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**MEMORANDUM TO:** Carole Showers  
Executive Director, Office of Policy  
performing the duties of the Deputy Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Carbazole Violet Pigment 23 from  
India; 2015-2016

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## I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on carbazole violet pigment 23 (CVP 23) from India. The review covers one producer/exporter of the subject merchandise, Pidilite Industries Limited (Pidilite). The period of review (POR) is December 1, 2015, through November 30, 2016. We preliminarily determine that Pidilite failed to cooperate to the best of its ability with the Department's request for information and, therefore, are applying facts otherwise available with an adverse inference.

## II. BACKGROUND

On December 1, 2016, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on CVP 23 from India.<sup>1</sup> Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), on December 7, 2016, Pidilite timely requested an administrative review of the AD order on CVP 23 from India with respect to its exports of subject merchandise to the United States during the POR.<sup>2</sup> Accordingly, on February 13, 2017, in accordance with 19 CFR 351.221(c)(1)(i), we

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<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 86694 (December 1, 2016).

<sup>2</sup> See Pidilite's letter to the Department, "Re: Carbazole Violet Pigment 23 from India; Request for Administrative



published a notice of initiation of an administrative review of the AD order on CVP 23 from India.<sup>3</sup>

On March 7, 2017, we issued the AD questionnaire to Pidilite. In April 2017, Pidilite timely submitted its responses to our questionnaire. Between April 2017, and October 2017, we issued supplemental questionnaires to Pidilite, to which it submitted timely responses between May 2017, and October 2017. On August 22, 2017, the Department extended the time period for issuing the preliminary results by 90 days.<sup>4</sup>

### III. AFFILIATION

Section 771(33) of the Act, sets out several categories of persons who are considered to be “affiliated” or “affiliated persons” under the Act:

- (A) Members of a family, including brothers and sisters (whether by 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, five 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 person.<sup>5</sup>

The Act further states that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”<sup>6</sup> “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”<sup>7</sup> The courts have upheld the Department’s interpretation of “any person” in section 771(33)(F) of the Act as encompassing “family,” and the position that “family” is not limited to the roles enumerated in section 771(33)(A) of the Act, but rather is subject to the Department’s interpretation.<sup>8</sup> The Department may interpret the definition of “family” in section

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Review,” dated December 7, 2016.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017).

<sup>4</sup> See Memorandum to James Maeder, Senior Director performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Irene Darzenta Tzafolias, Director, Office VIII, Antidumping and Countervailing Duty Operations, “Carbazole Violet Pigment 23 from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated August 22, 2017.

<sup>5</sup> See section 771(33) of the Act.

<sup>6</sup> *Id.*

<sup>7</sup> See 19 CFR 351.102(b).

<sup>8</sup> See *Ferro Union Inc. v. Wheatland Tube Co.*, 44 F. Supp. 2d 1310, 1325-1326 (CIT 1999)(*Ferro Union*) (“The intent of {section 771(33) of the Act} was to identify control exercised through ‘corporate’ or ‘family’ groupings .... By interpreting ‘family’ as a control person {the Department} was giving effect to that intent.”); see also *Dongkuk Steel Mill Co. v. United States*, 29 C.I.T. 724,731 (June 22, 2005) (*Dongkuk Steel*).

771(33)(A) of the Act in a reasonable manner.<sup>9</sup> The Department has previously considered in-laws in its analysis of family relationships pursuant to section 771 (33)(A) of the Act.<sup>10</sup> Thus, if members of a certain family control two companies, then these companies are affiliated under section 771(33)(F) of the Act because of the family's control of the two companies.<sup>11</sup>

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>12</sup>

Section 351.102(b)(3) of the Department’s regulations 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 Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not 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 Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

During the POR, Pidilite sold subject merchandise to its sole U.S. customer, Alpha Chem Inc. (Alpha Chem). Based on the analysis below, the Department preliminarily finds these companies to be affiliated under section 771(33)(F) of the Act.

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<sup>9</sup> See *Ferro Union*, 44 F. Supp. 2d 1310, at 1325 (“The word ‘including’ in section (A) of 19 U.S. C. § 1677(33) is an indication that Congress did not intend to limit the definition of ‘family’ to the members listed in this section. Had Congress intended this list to be definitive, it would have chosen different wording. The wording it did choose evinces an illustrative intent. Commerce’s interpretation of this section is reasonable and therefore not subject to reversal by the court.”).

<sup>10</sup> See *New World Pasta Co. v. United States*, 28 C.I.T. 290, 295-296 (CIT 2004) (explaining that “Commerce will consider persons ... affiliated where there is a family relationship between them,” and noting that “[b]ecause Amato’s major shareholders include a sister and a sister-in-law of Garofalo’s majority shareholder, Commerce found that the two companies were affiliated under 19 U.S.C. § 1677(33)(A).”); see also *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 63 FR 55578 (October 16, 1998), and accompanying Issues and Decision Memorandum at Comment 2 (“Where members of the same family hold interests and management positions in several companies in the same industry, it is reasonable to examine the interests of the family as a whole for purposes of determining where common control exists. See *Queen’s Flowers*, 981 F.Supp. at 626.”).

<sup>11</sup> See *Ferro Union*, 44 F. Supp. 2d at 1326; *Dongkuk Steel Mill Co. v. United States*, 29 CIT 724, 732 (CIT 2005) (*Dongkuk Steel*).

<sup>12</sup> See SAA, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) at 838.

#### *A. Alpha Chem and Prashant Shridharani*

The record supports finding Prashant Shridharani affiliated with Alpha Chem, pursuant to section 771(33)(E) of the Act. Pidilite reported that Prashant Shridharani is the founder, sole owner, and managing director of Alpha Chem, which is located at Prashant Shridharani's residential address.<sup>13</sup> Thus, pursuant to section 771(33)(E) of the Act, we preliminarily find that Alpha Chem and Prashant Shridharani are affiliated because Prashant Shridharani directly owns, controls, or holds with power to vote, at least 5 percent of Alpha Chem's outstanding voting stock or shares.

In addition, because we consider Prashant Shridharani and Alpha Chem as one and the same by virtue of Prashant Shridharani's sole ownership of Alpha Chem, we do not distinguish Prashant Shridharani from Alpha Chem.<sup>14</sup>

#### *B. Alpha Chem and Pidilite USA*

The record supports finding that Pidilite USA and Prashant Shridharani/Alpha Chem are affiliated pursuant to section 771(33)(B) of the Act because Prashant Shridharani/Alpha Chem is an Independent/Outside Director and Secretary of Pidilite USA. Prashant Shridharani/Alpha Chem sits on the board of directors of Pidilite USA and attends quarterly meetings as an active voting participant, receiving a sitting fee during the POR.<sup>15</sup> Thus, Prashant Shridharani/Alpha Chem is affiliated with Pidilite USA by virtue of his role as a director of Pidilite USA.

Additionally, record evidence demonstrates that Pidilite USA and Prashant Shridharani/Alpha Chem share an address, which is listed on both companies' corporate registration documents.<sup>16</sup>

#### *C. Alpha Chem and Pidilite*

The record supports finding that Alpha Chem and Pidilite are affiliated pursuant to section 771(33)(F) of the Act. Pidilite reported that "the Parekh family, its promoters and its associate companies form a group," and that the Parekh family members together control a certain amount<sup>17</sup> of Pidilite's shares. Pidilite identified M.B. Parekh as Executive Chairman, N.K. Parekh as Non-Executive Vice Chairman, and A.B Parekh and A.N. Parekh as Whole-Time Directors.<sup>18</sup> Therefore, through its ownership and roles in Pidilite, the Parekh family has a direct

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<sup>13</sup> See Pidilite's letter to the Department, "re: Carbazole Violet Pigment 23 from India: Submission of Third Supplemental Response," dated August 31, 2017 (Third Supplemental Questionnaire Response), at 3.

<sup>14</sup> See, e.g., *Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review*, 70 FR 8072 (February 17, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>15</sup> See Third Supplemental Questionnaire Response at 2-3.

<sup>16</sup> *Id.* at 4-5.

<sup>17</sup> Due to the business proprietary nature of the information, see Pidilite's letter to the Department, "re: Carbazole Violet Pigment 23 from India: Submission of Section A Response," dated April 5, 2017 (Section A Questionnaire Response), at Appendix 7 for the actual amount of shares owned by the Parekh family.

<sup>18</sup> *Id.* at 4-5.

control over Pidilite. Further, in response to the Department's fourth supplemental questionnaire regarding the relationship of Prashant Shridharani with the top shareholders of Pidilite, Pidilite reported that "Prashant Shridharani is the son of a niece of one of the directors of Pidilite."<sup>19</sup> The question and response thereto indicate that the Parekh family, through Prashant Shridharani, also controls Alpha Chem because Mr. Shridharani is the founder, sole owner and managing director of Alpha Chem.

Alpha Chem uses Pidilite's marketing materials, technical brochures, safety documents, packaging, and branding for its downstream sales of subject merchandise.<sup>20</sup> Pidilite also reported that it is dependent on Prashant Shridharani/Alpha Chem to develop the U.S. market, participating jointly in trade shows and exhibitions and having joint meetings with key potential customers.<sup>21</sup> Pidilite reported further that it requested Prashant Shridharani to assist in the incorporation of Pidilite USA as "Pidilite knew and trusted Mr. Shridharani from previous business encounters in India."<sup>22</sup> Prashant Shridharani listed his own residential address (*i.e.*, the same address used to register Alpha Chem) for Pidilite USA's incorporation documents, which has not been updated since the establishment of Pidilite USA in 2006.<sup>23</sup>

Accordingly, the record evidence supports finding that Prashant Shridharani/Alpha Chem and Pidilite are affiliated by virtue of their common control by the Parekh family, pursuant to section 771(33)(F). Members of the Parekh family control Pidilite through ownership and through various executive roles in the company, from which they have the ability to affect the pricing, production and cost of subject merchandise.<sup>24</sup> Additionally, the Parekh family controls Alpha Chem because Prashant Shridharani, the sole owner and managing director of Alpha Chem, is the son of a niece of one of the directors of Pidilite.<sup>25</sup> The Department finds that the totality of the information reported regarding this "family relationship" and Alpha Chem's role as the sole distributor of subject merchandise produced by Pidilite in the United States demonstrates the potential for Pidilite to exercise restraint and direction over Alpha Chem.

Based on the totality of the circumstances presented in Pidilite's questionnaire responses, the Department preliminarily finds that Pidilite is affiliated with its reported U.S. customer, Alpha Chem, pursuant to section 771(33)(F) of the Act.

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<sup>19</sup> See Pidilite's letter to the Department, "re: Carbazole Violet Pigment 23 from India: Submission of Fourth Supplemental Response," dated October 26, 2017 (Fourth Supplemental Questionnaire Response), at 6.

<sup>20</sup> See Fourth Supplemental Questionnaire Response at 3 and 5.

<sup>21</sup> *Id.* at 4.

<sup>22</sup> See Third Supplemental Questionnaire Response at 4-5.

<sup>23</sup> *Id.*

<sup>24</sup> See *e.g.*, Pidilite's letter to the Department, "re: Carbazole Violet Pigment 23 from India: Submission of Supplemental Section A Response," dated May 8, 2017 (Supplemental Section A Questionnaire Response), at 7.

<sup>25</sup> See Pidilite's Fourth Supplemental Questionnaire Response at 6.

#### **IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

##### Application of Facts Available to Pidilite

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the “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. 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.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

With regard to affiliation, in its Section A questionnaire response, Pidilite reported that it did not sell any subject merchandise to affiliated companies in the United States.<sup>26</sup> In the supplemental Section A questionnaire, the Department requested that Pidilite clarify whether its U.S. subsidiary, Pidilite USA, was involved in the distribution or sale of subject merchandise in the United States during the POR.<sup>27</sup> In response, Pidilite reported that Pidilite USA was not involved in the purchase or sale of subject merchandise.<sup>28</sup> Pidilite also reported that, during the POR, it only made export price (EP) sales to a large unaffiliated U.S. distributor, Alpha Chem.<sup>29</sup> At the time, Pidilite identified no other relationship with Alpha Chem aside from the supplier-customer relationship.

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<sup>26</sup> See Section A Questionnaire Response at 12.

<sup>27</sup> See the Department’s Supplemental Section A Questionnaire, dated April 17, 2017, at 2.

<sup>28</sup> See Pidilite’s Supplemental Section A Questionnaire Response at 3.

<sup>29</sup> *Id.* at 4.

Subsequently, the Department placed additional information on the record, including: 1) the registration and 2016 Foreign Profit Corporation Annual Report of Pidilite USA in the Division of Corporations of the Florida Department of State, and 2) the registration of Alpha Chem in the New Hampshire Corporation Division.<sup>30</sup> The Department noted in the third supplemental questionnaire that, under the Office/Director Detail in the registration with the Division of Corporations of the Florida Department of State, Prashant Shridharani, *i.e.*, sole owner of Alpha Chem, was listed as a “SD” of Pidilite USA. The address of Prashant Shridharani, SD, was also provided. As noted above, this address was also listed as the address for the U.S. customer to which Pidilite sold subject merchandise during the POR, *i.e.*, Alpha Chem. Another document we placed on the record, the “Foreign Profit Corporation Annual Reports” for Pidilite USA, filed with the state of Florida during the POR, also indicated the current principal place of business of Pidilite USA was the same address reported by Pidilite as being the address of Alpha Chem.<sup>31</sup> The Department also noted in the third supplemental questionnaire that the New Hampshire Corporation Division indicated that the registered agent of Alpha Chem was Prashant Shridharani, listing the same address as in the Pidilite USA registration.<sup>32</sup> Therefore, through the Alpha Chem registration with the New Hampshire Corporation Division, the Department learned about Prashant Shridharani and was able to connect him to the Pidilite USA registration from the Division of Corporations of the Florida Department of State. Having learned from the information we placed on the record that Alpha Chem and Pidilite USA shared a registration address, the Department asked Pidilite in the third supplemental questionnaire to clarify the relationship between Prashant Shridharani, Alpha Chem and Pidilite USA.<sup>33</sup>

In its response to the third supplemental questionnaire, Pidilite reported that Prashant Shridharani was an Independent/Outside Director and Secretary of Pidilite USA, and that Prashant Shridharani was on the Board of Directors, attending quarterly meetings, actively voting in company matters and receiving a sitting fee.<sup>34</sup> Pidilite also reported that Prashant Shridharani is the founder, sole owner, and managing director of Alpha Chem.<sup>35</sup> Pidilite reported that it requested Prashant Shridharani to assist in the incorporation of Pidilite USA as “Pidilite knew and trusted Mr. Shridharani from previous business encounters in India.”<sup>36</sup> Pidilite reported that because the newly-formed company did not have a physical address, Prashant Shridharani listed his own residential address, that of Alpha Chem, for Pidilite USA’s incorporation documents, which has not been updated since the establishment of Pidilite USA in 2006.<sup>37</sup> Pidilite also reported that it believed “that it did not make any constructed export price (CEP) transactions

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<sup>30</sup> See the Department’s Third Supplemental Questionnaire, dated August 16, 2017, at Attachment II and III.

<sup>31</sup> *Id.* at Attachment II.

<sup>32</sup> *Id.* at Attachment III.

<sup>33</sup> *Id.* at Attachment I.

<sup>34</sup> See Third Supplemental Questionnaire Response at 2-3.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 4.

<sup>37</sup> *Id.*

during the POR because it did not make any sales to affiliated customers,” but stated that it was willing to provide a revised Section C database treating all U.S. sales as CEP.<sup>38</sup>

Subsequently, the Department issued a fourth supplemental questionnaire requesting additional information regarding potential affiliation issues, in light of Pidilite’s responses to the third supplemental questionnaire, as the Department required more information in order to understand the full nature of the relationships between all of the entities.<sup>39</sup> The Department also requested that Pidilite respond to the CEP portion of the original AD Questionnaire and provide a CEP sales database in the event that we determined that Pidilite is affiliated with Alpha Chem. In its response to the fourth supplemental questionnaire, when asked about Prashant Shridharani’s relationship with the top shareholders of Pidilite, Pidilite reported that “Prashant Shridharani is the son of a niece of one of the directors of Pidilite.”<sup>40</sup> Further, Pidilite provided a CEP questionnaire response which was deficient because: 1) it did not provide invoices for Alpha Chem’s downstream sales to the final U.S. customer, 2) it did not provide any accounting documentation, worksheets or other source documents supporting the various CEP expenses, and 3) it only provided Alpha Chem’s profit and loss statement rather than a sales reconciliation.<sup>41</sup>

Accordingly, we preliminarily determine that the application of facts available pursuant to sections 776(a)(1), (2)(A), (B), and (D) of the Act is warranted because necessary information is missing from the record, Pidilite withheld information we requested regarding potential affiliation and supporting documentation for its CEP sales and expenses, failed to provide this information by the established deadlines, and significantly impeded the Department’s ability to calculate an accurate margin in this administrative review.

When a party submits substantially deficient responses, the Department is under no obligation to use this information.<sup>42</sup> Additionally, where the request for information was clear and relates to some of the central issues in an antidumping case, such as an accurate U.S. sales database and supporting documentation, the Court of International Trade (CIT) has found that the respondent has “a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce.”<sup>43</sup> Further, the CIT has stated that the terms of sections 782(d) and (e) do not give rise to an obligation for the Department to permit a remedial response from the respondent where the respondent has not met all of the criteria of 782(e).<sup>44</sup> Here, the requests for information were not unclear. The Department states in its instructions that if the respondent has

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<sup>38</sup> *Id.* at 6.

<sup>39</sup> See the Department’s Fourth Supplemental Questionnaire, dated October 12, 2017.

<sup>40</sup> See Fourth Supplemental Questionnaire Response at 6.

<sup>41</sup> *Id.* at Exhibits AC-1 and AC-2.

<sup>42</sup> See, e.g., section 782(e) of the Act which provides that the Department should use information submitted by interested parties even if the information does not meet all applicable requirements but only when, inter alia, “the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination...”

<sup>43</sup> See *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (CIT 2001) (*Tung Mung*); *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-3 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, where Commerce questioned the respondent regarding the information, and where Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the respondent’s obligation to create an accurate record and provide Commerce with the information requested).

<sup>44</sup> See *Tung Mung*, 25 CIT at 789 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all of the five enumerated criteria of 782(e)).



any questions concerning whether a company is affiliated to the respondent or the respondent does not believe it is appropriate to prepare a response that includes the information of a known affiliate, or concerning the completion and submission of the U.S. sales spreadsheet, to please contact the official in charge by no later than fourteen calendar days after the issuance of the questionnaire.<sup>45</sup> This record evidence shows that Pidilite was aware of its obligation to report complete, accurate, and reliable U.S. sales data of subject merchandise during the POR, as indicated in the instructions to the Department's U.S. sales questionnaire, including information about potential affiliation and the type of sales transactions in the U.S. market are critical to the Department's analysis. Pidilite had ample opportunity to contact the Department to clarify any questions regarding these issues in order to provide an accurate and reliable U.S. sales database. However, it chose not to do so.

#### Application of Adverse Facts Available to Pidilite

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 Trade Preferences Extension Act (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) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, in general, 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. Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.

Under 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 adverse facts available (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 accordance with section 776(b) of the Act as well as 19 CFR 351.308(a), the Department is applying AFA to Pidilite because Pidilite failed to cooperate by not acting to the best of its ability to respond to the Department's requests for information. Throughout the review, the Department issued four supplemental questionnaires to clarify deficiencies in Pidilite's questionnaire responses regarding potential affiliation between Pidilite and its U.S. customer, Alpha Chem, which would serve as the basis of the Department's treatment of the reported sales (EP versus

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<sup>45</sup> See the Department's Initial Questionnaire, dated March 7, 2017, at G-10 and C-1.

CEP). Pidilite has not been forthcoming with critical information regarding its potential affiliation with Alpha Chem, its accounting documentation, worksheets or other source documents supporting the various CEP expenses, Alpha Chem's sales reconciliation, the invoices for Alpha Chem's downstream sales to the final U.S. customer that establish the CEP sales price and quantity, and has consistently provided inadequate responses to questions pertaining to possible affiliations, which required multiple supplemental questionnaires to obtain a full understanding of the facts. We repeatedly requested information regarding the potential affiliation between Pidilite and Alpha Chem, and received responses that were not fulsome or responsive to the level required for a full understanding of the facts. Based on information we independently obtained and placed on the record, and responses to subsequent questions resulting from the independently-obtained information, the record information now reflects that Alpha Chem and Pidilite are affiliated. Although Pidilite had multiple opportunities to disclose its affiliation with Alpha Chem, it did not do so until we placed independent research on the record and questioned it directly.

As adverse facts available, 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. Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping duty 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 a 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. Further, section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal, except that the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

In light of Pidilite's failure to cooperate to the best of its ability, we recommend applying the AFA rate determined in the 2006-2007 administrative review of this case, which is 66.59 percent.<sup>46</sup> Pursuant to section 776(c)(2) of the Act, the Department need not corroborate this antidumping duty rate because it was applied in a separate segment of this same proceeding.

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<sup>46</sup> See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 73 FR 74141 (December 5, 2008).

## V. CONCLUSION

We recommend applying the above methodology for these preliminary results.



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Agree



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Disagree

11/27/2017

X



Signed by: CAROLE SHOWERS

Carole Showers

Executive Director, Office of Policy

performing the duties of the Deputy Assistant Secretary  
for Enforcement and Compliance