



A-533-875
Investigation
Public Document
E&C/IV: PO

DATE: December 18, 2017

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

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair Value Investigation of Fine Denier Polyester
Staple Fiber from India

I. SUMMARY

We preliminarily determine that fine denier polyester staple fiber (fine denier PSF) 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(b) of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On May 31, 2017, the Department of Commerce (Department) received an antidumping duty (AD) petition concerning imports of fine denier PSF from India,¹ which was filed in proper form by DAK Americas LLC, Nan Ya Plastics Corporation, America, and Auriga Polymers Inc. (the petitioners). On June 5, 2017² and June 12, 2017, the Department requested information and clarification of certain areas of the petition.³ The petitioners filed timely responses to these

¹ See Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam – Petition for the Imposition of Antidumping and Countervailing Duties, dated May 31, 2017 (petition).

² See Memorandum, “Petition for the Imposition of Antidumping Duties on Imports of Fine Denier Polyester Staple Fiber from India: Supplemental Questions,” dated June 5, 2017.

³ See Memorandum, “Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam,” dated June 13, 2017.



requests. On June 27, Department published the notice of the initiation of the AD investigation of fine denier PSF from India in the *Federal Register*.⁴

On June 27, 2017, the Department released U.S. Customs and Border Protection (CBP) import data to interested parties which it intended to use for purposes of selecting mandatory respondents.⁵ On July 5, 2017, we received comments on the Department's selection of respondents from the petitioners.⁶ On July 25, 2017, the Department selected Reliance Industries Limited (RIL) and Bombay Dyeing & Manufacturing Company Limited (Bombay Dyeing) as mandatory respondents for this investigation.⁷ On July 26, 2017, the Department issued the AD Questionnaire to Bombay Dyeing and RIL.⁸

RIL submitted timely responses to the Department's AD Questionnaire (sections A, B, C, and D) between August 23, 2017, and September 15, 2017.⁹ The Department issued supplemental AD Questionnaires to RIL between September 19, 2017 and November 21, 2017.¹⁰ Between October 10, 2017 and November 30, 2017, RIL timely submitted its responses to the supplemental questionnaires.¹¹

⁴ See *Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 29023 (June 27, 2017) (*Initiation Notice*).

⁵ See Memorandum to the File, re: "Fine Denier Polyester Staple Fiber from the India: Customs Data," dated June 27, 2017 (Customs Data Memorandum).

⁶ See letter from the petitioners to the Department, re: "Fine Denier Polyester Staple Fiber from India – Petitioners' Respondent Selection Comments," dated July 5, 2017 (the petitioners' Respondent Selection Comments).

⁷ See Memorandum to James Maeder, Senior Director performing the Duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: "Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from India: Respondent Selection," dated July 25, 2017 (Respondent Selection Memo).

⁸ See letters from the Department to Bombay Dyeing and RIL dated July 26, 2017 (AD Questionnaire).

⁹ See letter from RIL to the Department, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Response to Section A of the Department's Questionnaire," dated August 23, 2017 (RIL Section A Response); see letter from RIL to the Department, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Response to Section B of the Department's Questionnaire," dated September 15, 2017 (RIL Section B Response); see letter from RIL to the Department, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Response to Section C of the Department's Questionnaire," dated September 15, 2017 (RIL Section C Response); see letter from RIL to the Department, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Response to Section D of the Department's Questionnaire," dated September 15, 2017 (RIL Section D Response).

¹⁰ See letter from the Department to RIL, re: "Fine Denier Polyester Staple Fiber from India: Supplemental Section A Questionnaire," dated September 19, 2017, (RIL Supplemental A Questionnaire); see also letter from the Department to RIL, re: "Fine Denier Polyester Staple Fiber from India: Supplemental Sections B and C Questionnaire," dated October 20, 2017 (RIL Supplemental B and C Questionnaire); see also letter from the Department to RIL, re: "Antidumping Duty Investigation on Fine Denier Polyester Staple Fiber from India," dated October 26, 2017 (RIL Supplemental D Questionnaire); see also letter from the Department to RIL, re: "Fine Denier Polyester Staple Fiber from India: Supplemental Sections B and C Questionnaire," dated November 21, 2017 (RIL Second Supplemental B and C Questionnaire).

¹¹ See letter from RIL to the Department, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Supplemental Section A Questionnaire Response," dated October 10, 2017 (RIL Supplemental A Response); see letter from RIL to the Department, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Supplemental Sections B&C Questionnaire Response," dated November 7, 2017 (RIL First Supplemental B and C Response); see letter from RIL to the Department, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Supplemental Sections B&C Questionnaire Response (Questions 51-53)," dated November 9,

Bombay Dyeing submitted responses to the Department's AD Questionnaire (sections A, B, C, and D) between August 23, 2017, and October 6, 2017.¹² The Department issued supplemental AD questionnaires (sections A, B, C, and D) to Bombay Dyeing, between September 22, 2017, and October 26, 2017.¹³ On October 10, 2017, Bombay Dyeing timely submitted its supplemental section A questionnaire response.¹⁴ However, Bombay Dyeing failed to provide a response to the Department's sections B and C supplemental questionnaire on the due date, October 30, 2017, and the Department rejected the company's subsequent untimely response.¹⁵ Furthermore, on November 13, 2017, Bombay Dyeing submitted an incomplete section D supplemental questionnaire response.¹⁶

In addition, in the *Initiation Notice*, the Department set aside time for parties to comment on the appropriate physical characteristics of fine denier PSF to be reported in response to the Department's AD questionnaire.¹⁷ On July 14, 2017, the petitioners and various other interested parties in this investigation, and the companion AD investigations for the People's Republic of China (PRC), India, Taiwan, and the Socialist Republic of Vietnam, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be

2017 (RIL Supplemental Packing Response); *see* letter from RIL to the Department, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Supplemental Section D Questionnaire Response," dated November 13, 2017 (RIL Supplemental D Response); *see* letter from RIL to the Department, re: "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Second Supplemental Sections B&C Questionnaire Response," dated November 20, 2017 (RIL Second Supplemental B and C Response). In their November 14, 2017, submission, the petitioners contend that RIL First Supplemental B and C Response was untimely filed, because it did not contain a U.S. sales file; however, we note that RIL included a PDF copy of its U.S. sales file with the RIL First Supplemental B and C Response and filed a revised electronic version of the sales file with the RIL Supplemental Packing Response two days later.

¹² *See* Bombay Dyeing's letters to the Department "Anti-dumping Duty Investigation of Fine Denier Polyester Staple Fiber from India: Section A Questionnaire Response," dated August 23, 2017; "Anti-dumping duty Investigation of Fine Denier Polyester Staple Fiber from India: Section B Questionnaire Response," dated September 15, 2017, "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Response to Section C of the Department's Questionnaire," dated September 15, 2017, and "Anti-Dumping Duty Investigation of Fine Denier Polyester Staple Fiber from India: Section D Questionnaire Response," dated September 15, 2017.

¹³ *See* the Department's letters to Bombay Dyeing "Fine Denier Polyester Staple Fiber from India: Supplemental Section A Questionnaire," dated September 22, 2017 (supplemental section A questionnaire); "Fine Denier Polyester Staple Fiber from India: Supplemental Section B&C Questionnaire," dated October 12, 2017; and the Department's section D supplemental questionnaire "Antidumping Duty Less Than Fair Value Investigation of Fine Denier Polyester Staple Fiber from India," dated October 26, 2017.

¹⁴ *See* Bombay Dyeing's letter to the Department "Anti-dumping duty Investigation of Fine Denier Polyester Staple Fiber from India: Supplemental Section A Questionnaire Response, dated October 10, 2017.

¹⁵ *See* the Department's Letter to Bombay Dyeing "Fine Denier Polyester Staple Fiber from India: Rejection of Untimely Sections B and C Supplemental Questionnaire Response," dated November 3, 2017.

¹⁶ *See* Bombay Dyeing's Letter to the Department "Anti-dumping duty Investigation of Fine Denier Polyester Staple Fiber from India: Supplemental Section D Questionnaire Response," dated November 13, 2017. *See, also*, the Department's section D supplemental questionnaire to Bombay Dyeing "Antidumping Duty Less Than Fair Value Investigation of Fine Denier Polyester Staple Fiber from India," dated October 26, 2017.

¹⁷ *See Initiation Notice*.

used for reporting purposes.¹⁸ On July 24, 2017, interested parties filed rebuttal comments.¹⁹ Based on the comments received, the Department issued a memorandum to interested parties which contained the product characteristics for this and the companion AD investigations.²⁰ On August 17, 2017, the petitioners submitted comments concerning the product matching hierarchy released by the Department.²¹

On October 25, 2017, 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 fine denier PSF from India.²²

On October 13, 2017, the petitioners requested a postponement of the preliminary determination.²³ On October 24, 2017, and pursuant to section 733(c)(1)(B) of the Act, and 19 CFR 351.205(f)(1), the Department published in the *Federal Register* a postponement of the preliminary determination.²⁴

On November 9, 2017, the Department notified parties of an opportunity to comment on the forthcoming preliminary determination.²⁵ On November 14, 2017, the petitioners filed comments for the Department to consider in its preliminary determination.²⁶ On November 20, 2017, RIL filed rebuttal comments in response to the petitioners regarding the preliminary determination.²⁷

¹⁸ See letter from the petitioners to the Department, re: “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan – Petitioner’s Comments on the Hierarchy of Product Matching Characteristics,” dated July 14, 2017. See also Letter from Tainan Spinning Co., Ltd. (TSCL) to the Department, re: “Comments on Product Characteristics,” dated July 14, 2017.

¹⁹ See letter from the petitioners to the Department, re: “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea and Taiwan – Petitioners’ Rebuttal Comments to the Importers’ Scope Exclusion Requests,” dated July 24, 2017. See also Letter from Jiangyin Hailun Chemical Fiber Co., Ltd. to the Department, re: “Fine Denier Polyester Staple Fiber from The People’s Republic of China, India, the Republic of Korea, and Taiwan - Rebuttal Product Matching Comments,” dated July 24, 2017.

²⁰ See Memorandum to The File, re: “Product Characteristics for Use in Sections B, C, and D Questionnaire Responses,” dated August 11, 2017.

²¹ See letter from the petitioners to the Department, re: “Fine Denier Polyester Staple Fiber from India. the People’s Republic of China. the Republic of Korea, and Taiwan - Petitioners’ Request to Modify the Product Matching Criteria,” dated August 17, 2017 (Petitioners’ Product Matching Modification Request).

²² See letter from the petitioners to the Department, re: “Fine Denier Polyester Staple Fiber from China. India. Korea and Taiwan - Submission of ITC Preliminary Report,” dated October 25, 2017.

²³ See letter from the petitioners to the Department, re: “Fine Denier Polyester Staple Fiber from India, the People’s Republic of China, the Republic of Korea, and Taiwan – Petitioners’ Request to Postpone the Antidumping Duty Preliminary Determinations,” dated October 13, 2017.

²⁴ See *Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in Less-Than-Fair-Value Investigations*, 82 FR 49178 (October 24, 2017) (Postponement of Preliminary Determinations).

²⁵ See memorandum to all interested parties, re: “Less than Fair Value Investigation of Fine Denier Polyester Staple Fiber from India: Notice of Opportunity to Submit Pre-Preliminary Determination Comments,” dated November 9, 2017.

²⁶ See letter from the petitioners to the Department, re: “Fine Denier Polyester Staple Fiber from India – Petitioners’ Pre-Preliminary Comments Concerning Reliance,” dated November 14, 2017.

²⁷ See letter from RIL to the Department, re: “Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.’s Response to Petitioners’ Letter of November 14, 2017,” dated November 20, 2017.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2016, through March 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was May 2017.²⁸

IV. POSTPONEMENT OF PRELIMINARY DETERMINATION

On October 24, 2017, pursuant to section 733(c)(1)(A) of the Act and the petitioners' request, the Department postponed the preliminary determination by 41 days until December 18, 2017.²⁹

V. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

In accordance with section 735(a)(2) of the Act, on November 15, 2017, RIL requested that the Department postpone the final determination and requested that the Department extend the application of provisional measures from four months to six months.³⁰ 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, RIL, 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*. Also, we are extending the provisional measures from four months to a period not to exceed six months pursuant to section 773(d) of the Act and 19 CFR 351.210(e)(2). Suspension of liquidation as described in the accompanying preliminary determination *Federal Register* notice will be extended accordingly.

VI. SCOPE OF THE INVESTIGATION

The product covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded, combed, or pre-opened, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently

²⁸ See 19 CFR 351.204(b)(1).

²⁹ See Postponement of Preliminary Determinations.

³⁰ See Letter from RIL, "Fine Denier Polyester Staple Fiber from India: Reliance Industries, Ltd.'s Request to Extend the Antidumping Duty Final Determination," dated November 15, 2017.

classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

This scope reflects a revision to the low-melt exclusion language that was included in the scope in the *Initiation Notice*. For details, see the “Scope Comments” section below.

VII. SCOPE COMMENTS

In accordance with the *Preamble* to the Department’s regulations,³¹ in the initiation notices the Department invited interested parties to comment on the scope of the investigations. On July 10, 2017, the Department received timely scope comments from David C. Poole Company Inc. (Poole), Suominen Corporation (Suominen), and Consolidated Fibers, Inc. (Consolidated Fibers).³² On July 10, 2017, the Department extended the deadline for scope comments to July 12, 2017 and rebuttal comments to July 24, 2017.³³ On July 11, 2017, the Department received timely scope comments from Reliance Industries, Ltd. (Reliance).³⁴ On July 12, 2017, the Department received timely scope comments from the petitioners.³⁵ On July 24, 2017, the Department received timely scope rebuttal comments from the petitioners.³⁶

Additionally, 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.³⁷ The Department specified that any such comments were due July 10, 2017, which was 20 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by

³¹ See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³² See Letter from Poole to the Department, regarding “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and Vietnam; Scope Comments,” dated July 10, 2017 (Poole Scope Comments); see also letter from Suominen to the Department, regarding “Comments on Scope of the Investigation – Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam,” dated July 10, 2017 (Suominen Scope Comments); see also letter from Consolidated Fibers to the Department, regarding “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam- Scope Comments,” dated July 10, 2017 (Consolidated Fibers Scope Comments).

³³ See Memorandum, “Extension of deadline to submit comments on the scope of the investigations,” dated July 10, 2017. Because July 22, 2017, is a Saturday, the deadline for filing of rebuttal comments to the scope comments is no later than the close of business on Monday July 24, 2017.

³⁴ See Reliance’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Reliance Industries, Ltd.’s Comments Regarding the Scope of the Investigation,” dated July 11, 2017 (Reliance Scope Comments).

³⁵ See the petitioners’ letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam – Petitioners’ Scope Comments,” dated July 12, 2017 (the petitioners’ Scope Comments).

³⁶ See the petitioners’ letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan – Petitioners’ Rebuttal Comments to the Importers’ Scope Exclusion Requests,” dated July 24, 2017 (the petitioners’ Rebuttal Scope Comments).

³⁷ See *Preamble*, 62 FR at 27323.

July 20, 2017.³⁸ On July 7, 2017, the Department extended the deadline for comments on product characteristics to July 14, 2017, and rebuttal comments to July 24, 2017.³⁹ On July 14, 2017, the petitioners and various other interested parties in this investigation, and the companion AD investigations for the PRC, India, Taiwan, and Vietnam, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.⁴⁰ On July 24, 2017, interested parties filed rebuttal comments.⁴¹ Based on the comments received, the Department issued a memorandum to interested parties which contained the product characteristics for this and the companion AD investigations.⁴²

On August 17, 2017, the petitioners submitted comments concerning the product matching hierarchy released by the Department.⁴³ The petitioners requested that the Department modify the product matching characteristics. Specifically, the petitioners advocated eliminating the first product matching characteristic “Fiber Loft” (or listing it as the last characteristic) and including “tenacity” as a product matching characteristic. The petitioners stated that “fiber loft” (which involves either a conjugate (bi-component) fiber or a single component (non-conjugate), crimped fiber) is only relevant to non-subject coarse denier PSF; as “conjugate” fine denier PSF is not produced in the United States and is not a commercially significant physical characteristic for fine denier PSF. The petitioners noted that non-subject coarse denier polyester fibers are primarily used for fill applications, where “loft” is necessary to provide added filling capacity. However, the Department finds that record evidence shows conjugate fine denier PSF is relevant in the U.S. market. Furthermore, the Department finds that “fiber loft” is a commercially meaningful product characteristic because conjugate or non-conjugate characteristics deal with the fiber’s fundamental structure.

Regarding tenacity, the petitioners stated that “{s}ubject products may be of low, mid, high or very high tenacity, representing the strength of the fibers”⁴⁴ and later noted that “{i}f the Department wishes to ensure reporting for different crimping levels, it should require “tenacity”

³⁸ See *Initiation Notice*.

³⁹ See Memorandum, “Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Extension of Deadline to Submit Comments on Product Characteristics,” dated July 7, 2017.

⁴⁰ See the petitioners’ letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan – petitioners’ Comments on the Hierarchy of Product Matching Characteristics,” dated July 14, 2017; see Tainan Spinning Co., Ltd.’s Letter, “Comments on Product Characteristics,” dated July 14, 2017.

⁴¹ See the petitioners’ letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea and Taiwan – Petitioners’ Rebuttal Comments to the Importers’ Scope Exclusion Requests,” dated July 24, 2017; see Jiangyin Hailun Chemical Fiber Co., Ltd.’s Letter, “Fine Denier Polyester Staple Fiber from The People's Republic of China, India, the Republic of Korea, and Taiwan - Rebuttal Product Matching Comments,” dated July 24, 2017.

⁴² See Memorandum, “Product Characteristics for Use in Sections B, C, and D Questionnaire Responses,” dated August 11, 2017.

⁴³ See the petitioners’ letter, “Fine Denier Polyester Staple Fiber from India. the People’s Republic of China. the Republic of Korea, and Taiwan - Petitioners' Request to Modify the Product Matching Criteria,” dated August 17, 2017 (the petitioners’ Product Matching Modification Request).

⁴⁴ See Petitioner’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan – Petitioner’s Comments on the Hierarchy of Product Matching Characteristics,” dated July 14, 2017.

to be reported as a matching variable within the control numbers.”⁴⁵ However, the petitioners did not explain why it is important to consider different crimping levels. Based on the foregoing, the Department has made no changes or modifications to the product matching criteria.

Reliance Industries, Ltd., a respondent in the AD investigation of fine denier PSF from India, and several importers argued to exclude from the scope short-cut, siliconized, certified post-consumer recycled, and/or dope dyed black fine denier PSF and polyester fiber fill. The petitioners requested that we broaden the scope exclusion for low-melt PSF because, as currently written, it does not exclude certain products within the scope of the ongoing low-melt PSF investigations. The petitioners also opposed interested parties’ exclusion requests. For the reasons discussed in the Scope Memorandum, we have preliminarily revised the low-melt exclusion to avoid overlap of the scopes in the fine denier and low-melt PSF investigations but we have not revised the scope to exclude any other products.⁴⁶

VIII. DISCUSSION OF METHODOLOGY

Application of Adverse Facts Available (AFA)

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or 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 the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the

⁴⁵ See Petitioner’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan – Petitioners’ Request to Modify the Product Matching Characteristics,” dated August 17, 2017.

⁴⁶ See Memorandum, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, Republic of Korea, and Taiwan, : Scope Comments Decision Memorandum for the Preliminary Determinations,” dated December 8, 2017. (Preliminary Scope Decision Memorandum).

addition of section 776(d) of the Act.⁴⁷ The amendments to the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this investigation.⁴⁸

Section 776(b) of the Act provides that the Department may use an adverse inference in selecting from the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, 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.⁴⁹ Further, section 776(b)(2) of the Act states that use of an adverse inference when selecting from the facts otherwise available may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.⁵⁰ The SAA explains that the Department may use an adverse inference when selecting from the facts otherwise available “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁵¹ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may use an adverse inference when selecting from the facts available.⁵²

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.⁵³ 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.⁵⁴ Further, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, the Department may use a dumping margin from any segment of the proceeding under the applicable antidumping order when using an adverse inference to select from the facts otherwise available, including the highest of such margins.⁵⁵ When selecting from the facts otherwise available with an adverse inference, the Department is not required to estimate what the dumping margin would have been if the interested party failing

⁴⁷ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). See also *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*). The text of the TPEA may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

⁴⁸ See *Applicability Notice*, 80 FR at 46794-95.

⁴⁹ See section 776(b)(1)(B) of the Act.

⁵⁰ See also 19 CFR 351.308(c).

⁵¹ See Statement of Administrative Action (SAA), H.R. Doc. 103-316, 103d Cong., 2d Session, vol 1 (1994) (SAA) at 870.

⁵² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340; and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

⁵³ See also 19 CFR 351.308(d).

⁵⁴ See SAA at 870.

⁵⁵ See section 776(d)(1)(B) and 776(d)(2) of the Act.

to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁵⁶

Because of multiple instances of filing deficiencies, including an improperly filed entry of appearance, an improperly filed extension request,⁵⁷ a business proprietary version (BPI) response to section D of the Department’s questionnaire with only one page of narrative,⁵⁸ and its failure to timely serve the petitioners with that BPI version (which resulted in a month delay before the petitioners’ counsel received the response),⁵⁹ the Department placed Bombay Dyeing on notice that it may decline to provide the company with an opportunity to correct future filing deficiencies; may reject such deficient submissions; and, in such a case, may rely on facts otherwise available, and use an adverse inference, under section 776(a) and (b) of the Act for its determination with respect to Bombay Dyeing.⁶⁰ Despite the Department’s repeated requests that Bombay Dyeing follows its filing instructions and properly file complete submissions with the Department, on October 30, 2017, the due date for Bombay Dyeing’s section B and C supplemental questionnaire response (SBCQR), Bombay Dyeing failed to timely file with the Department its entire SBCQR, including the public version of that response.⁶¹ Consequently, we rejected Bombay Dyeing’s SBCQR.⁶² On November 13, 2017, Bombay Dyeing again failed to timely file a complete section D supplemental questionnaire response. It did not provide a narrative response to any of the Department’s supplemental section D questions; it merely provided exhibits, and failed to timely serve the petitioners with the response.⁶³

In addition, there are significant deficiencies in the information that Bombay Dyeing did file on the record.⁶⁴ Among other things, Bombay Dyeing did not clearly establish the basis for the date of sale, reporting conflicting information regarding the appropriate date of sale; there is

⁵⁶ See section 776(d)(3)(B) of the Act.

⁵⁷ See Letter from the Department to Bombay Dyeing, dated August 15, 2017.

⁵⁸ See the Department’s letter to Bombay Dyeing “Fine Denier Polyester Staple Fiber from India: Improper Filing of the Section D Questionnaire Response,” dated October 4, 2017.

⁵⁹ See the Department’s letter to Bombay Dyeing “Fine Denier Polyester Staple Fiber from India: Filing of the Section D Questionnaire Response,” dated October 18, 2017; *see also* the Department’s Letter to Bombay Dyeing “Fine Denier Polyester Staple Fiber from India: Filing Deficiencies,” dated October 25, 2017.

⁶⁰ *Id.*

⁶¹ See Bombay Dyeing’s letter to the Department “Fine Denier Polyester Staple Fiber from India: Explanation for marginal Delay in filing of Supplemental response to Section Band C questionnaire, dated November 2, 2017.

⁶² See the Department’s Letter to Bombay Dyeing “Fine Denier Polyester Staple Fiber from India: Rejection of Untimely Sections B and C Supplemental Questionnaire Response,” dated November 3, 2017 (the Department’s November 3, 2017 Letter to Bombay Dyeing).

⁶³ See the Department’s section D supplemental questionnaire to Bombay Dyeing “Antidumping Duty Less Than Fair Value Investigation of Fine Denier Polyester Staple Fiber from India,” dated October 26, 2017; Bombay Dyeing’s letter to the Department “Anti-dumping duty Investigation of Fine Denier Polyester Staple Fiber from India: Supplemental Section D Questionnaire Response,” dated November 13, 2017 (SSDQR); and the petitioners’ letter to the Department “Fine Denier Polyester Staple Fiber from India - Petitioners’ Request to Reject Bombay Dyeing & Mfg. Co. Ltd.’s Supplemental Section D Response,” dated November 16, 2017.

⁶⁴ See the Department’s letters to Bombay Dyeing “Fine Denier Polyester Staple Fiber from India: Supplemental Section B&C Questionnaire,” dated October 12, 2017; and the Department’s section D supplemental questionnaire “Antidumping Duty Less Than Fair Value Investigation of Fine Denier Polyester Staple Fiber from India,” dated October 26, 2017; the petitioners’ letter to the Department “Fine Denier Polyester Staple Fiber from India – Petitioners’ Comments on the Section D Questionnaire Response of Bombay Dyeing & Mfs. Co. Ltd.,” dated November 1, 2017; and the SSDQR.

insufficient explanation and support for virtually all reported expenses relating to the company's U.S. and home market sales; there is insufficient explanation and support for the home market and U.S. sales reconciliation; and there is a discrepancy between the home market and U.S. sales values in the section A questionnaire response and the sales values in the sections B and C questionnaire response.⁶⁵ Moreover, Bombay Dyeing's section D questionnaire response is also replete with deficiencies involving virtually all of the company's reported costs.⁶⁶

As a result, we preliminarily find that the necessary information is not available on the record of this investigation, that Bombay Dyeing withheld information the Department requested, that it failed to provide information by the specified deadlines or in the form and manner requested, and that it significantly impeded the proceeding. Moreover, because Bombay Dyeing failed to provide the information requested by the Department's questionnaire, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are preliminarily relying upon facts otherwise available to determine Bombay Dyeing's preliminary estimated weighted-average dumping margin.

Next, we considered whether it is appropriate to use an adverse inference in applying the facts otherwise available to Bombay Dyeing based on a failure of the company to act to the best of its ability to comply with requests for information. The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the meaning of failure to act to "the best of its ability," stating that the ordinary meaning of "best" means "one's maximum effort," and that "ability" refers to "the quality or state of being able."⁶⁷ Thus, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum that it is able to do.⁶⁸ The CAFC acknowledged, however, that while there is no willfulness requirement, "deliberate concealment or inaccurate reporting" would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.⁶⁹ Hence, compliance with the "best of its ability" standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.⁷⁰

Bombay Dyeing's pattern of improperly filing documents, filing incomplete responses to the Department's requests for information, and filing untimely responses to the Department's request for information demonstrate that it did not do the maximum that it was able to do in responding to those requests. Bombay Dyeing was provided multiple opportunities to correct its filing deficiencies, including the opportunity to complete an incomplete section D questionnaire response, pursuant to section 782(d) of the Act. Yet it continued to provide incomplete responses to requests for information, including submitting a response to the Department supplemental section D questionnaire without a narrative response to any of the questions. Thus,

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See *Nippon Steel*, 337 F.3d at 1382.

⁶⁸ *Id.*

⁶⁹ *Id.* at 1380.

⁷⁰ *Id.* at 1382.

Bombay Dyeing has not put forth its maximum effort to provide the Department with full and complete answers to all inquiries in this investigation. Accordingly, the Department concludes that Bombay Dyeing failed to cooperate to the best of its ability to comply with requests for information by the Department, in accordance with section 776(b) of the Act and 19 CFR 351.308(a). Therefore, in selecting from among the facts otherwise available, we preliminarily determine that an adverse inference is warranted.⁷¹

As noted above, section 776(b) of the Act states that the Department, when selecting from the facts otherwise available with an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁷² In selecting a rate based on the facts otherwise available with an adverse inference (AFA), 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.⁷³ In this investigation, we have selected the petition dumping margin of 21.43 percent as the AFA rate applicable to Bombay Dyeing.

Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.⁷⁴ 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.”⁷⁵ Thus, because the 21.43 percent AFA rate applied to Bombay Dyeing 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.⁷⁶ The SAA and the Department’s regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁷⁷ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information

⁷¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁷² See also 19 CFR 351.308(c).

⁷³ See SAA at 870.

⁷⁴ See also 19 CFR 351.308(d).

⁷⁵ See SAA at 870; see also 19 CFR 351.308(c)(1).

⁷⁶ See SAA at 870; see also 19 CFR 351.308(d).

⁷⁷ See SAA at 870; see also 19 CFR 351.308(d).

used has probative value by examining the reliability and relevance of the information.⁷⁸

We determine that the highest petition dumping margin of 21.43 percent is reliable because, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination.⁷⁹ During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations used in the petition to derive estimated dumping margins. Specifically, we 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 elements of the EP and NV calculations used in the petition to derive estimated dumping margins.

As discussed in detail in the Initiation Checklist, we considered the EP and NV calculations in the petition to be reliable.⁸⁰ Because we obtained no other information that would make us question the validity of the information supporting the U.S. price or NV calculations provided in the petition, we preliminarily consider the EP and NV calculations from the petition, and thus the dumping margins in the petition, to be reliable for the 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. The courts acknowledge that consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.⁸¹

To corroborate the 21.43 percent AFA rate that we selected, we compared the 21.43 percent petition rate to the dumping margins that we calculated for RIL. We found that the petition rate of 21.43 percent is within the range of transaction-specific dumping margins calculated for RIL, and therefore is relevant and has probative value.⁸² Accordingly, we find that the petition rate of 21.43 percent is corroborated within the meaning of section 776(c) of the Act.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that “the estimated “all-others” rate shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding all zero or *de minimis* dumping

⁷⁸ See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 82 FR 55574 (Nov. 22, 2017) and accompanying Preliminary Decision Memorandum at “Corroboration of the AFA Rate.”

⁷⁹ See AD Investigation Initiation Checklist regarding, “Fine Denier Polyester Staple Fiber from India,” dated June 20, 2017 (*Initiation Checklist*).

⁸⁰ See *Initiation Checklist*.

⁸¹ See, e.g., *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

⁸² See Memorandum, “Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from India: Reliance Industries Limited.” (Analysis Memorandum), dated concurrently with this memorandum.

margins, and all dumping margins determined entirely {on the basis of facts available}.” We assigned a dumping margin based entirely on AFA to Bombay Dyeing. When only one weighted-average dumping margin for the individually investigated respondents is above *de minimis* and not based entirely on facts available, the estimated “all-others” rate will be equal to that single above *de minimis* rate.⁸³ Therefore, pursuant to section 735(c)(5)(A) of the Act, we have preliminarily assigned RIL’s rate to all other producers and exporters of subject merchandise.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether RIL’s sales of fine denier PSF from India to the United States were made at LTFV, we compared EPs to NV, as described in the “U.S. Price” and “Normal Value” sections of this memorandum.

A) Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEP) (*i.e.*, the average-to-average comparison method) unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs to EPs (or CEPs) of individual transactions, *i.e.*, the average-to-transaction comparison method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁸⁴ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, 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 comparison method in calculating weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis

⁸³ See *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming the Department’s determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively) and *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).

⁸⁴ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 3 and *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. 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, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period 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 prices to the particular purchaser, region, or time period differ significantly from the 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 (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to 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 accounts 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. 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, the Department

examines whether using only the average-to-average comparison method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison 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 comparison method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average comparison method cannot account for differences such as those observed in this analysis and, therefore, an alternative comparison 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 comparison method and the appropriate alternative comparison method where both rates are above the *de minimis* threshold; or (2) the resulting weighted-average dumping margin between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

B) Results of the Differential Pricing Analysis

For RIL, based on the results of the differential pricing analysis, the Department preliminarily finds that 56.52 percent of the value of U.S. sales pass the Cohen's *d* test,⁸⁵ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for RIL.

IX. 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 Department 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 Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁸⁶ The material terms of sale normally include the price, quantity,

⁸⁵ See Analysis Memorandum.

⁸⁶ See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

delivery terms, and payment terms.⁸⁷ Finally, the Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁸⁸

RIL reported the invoice date as the date of sale for its U.S.⁸⁹ and home markets⁹⁰ because it explained that the invoice date is the point in time at which all the material terms of the sale have been agreed upon.⁹¹ Based on the information provided by RIL, we relied on RIL's invoice date as the date of sale for its U.S. and home market sales.⁹²

X. U.S. PRICE

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” In accordance with section 772(b) of the Act, CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).”

RIL reported that it has a U.S. regional office which acts as a liaison for certain of its sales made from its polyester segment⁹³ but the U.S. office does not have the authority to set the terms of sale, does not issue the commercial invoice, does not take possession of the product, does not receive remuneration for the sale, and does not take title to the merchandise.⁹⁴ RIL reports that U.S. POI sales of subject merchandise in which the U.S. office was involved were made prior to importation into the United States.

The relevant question in determining whether to classify these sales as a EP or CEP transactions,

⁸⁷ See, e.g., *Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Issue 2 “Date of Sale,” Comment 1.

⁸⁸ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and accompanying Issues and Decision Memorandum at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying Issues and Decision Memorandum at Comment 2.

⁸⁹ See RIL Section C Response at 16.

⁹⁰ See RIL Section B Response at 19.

⁹¹ See RIL Second Supplemental B and C Response at 17-18.

⁹² See RIL Supplemental A Response at Exhibit Supp-A10; see also RIL's Section B and C Response dated September 20, 2017 and September 18, 2017, respectively; Section B Response at 17-18 and Section C Response at 19-20.

⁹³ See RIL Supplemental B and C Response at 41-42.

⁹⁴ *Id.*; see also RIL Second Supplemental B and C Response at 23-25.

is where the sale took place. In *AK Steel*, the CAFC explained “the plain meaning of the {EP and CEP} language enacted by Congress ... focuses on where the sale takes place ...”⁹⁵ Also in *AK Steel*, the CAFC explained that, “{i}n general, a producer/exporter in a dumping investigation will always be located outside the United States”; thus, the important issue is “the locus of the transaction” and “not the location of the company.” The CIT explained in *Nucor Corp.*, that “{t}he gravamen of *AK Steel* is the significance of the location of the sale or transaction – specifically, ‘whether the sale or transaction takes place inside or outside the United States.’”⁹⁶ In *Nucor Corp* the CIT also explained that *AK Steel* “not only used the term ‘location of the sale,’ {to define EP or CEP sales} it specifically defined it – as the place of ‘the transfer of ownership or title.’”⁹⁷

Here, even though RIL’s U.S. sales office participates in the sales process for its U.S. sales, RIL establishes the terms of sale and the sale is made outside of the United States before importation of the merchandise into the United States. The terms of sale were made on CFR, CIF and FOB bases, and thus risk and title would have transferred to RIL’s customer upon export.⁹⁸ Therefore, we find that RIL’s U.S. sales are EP transactions.

We based the starting EP on packed prices to unaffiliated purchasers in, or for exportation to, the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the starting price (gross unit price) for movement expenses, which include, where appropriate, the following expenses: foreign inland freight, foreign brokerage and handling, and international freight.

RIL reported that it received a duty drawback.⁹⁹ Section 772(c)(1)(B) of the Act states that the price used to establish EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to U.S. prices.¹⁰⁰ The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); the second prong of the test is that the company must demonstrate that there were sufficient imports of materials to account for the duty drawback or exemption granted for the export of the manufactured product.¹⁰¹

⁹⁵ See *AK Steel Corp. v. United States*, 226 F.3d 1361, 1370-71 (Fed. Cir. 2000) (*AK Steel*).

⁹⁶ See *Nucor Corp. v. United States*, 612 F. Supp. 2d 1264, 1277-81 (CIT 2009) (*Nucor Corp.*).

⁹⁷ *Id.*

⁹⁸ See RIL Section A Response at 18.

⁹⁹ See RIL Section C Response at 33 and Exhibit C-9 and C-10.

¹⁰⁰ See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*).

¹⁰¹ *Id.*; Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

RIL reported that duty drawback credits are available only if a company exports the specified product listed in the customs' duty drawback schedule and realizes its proceeds in freely convertible currency. Thus, eligibility under the drawback program is contingent on exports. However, RIL also reported that there is no linkage between the exports and the inputs.¹⁰² Because there is no linkage between the exports of merchandise under consideration and the imported inputs and any associated duties that have been exempted or rebated, RIL has not satisfied the first prong of the Department's "two-pronged" test. Furthermore, RIL provided no evidence to show whether it imported sufficient quantities of dutiable inputs during the POI in order to qualify for a duty drawback adjustment. Thus, RIL has not satisfied the second prong of the Department's "two-pronged" duty drawback test. Accordingly, we are preliminarily not granting a duty drawback adjustment to RIL.

XI. Normal Value

A) *Home Market Viability*

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

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

B) *Affiliated-Party Transactions and Arm's-Length Test*

During the POI, RIL made sales of the foreign like product in the home market to affiliated parties, as defined in section 771(33)(F) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, where appropriate, we compared the unit prices of sales to affiliated and unaffiliated customers net of all billing adjustments, discounts, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c), and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length.¹⁰³ Sales to affiliated

¹⁰² See RIL Supplemental B and C Response at 38-39.

¹⁰³ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November

customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.¹⁰⁴

C) *Deemed Export Sales*

RIL noted that in its sales reconciliation, it treated deemed export sales, which are sales that are made to customers geographically within India who will use the goods for purposes of their exports as home market sales, rather than export sales. The petitioners contend that RIL should not have reported deemed export sales in its home market sales database, because in *PET Resin from India*, in which RIL was also a respondent, the Department determined that because RIL knew that its deemed exports were sales of merchandise destined for exportation, they were not home market sales.¹⁰⁵ In the instant investigation, however, RIL reported that it had no deemed export sales of foreign like product during the POI.¹⁰⁶ Thus, the issue raised by the petitioners is not relevant here.

D) *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.¹⁰⁷ Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).¹⁰⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.¹⁰⁹ 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 levels of trade for EP and comparison market sales, *i.e.*, NV based on either home market or third-country prices,¹¹⁰ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling

15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

¹⁰⁴ See section 771(15) of the Act and 19 CFR 351.102(b)(35).

¹⁰⁵ See *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327 (March 14, 2016) (*PET Resin from India*) and accompanying Issues and Decision Memorandum at Comment 13.G.

¹⁰⁶ See RIL Supplemental A response at 8; see also RIL Second Supplemental B and C Response at Exhibit 2Supp-BC5.

¹⁰⁷ See also section 773(a)(7)(A) of the Act.

¹⁰⁸ See 19 CFR 351.412(c)(2).

¹⁰⁹ *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*).

¹¹⁰ Where NV is based on constructed value (CV), we determine the NV level of trade based on the level of trade 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).

activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.¹¹¹

To determine if RIL's home-market sales were made at a different LOT than EP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between RIL and the unaffiliated customers.¹¹² If home-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home-market sales made at the LOT of the export transaction, then we make a LOT adjustment to NV. Namely, when the Department is unable to match U.S. sales to 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. sales to sales at a different LOT in the comparison market and where available data make it possible, will make an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412.¹¹³

RIL reported two channels of trade in the home market. The first channel consists of direct sales from the factory to home market customers. The second channel of trade consists of sales made through agents or trading companies that stock RIL's merchandise in their warehouses and deliver it to customers.¹¹⁴ There were not significant differences between the selling activities RIL reported for the two home market sales channels.¹¹⁵ Because the majority of the selling functions for RIL's home market sales were made at the same level of intensity, we found that the two home market channels of trade constitute a single LOT.¹¹⁶

RIL reported two channels of trade in the U.S. market. The first channel consists of direct export sales to U.S. customers. The second channel of trade consists of export sales made through agents or trading companies.¹¹⁷ There were not significant differences between the selling activities RIL reported for the two home market sales channels.¹¹⁸ Because the majority of the selling functions for RIL's U.S. sales were made at the same level of intensity, we found that the U.S. market channels of trade constitutes a single LOT.¹¹⁹

After reviewing the selling activities associated with EP and home market sales, aside from certain sales activities, we determined that the selling activities associated with the home market LOT were the same as those associated with the EP LOT and all corresponding selling activities were performed at the same level of intensity.¹²⁰ As we find that there were no significant differences between the selling activities, we preliminarily find that RIL sold the subject merchandise and the foreign like product at the same LOT during the POI. Accordingly, all

¹¹¹ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

¹¹² See 19 CFR 351.412(c)(2).

¹¹³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-61733 (November 19, 1997).

¹¹⁴ See RIL's Section A Response at 17-20 and Exhibit A-10.

¹¹⁵ See Analysis Memorandum for a further discussion of level of trade.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

comparisons of EP to NV are at the same LOT, and thus a LOT adjustment pursuant to section 773(a)(7)(A) of the Act, is not warranted.

E) Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the cost of production (COP), we based NV on comparison market prices. We calculated NV based on packed, delivered or ex-works prices to unaffiliated customers in India. We made deductions, where appropriate, from the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight and inland insurance under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and for circumstances of sale (imputed credit expenses and other selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with home market sales of merchandise similar to that sold in the U.S. market, we 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.¹²¹

F) Calculation of NV Based on CV

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of RIL's material and fabrication costs, selling, general, and administrative (SG&A) expenses, profit and U.S. packing costs, as adjusted. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by RIL in connection with the production and sale of the foreign like product at the most similar LOT as the U.S. sale, as discussed above, in the ordinary course of trade, for consumption in the comparison market.

We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

G) Cost of Production (COP) Analysis

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 examined RIL's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual average costs based on the reported data except as follows.

¹²¹ See 19 CFR 351.411(b).

- We revised RIL’s G&A expense ratio to exclude the selling expenses, interest expenses, packing materials and net exchange difference from the cost of goods sold (COGS) used as the denominator in the calculation of the ratio.
- We revised RIL’s interest expense ratio to include the net exchange difference in the interest expense numerator and to exclude the G&A expenses, selling expenses, packing expenses and net exchange difference from the COGS used as the denominator in the calculation of the ratio.

For additional details, *see* Memorandum to Neal M. Halper, Director of Office of Accounting, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Reliance Industries Limited,” dated December 18, 2017.

2. Results of the COP Test

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

We found that, for certain products, more than 20 percent of RIL’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.

XII. ADJUSTMENTS FOR COUNTERVAILABLE EXPORT SUBSIDIES

In an antidumping investigation with a companion countervailing duty (CVD) investigation, it is the Department’s practice to calculate the AD cash deposit rate for each respondent by reducing the respondent’s weighted-average dumping margin to account for export subsidies found for the respondent in the companion CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price “shall be increased by the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy.”¹²² The

¹²² *See Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

Department preliminarily determined in the companion CVD investigation that RIL and Bombay Dyeing benefitted from an export subsidy. Therefore, we calculated the AD cash deposit rate for RIL, Bombay Dyeing, and all-other companies by reducing the weighted-average dumping margin by 2.00 percent, 5.77 percent, and 2.69 percent, respectively.

XIII. 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.

XIV. VERIFICATION

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

XV. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.

☒

☐

Agree

Disagree

12/18/2017

X



Signed by: GARY TAVERMAN

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