



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-533-861
Investigation
Public Document
AD/CVD6:FB

DATE: October 6, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Certain Polyethylene
Terephthalate Resin from India

SUMMARY

The Department of Commerce (the Department) preliminarily determines that certain polyethylene terephthalate (PET) resin from India 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.

BACKGROUND

On March 9, 2015, the Department received an antidumping duty (AD) petition covering imports of PET resin from India,¹ which was filed in proper form by Dak Americas, LLC; M&G Chemicals; and Nan Ya Plastics Corporation, America (collectively, "petitioners"). The Department initiated this investigation on March 30, 2015.²

In the Initiation Notice, the Department stated that in selecting respondents for the India investigation, 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)

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman, dated March 9, 2015 (the petition).

² See 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, 80 FR 18376 (April 6, 2015) (Initiation Notice).



subheadings listed in the scope of the investigation.³ Accordingly, on April 7, 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.

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 PET resin to be reported in response to the Department's AD questionnaire.⁴ In April 2015, the petitioners, and Ester Industries, Ltd. (Ester), as well as OCTAL SAOC- FZC (OCTAL) (a respondent in the companion AD investigation of PET resin from Oman), and Far Eastern Industries (Shanghai) Ltd., and Oriental Industries (Suzhou) Ltd., (respondents in the companion AD investigation of PET resin from the People's Republic of China), submitted comments on the appropriate physical characteristics of subject PET resin. On April 30, 2015, we received rebuttal comments from petitioners and OCTAL. Also on April 30, 2015, we received comments from Dhunseri Petrochem Limited (Dhunseri), but we rejected them on May 7, 2015, because we determined that they constituted affirmative comments, not rebuttal comments.

On April 23, 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 PET resin from India.⁵

On April 29, 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 Dhunseri and JBF Industries (JBF) as mandatory respondents.⁶ JBF never responded to the Department's request for information. Furthermore, on June 29, 2015, Dhunseri informed the Department that it would not participate in the investigation.⁷ Therefore, on July 6, 2015, the Department selected the next two largest publicly-identifiable producers/exporters of the subject merchandise, Ester and Reliance Industries Limited (Reliance), as mandatory respondents, and issued the AD questionnaire to them.⁸

On July 16, 2015, petitioners alleged that critical circumstances exist with respect to imports from India of the merchandise under investigation. On August 13, 2015, we issued requests to Ester and Reliance that they submit the monthly volume and value of their shipments to the United States beginning in September 2014 and ending with the last day of the month of the publication of the preliminary determination in this investigation. Ester submitted the requested

³ See Initiation Notice, 80 FR at 18381.

⁴ Id., at 18377.

⁵ See Certain Polyethylene Terephthalate Resin From Canada, China, India, and Oman, 80 FR 24276 (April 30, 2015).

⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection for the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from India," dated April 29, 2015, at 4-5.

⁷ See Letter from Dhunseri, "Polyethylene Theraphthalate (sic) Resin from India: Dhunseri's Withdrawal from Participation as a Mandatory Respondent in the Antidumping Investigation," dated June 29, 2015.

⁸ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Respondent Selection for the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from India," dated July 6, 2015, at 4-6.

information on August 20 and September 9, 2015. Reliance submitted the requested information on August 20 and September 15, 2015.

On July 21, 2015, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be fully extended. On July 31, 2015, the Department published a postponement of the preliminary determination until no later than October 6, 2015.⁹

On July 23, 2015, Ester and Reliance submitted timely responses to section A of the Department's AD questionnaire (i.e., the section relating to general information), and on August 10 and August 12, 2015, these companies, respectively, also responded to sections B and C (i.e., the sections relating to home market and U.S. sales, respectively).¹⁰ In August and September 2015, we issued multiple sections A- C supplemental questionnaires to Ester and Reliance. We received responses to these supplemental questionnaires during this same time period.

On August 19, 2015, petitioners requested that the Department initiate cost investigations with respect to Ester and Reliance's sales of PET resin in India.¹¹ On August 26, 2015, petitioners submitted additional information about the cost allegation with respect to Reliance. After reviewing the sales-below-cost allegations, we found that the petitioners had provided a reasonable basis to believe or suspect that Ester and Reliance were selling PET resin at prices below their cost of production (COP). Accordingly, we initiated sales-below-cost investigations with respect to Ester and Reliance's home market sales, and requested that they respond to section D of the Department's questionnaire (i.e., the section relating to COP and constructed value (CV)).¹² In September 2015, both Ester and Reliance submitted timely responses to section D of the Department's AD questionnaire.

⁹ See Certain Polyethylene Terephthalate Resin From Canada, the People's Republic of China, India, and the Sultanate of Oman: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 45640 (July 31, 2015).

¹⁰ On September 10, 2015, the Department returned Reliance's sections B and C responses to Reliance and requested changes in its requests for proprietary treatment of certain information. Reliance accordingly revised its sections B and C responses, and resubmitted them on September 14, 2015.

¹¹ 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 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than cost of production. 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*). Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value and cost of production information from respondent companies in all AD proceedings. *Id.*, 80 FR at 46794-95. Here, the complete initial questionnaires was issued prior to the applicability date, and the Department requested this information from Selenis. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

¹² See Memorandum to Scot Fullerton, Director, Office VI, entitled "Petitioners' Allegation of Home Market Sales at Prices Below the Cost of Production for Reliance Industries, Ltd.," dated September 2, 2015 (Reliance COP Memo); and Memorandum to Scot Fullerton, Director, Office VI, entitled "Petitioners' Allegation of Home Market Sales at Prices Below the Cost of Production for Ester Industries, Ltd." dated September 4, 2015 (Ester COP Memo).

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

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 March 2015.¹³

POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On September 24, 2015, Reliance requested that the Department postpone its final determination pursuant to 19 CFR 351.210(e)(2), and requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.¹⁴ 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, Reliance, accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the accompanying preliminary determination notice in the Federal Register. We are also extending provisional measures from four months to a period not to exceed six months pursuant to section 733(d) of the Act and 19 CFR 351.210(e)(2). Suspension of liquidation described in the accompanying preliminary determination notice will be extended accordingly.

SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is 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 predominantly virgin PET resin content, 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.

SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time for interested parties to raise issues regarding product coverage.¹⁵ The Department specified that

¹³ See 19 CFR 351.204(b)(1).

¹⁴ See Letter from Reliance to the Secretary of Commerce, "Polyethylene Terephthalate Resin from India," dated September 24, 2015.

¹⁵ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296 (May 19, 1997).

comments regarding scope were due April 20, 2015, which was 21 calendar days from the signature date of the Initiation Notice, and rebuttal comments were due by April 30, 2015.¹⁶ However, no interested party submitted scope comments.

DISCUSSION OF THE METHODOLOGY

Fair Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c) and (d), to determine whether sales of PET resin from India 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 below.

1. *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). In antidumping investigations the Department examines whether to compare weighted-average NVs to the EPs (or CEPs) of individual transactions (the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).¹⁷ 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 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 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 weighted-average dumping margin. The differential pricing

¹⁶ See Initiation Notice, 80 FR at 18376 - 18377.

¹⁷ 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.

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 Ester and Reliance. 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 customer, 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* test 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 within the test group pass the 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 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 weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the 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 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.

2. *Results of the Differential Pricing Analysis*

Based on the results of the differential pricing analysis, the Department finds that zero percent of Ester's export sales, by value, pass the Cohen's *d* test. Thus, the results of the test do not support consideration of an alternative to the average-to-average method.¹⁸ Accordingly, the Department preliminarily determines to use the average-to-average method for all U.S. sales to calculate Ester's estimated weighted-average dumping margin.

For Reliance, based on the results of the differential pricing analysis, the Department preliminarily finds that 74.64 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly.¹⁹ Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margins calculated using the average-to-average method and those calculated using the alternative average-to-transaction method. Because there is no meaningful difference, the Department can appropriately account for the differences in pricing by utilizing the average-to-average method. Thus, for this preliminary determination, the Department is applying the average-to-average for all U.S. sales to calculate the weighted-average dumping margin for Reliance.

Product Comparisons

As indicated above, in the Initiation Notice, we set aside a period of time for parties to raise issues regarding product characteristics and model matching. On April 23, 2015, Petitioners, OCTAL, Far Eastern Industries (Shanghai) Ltd., and Oriental Industries (Suzhou) Ltd. submitted

¹⁸ See the Memorandum to the File from Fred Baker, "Analysis for the Preliminary Results of the Antidumping Duty Investigation of Certain Polyethylene Terephthalate (PET) Resin from India: Ester Industries, Ltd." dated October 6, 2015 (Ester Preliminary Analysis Memorandum).

¹⁹ See the Memorandum to the File from Fred Baker, "Analysis for the Preliminary Results of the Antidumping Duty Investigation of Certain Polyethylene Terephthalate (PET) Resin from India: Reliance Industries, Ltd." dated October 6, 2015 (Reliance Preliminary Analysis Memorandum).

comments on product characteristics.²⁰ On April 30, 2015, Petitioners, OCTAL, and Dhunseri submitted rebuttal comments on the product characteristics.²¹ However, on May 7, 2015, the Department rejected Dhunseri's April 30, 2015 submission as untimely filed affirmative comments on product characteristics and not rebuttal comments.

After considering the comments that were submitted, the Department established product characteristics to use as a basis for defining models of the merchandise under consideration sold in the United States. The Department identified the following five criteria for matching U.S. sales of subject merchandise to home market sales of the foreign like product: (1) intrinsic viscosity; (2) blend; (3) copolymer/homopolymer; (4) additives; and (5) acetaldehyde content. These criteria were issued to interested parties on May 21, 2015.²²

Date of Sale

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.²³

Ester reported the invoice date as the date of sale in both its U.S. and home markets.²⁴ However, Ester also reported that during the POI, there were no changes made to orders regarding either quantity or price in its home market or U.S. sales following its receipt of the purchase order. For this reason we preliminarily determine that the purchase order date is the date that best reflects when the material terms of sale were set in both Ester's home and U.S. markets. However, Ester did not report the purchase order dates on its sales listings and, due to time constraints resulting from the second round of respondent selection, the Department did not request that it do so. Nevertheless, the purchase order dates of all of Ester's U.S. sales and some of Ester's home

²⁰ See Letter from Petitioners to the Department, "Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman - Product Matching Comments," dated April 23, 2015; Letter from OCTAL to the Department, "OCTAL's Comments on Product Characteristics for Model-Matching Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman, Canada, India and China," dated April 23, 2015; Letter from Far Eastern Industries (Shanghai) Ltd. and Oriental Industries (Suzhou) Ltd. to the Department, "Certain Polyethylene Terephthalate Resin From Canada, the People's Republic of China, India, and the Sultanate of Oman: Comments on Product Characteristics," dated April 23, 2015.

²¹ See Letter from Petitioners to the Department, "Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman - Product Matching Rebuttal Comments," dated April 30, 2015; Letter from OCTAL to the Department, "OCTAL's Comments on Product Characteristics for Model-Matching Certain Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman, Canada, India and China," dated April 30, 2015; Letter from Dhunseri Petrochem Limited to the Department, "Certain Polyethylene Terephthalate Resin from Canada, China, Oman, and India - Dhunseri Rebuttal Comments on Product Characteristics," dated April 30, 2015.

²² See Memorandum to Interest Parties, "Re: Product Characteristics for Use in Sections B, C, and D Questionnaire Responses," dated May 21, 2015.

²³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1091 (CIT 2001) (*Allied Tube & Conduit Corp.*) (quoting 19 CFR 351.401(i)).

²⁴ See Sections B and C response from Ester, dated August 9, 2015 (Ester Sections B and C Response), at 15 and 49, respectively.

market sales are identifiable from the sales documents Ester place on the record.²⁵ Therefore, where this was the case, we used the purchase order date as the date of sale. Where the sales documents on the record did not permit identification of the correct purchase order date, as neutral facts available, we used the invoice date as the date of sale.

Reliance also reported the invoice date as the date of sale in both its home and U.S. markets.²⁶ However, Reliance also reported that there were no changes made to orders following issuance of the proforma invoice in the U.S. market. With respect to its home market, Reliance did not have a system of issuing proforma invoices.²⁷ This information suggests that either the proforma invoice (in the U.S. market) or possibly an even earlier date (in either market) may best reflect the date on which the material terms of sale are set. Nevertheless, Reliance did not report any dates earlier than the invoice date on its sales listings and, due to time constraints resulting from the second round of respondent selection, the Department never requested that it do so. Reliance also did not put sufficient sales documentation on the record for the Department to identify the purchase order dates. Therefore, for this preliminary determination, we have used the invoice date as the date of sale for Reliance in both its U.S. and home markets.

We intend to review this issue further after publication of this preliminary determination with respect to both Ester and Reliance, and will solicit additional information on this subject that we may use in our final determination.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for Ester and Reliance because the merchandise under consideration was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and thus, the CEP methodology was not otherwise warranted.

For Ester, we calculated EP based on a packed price to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for movement expenses (e.g., international freight, foreign inland freight, inland insurance, and foreign brokerage and handling), in accordance with section 772(c)(2)(A) of the Act.²⁸ We also increased U.S. price for duty drawback.

For Reliance, we calculated EP based on a packed price to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for movement expenses (e.g., international freight, foreign inland freight, foreign brokerage and handling, and marine insurance), in accordance with section 772(c)(2)(A) of the Act.²⁹

Normal Value

²⁵ See Ester's August 31, 2015, supplemental questionnaire response at Annexures 7b and 8.

²⁶ Sections B and C response from Reliance (Reliance Sections B and C Response), dated August 12, 2015 (resubmitted September 14, 2015), B-14 and C-13, respectively.

²⁷ See Reliance's August 27, 2015, supplemental questionnaire response at 5.

²⁸ See Ester Preliminary Analysis Memorandum, dated October 6, 2015.

²⁹ See Reliance Preliminary Analysis Memorandum, dated October 6, 2015.

1. *Comparison 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, 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 each respondent 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 Ester and Reliance, in accordance with section 773(a)(1)(B) of the Act.

2. *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).³⁰ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³¹ 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),³² 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.³³

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

³⁰ See 19 CFR 351.412(c)(2).

³¹ *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).

³² 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).

³³ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

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.³⁴

In this investigation, we obtained information from Ester and Reliance regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Ester reported that it had only one channel of distribution and one category of customer in its home and U.S. markets. Specifically, Ester reported that all of its sales in both markets were direct sales to end user customers.³⁵

Furthermore, Ester reported almost identical selling activities in both markets.³⁶ Therefore, we conclude that only one level of trade exists in Ester's home and U.S. markets and, furthermore, that Ester provided virtually the same level of customer support on its U.S. EP sales as it did for its home market sales. Therefore, we conclude that the starting price of its U.S. EP sales and its home market sales represent the same stage in the marketing process. For this reason, we find that a level of trade adjustment is not warranted for Ester.

Reliance reported that in its U.S. market the only customer category was trading companies, and the only channel of distribution was direct sales.³⁷ With respect to its home market, Reliance reported that the customer categories were trading companies and original equipment manufacturers, and that the channels of distribution were direct sales (channel 1), sales agents (channel 2), and distributors (channel 3).³⁸ Moreover, Reliance reported that its selling activities for its sales to home market channels 2 and 3 were identical.³⁹

From our review of Reliance's reported home market selling activities, we find that the differences between channel 1 (on the one hand) and channels 2 and 3 (on the other hand) are not substantial. Although substantial differences in selling activities are not a sufficient condition for determining there is a difference in the stage of marketing, they are a necessary condition.⁴⁰ According to 19 CFR 351.412(c)(2), the Department will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Because Reliance performed largely the same selling functions at the same relative level of intensity for all of its home market sales, we preliminarily determine that its home market sales are all at the same marketing stage, and hence at the same level of trade.

Finally, we compared the U.S. level of trade to the home market level of trade, and found that the selling functions Reliance performed for its U.S. and home market customers are substantially

³⁴ See, e.g., OJ from Brazil, at Comment 7.

³⁵ See Ester's July 23, 2015, section A response at 17 and its sections B and C response at 13-14 and 47-48, respectively.

³⁶ See Ester's section A response at Annexure A-3(c).

³⁷ See Reliance's section C response C-11 and C-12.

³⁸ See Reliance's section B response at B-13.

³⁹ See Reliance's September 25, 2015, submission at Exhibit 2S-2.

⁴⁰ See 19 CFR 351.412(c)(2).

similar. The differences that do exist are not substantial, and therefore do not represent two different levels of trade. Thus, we preliminarily determine that sales to the United States and home market during the POI were made at the same level of trade and, as a result, no level of trade adjustment is warranted.

3. *Calculation of Normal Value Based on Comparison Market Prices*

For Ester, we calculated NV based on home market prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight and insurance under 773(a)(6)(B)(ii) of the Act.

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. 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, and other direct selling expenses.

For Reliance, we calculated NV based on home market sales to unaffiliated customers. We made deductions, where appropriate, from the starting price for discounts and 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 warehousing expenses under section 773(a)(6)(B)(ii) of the Act.

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(c) for differences in circumstances of sale for credit expenses, warranty expenses, and technical service expenses. We also made an adjustment for home market commissions in accordance with 19 CFR 351.410(e).

For both Ester and Reliance, when comparing U.S. sales with home market sales of similar merchandise (rather than identical 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.⁴¹

Cost of Production

On August 19, 2015, the petitioners alleged that Ester and Reliance had made sales in the home market during the POI below their respective COPs.⁴² Based on our analysis of the allegations made by the petitioners, we determined that there were reasonable grounds to believe or suspect

⁴¹ See 19 CFR 351.411(b).

⁴² See the petitioners' cost allegations regarding Ester and Reliance, dated August 19, 2015, and additional information petitioners submitted with respect to Reliance on August 26, 2015.

that Ester's and Reliance's sales of PET resin in the home market were made at prices below the COP.⁴³ Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether Ester's and/or Reliance's home market sales were made at prices below COP. We examined both respondents' 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.

We relied on the cost data Ester and Reliance submitted, except that for Ester we made the following adjustments:

- We recalculated Ester's G&A expense rate based on Ester's March 31, 2015 fiscal year-ended audited financial statements.
- We recalculated Ester's financial expense rate based on Ester's March 31, 2015 fiscal year-ended audited consolidated financial statements.

2. *Test of Comparison Market Sales Prices*

On a product-specific basis, pursuant to section 773(b)(1)(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 sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices used in the comparison were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.

3. *Results of 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

⁴³ See Ester COP Memo and Reliance COP Memo, dated September 4, 2015.

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 Ester and Reliance’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.

FACTS AVAILABLE

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.

Section 776(b) of the Act further 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. Such an 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.⁴⁴

Dhunseri and JBF

A. Use of Facts Available

As noted in the “Background” section, above, neither JBF nor Dhunseri participated in this investigation. As a result, Dhunseri and JBF 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, Dhunseri and JBF 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

⁴⁴ See also 19 CFR 351.308(c).

proceeding. Accordingly the use of facts available is warranted in determining AD margins for Dhunseri and JBF, pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act.

B. Application of Facts Available with an Adverse Inference

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.⁴⁵ In addition, 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.”⁴⁶ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁴⁷

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.⁴⁸ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁴⁹

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. Further, section 776(b)(2) states that an 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.

We preliminarily find that Dhunseri and JBF failed to cooperate by not acting to the best of their

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ See Preamble, 62 FR at 27340.

⁴⁸ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 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).

⁴⁹ Id., 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

abilities 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. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies.⁵⁰

C. *Selection and Corroboration of Adverse Facts Available (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.⁵¹ Under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. 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. In selecting a rate based on adverse facts available, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁵² 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.⁵³ As AFA, we preliminarily assign Dhunseri and JBF a rate of 19.41 percent, which is the sole rate alleged in the petition, as noted in the initiation of the investigation.⁵⁴

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.⁵⁵ 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.⁵⁶ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁷ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, 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.⁵⁸ Thus, because the 19.41

⁵⁰ See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁵¹ See SAA at 868-870; 19 CFR 351.308(c)(1) & (2).

⁵² See SAA at 870.

⁵³ 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.

⁵⁴ See Initiation Notice, 80 FR at 18381.

⁵⁵ See also 19 CFR 351.308(d).

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of

percent AFA rate applied to Dhunseri and JBF is derived from the petition and, consequently, is based upon secondary information, the Department must corroborate it to the extent practicable.

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁵⁹ The SAA and the Department’s regulations explain that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁶⁰ Thus, we determined that the petition margin of 19.41 percent is reliable, to the extent appropriate information was available, by reviewing the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination.⁶¹

We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination.⁶² During our pre-initiation analysis, we examined the key elements of the EP and NV calculations used in the petition to derive an estimated margin.⁶³ During our pre-initiation analysis, we also examined information (to the extent that such information was reasonably available) from various independent sources provided either in the petition or, on our request, in the supplements to the petition that corroborates some of the elements of the EP and NV calculations used in the petition to derive the estimated margin.⁶⁴

Based on our examination of the information, as discussed in detail in the Initiation Checklist,⁶⁵ we consider the petitioners’ EP and NV calculations to be reliable. We obtained no other information that would make us question the validity of the sources of information or the validity of the information supporting the U.S. price or NV calculations provided in the petition. Because we confirmed the accuracy and validity of the information underlying the derivation of the margins in the petition by examining source documents and affidavits, as well as publicly available information, we preliminarily determine that the margins in the petition are reliable for purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. In this particular case, because the petition rates are derived from the PET resin industry and are based on information related to aggregate data involving the PET resin industry, we determine that the petition rates are relevant. More specifically, the

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

⁵⁹ See SAA at 870; see also 19 CFR 351.308(d).

⁶⁰ See SAA at 870; see also 19 CFR 351.308(d).

⁶¹ See the India AD Initiation Checklist (Initiation Checklist), dated March 30, 2015.

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ See Initiation Checklist at 8-12.

information contained in the petition is relevant to the non-cooperating respondents because the U.S. price in the petition was based on the average unit value (AUV) of U.S. imports from India under the relevant HTSUS subheading during the POI, thus including all Indian shippers of the merchandise under investigation. Moreover, we analyzed 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, as noted the Initiation Notice, is within the range of Ester and Reliance's product-specific margins.

In sum, the Department corroborated the AFA rate of 19.41 percent to the extent practicable within the meaning of section 776(c) of the Act because the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant to the uncooperative respondents.⁶⁶ As the 19.41 percent rate is both reliable and relevant, we determine that it has probative value and, thus, it has been corroborated to the extent practicable, pursuant to section 776(c) of the Act. Thus, we preliminarily assigned this AFA rate to subject merchandise from Dhunseri and JBF.

CRITICAL CIRCUMSTANCES

On July 16, 2015, Petitioners filed a timely critical circumstances allegation, pursuant to 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise.⁶⁷

In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

Legal Framework

Section 733(e)(1) of the Act, provides that the Department, upon receipt of a timely allegation of critical circumstances, will determine whether 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 massive imports of the subject merchandise over a relatively short period.

Critical Circumstances Allegation

⁶⁶ See section 776(c) of the Act; 19 CFR 351.308(c) and (d); see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁷ See letter from petitioners, "Certain Polyethylene Terephthalate Resin from India - Critical Circumstances," dated July 16, 2015 ("Petitioners' Critical Circumstances Allegation").

In support of their allegation, petitioners contend that there is a history of injurious dumping by Indian PET resin producers, and cite to the AD orders in South Africa and Argentina. Petitioners state that South Africa has maintained AD duties of 54.10 percent since 2006, which were extended in 2011.⁶⁸ They also state that Argentina imposed an AD duty order on PET resin from India in 2003, with duties ranging from 3.35 to eight percent.⁶⁹ For this reason, petitioners conclude, there is ample record evidence to demonstrate that there is a history of dumping and material injury by reason of dumped PET resin from India.

Analysis

For this preliminary determine, we determine that critical circumstances exist with regard to imports of PET resin from India. We considered each of the statutory criteria for our preliminary affirmative finding of critical circumstances, as described in the following sections.

Section 733(e)(1)(A)(i) of the Act: History of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise

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.⁷⁰ 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.

Section 733(e)(1)(B): Whether there have been massive imports of the subject merchandise over a relatively short period

19 CFR 351.206(h)(1) provides that, in determining whether imports of the subject merchandise were “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “[i]n general, unless the imports during the ‘relatively short period’...have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” 19 CFR 351.206(i) defines “relatively short period” generally as the period starting on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later (*i.e.*, the comparison period). This section of the regulations further provides

⁶⁸ See Petitioners’ Critical Circumstances Allegation at 4 and Attachment 2.

⁶⁹ *Id.*

⁷⁰ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, 73 FR 31970, 31972 (June 5, 2008)(Carbon Steel Pipe Final Determination); see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China, 74 FR 2049 (January 14, 2009) (SDGE Final Determination).

that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then the Department may consider a period of not less than three months from that earlier time. The comparison period is normally compared to a corresponding period prior to the filing of the petition (i.e., the base period).

In its July 16, 2015, allegation, petitioners maintained that importers, exporters, or foreign producers gained knowledge that this proceeding was possible when the petition for an AD duty investigation was filed on March 10, 2015.⁷¹ As such, Petitioners noted that the base period extends from December 2014 to February 2015, while the comparison period extends from March 2015 to May 2015. Petitioners included in their submission U.S. import data collected from the ITC’s Dataweb.⁷² Based on these data, Petitioners claimed that imports of PET resin from India increased by over 70.90 percent during the comparison period over the base period. Thus, Petitioners conclude that there were massive imports during a relatively short period.⁷³

The Department typically determines whether to include the month in which a party had reason to believe that a proceeding was likely in the base, or comparison, period depending on whether the event that gave rise to the reason for belief occurred in the first or second half of the month.⁷⁴ Moreover, it is the Department’s practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.⁷⁵ Based on these practices, we chose to examine the base period September 2014 through February 2015, and the corresponding comparison period March 2015 through August 2015 in order to determine whether imports of subject merchandise were massive. These base and comparison periods satisfy the Department’s practice that the comparison period is at least three months.

In determining whether there were massive imports from Ester and Reliance, we analyzed each respondent’s monthly shipment data for the period September 2014 through August 2015. These data indicate that there was a massive increase, as defined in 19 CFR 351.206(h)(2), in shipments of subject merchandise to the United States by these two companies during the six-month period immediately following the filing of the petition on March 10, 2015. Therefore, we preliminarily find there to be massive imports for both Ester and Reliance.

It is the Department’s practice to conduct its massive imports analysis based on the experience of investigated companies, using the reported monthly shipment data for the base and comparison

⁷¹ See Initiation Notice, 78 FR at 44526.

⁷² See Petitioners’ Critical Circumstances Allegation at Attachment 1.

⁷³ Id., at 9.

⁷⁴ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances, 77 FR 31309, 31312 (May 25, 2012).

⁷⁵ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004); and 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.

periods.⁷⁶ However, as noted above, JBF did not respond to any of our requests for information, and Dhunseri ceased responding after initially being cooperative.⁷⁷ Therefore, the Department preliminarily determines that the use of facts otherwise available with an adverse inference is warranted. Accordingly, we preliminarily find that there were massive imports of merchandise from JBF and Dhunseri, pursuant to our practice.⁷⁸

With regard to all other non-individually reviewed entities, it is the Department's practice to conduct its massive imports analysis based on the experience of investigated companies.⁷⁹ However, where the mandatory respondents receive AFA, we do not impute those adverse inferences of massive imports to the non-individually examined companies receiving the "All Others" rate.⁸⁰ Therefore, in determining whether there were massive imports for all other companies, we relied upon the USITC Dataweb import statistics as evidence that imports in the post-Petition period for the subject merchandise were massive.⁸¹ From these data, it is clear that there was an increase in imports of more than 15 percent during a "relatively short period" of time, in accordance with 19 CFR 351.206(h) and (i). Therefore, we preliminarily find there to be massive imports for all non-individually reviewed companies, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

CURRENCY CONVERSION

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

VERIFICATION

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

ADJUSTMENTS FOR COUNTERVAILABLE SUBSIDIES

As set forth below, the Department has made certain adjustments to the weighted-average dumping margins to account for countervailable subsidies categorized as export subsidies, under Section 772(c)(1)(C) of the Act. These adjustments will be applied to the AD margins calculated for each entity, which are reflected in the accompanying Federal Register notice.

⁷⁶ See, e.g., Carbon Steel Pipe Final Determination, 73 FR at 31972-73; SDGE Final Determination, 74 FR 2052-53.

⁷⁷ See the "Facts Available" section of this memorandum.

⁷⁸ See SDGE, 74 FR at 2052-2053.

⁷⁹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey, 62 FR 9737 (March 4, 1997); see also, e.g., Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation, 75 FR 24575 (May 5, 2010); unchanged in Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry, 75 FR 30377 (June 1, 2010) (Potassium Phosphate Salts).

⁸⁰ See Potassium Phosphate Salts.

⁸¹ See Critical Circumstances Memorandum, dated October 6, 2015.

Dhunseri is a mandatory, participating respondent in the companion CVD investigation of PET resin from India. Therefore, for Dhunseri, we are deducting from the AFA AD margin 5.13 percent, which represents the aggregated export subsidies rates calculated for Dhunseri in the preliminary determination of the companion CVD investigation.

Ester is not a mandatory respondent in the companion CVD investigation of PET resin from India. Therefore, for Ester, we are deducting from the weighted-average AD margin 5.13 percent, which represents the aggregated export subsidies rates utilized in the "All Others" rate in the preliminary determination of the companion CVD investigation.


JBF Industries was a mandatory respondent in the companion CVD investigation of PET resin from India. However, in the preliminary determination of the CVD investigation, the Department found that JBF did not act to the best of its ability to respond to the Department's requests for information and applied AFA in determining JBF's subsidy rate. Therefore, for JBF, we are deducting from the AFA AD margin 37.10 percent, which represents the aggregated export subsidies rates utilized in the AFA rate applied to JBF in the preliminary determination of the companion CVD investigation.

Reliance is not a mandatory respondent in the companion CVD investigation of PET resin from India. Therefore, for Reliance, we are deducting from the weighted-average AD margin 5.13 percent, which represents the aggregated export subsidies rates utilized in the "All Others" rate in the preliminary determination of the companion CVD investigation.

Finally, we are deducting from the "All Others" rate 5.13 percent, which represents the aggregated export subsidies rates utilized in the "All Others" rate in the preliminary determination of the companion CVD investigation.


RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



Date