so incomplete that it cannot be deemed to be reliable.

Petitioners note too that the CIT has stated:

{S}ection 1677m(e) is, on its face, inapplicable in situations where ... a party has failed to "demonstrate{ } that it acted to the best of its ability in providing information and meeting the requirements established by {Commerce} with respect to the information."⁹⁵

⁹³ *Id.*, citing section 776(a) of the Act.

⁹⁴ *Id.*, at 36, citing *Nippon Steel Corporation v. United States*, 337 F.3d 1373 at 1383.

⁹⁵ *Id.* at 37, citing *See Borden v. United States*, 4 F. Supp. 2d 1221, 1245-46 (CIT 1998);

Petitioners state that Reliance was at all times in possession of the information necessary to provide accurate information to the Department and did not do so, and therefore applying AFA to Reliance would not be unfair.⁹⁶ To use Reliance's data as presented, petitioners argue, would send the message that there is no penalty to respondents for submitting incomplete or careless data or a raft of incorrect data to the agency in effort to avoid dumping duty liabilities. The Department has both the legal authority and a sufficient factual basis to apply total AFA to Reliance.⁹⁷ They state that the assignment of total AFA is necessary to ensure that Reliance does not engage in such behavior again and that it provides more careful, complete and accurate responses in the future. Use of AFA is also consistent with prior decisions of the Department, and the only outcome that would protect the integrity of the administrative review process. Thus, petitioners argue, for the final determination the Department should assign Reliance the higher of the petition rate or the highest calculated transaction margin for any respondent, as total AFA.

Petitioners also argue that if the Department nonetheless elects to base the final determination on Reliance's home market and U.S. sales listings despite the serious problems with the completeness and accuracy of the data, it should at a minimum, apply partial facts available with regard to the missing data.

In rebuttal, Reliance argues that the record evidence does not meet the standard for either partial or total AFA. With respect to partial AFA, Reliance states that the relevant statute says the Department may apply facts available only under the conditions of section 776(a) of the Act (quoted above). Reliance states that the record evidence in this proceeding clearly shows that none of the conditions enumerated there have been met. First, all the necessary information is available on the record: Reliance submitted timely and complete responses to the Department's questionnaires and supplemental questionnaires; and the documents collected at verification demonstrate that Reliance has submitted accurate, reliable information to the Department on its home market sales, U.S. sales and expense data. Second, Reliance states it did not withhold any requested information, submit any untimely or nonconforming information, significantly impede this proceeding or provide unverifiable information.

Thus, Reliance states, the record of this investigation shows that the criteria under which the Department must use the information submitted by a respondent is met. Specifically, Reliance cites to section 776(a) of the Act (quoted above). Therefore, Reliance argues, the Department should use the evidence properly placed on the record by Reliance and reject petitioners' suggestion to use facts otherwise available.

With respect to the use of total AFA, Reliance again argues that the relevant criteria are not met. Specifically, the Department "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available" only if the Department determines that the

⁹⁶ *Id.*, citing *Jiangsu Changbao Steel Tube Co. v. United States*, 884 F. Supp. 2d 1295, 1308 (CIT 2012) ("Changbao was at all times in possession of this information but chose not to disclose it until confronted with contradictory evidence which Commerce itself obtained and placed on record. Thus, Changbao cannot claim unfair disadvantage from the late hour of the discovery that additional verification was necessary to support the credibility of its submissions").

⁹⁷ *Id.*

above criteria for partial AFA are met, and it makes an additional subjective determination that the respondent has “failed to cooperate by not acting to the best of its ability to comply with a request for information.”⁹⁸ Reliance argues that throughout this investigation it has clearly acted to the best of its ability in providing requested information.

Department’s Position

We agree with Reliance that the criteria for total AFA are not met.

As explained above, we find that Reliance properly excluded home market sales of RELPET Green from its home market sales listing, and thus did not “withhold” necessary information. Moreover, as explained above, given that Reliance provided all requested information about its contract sales in a supplemental questionnaire response, we do not consider that its failure to provide that information in its original questionnaire response constituted “withholding” information within the meaning of the statute.

Moreover, as also explained above, we have determined that the invoice date was the correct date of sale for Reliance’s home market sales made pursuant to long-term contracts. Therefore, the universe of home market sales that Reliance reported was the correct universe. Thus, we again determine that Reliance did not withhold necessary information. Furthermore, we have also determined that invoice date was the correct date of sale for Reliance’s U.S. sales.

Furthermore, certain of the issues petitioners have raised are issues that the Department has never found to be grounds for assigning AFA; nor do we consider such issues to be grounds for application of AFA in this investigation. These issues are the overreporting of sales on the home market sales listing (*e.g.*, sample sales or export sales that need not have been reported, but that can be removed) and making insufficiently-substantiated claims for adjustments that the Department can deny (*e.g.*, duty drawback and the focus product scheme).

Others of the issues petitioners have raised are moot. These are Reliance’s failure to allow verification of its non-U.S. export warranty expenses and its reported selling functions about which petitioners have raised numerous questions. *See* comments 13F and 13J (above).

Some of the issues petitioners have raised do present difficulties. These include Reliance’s failure to report its short-term borrowing rates and its making an offset adjustment to G&A expenses that was not warranted. These issues require some correction, but do not involve “a great deal of work,” as petitioners have asserted. For an explanation of how we corrected them, including use of partial AFA for short-term borrowing rates, see issues 13I and 13K (above) and the Reliance Final Determination Analysis Memorandum.

From the above, we conclude that there is no necessary information that is not available on the record. We also determine that Reliance did not fail to timely provide requested information in the form and manner requested, withhold any requested information, or significantly impede the proceeding. We also determine that there is no needed information that cannot be verified.

⁹⁸ *See* section 776(b) of the Act.

Our determination not to resort to total AFA in this case is in keeping with Department precedent in similar situations. For example, in *Plate from South Africa*,⁹⁹ petitioners argued that the Department should apply AFA to respondent Columbus because of numerous deficiencies in its reporting, many of which (as here) were found at verification. The Department responded:

We agree with petitioners that Columbus, as described in the comments that follow, committed a number of errors in compiling its responses and in certain cases failed to follow the instructions provided in the Department's questionnaires. We have addressed each of these alleged shortcomings below and have, where appropriate, resorted to facts otherwise available, including adverse facts available, when faced with irreparable shortcomings in Columbus's responses. Overall, however, we find that Columbus attempted to cooperate in this proceeding and that the deficiencies in its responses, considered either singly or collectively, do not merit the application of adverse facts available in every instance.¹⁰⁰

For the reasons given above we have determined to follow the precedent of *Plate from South Africa* for this final determination.

Issues Pertaining to Mandatory Respondents Which Failed to Respond

Comment 14: Proper AFA Rate

Petitioners argue the Department should revise its methodology of calculating the AFA rate for the two mandatory respondents who did not respond to the Department's requests for information. One of them, JBF, never filed any response to the Department's questionnaire. The other, Dhunseri, submitted a section A response, but on June 29, 2015, the day that its section B and C response was due, submitted a letter saying it would no longer respond to the Department's questionnaires. In the preliminary determination the Department based the AFA rate for these two respondents on a rate drawn from the antidumping duty petition.

Petitioners argue that the Department should conclude from the timing of Dhunseri's June 29, 2015, submission that Dhunseri's actual margin would have been higher than the corroborated petition rate of 19.41 percent. Petitioners argue that as an alternative to the petition rate, the Department should base Dhunseri's margin on a margin petitioners calculated. The U.S. price in that calculation was drawn from U.S. sales documents that Dhunseri submitted in its section A response. The normal value was a constructed value calculated partly from petitioners' own consumption quantities valued variously at Dhunseri, Indian, or U.S. values for each input, and partly from Dhunseri's audited 2015 financial statement.

Petitioners state that using the margin they calculated as the AFA rate is better than using a rate from the petition because the U.S. price in the petition rate was based on the POI average price for all Indian imports, and the constructed value was based on average values for four Indian companies. In addition, the financial ratios used for the constructed value were based on fiscal

⁹⁹ See Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Plate in Coils From South Africa, 64 FR 15459 (March 31, 1999) (*Plate from South Africa*).

¹⁰⁰ See *Plate from South Africa*, 64 FR at 15462.

year 2014 financial statements, rather than Dhunseri's 2015 financial statement, which is both specific to the company and covers more of the POI. Thus, petitioners argue, the rate it calculated is company-specific, is specific to the POI, and is representative of Dhunseri's commercial practices.

Petitioners state too that the Department should find that Reliance's rate as calculated by petitioners is a reasonable and corroborated rate for JBF also.

Petitioners argue that, alternatively, the Department should rely on the highest transaction-specific margin for any cooperating respondent in this investigation as the AFA rate for the uncooperative respondents.¹⁰¹

JBF and Dhunseri did not comment on this issue.

Department's Position

We disagree with petitioners about the correct AFA rate to assign to Dhunseri and JBF.

Because Dhunseri stopped responding to the Department's requests for information after submitting its section A response, the rate petitioners have calculated is based on a rate from a company that never submitted a complete response to the Department's questionnaire, and also was never subject to verification. Section 782(i) of the Act requires Commerce to verify all information relied upon in making a final determination in an investigation. For these reasons we find any information or documentation that Dhunseri did submit to be unreliable.

Furthermore, we also disagree with petitioners that the appropriate AFA rate is the highest transaction-specific margin for any cooperating respondent in the investigation. Petitioners in *Line Pipe from Turkey*¹⁰² made the same argument, and the Department responded:

We disagree with the petitioners that using the highest transaction-specific margin calculated {in} this investigation as the basis for AFA is warranted here. The Department's general practice with respect to the assignment of adverse rates is to assign the higher of the highest rate in the petition or the highest margin rate calculated in any segment of a given proceeding, unless these rates cannot be corroborated or there are case-specific reasons that these rates are not acceptable.¹⁰³

Thus, Department precedent favors assignment of the highest rate from the petition as the AFA rate for the non-cooperating respondents in this investigation. We may choose to use the highest transaction-specific margin calculated for any cooperative respondent as the AFA rate (as petitioners suggest) if a petition margin cannot be corroborated with the information on the

¹⁰¹ See *Petitioners' Case Brief for Reliance*, at 3, citing *Nan Ya Plastics Crop. V. United States*, Slip Op. 2015-1054 (Fed Cir. Jan. 19, 2016).

¹⁰² See *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum (*Line Pipe from Turkey*).

¹⁰³ *Id.* at Comment 20.

record.¹⁰⁴ Such is not the case here. We find this rate continues to be corroborated, in accordance with section 776(c) of the Act. Therefore, in this final determination, as in the preliminary determination, we used for Dhunseri and JBF a rate drawn from the petition in accordance with section 776 of the Act.

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination and the final dumping margins in the *Federal Register*.

AGREE

DISAGREE



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 MARCH 2016

Date

¹⁰⁴ See, e.g., *Monosodium Glutamate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014), and accompanying Issues and Decision Memorandum at 4.