



A-560-828  
Investigation  
Public Document  
AD/CVDOps/II/SM

DATE: August 19, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Antidumping Duty Investigation of Certain Uncoated Paper from  
Indonesia

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## I. SUMMARY

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

## II. BACKGROUND

On January 21, 2015, the Department received an antidumping duty (AD) petition covering imports of uncoated paper from Indonesia,<sup>1</sup> which was filed in proper form by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Domtar Corporation; Finch Paper LLC; P.H. Glatfelter Company; and Packaging Corporation of America (collectively, the petitioners). The Department initiated this investigation on February 10, 2015.<sup>2</sup>

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<sup>1</sup> See Petitions for the Imposition of Antidumping Duties on Imports of Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China (PRC), Indonesia, and Portugal; and Countervailing Duties on Imports from the People’s Republic of China and Indonesia, dated January 21, 2015 (the Petition).

<sup>2</sup> See Certain Uncoated Paper From Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Initiation of Less-Than-Fair-Value Investigations, 80 FR 8608 (February 18, 2015) (Initiation Notice).



In the Initiation Notice, the Department stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>3</sup> Accordingly, on February 19, 2015, the Department released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection. In February 2015, we received comments from the petitioners<sup>4</sup> and PT Anugerah Kertas Utama (AKU) and APRIL Fine Paper Macao Commercial Offshore Limited (AFPM), who are producers/exporters of uncoated paper in Indonesia.<sup>5</sup>

Also in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of uncoated paper to be reported in response to the Department's AD questionnaire.<sup>6</sup> In March 2015, the petitioners, AKU/AFPM, and the following interested parties submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes: Suzano Papel e Celulose S.A./Suzano Pulp and Paper America, Inc. (Suzano) and International Paper do Brasil Ltda./ International Paper Exportadora Ltda. (International Paper) (respondents in the companion AD investigation on uncoated paper from Brazil); and Portucel S.A./Portucel Soporcel N.A. (Portucel) (a respondent in the companion AD investigation on uncoated paper from Portugal).<sup>7</sup> In the same month, each of these parties, with the exception of Australian Paper, filed rebuttal comments.

On March 17, 2015, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of uncoated paper from Indonesia.<sup>8</sup>

On March 25, 2015, the Department limited the number of respondents selected for individual examination to the two largest publicly-identifiable producers/exporters of the subject merchandise by volume. Accordingly, we selected Great Champ Trading Limited (Great Champ) and Indah Kiat Pulp & Paper TBK (IK) as mandatory respondents in this investigation and issued AD questionnaires to them.<sup>9</sup>

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<sup>3</sup> See Initiation Notice, 80 FR at 8614.

<sup>4</sup> See Letter from the petitioners, "Antidumping Duty Investigation of Certain Uncoated Paper from Indonesia (A-560-828) - Petitioners' Respondent Selection Comments," dated February 26, 2015.

<sup>5</sup> See Letter from the AKU and AFPM, "Certain Uncoated Paper from Indonesia: Comments on Customs Data," dated February 26, 2015.

<sup>6</sup> See Initiation Notice, 80 FR at 8609.

<sup>7</sup> On July 30, 2015, Paper Australia Pty Ltd. and Paper Products marketing (USA) Inc. (Australian Paper), a respondent in the AD investigation on uncoated paper from Australia, placed on the record of this proceeding certain comments related to product characteristics that it filed on March 3, 2015 in the AD investigation on uncoated paper from Australia. In addition, on March 16, 2015, Commerce rejected a submission from Gartner Studios, Inc. (Gartner Studios) regarding the scope of the investigation because such a submission was untimely under the Department's regulations.

<sup>8</sup> See Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal, 80 FR 13890 (March 17, 2015) (ITC Preliminary Determination).

<sup>9</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection for the Antidumping Duty Investigation of Certain Uncoated Paper from

In April 2015, both Great Champ and IK informed the Department that they would not be responding to the AD questionnaires.<sup>10</sup> Therefore, the Department selected the next two largest publicly-identifiable producers/exporters of the subject merchandise, AFPM and Pabrik Kertas Tjiwi Kimia (TK), as additional mandatory respondents. At the same time, we issued AD questionnaires to them.<sup>11</sup>

Also, in April 2015, the petitioners requested that the Department apply adverse facts available (AFA) to Great Champ and IK, and to all companies that the Department has previously collapsed with IK.<sup>12</sup> Specifically, the petitioners stated that the Department should treat IK and its affiliates TK and PT. Pindo Deli Pulp and Paper Mills (PD) as a single entity (*i.e.*, “collapse”) in this investigation and base the margin for these companies on AFA. Alternatively, the petitioners requested that the Department select PD as an additional mandatory respondent. Subsequently, the petitioners submitted factual information regarding the collapsing of IK, TK, and PD (collectively, APP/SMG).<sup>13</sup>

Finally, in April 2015, Gartner Studios, an importer of print and social stationery, requested that the Department clarify whether certain pre-printed forms are covered by the scope of the investigation.<sup>14</sup> During the same month, Gartner Studios supplemented this request by submitting photographs of the products at issue. In May 2015, the petitioners responded to Gartner Studios’ submissions, indicating that they believe that each item in these submissions should be excluded.

In May 2015, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation. Based

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Indonesia,” dated March 25, 2015 (First Respondent Selection Memo).

<sup>10</sup> See Letter from Indah Kiat, “Questionnaire Responses, Certain Uncoated Paper from Indonesia, Investigation Nos. A-560-828 and C-560-829,” dated April 7, 2015 (IK’s April 7, 2015 Letter); and Letter from Great Champ, “Certain Uncoated Paper from Indonesia, Investigation Nos. A-560-828 and C-560-829,” dated April 9, 2015 (Great Champs’ April 9, 2015 Letter).

<sup>11</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Antidumping Duty Investigation of Certain Uncoated Paper from Indonesia: Selection of Additional Mandatory Respondents,” dated April 10, 2015 (Second Respondent Selection Memo).

<sup>12</sup> See Letter from the petitioners, “Certain Uncoated Paper from Indonesia – Petitioners’ Additional Comments on Respondent Selection,” dated April 15, 2015.

<sup>13</sup> See Letter from the petitioners, “Certain Uncoated Paper from Indonesia: Petitioners’ Submission of Factual Information Concerning Collapsing,” dated June 15, 2015 (Petitioners’ Factual Information Submission for Collapsing).

<sup>14</sup> Gartner Studios initially made this submission in March 2015; however, the submission failed to meet the filing requirements set forth in 19 CFR 351.102(b)(21). The Department permitted Gartner Studios to remedy its filing deficiencies and accepted Gartner’s refiled submission on April 14, 2015. See Letter from the Department to Gartner Studios, “Antidumping Duty Investigations Of Certain Uncoated Paper From Australia, Brazil, The People’s Republic Of China, Indonesia, And Portugal; And Countervailing Duty Investigations Of Certain Uncoated Paper From The People’s Republic Of China And Indonesia: Gartner Studios’ Request For Permission To Submit Additional Factual Information Pertaining To The Scope Of The Investigations,” dated April 6, 2015.

on the request, the Department published a postponement of the preliminary determination until no later than August 19, 2015.<sup>15</sup>

Also, in May 2015, AFPM and its affiliated producers AKU and PT Riau Andalan Kertas (RAK) (collectively, “APRIL”), submitted a timely response to section A of the Department’s AD questionnaire (*i.e.*, the section relating to general information). We issued a supplemental section A questionnaire to APRIL, and we received APRIL’s response in June 2015.

In June 2015, APRIL responded to sections B, C, and D of the Department’s AD questionnaire (*i.e.*, the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively). In June and July 2015, we issued additional supplemental questionnaires to APRIL, and we received responses to these supplemental questionnaires in June, July, and August.

In July 2015, the petitioners made an allegation that critical circumstances exist with respect to imports of the merchandise under consideration produced and exported by APP/SMG.<sup>16</sup> Also in July 2015, APRIL requested that the Department postpone the final determination, and that provisional measures be extended.<sup>17</sup>

We are conducting this investigation in accordance with section 733(b) of the Act.

### **III. PERIOD OF INVESTIGATION**

The period of investigation (POI) is January 1, 2014, through December 31, 2014. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was January 2015.<sup>18</sup>

### **IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES**

Pursuant to section 735(a)(2) of the Act, on July 27, 2015, APRIL requested that the Department postpone the final determination, and that provisional measures be extended.<sup>19</sup> In addition, on July 31, 2015, the petitioners also requested that, in the event of a negative preliminary determination, the Department postpone its final determination in accordance with 19 CFR 351.210(b)(c)(i).<sup>20</sup>

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<sup>15</sup> See Certain Uncoated Paper From Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 31017 (June 1, 2015).

<sup>16</sup> See Letter from the petitioners, “Certain Uncoated Paper from Indonesia – Petitioners’ Critical Circumstances Allegation,” dated July 15, 2015 (the petitioners’ Critical Circumstances Allegation).

<sup>17</sup> See Letter from APRIL entitled, “Certain Uncoated Paper from Indonesia: Request to Postpone Final Determination,” dated July 27, 2015 (APRIL Final Postponement Request).

<sup>18</sup> See 19 CFR 351.204(b)(1).

<sup>19</sup> See APRIL Final Postponement Request.

<sup>20</sup> See Letter from the petitioners, entitled, “Certain Uncoated Paper from Indonesia – Petitioners’ Comments on the Extension of the Final Determination,” dated July 31, 2015.

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporter account for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the Federal Register, and we are extending provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

## V. SCOPE COMMENTS

As noted in the Initiation Notice, we set aside a period of time for parties to raise issues regarding product coverage.<sup>21</sup>

As referenced above, Gartner Studios submitted letters, including nine product samples, requesting that the Department clarify whether the scope of the instant investigations includes certain printed uncoated paper, including printed forms and paper with printed designs.<sup>22</sup>

The petitioners submitted comments in response to Gartner Studios' request, indicating that each of the nine samples Gartner Studios provided appears to be "printed with final content of printed text or graphics" within the intended meaning of the scope exclusion language.<sup>23</sup>

Based on the information on the record, we agree with Gartner Studios and the petitioners that each sample Gartner Studios provided is considered "paper printed with final content of printed text or graphics" and, thus, is excluded from the scope of these investigations.<sup>24</sup>

As stated in the Preliminary Scope Comments Decision memorandum, we invite parties to comment on this finding in their case briefs so that the issue can be addressed in the final determinations of these investigations. Further, we note that with the exception of HTS categories 4911.99.6000 and 4911.99.8000, Gartner Studios' samples of printed uncoated paper fall under HTS categories that are included in the scope. Therefore, we invite parties to comment on whether and how the language of the scope can be revised to exclude the printed uncoated paper at issue in a manner that will facilitate the enforcement and administration of the scope by U.S. Customs and Border Protection.<sup>25</sup>

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<sup>21</sup> See Initiation Notice; see also Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27323 (May 19, 1997) (Preamble).

<sup>22</sup> See Letter from Gartner Studios, entitled "Antidumping Duty Investigations on Certain Uncoated Paper from Australia, Brazil, the People's Republic of China (PRC), Indonesia, and Portugal, and Countervailing Duty Investigations on Certain Uncoated Paper from Indonesia and the PRC," dated April 14, 2015 and April 28, 2015.

<sup>23</sup> See Letter from Petitioners, entitled "Certain Uncoated Paper From Australia, Brazil, The People's Republic Of China, Indonesia, and Portugal: Response To Gartner Studios," dated May 8, 2015, at 2.

<sup>24</sup> See Memorandum from Erin Begnal, Director, Office III, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Scope Comments Decision Memorandum for the Preliminary Determinations," dated August 3, 2015.

<sup>25</sup> Id. at 5.

## VI. AFFILIATION DETERMINATIONS

Section 771(33) of the Act, provides that:

The following persons shall be considered to be ‘affiliated’ or ‘affiliated persons’:

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm “operationally in a position to exercise restraint or direction” over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.<sup>26</sup>

19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs the Department not to find that control exists on the basis of these factors unless the relationship has “the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” The regulation also directs the Department to consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

19 CFR 351.401(f), which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

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<sup>26</sup> See SAA, H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Sess. (1994), at 838.

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:
  - (i) The level of common ownership;
  - (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
  - (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.<sup>27</sup>

#### APRIL

Based on the information presented in APRIL's questionnaire responses, we preliminarily find that AKU, RAK, and AFPM are affiliated, pursuant to sections 771(33)(F) of the Act. The facts underlying this conclusion have been designated by APRIL as business proprietary information. Therefore, the Department issued a separate business proprietary memorandum that contains a full discussion of our affiliation determinations.<sup>28</sup>

We also preliminarily find that AKU, RAK, and AFPM should be considered as a single entity for purposes of this investigation. The relevant information for this determination has been designated by APRIL as business proprietary information. Therefore, the Department issued a separate business proprietary memorandum that contains a full discussion of our single entity determination.<sup>29</sup>

#### APP/SMG

As noted in the "Background" section above, in March and April 2015, the Department selected IK and TK, respectively, as mandatory respondents in this investigation.<sup>30</sup> Based on factual information submitted on the record, the petitioners requested that the Department collapse IK and TK with their affiliate PD and treat them as a single entity for purposes of this proceeding. The petitioners argue that failure to take this action could lead to a significant potential for

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<sup>27</sup> See 19 CFR 351.401(f).

<sup>28</sup> See "Memorandum to Melissa Skinner, Director, Office II, entitled "Antidumping Duty Investigation of Certain Uncoated Paper from Indonesia: Preliminary Determination of Affiliation/Single Entity Treatment of April Fine Paper Macao Limited," issued concurrently with this memorandum ("APRIL Affiliation Memo").

<sup>29</sup> Id.

<sup>30</sup> See First Respondent Selection Memo and Second Respondent Selection Memo.

manipulation, given that PD would likely receive a substantially lower dumping margin than IK and TK. The petitioners submitted factual information regarding the collapsing of IK, TK, and PD, including, but not limited to, various prior determinations by the Department involving these companies and IK's and TK's 2014 financial statements as well as PD's unaudited 2013 financial statements.<sup>31</sup>

While the Department has determined that it is not appropriate to conduct collapsing analyses at the respondent selection phase because of the early stage of a proceeding, we agree with the petitioners that failure to consider in this preliminary determination whether PD is a single entity with non-cooperating respondents IK and TK could lead to a significant potential for manipulation. Based on information on the record, we preliminarily find that IK, TK, and PD are affiliated, pursuant to sections 771(33)(F) of the Act. Further, we also preliminarily find that these companies meet the collapsing criteria set forth in 19 CFR 351.401(f), and thus they should be considered as a single entity for purposes of this investigation. The bases for these conclusions are set forth in a separate memorandum that contains a full discussion of our determinations.<sup>32</sup>

## **VII. DISCUSSION OF THE METHODOLOGY**

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of uncoated paper from Indonesia to the United States were made at LTFV, we compared the export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this memorandum.

### *A) Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. The Department's regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to the EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions (average-to-transaction method).<sup>33</sup>

In order to determine which comparison method to apply, in recent proceedings, the Department applied a "differential pricing" analysis for determining whether application of the average-to-

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<sup>31</sup> See Petitioners' Factual Information Submission for Collapsing.

<sup>32</sup> See "Memorandum to Melissa Skinner, Director, Office II, entitled "Antidumping Duty Investigation of Certain Uncoated Paper from Indonesia: Preliminary Determination of Affiliation/Single Entity Treatment of Treatment of Indah Kiat Pulp & Paper TBK (IK), Pabrik Kertas Tjiwi Kimia (TK), and PT. Pindo Deli Pulp and Paper Mills (PD)" issued concurrently with this memorandum.

<sup>33</sup> See 19 CFR 351.414(b)(1) and (2).

average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).<sup>34</sup> The Department may determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the average-to-transaction method. The Department finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this investigation and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating estimated weighted-average dumping margins.

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

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group will have been found to pass the

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<sup>34</sup> See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test (i.e., the "mixed alternative" method). If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the estimated weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the estimated weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the estimated weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting estimated weighted-average dumping margin moves across the de minimis threshold.

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

#### *B) Results of the Differential Pricing Analysis*

Based on the results of the differential pricing analysis, the Department finds that less than 33 percent of APRIL's U.S. sales passed the Cohen's *d* test. Thus, the results of the test do not support consideration of an alternative to the average-to-average method.<sup>35</sup> Accordingly, the Department preliminarily determines to use the average-to-average method to calculate the estimated weighted-average dumping margin for APRIL.

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<sup>35</sup> See the Memorandum to the File from Blaine Wiltse, Senior Analyst, entitled, "Preliminary Determination Calculations for APRIL," dated August 19, 2015 (APRIL Preliminary Calc Memo).

## VIII. DATE OF SALE

APRIL reported the date of invoice to the first unaffiliated customer as the date of sale for all home market and U.S. sales.<sup>36</sup> Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration 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. Additionally, 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.<sup>37</sup>

In this case, APRIL reported certain home market and U.S. sales that were shipped prior to invoicing. The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.<sup>38</sup> Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale, in accordance with our practice.<sup>39</sup>

## IX. PRODUCT COMPARISONS

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

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: whether the product is folio paper, color, existence of embossing/watermark, basis weight, sheet size, brightness, recycled weight, printing, perforations, and punching.

## X. EXPORT PRICE

In accordance with section 772(a) of the Act, we used EP for APRIL because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly

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<sup>36</sup> See APRIL's Response to Sections B and C of the Questionnaire, dated June 3, 2015 (APRIL's Section B Response) (APRIL's Section C Response), at pages B-16 and C-15.

<sup>37</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>38</sup> See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11; see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>39</sup> *Id.*

to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted.

We calculated the EP based on a packed price to the first unaffiliated purchaser in the United States. We made adjustments to the starting price, where appropriate, for rebates, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price, where appropriate, for movement expenses (e.g., international freight, marine insurance, foreign inland freight, and foreign brokerage and handling), in accordance with section 772(c)(2)(A) of the Act. We recalculated APRIL's rebates to base them on the rebate agreement provided in APRIL's Section C response.<sup>40</sup>

## **XI. DUTY DRAWBACK**

Section 772(c)(1)(B) of the Act states that EP shall be increased by "the amount of any import duties imposed by the country of exportation... which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for this adjustment to be made to EP.<sup>41</sup> The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.<sup>42</sup>

In this case, APRIL claimed an adjustment to EP for duty drawback.<sup>43</sup> Beyond reporting the duty drawback in its database, APRIL provided no other information to demonstrate that the reported duty drawback program meets both prongs of our "two-pronged" test. Therefore, we have preliminarily denied APRIL's duty drawback claim.

## **XII. NORMAL VALUE**

### **A. Home Market Viability**

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate,

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<sup>40</sup> See APRIL's Section C Response, at Exhibit C-6; and APRIL's Preliminary Calc Memo.

<sup>41</sup> See, e.g., *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011).

<sup>42</sup> *Id.*

<sup>43</sup> See APRIL's Section A & C Supplemental Response, dated July 17, 2015, at Exhibit 22.

use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for APRIL was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for APRIL, in accordance with section 773(a)(1)(B) of the Act.

#### B. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>44</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>45</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>46</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>47</sup>

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>48</sup>

In this investigation, we obtained information from APRIL regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the

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<sup>44</sup> See 19 CFR 351.412(c)(2).

<sup>45</sup> *Id.*; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

<sup>46</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>47</sup> See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>48</sup> See, e.g., OJ from Brazil, at Comment 7.

selling activities performed by the respondent for each channel of distribution.<sup>49</sup> Our LOT findings are summarized below.

In the home market, APRIL reported that it made sales through one channel of distribution (*i.e.*, sales to distributors).<sup>50</sup> According to APRIL, it performed the following selling functions for sales to all home market customers: sales forecasting and promotion; order input/processing; employment of direct sales personnel; marketing support; technical assistance; back office financial support; provision of rebates; provision of after-sales services; and handling of freight and delivery arrangements.<sup>51</sup>

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Based on these selling function categories, we find that APRIL performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support and for its home market sales. Because we find that there were no differences in selling activities performed by APRIL to sell to its home market customers, we determine that there is one LOT in the home market for APRIL.

With respect to the U.S. market, APRIL reported that it made sales through two channels of distribution (*i.e.*, sales to distributors and to a trading company).<sup>52</sup> APRIL reported that it performed the following selling functions in Indonesia and other overseas locations for sales to all U.S. customers: sales forecasting and promotion; order input/processing; employment of direct sales personnel; marketing support; technical assistance; back office financial support; provision of rebates; provision of after-sales services; and handling of freight and delivery arrangements.<sup>53</sup> Accordingly, based on the selling function categories noted above, we find that APRIL performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for all of its reported U.S. sales. Because APRIL performed the same selling functions at the same relative level of intensity for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions APRIL performed for its U.S. and home market customers are virtually identical. Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

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<sup>49</sup> See APRIL's Section A response, dated May 11, 2015 (APRIL's Section A Response), at pages 13-15; APRIL's Supplemental Section A response, dated June 16, 2015 (APRIL's Supplemental Section A Response), at Exhibit 1.

<sup>50</sup> See APRIL's Section B Response, at 15.

<sup>51</sup> See APRIL Supplemental Section A Response, at Exhibit 1; and Section B Response at page 37.

<sup>52</sup> See APRIL Section A Response at page 13; and APRIL's Section C Response at page 15.

<sup>53</sup> APRIL reported that its corporate office is located in Singapore and some of its sales and shipping functions are performed in Malaysia. See APRIL's Supplemental Section A response at Exhibit 1.

### C. *Cost of Production Analysis*

As noted above, based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that APRIL's sales of uncoated paper in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether APRIL's sales were made at prices below their respective COPs. We examined APRIL's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses.<sup>54</sup>

We relied on the COP data submitted by APRIL except as follows:<sup>55</sup>

- We weight-averaged the reported costs for products identical in all physical characteristics except sheet size to mitigate the impact of cost differences unrelated to the physical characteristics of the products;
- We adjusted the reported costs to include other variable overhead costs that were omitted from the per-unit cost calculations;
- We adjusted the reported costs to include fixed overhead costs that were omitted from the per-unit cost calculations; and
- We adjusted the reported costs to include import duties that were omitted from the per-unit cost calculations; and
- We calculated a combined G&A expense rate because APRIL did not submit company-specific cost databases.

#### 2. Test of Comparison Market Sales Prices

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

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<sup>54</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

<sup>55</sup> See Memorandum from Heidi K. Schriefer to Neal M. Halper "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – APRIL," dated August 19, 2015.

### 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of APRIL's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D. *Calculation of NV Based on Comparison-Market Prices*

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for rebates, in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight and inland insurance under section 773(a)(6)(B)(ii) of the Act. We made no adjustment for home market billing adjustments because, while APRIL reported these adjustments in its database, it failed to provide an accompanying narrative description of them. In addition, we revised certain movement expenses reported in APRIL's database to be consistent with the amounts shown on the supporting documentation contained elsewhere in its response.<sup>56</sup>

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for credit expenses bank charges, advertising expenses, and commissions. In instances where APRIL's databases contained information that was inconsistent with its narrative explanation and/or supporting documentation, we revised the database information to match the narrative responses.<sup>57</sup> We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market up to the amount of the commissions paid on U.S. sales.

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<sup>56</sup> See APRIL's Preliminary Calc Memo.

<sup>57</sup> *Id.*

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>58</sup>

### **XIII. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE**

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>59</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>60</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>61</sup> Further, section 776(b)(2) states that an

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<sup>58</sup> See 19 CFR 351.411(b).

<sup>59</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).

<sup>60</sup> Id., 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>61</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.<sup>62</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>63</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>64</sup> Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.<sup>65</sup>

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.<sup>66</sup> The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>67</sup>

#### A. *Use of Facts Available*

As noted in the “Background” section, above, Great Champ and APP/SMG<sup>68</sup> received, but did not respond to, the Department’s questionnaire and otherwise declined to participate in the proceeding.<sup>69</sup> As a result, Great Champ and APP/SMG did not provide the requested information necessary for the Department to calculate AD margins for them in this investigation. Furthermore, by not responding to the Department’s questionnaire, these companies withheld information requested by the Department, failed to provide such information by the deadlines for submission of the information or in the form and manner requested by the Department, and significantly impeded this proceeding. Moreover, because Great Champ and APP/SMG failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, we preliminarily find that the use of facts available is warranted in determining AD margins for Great Champ and APP/SMG, pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act.

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<sup>62</sup> See also 19 CFR 351.308(c).

<sup>63</sup> See also 19 CFR 351.308(d).

<sup>64</sup> See SAA at 870.

<sup>65</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

<sup>66</sup> See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

<sup>67</sup> See section 776(d)(3) of the Act; TPEA, section 502(3)section.

<sup>68</sup> As noted in the “Collapsing Analysis” section above, the Department is treating IK, TK, and PD as single entity in this investigation, and we refer to this entity as “APP/SMG.”

<sup>69</sup> See IK’s April 7, 2015, Letter; and see Great Champ’s April 9, 2015, Letter.

B. *Application of Facts Available with an Adverse Inference*

As described above, Section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.<sup>70</sup>

We preliminarily find that Great Champ and APP/SMG failed to cooperate by not acting to the best of their ability to comply with requests for information in this investigation, within the meaning of section 776(b) of the Act, because they failed to respond to the Department's requests for information. Great Champ and APP/SMG's failure to respond to the Department's questionnaire or otherwise participate in this investigation has precluded the Department from performing the necessary analysis and verification of their questionnaire responses, as required by section 782(i)(1) of the Act. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies in accordance with section 776(b) of the Act and 19 CFR 351.308(a).<sup>71</sup>

C. *Selection and Corroboration of the AFA Rate*

Where the Department uses AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.<sup>72</sup> In selecting a rate based on AFA, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>73</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>74</sup> Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.<sup>75</sup> The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had

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<sup>70</sup> See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile, 72 FR 70295, 70297 (December 11, 2007).

<sup>71</sup> See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

<sup>72</sup> See SAA at 868-870; 19 CFR 351.308(c)(1) & (2).

<sup>73</sup> See SAA at 870; Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663, 69664 (December 10, 2007); see also Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at page 4, unchanged in Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, 79 FR 14476 (March 14, 2014).

<sup>74</sup> See Preamble, 62 FR at 27340.

<sup>75</sup> See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>76</sup>

In order to induce respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.<sup>77</sup> However, in order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the petition dumping margins of 12.08 percent to 66.82 percent, to the transaction-specific dumping margins for the mandatory respondent (*i.e.*, APRIL), we found that the petition dumping margins are significantly higher than each of the transaction-specific dumping margins calculated for APRIL. Therefore, we were unable to corroborate the dumping margin contained in the petition.<sup>78</sup>

Therefore, for the preliminary determination, we assigned a dumping margin of 51.75 percent, which is the highest transaction-specific dumping margin for APRIL, to subject merchandise from Great Champ and APP/SMG.<sup>79</sup> It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.<sup>80</sup> The transaction underlying this dumping margin is neither unusual in terms of transaction quantities nor otherwise atypical.

#### **XIV. CRITICAL CIRCUMSTANCES**

On July 15, 2015, the petitioners alleged that critical circumstances exist with respect to imports of certain uncoated paper from APP/SMG.<sup>81</sup> Section 733(e)(1) of the Act states that the Department will find that critical circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there were

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<sup>76</sup> See section 776(d)(3) of the Act; TPEA, section 502(3) section.

<sup>77</sup> See, e.g., Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3; Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany, 73 FR 38986 (July 8, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>78</sup> See Monosodium Glutamate From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination, 79 FR 26408 (May 8, 2014), and accompanying preliminary decision memorandum at “Corroboration” section.

<sup>79</sup> See e.g., Silica Bricks and Shapes From the People's Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination, 78 FR 37203 (June 20, 2013), and accompanying Preliminary Decision Memorandum at Comment 3.

<sup>80</sup> See Section 776(c) of the Act; see also SAA at 870 (providing examples of secondary information).

<sup>81</sup> See the petitioners' Critical Circumstances Allegation.

massive imports of the subject merchandise over a relatively short period. Section 351.206(h) of our regulations defines “massive imports” as imports that have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the regulations states that “relatively short period” will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later.

At this time, we find that the petitioners have not sufficiently supported their critical circumstances’ allegation in accordance with section 733(e)(1) of the Act and 19 CFR 351.206. In particular, the petitioners placed U.S. import data on the record which shows that imports of subject merchandise during the comparison period (February 2015 through May 2015) increased in volume by only 4.62 percent over the base period (October 2014 through January 2015).<sup>82</sup> This data undercuts, rather than supports, petitioners’ allegation of “massive imports” within the meaning of the Act. While the petitioners provided an alternative analysis showing that imports from February through May 2015 increased in volume by 22.94 percent over imports during the same period in 2014, they did not explain how this alternative comparison is relevant to the statutory criteria or why the Department should consider it. As a result, we find that the information provided by the petitioners does not provide a sufficient basis for the Department to believe or suspect that massive imports of subject merchandise occurred over a relatively short period of time within the meaning of section 733(e)(1)(B) of the Act, and, thus, we find that we have no basis upon which to make a critical circumstance determination under section 733(e)(1) of the Act and 19 CFR 351.206.

## XV. CURRENCY CONVERSION

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

We recommend applying the above methodology for this preliminary determination.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

19 August 2015  
\_\_\_\_\_  
Date

<sup>82</sup> See Critical Circumstances Allegation at 5.