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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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Carbazole Violet Pigment 23 from India: Issues and Decision
Memorandum for the Final Results of Antidumping Duty
Administrative Review; 2015-2016

I. SUMMARY

The Department of Commerce (Commerce) has conducted 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. As a result of our analysis of the case and rebuttal briefs submitted by interested parties in this administrative review, we have not made changes to the *Preliminary Results*.¹ Below is the complete list of issues in this administrative review for which we received comments from interested parties.

Issues

Comment 1: Whether Pidilite and Its U.S. Customer Are Affiliated

Comment 2: Whether to Continue to Apply AFA to Pidilite for the Final Results

¹ See *Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57205 (December 4, 2017) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On December 4, 2017, Commerce published in the *Federal Register* the *Preliminary Results* of the 2015-2016 administrative review of the antidumping duty order on CVP 23 from India. In the *Preliminary Results*, Commerce preliminarily determined that Pidilite failed to cooperate to the best of its ability with Commerce's request for information, and applied a dumping margin based on adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (Act).² On January 11, 2018, Pidilite timely submitted a case brief concerning Commerce's *Preliminary Results*.³ On January 16, 2018, Nation Ford Chemical Company (NFC) and Sun Chemical Corporation (Sun) (collectively, the petitioners), timely submitted a rebuttal brief.⁴ Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. As a result, the revised deadline for the final results of this review is now April 6, 2018.⁵

III. AFFILIATION

In the *Preliminary Results*, pursuant to section 771(33)(E) of the Act, Commerce found that Alpha Chem, Pidilite's reported U.S. customer, and Prashant Shridharani, the sole owner of Alpha Chem, are affiliated because Prashant Shridharani directly owns, controls, or holds with power to vote, at least five percent of Alpha Chem's outstanding voting stock or shares. Also, Commerce found that Prashant Shridharani is the founder, sole owner, and managing director of Alpha Chem, which is located at Prashant Shridharani's residential address. Accordingly, Commerce found Prashant Shridharani and Alpha Chem to be one and the same. Commerce also found that Pidilite USA, Pidilite's U.S. subsidiary, 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. Finally, Commerce found that, based on the information provided in Pidilite's questionnaire responses, Pidilite is affiliated with its reported U.S. customer, Alpha Chem, pursuant to section 771(33)(F) of the Act because both are controlled by the Parekh family.⁶ We have made no changes to our affiliation determination for these final results.

IV. USE OF FACTS OTHERWISE AVAILABLE WITH ADVERSE INFERENCES

In the *Preliminary Results*, Commerce applied facts available and adverse facts available (AFA) to Pidilite based on sections 776(a)(1), (2)(A), (B), and (C) and 776(b) of the Act in connection with Pidilite's failure to report complete, accurate, and reliable U.S. sales data of subject

² See PDM at 6.

³ See Pidilite's letter to Commerce, "Carbazole Violet Pigment 23 from India: Resubmission of Pidilite's Administrative Case Brief to Correct the Misidentified Proceeding Segment in the Cover Letter's Identification Block," dated January 11, 2018 (Pidilite Case Brief).

⁴ See Petitioners' letter to Commerce, "Rebuttal Brief of Petitioners NFC and Sun," dated January 16, 2018 (Petitioners Rebuttal Brief).

⁵ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

⁶ See PDM at 4-5.

merchandise during the POR, including information about potential affiliation and the type of sales transactions in the U.S. market that are critical to Commerce's analysis.⁷ For these final results, we have made no changes to our analysis and application of facts available and AFA for Pidilite.⁸

As discussed in the *Preliminary Results*, Pidilite continually failed to provide information requested, either completely, or in the form and manner requested by Commerce. 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.⁹ In the supplemental section A questionnaire, Commerce 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.¹⁰ In response, Pidilite reported that Pidilite USA was not involved in the purchase or sale of subject merchandise.¹¹ Pidilite also reported that, during the POR, it only made export price (EP) sales to a large unaffiliated U.S. distributor, Alpha Chem.¹² At the time, Pidilite identified no other relationship with Alpha Chem aside from the supplier-customer relationship.

Subsequently, Commerce 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.¹³ Commerce 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.*, the sole owner of Alpha Chem, was listed as an "SD" of Pidilite USA. The address of Prashant Shridharani, SD, was also provided. 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 Commerce placed on the record, the "Foreign Profit Corporation Annual Reports" for Pidilite USA, filed with the state of Florida during the POR, also indicated that the current principal place of business of Pidilite USA was the same address reported by Pidilite as being the address of Alpha Chem.¹⁴ Commerce 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.¹⁵ Therefore, through the Alpha Chem registration with the New Hampshire Corporation Division, Commerce 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. Through these documents,

⁷ See PDM at 6-10.

⁸ For a detailed explanation, see "Comment 2: Whether to Continue to Apply AFA to Pidilite for the Final Results" below.

⁹ See Pidilite's letter to Commerce, "Carbazole Violet Pigment 23 from India: Submission of Section A Response," dated April 5, 2017 (Section A Questionnaire Response), at 12.

¹⁰ See Commerce's Supplemental Section A Questionnaire, dated April 17, 2017, at 2.

¹¹ See Pidilite's letter to Commerce, "Carbazole Violet Pigment 23 from India: Submission of Supplemental Section A Response," dated May 8, 2017 (Supplemental Section A Questionnaire Response), at 3.

¹² *Id.* at 4.

¹³ See Commerce's Third Supplemental Questionnaire, dated August 16, 2017, at Attachment II and III.

¹⁴ *Id.* at Attachment II.

¹⁵ *Id.* at Attachment III.

Commerce became aware of a potential deficiency in Pidilite's reporting. And, through the placement of such information on the record and Commerce's accompanying questions in the third supplemental questionnaire, Commerce notified Pidilite of the possible deficiencies of its prior responses. Specifically, in the third supplemental questionnaire, Commerce asked Pidilite again to report its affiliations, in this instance, and clarifying the relationship between Prashant Shridharani, Alpha Chem, and Pidilite USA.¹⁶

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, attended quarterly meetings, actively voted in company matters and received a sitting fee.¹⁷ Pidilite also reported that Prashant Shridharani was the founder, sole owner, and managing director of Alpha Chem.¹⁸ 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."¹⁹ 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, and that this address had not been updated since the establishment of Pidilite USA in 2006.²⁰ Pidilite also reported that it believed "that it did not make any constructed export price (CEP) transactions 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.²¹

Subsequently, Commerce issued a fourth supplemental questionnaire requesting additional information regarding potential affiliation issues to understand the full nature of the relationships between all entities, in light of Pidilite's deficient responses to the third supplemental questionnaire.²² Commerce 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."²³ Further, Pidilite provided a deficient CEP questionnaire response in which: 1) it did not provide at least one sample invoice 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 certain CEP expenses; and 3) it only provided Alpha Chem's profit and loss statement rather than a complete sales reconciliation.²⁴

¹⁶ *Id.* at Attachment I.

¹⁷ See Pidilite's letter to Commerce, "Carbazole Violet Pigment 23 from India: Submission of Third Supplemental Response," dated August 31, 2017 (Third Supplemental Questionnaire Response), at 2-3.

¹⁸ *Id.*

¹⁹ *Id.* at 4.

²⁰ *Id.*

²¹ *Id.* at 6.

²² See Commerce's Fourth Supplemental Questionnaire, dated October 12, 2017.

²³ See Pidilite's letter to Commerce, "Carbazole Violet Pigment 23 from India: Submission of Fourth Supplemental Response," dated October 26, 2017 (Fourth Supplemental Questionnaire Response), at 6.

²⁴ *Id.* at Exhibits AC-1 and AC-2.

V. DISCUSSION OF THE ISSUES

Comment 1: Whether Pidilite and Its U.S. Customer Are Affiliated

Pidilite's Case Brief:

- Pidilite and Alpha Chem are not affiliated under section 771(33)(A) of the Act; Commerce has extended the definition of family further than it ever has to encompass a relationship across three generations of non-lineal descendants.²⁵
- The Parekh family does not exercise control over Pidilite as it does not own a majority share of Pidilite and does not constitute a majority of the 14 directors of Pidilite appointed by the shareholders.²⁶
- Alpha Chem and Pidilite USA are not affiliated under section 771(33)(B) of the Act because Prashant Shridharani is not a remunerated employee of Pidilite USA and does not have an ownership interest in the company.²⁷
- Prashant Shridharani is only one of six Pidilite USA directors. He has only one vote and does not exercise control or restraint over Pidilite USA.²⁸
- In *China OTR Tires*, Commerce determined that two Chinese companies were not affiliated because both companies only shared one director in common out of a board of seven and five, respectively. The common director lacked the ability to exercise control or restraint over either company.²⁹

The Petitioners' Rebuttal:

- Commerce's affiliation between Pidilite and Alpha Chem is not based solely on section 771(33)(A) of the Act but also specific findings under sections 771 (33)(B), (E), and (F) of the Act. None of Pidilite's cited cases state that a finding of control through ownership is an absolute requirement for finding a familial relationship to create affiliation.³⁰
- Commerce has the discretion to extend the familial relationship to in-laws.³¹
- Control through family is not constrained by majority stock ownership as stated in the Statement of Administrative Action (SAA). The Parekh family, its promoters and its associate companies as a group together control Pidilite, and Prashant Shridharani is the son of a niece of one of the directors of Pidilite.³²
- The totality of the evidence on the record fully supports Commerce's finding of affiliation between Prashant Shridharani/Alpha Chem and Pidilite USA.³³

²⁵ See Pidilite Case Brief at 15.

²⁶ *Id.* at 15-16.

²⁷ *Id.* at 16.

²⁸ *Id.* at 17.

²⁹ *Id.* (citing *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) (*China OTR Tires*) and accompanying IDM at 41).

³⁰ See Petitioners Rebuttal Brief at 4.

³¹ *Id.*

³² *Id.* at 4-5.

³³ *Id.* at 5-6.

- Unlike the common director in *China OTR Tires*, Prashant Shridharani in this case is the founder, sole owner, and managing director of Alpha Chem, and therefore has absolute ability and restraint over one of the companies.³⁴

Commerce's Position:

Commerce agrees with the petitioners that our preliminary finding of affiliation between Pidilite and Alpha Chem continues to be supported by record evidence. In the *Preliminary Results*, Commerce determined that the record supports finding affiliation between: 1) Alpha Chem and Prashant Shridharani, pursuant to section 771(33)(E) of the Act; 2) Alpha Chem and Pidilite USA, pursuant to section 771(33)(B) of the Act; and 3) Alpha Chem and Pidilite, pursuant to section 771(33)(F) of the Act.³⁵

In the *Preliminary Results* and as summarized above, we described how the facts on the record demonstrate affiliation between the aforementioned entities/persons.³⁶ We disagree with Pidilite's claim that the Parekh family does not exercise control over Pidilite,³⁷ as 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 amount³⁸ of Pidilite's shares. Pidilite also 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 of Pidilite.³⁹ Therefore, given the information provided by Pidilite in its section A questionnaire response, we find that the Parekh family has direct control over Pidilite through its ownership and executive roles in the company. Through the Executive Chairman, Non-Executive Vice-Chairman, and Whole-Time Director roles, the Parekh family is able to exercise direct control over business matters, such as pricing, relating to the subject merchandise.⁴⁰

Furthermore, we disagree with Pidilite's claim that the relationship between a great-uncle and great-nephew is beyond the scope of the term "family."⁴¹ The courts have upheld Commerce'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 Commerce's interpretation.⁴² As the CIT held in *Ferro Union*, Commerce has the discretion to interpret the definition of "family" in a reasonable manner.⁴³ In this case,

³⁴ *Id.* at 6 (citing *China OTR Tires*).

³⁵ See PDM at 4.

³⁶ *Id.*

³⁷ See Pidilite Case Brief at 16.

³⁸ Due to the business proprietary nature of the information, see Section A Questionnaire Response, at Appendix 7 for the amount of shares owned by the Parekh family.

³⁹ *Id.* at 4-5.

⁴⁰ See, e.g., Supplemental Section A Questionnaire Response at 7.

⁴¹ See Pidilite Case Brief at 7.

⁴² See *Ferro Union Inc. v. United States*, 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*).

⁴³ See *Ferro Union*, 44 F. Supp. 2d 1310, at 1325 ("The word 'including' in section (A) of 19 U.S. C. § 1677(33) is

given the information on the record, we continue to determine that the Parekh family, which is a large shareholder and occupies executive roles in Pidilite, also controls Alpha Chem, because Prashant Shridharani, the founder, sole owner and managing director of Alpha Chem, is also the son of a niece (*i.e.*, great-nephew) of a director of Pidilite who is a member of the Parekh family.⁴⁴ If members of a certain family control two companies, these companies are affiliated under section 771(33)(F) of the Act.⁴⁵ Therefore, contrary to Pidilite's claim that Commerce found affiliation between Pidilite and Alpha Chem solely based on a family relationship under section 771(33)(A) of the Act, for these final results, we continue to find Pidilite and Alpha Chem affiliated under 771(33)(F) of the Act, as the Parekh family exercises control of both companies.

Pidilite also argues that Prashant Shridharani/Alpha Chem is not affiliated with Pidilite USA because in *China OTR Tires*, Commerce did not find affiliation between two companies under similar factual circumstances.⁴⁶ We disagree. In *China OTR Tires*, Commerce determined that two Chinese companies were not affiliated where both companies only shared one director out of a board of seven and five directors, respectively.⁴⁷ In *China OTR Tires*, the common director lacked the ability to exercise control or restraint over either company.⁴⁸ Also, one company's business license listed a separate individual as the legal representative of that company. Therefore, we reject the assertion that the facts in *China OTR Tires* reflect the record information in this proceeding.

As we noted in the *Preliminary Results*, Prashant Shridharani is the founder, sole owner, and managing director of Alpha Chem, which is located at Prashant Shridharani's residential address.⁴⁹ Pursuant to section 771(33)(E) of the Act, 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.⁵⁰

With regard to Prashant Shridharani's/Alpha Chem's relationship with Pidilite USA, we note that Prashant Shridharani is an Independent/Outside Director and Secretary of Pidilite USA.

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.").

⁴⁴ See Fourth Supplemental Questionnaire Response at 6; *see also* Pidilite Case Brief at 7.

⁴⁵ See *Ferro Union*, 44 F. Supp. 2d at 1326; *Dongkuk Steel Mill Co. v. United States*, 29 CIT 724, 732 (CIT 2005) (*Dongkuk Steel*).

⁴⁶ See Pidilite Case Brief at 17.

⁴⁷ See *China OTR Tires* IDM at 41.

⁴⁸ *Id.*

⁴⁹ See PDM at 4; *see also* Third Supplemental Questionnaire Response at 3.

⁵⁰ 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) (*India PET Film*), and accompanying IDM at Comment 1.

Prashant Shridharani/Alpha Chem sits on the board of directors of Pidilite USA and attends quarterly meetings as an active voting participant.⁵¹ As stated by Pidilite, Prashant Shridharani was remunerated with a sitting fee during the POR as a member of Pidilite USA's board of directors.⁵² Pidilite also reported that its management requested Prashant Shridharani to assist in the incorporation of Pidilite USA, as Pidilite knew and trusted Prashant Shridharani from previous business encounters in India.⁵³ Additionally, record evidence demonstrates that Pidilite USA and Prashant Shridharani/Alpha Chem share an address, which is listed on both companies' corporate registration documents.⁵⁴ Here, we note that Prashant Shridharani, one of six members of the board of directors, made decisions concerning Pidilite USA's business, as shown in Pidilite USA's board meeting minutes, and received a sitting fee as remuneration for his role.⁵⁵ Therefore, we continue to find, as we did in the *Preliminary Results*, that these business activities and consequent remuneration demonstrate that Prashant Shridharani is a director of Pidilite USA. Thus, Prashant Shridharani/Alpha Chem is affiliated with Pidilite USA by virtue of his role as a director of Pidilite USA, pursuant to section 771(33)(B) of the Act.

Comment 2: Whether to Continue to Apply AFA to Pidilite for the Final Results

Pidilite's Case Brief

- Commerce has an obligation to clearly articulate how it reached the conclusion that a party has failed to act to the best of its ability and explain why any alleged omissions were “a deliberate evasion, rather than an oversight.” Commerce’s discretion is not unbounded and it must consider whether the assigned AFA rate creates an overly punitive result.⁵⁶
- Pidilite was cooperative and did not withhold any information in this review, including volunteering and submitting an alternative CEP database that was not “substantially deficient” in any respect.⁵⁷
- Commerce should have issued a small supplemental questionnaire identifying any missing information in Pidilite’s CEP database, as the deadline for the *Preliminary Results* could have been extended to the full 120 days. Commerce did not provide Pidilite the opportunity to explain or rectify any deficiencies in the CEP database.⁵⁸
- Pidilite responded in full to each question regarding the potential for affiliation, explaining in detail why it did not believe the distant familial relationship between a great-uncle and great-nephew would indicate affiliation between Pidilite and its U.S. customer.⁵⁹

⁵¹ See Third Supplemental Questionnaire Response at 2-3.

⁵² *Id.*

⁵³ *Id.* at 4.

⁵⁴ *Id.* at 4-5.

⁵⁵ *Id.* at 6 and Exhibit 10.

⁵⁶ See Pidilite Case Brief at 3-4 (citing *e.g.*, *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322 (CIT 2000); see also *Mannesmanrohen-Werke AG v. United States*, 77 F. Supp. 2d 1302, 1314 (CIT 1999) (*Mannesmanrohen-Werke AG*); see also *Chia Far Indus. Factory Co., Ltd. v. United States*, 343 F. Supp. 2d 1366 (CIT 2004); see also *See F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)).

⁵⁷ *Id.* at 5-6.

⁵⁸ *Id.* at 5 and 12 (citing *Borden Inc. v. United States*, 215 F. Supp. 2d 1221 (CIT 1998)).

⁵⁹ *Id.* at 6-7.

- Commerce should not penalize Pidilite for failing to provide this information earlier given the forty-year absence of precedent nor for adopting a legal position in its questionnaire response, as Pidilite never meant to intentionally withhold this distant relationship. Without more detailed questions from Commerce earlier in the proceeding, Pidilite had no reason to reveal that the owner of Alpha Chem was the son of a niece of one of the directors of Pidilite.⁶⁰
- Despite claiming that Pidilite withheld information concerning potential affiliation, Commerce ultimately found in the *Preliminary Results* that it had sufficient information to conclude that Pidilite is affiliated with its reported U.S. customer, Alpha Chem.⁶¹
- Pidilite submitted a full section C response for Alpha Chem's sales, reporting each Alpha Chem invoice number for the five U.S. sales at issue and including a sales reconciliation (*i.e.*, a total sales worksheet tying to the profit and loss statements) and supporting documentation to support all CEP expenses. U.S. brokerage and U.S. inland freight to customer expenses did not require a worksheet as Alpha Chem reported actual amounts.⁶²
- Commerce never explicitly requested Alpha Chem's invoices for downstream sales to the final U.S. customer as they are typically furnished at verification. Had Commerce requested the invoices, Alpha Chem would have provided them, as there would have been no cause whatsoever to withhold such documentation.⁶³

The Petitioners' Rebuttal:

- Pidilite was aware of the relevant facts regarding the nature of affiliation but chose not to disclose them as soon as possible to Commerce. Rather, it stonewalled Commerce by not elaborating on all it knew about potential affiliation in its initial section A response or first supplemental questionnaire response.⁶⁴
- Commerce had to send numerous supplemental questionnaires to Pidilite to tease out relevant facts about affiliation. Pidilite should have understood Commerce's concern regarding affiliation in the first supplemental questionnaire so Commerce could have made its determination earlier in the review and obtained a complete CEP database from Pidilite.⁶⁵
- Commerce is not required to use Pidilite's CEP data to calculate its margin. Instead, it should continue to apply the AFA rate in the prior 2006-2007 administrative review.⁶⁶

Commerce's Position:

Commerce agrees with the petitioners that the application of AFA is appropriate for Pidilite, as determined in the *Preliminary Results*.⁶⁷ Because Pidilite did not provide the necessary information on the record, particularly a complete section C response that we could use in our calculations, the use of facts available for the final results of this review is warranted, pursuant to

⁶⁰ *Id.* at 7-8 (citing *e.g.*, *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d. 1310 (CIT 1999); *see also NSK Ltd. v. United States*, 910 F. Supp. 663, 671 (CIT 1995)).

⁶¹ *Id.* at 8.

⁶² *Id.* at 9.

⁶³ *Id.* at 13.

⁶⁴ *See* Petitioners Rebuttal Brief at 8.

⁶⁵ *Id.* at 8-9.

⁶⁶ *Id.* at 10.

⁶⁷ *See* PDM at 6.

section 776(a)(1) of the Act. Furthermore, because Pidilite withheld information we requested regarding potential affiliation and source documents for its CEP sales and expenses, failed to provide this information by the established deadlines, and significantly impeded Commerce's ability to calculate an accurate margin in this administrative review, the use of facts available for the final results is warranted pursuant to sections 776(a)(2)(A), (B) and (C) of the Act. Despite Commerce's identification of Pidilite's deficient submissions and providing Pidilite with additional opportunities to submit the information requested, pursuant to section 782(d) of the Act, Pidilite was not forthcoming in providing information about its affiliations, only provided necessary information in response to Commerce's placement of information on the record, notwithstanding the close ties between/among Alpha Chem, Pidilite and Pidilite USA, and failed to provide a complete section C CEP response. Therefore, we continue to find that Pidilite has failed to cooperate to the best of its ability, in accordance with section 776(b) of the Act. Consequently, Commerce has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted based on the totality of the circumstances in this case as outlined below.

Commerce explained in the *Preliminary Results* that it independently obtained and placed information on the record indicating a possible affiliation between Pidilite, its U.S. subsidiary, Pidilite USA, and its U.S. customer, Alpha Chem. Commerce gave Pidilite numerous opportunities to provide a complete and detailed response regarding issues related to affiliation and its sales reporting. Specifically, in its section A questionnaire response, Pidilite reported that it did not sell any subject merchandise to affiliated companies in the United States.⁶⁸ In the supplemental section A questionnaire, Commerce 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.⁶⁹ In response, Pidilite reported that Pidilite USA was not involved in the purchase or sale of subject merchandise.⁷⁰ Pidilite also reported that, during the POR, it only made EP sales to a large unaffiliated U.S. distributor, Alpha Chem.⁷¹ At the time, Pidilite identified no other relationship with Alpha Chem aside from the supplier-customer relationship. After Commerce placed information on the record indicating that Alpha Chem may be affiliated with Pidilite and accompanying questions in the third supplemental questionnaire, which also served to notify Pidilite of the potential deficiencies of its previous responses, Pidilite provided information in the third and fourth supplemental questionnaire responses which revealed that Alpha Chem was indeed affiliated with Pidilite. In the third supplemental questionnaire, Commerce requested that Pidilite clarify the relationship between Prashant Shridharani/Alpha Chem and Pidilite USA.⁷² Pidilite responded by reporting that Prashant Shridharani was an Independent/Outside Director and Secretary of Pidilite USA, and that he was on the Board of Directors, attending quarterly meetings, actively voting in company matters and receiving a sitting fee.⁷³ Pidilite also reported that Prashant Shridharani is the founder, sole

⁶⁸ See Section A Questionnaire Response at 12.

⁶⁹ See Commerce's Supplemental Section A Questionnaire at 2.

⁷⁰ See Supplemental Section A Questionnaire Response at 3.

⁷¹ *Id.* at 4.

⁷² See Commerce's Third Supplemental Questionnaire, dated August 16, 2017.

⁷³ See Third Supplemental Questionnaire Response at 2-3.

owner, and managing director of Alpha Chem.⁷⁴ Pidilite reported that it believed “that it did not make any CEP transactions 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.⁷⁵ In the fourth supplemental questionnaire, Commerce requested additional information regarding potential affiliation issues, in light of Pidilite’s deficient responses to the third supplemental questionnaire, as Commerce required more information regarding the nature of Pidilite’s affiliations, specifically between Prashant Shridharani/Alpha Chem and Pidilite.⁷⁶ Commerce also requested in the fourth supplemental questionnaire 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 was affiliated with Alpha Chem. Commerce extended the deadline of the *Preliminary Results* by 90 days to December 1, 2017, which afforded Pidilite time to respond to Commerce’s additional supplemental questionnaires.⁷⁷ Thus, despite asking for pertinent information related to affiliation as far back as the original section A questionnaire issued on March 7, 2017,⁷⁸ Pidilite did not provide complete and accurate information regarding its affiliations until its response to the fourth supplemental questionnaire on October 26, 2017,⁷⁹ extremely late in the already-extended proceeding.

We disagree with Pidilite’s claim that it was reasonable not to believe it was necessary to disclose in its initial and supplemental section A questionnaire responses the affiliation between Pidilite and Alpha Chem because of the distant familial relationship between a great-uncle and great-nephew. Specifically, we disagree with Pidilite’s assertion that, “{w}ithout more detailed questions from Commerce earlier in the proceeding, Pidilite had no reason to reveal that the owner of Alpha Chem was the son of a niece of one of the directors of Pidilite.”⁸⁰ As identified above, the Court has identified that “the definition of family includes uncle-nephew relationships”⁸¹ and that section 771(33)(F) of the Act “can be interpreted to encompass ‘family’ in order to carry out the intent of the...statute.”⁸² Accordingly, Pidilite’s explanation does not reflect a reasonable basis for its failure to provide the information that Commerce requested. Moreover, to the extent that Pidilite did have questions about the nature of the information Commerce requested, the instructions for the initial questionnaire stated:

If (a) you are **uncertain** whether a company is affiliated with you; (b) you do not believe you are able to prepare a response that includes the information of a known affiliate; or, (c) you do not believe it is appropriate to prepare a response that includes the information of a known affiliate, **contact the official in charge immediately.**⁸³

⁷⁴ *Id.*

⁷⁵ *Id.* at 6.

⁷⁶ See Commerce’s Fourth Supplemental Questionnaire, dated October 12, 2017.

⁷⁷ See Memorandum, “Carbazole Violet Pigment 23 from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated August 22, 2017.

⁷⁸ See Commerce’s Initial Questionnaire to Pidilite (Initial Questionnaire), dated March 7, 2017.

⁷⁹ See Fourth Supplemental Questionnaire Response.

⁸⁰ See Pidilite Case Brief at 7.

⁸¹ See *Dongkuk Steel* at 731 (citing *Ferro Union* at 1325-1326).

⁸² *Id.* at 732 (citing *Ferro Union* at 1326).

⁸³ See Initial Questionnaire at G-10 (emphasis added).

Thus, Pidilite should have followed the instructions set out in the initial questionnaire and contacted Commerce to inform the officials in charge that it was uncertain whether it would be appropriate to report the relationship between certain companies by virtue of the familial connection between Prashant Shridharani and his great-uncle when Commerce asked Pidilite to report any pertinent affiliations.⁸⁴ Instead, Pidilite elected to “adopt a legal position” by withholding information regarding affiliation.⁸⁵ Pidilite provided relevant information only after Commerce placed information on the record indicating potential affiliation between Pidilite and Alpha Chem and questioned it directly in the third supplemental questionnaire, which served as notification of the deficiencies with Pidilite’s prior responses. By this point in the proceeding, Commerce had already provided Pidilite with an initial (*i.e.*, the section A questionnaire) and second (*i.e.*, the supplemental section A questionnaire) opportunity to provide information concerning its affiliations. Despite Commerce’s directions and questions in its initial and supplemental section A questionnaires, Pidilite withheld requested information on affiliation until Commerce independently placed information on the record in the third supplemental questionnaire. It was only in the fourth supplemental questionnaire response, following an incomplete response to the third supplemental questionnaire, that Pidilite reported the “family” relationship between Pidilite and Alpha Chem. Therefore, Pidilite failed to cooperate to the best of its ability with respect to providing requested information on affiliation.

As an additional matter, we disagree with Pidilite’s argument that, for the final results, Commerce should accept its section C CEP database and supporting documentation as reported and calculate a dumping margin. Absent reliable data supported by documentation and/or worksheets, we cannot reliably determine Pidilite’s dumping margin during the POR. In this case, we find that Pidilite’s responses to Commerce’s fourth supplemental questionnaire regarding the section C CEP response and its supporting documentation are so deficient that they are not useable. Specifically, Commerce requests that respondents provide a section C response that includes a complete sales reconciliation, a U.S. sales database, and a narrative explanation with supporting source documentation about the U.S. price, quantity, movement and selling expenses so that Commerce can be confident that the reported sales information constitutes the full universe of sales information it needs to calculate a reliable margin. However, Pidilite: 1) failed to provide at least one sample invoice for Alpha Chem’s downstream sales to the final U.S. customer, 2) failed to provide any source documents supporting certain CEP expenses,⁸⁶ and 3) only provided Alpha Chem’s profit and loss statement as a sales reconciliation without providing complete financial statements, sufficiently detailed worksheets and source documents for the CEP sales figures.⁸⁷ This lack of documentation renders the database unreliable because

⁸⁴ See *e.g.*, Initial Questionnaire at Section A; see also Supplemental Section A Questionnaire at 2; see also Third Supplemental Questionnaire; see also Fourth Supplemental Questionnaire.

⁸⁵ See Pidilite Case Brief at 8; see also Third Supplemental Questionnaire Response at 6.

⁸⁶ Contrary to Pidilite’s claim that all worksheets and source documents for expenses were submitted, Pidilite only submitted source documents for its EP sales expenses in its original section C response and the supplemental sections B and C response.

⁸⁷ Pidilite provided a sales reconciliation for its EP sales from India in its original section B and C response and the supplemental sections B and C response, but did not provide a sales reconciliation for its CEP sales from Alpha Chem to the unaffiliated U.S. customer as requested.

we are not able to test the accuracy of the information submitted. Importantly, such deficient information was provided after numerous requests to provide Pidilite's U.S. sales information to Commerce, as detailed below.

Pidilite originally submitted a section C database that reported EP sales, to which Commerce issued a supplemental questionnaire to correct deficiencies in its response.⁸⁸ Through the information Commerce independently placed on the record and subsequent supplemental questionnaire responses, it became apparent that the sales reported as EP sales should have been reported as CEP sales due to the affiliation between Pidilite and its U.S. customer, Alpha Chem. Thus, by the time Commerce became aware, through information it, not Pidilite, placed on the record, about Pidilite's possible affiliation with its U.S. customer, Alpha Chem, Pidilite had already had two opportunities to report its sales as CEP sales, but it did not do so. As stated in the *Preliminary Results*, in its third supplemental questionnaire response, Pidilite reported that it could provide a revised section C database treating all U.S. sales as CEP sales.⁸⁹ However, Pidilite failed to provide a revised section C database in the third supplemental questionnaire response. Rather, it was not until Commerce explicitly requested in the fourth supplemental questionnaire for Pidilite to provide a revised section C database, that Pidilite provided the CEP database with the deficiencies highlighted above.⁹⁰ Thus, Pidilite was given ample opportunities, from the initial reporting of its section C database in response to Commerce's initial questionnaire, to the submission of the section C CEP database in response to Commerce's fourth supplemental questionnaire, to report accurate information and remedy its deficiencies. However, Pidilite's section C CEP database was deficient, per section 782(e) of the Act.⁹¹ In light of these facts, Commerce was not required, as Pidilite argues,⁹² to issue yet another supplemental questionnaire requesting the complete U.S. sales information that had been initially requested as far back as the original section C questionnaire.

We also disagree with Pidilite's assertion that Commerce should have extended the deadline for the *Preliminary Results* to issue another supplemental questionnaire to request the U.S. downstream sales invoices and to allow Pidilite to clarify deficiencies in its section C CEP response.⁹³ We did not find it appropriate to further extend the deadline for the *Preliminary Results*. Commerce has the discretion to extend the deadline in a segment of a proceeding if the Secretary believes it is not practicable to complete the review within the specified time period.⁹⁴ In this case, Commerce had already extended the deadline of the *Preliminary Results* by 90 days, thereby allowing Pidilite to respond to supplemental questionnaires regarding information that

⁸⁸ See Pidilite's letter to Commerce, "Carbazole Violet Pigment 23 from India: Submission of Sections B and C Response," dated April 21, 2017; see also Pidilite's letter to Commerce, "Carbazole Violet Pigment 23 from India: Submission of Supplemental Sections B and C Response," dated May 26, 2017.

⁸⁹ See PDM at 8; see also Third Supplemental Questionnaire Response at 6.

⁹⁰ See Fourth Supplemental Questionnaire Response at Section C.

⁹¹ See section 782(e)(3) (Commerce "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 {Commerce,} ... {if} the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination").

⁹² See Pidilite Case Brief at 5.

⁹³ *Id.* at 5.

⁹⁴ See 19 CFR 351.213(h)(2).

Commerce had independently placed on the record.⁹⁵ In light of Pidilite's additional deficient responses, Commerce was not compelled to exercise its discretion to extend again the *Preliminary Results*.⁹⁶

Commerce also disagrees with Pidilite's claim that its responses were not deficient and that it provided supporting documentation for its CEP expenses where necessary. Pidilite did not provide any type of supporting documentation (*i.e.*, worksheets or invoices) to support the accuracy of its reported CEP database related to U.S. brokerage and U.S. inland freight from port to warehouse/final customer. Pidilite states that, "as Alpha Chem relied on actual expenses, there was no worksheet required to explain any allocation methodology" for these two CEP expenses.⁹⁷ Nevertheless, Pidilite did not provide any vendor invoices or other source documents to support the accuracy of the data provided as requested on page G-4 of Commerce's initial questionnaire, which states, "{p}lease include with your response copies of source documents necessary to understand your response."⁹⁸

Commerce also disagrees with Pidilite's argument that it provided a complete sales reconciliation. Alpha Chem's sales reconciliation, along with a complete package of supporting documents, is needed in order for Commerce to test the accuracy of the reported total amount of sales of subject merchandise to the final customer. In its fourth supplemental questionnaire response, Pidilite submitted what it claimed to be a U.S. sales reconciliation, but failed to fully respond to Commerce's request to provide supporting documentation in conjunction with its U.S. sales reconciliation. Pidilite did not provide any ledgers, subledgers, or other source documentation from Alpha Chem's accounting records, as instructed, to support the U.S. sales reconciliation it submitted. We note that Pidilite only submitted Alpha Chem's profit and loss statement for 2015 and 2016.⁹⁹ Pidilite did not submit sufficiently detailed worksheets, written narrative or supporting documentation explaining how Alpha Chem distinguishes between sales of subject and non-subject merchandise. Instead, it provided a figure for its sales of non-subject merchandise but did not provide an explanation or supporting documentation to demonstrate the accuracy of the provided figure.¹⁰⁰ Without this information, Commerce cannot test the accuracy of the database submitted and cannot rely on it to calculate a dumping margin. Therefore, we find that Pidilite did not provide complete documents for its U.S. sales reconciliation, as requested on page C-4 of Commerce's initial questionnaire:

Please provide a **complete package of documents** and worksheets demonstrating how you identified the sales you reported to the Department and reconciling the reported sales to the total sales listed in your general

⁹⁵ See Memorandum, "Carbazole Violet Pigment 23 from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated August 22, 2017.

⁹⁶ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1371 (CIT 2003). ("Commerce is not required to extend the preliminary determination's deadline beyond the normal 140 day limitation.")

⁹⁷ See Pidilite's Case Brief at 11.

⁹⁸ See Initial Questionnaire at G-4.

⁹⁹ See Fourth Supplemental Questionnaire Response at Exhibit AC-2.

¹⁰⁰ *Id.*

ledger. Include a copy of all computer programs used to separate the reported sales from your total sales and to calculate expenses.¹⁰¹

As stated above, Commerce requests that respondents provide a sales reconciliation as well as supporting documentation (*e.g.*, general ledger, sub-ledger, etc.) for each step in the reconciliation (*i.e.*, tying financial statements to their accounting ledgers and sales revenue accounts, and tying accounting ledgers and sales revenue accounts to the U.S. sales database submitted with their response). However, Pidilite failed to provide a U.S. sales reconciliation for Alpha Chem, as requested. A complete U.S. sales reconciliation builds from individual invoices which show the accuracy of the quantity and value of certain specific sales reported to Commerce in the U.S. sales database. Those individual invoices issued by Alpha Chem to the final customer should then tie to Alpha Chem's accounting ledger and subledgers, which record the entirety of Alpha Chem's sales revenue and expenses, thereby demonstrating the accuracy of the quantity and value of subject merchandise reported in Pidilite's U.S. sales database. Alpha Chem's general ledger also informs Commerce as to the accuracy of its internal record keeping because a general ledger should provide a complete record of the Alpha Chem's financial transactions during the POI. Finally, Alpha Chem's general ledger and sub-ledgers should tie to its financial statements which provide a full and formal record of Alpha Chem's financial activities and position for a fiscal period, thereby further ensuring that Pidilite has properly reported the universe of subject merchandise in its U.S. sales database. Each portion of the reconciliation demonstrates a particular point of accuracy which, when considered together, can give Commerce confidence that Pidilite accurately and completely reported its U.S. sales of subject merchandise from Alpha Chem to the final customer during the POI.

Furthermore, as part of its sales reconciliation to support the downstream U.S. price to the first unaffiliated U.S. customer and considering that there were so few reported CEP sales, Pidilite could have submitted at least one sample invoice for Alpha Chem's sales to downstream customers, but it chose not to. Pidilite failed to provide any support for any reported U.S. price in its CEP database. Commerce has a practice of relying on invoices as integral documentary evidence of sales, upon which it evaluates and bases its calculations.¹⁰² Moreover, Commerce requires commercial documents, such as commercial sales invoices, to review a respondent's sales reconciliation and test the accuracy of the total amount of sales of subject merchandise. In this case, the commercial sales invoices were necessary to test the total amount of subject merchandise sales from Alpha Chem to its downstream U.S. customers. Pidilite and Alpha Chem did not provide any supporting documentation to demonstrate that the CEP sales reported in the last database contained accurate sales data. While Pidilite argues that such documentation is typically provided at verification,¹⁰³ we note that no verification was planned for this review. Moreover, Pidilite should have provided a sample CEP sales package, including a commercial invoice to the first unaffiliated U.S. customer, in accordance with the requirements in Commerce's Initial Questionnaire¹⁰⁴ irrespective of whether verification would occur. Rather,

¹⁰¹ See Initial Questionnaire at C-4 (emphasis added).

¹⁰² See, *e.g.*, *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 82 FR 13432 (March 13, 2017) and accompanying IDM at 28.

¹⁰³ See Pidilite Case Brief at 13.

¹⁰⁴ See Initial Questionnaire at G-4 ("In each of your answers, please identify your source of information. Please

Commerce had already granted Pidilite numerous opportunities to provide information that should have been submitted in the initial or the first supplemental questionnaire responses for section C, not in a possible fifth supplemental questionnaire response.

Pursuant to section 773(a) of the Act, to determine whether a respondents' sales of the subject merchandise to the United States are made at less than normal value (NV), Commerce generally compares the EP or CEP, as appropriate, to the NV. Without a reliable sales reconciliation from Pidilite, Commerce can neither ensure that it appropriately makes this comparison of EP or CEP to NV (because Commerce cannot be sure whether it is appropriate to use EP or CEP), nor rely on the sales data reported to calculate a margin because it is not possible to determine that all relevant sales were reported. A reliable U.S. sales reconciliation is, therefore, fundamental to Commerce's ability to calculate a reliable margin. This is true regardless of whether the respondent reports EP and/or CEP sales to Commerce.

Despite Commerce's questionnaire requests, Pidilite did not reply accurately and completely to requests for information regarding its potential affiliation, sales and CEP expenses. Accordingly, the application of facts available under section 776(a)(1) is warranted, as necessary information is not available on the record. Moreover, as noted above, Pidilite reported numerous times that it was not affiliated with its U.S. customer Alpha Chem, and later in the review, revealed its affiliation with this customer. Pidilite also failed to provide a complete section C CEP database to Commerce, after numerous opportunities to do so. Because 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 Commerce's ability to calculate a reliable margin in this administrative review, the use of facts available for the final results is warranted pursuant to sections 776(a)(2)(A), (B) and (C) of the Act. Despite numerous requests for the above information, Pidilite failed to provide information, data, and supporting documentation that is fundamental to the dumping analysis. We disagree with Pidilite's claim that Commerce has an obligation to explain why any alleged omissions were "a deliberate evasion, rather than an oversight."¹⁰⁵ In *Nippon Steel*, the CAFC explained that intent is not required to apply AFA.¹⁰⁶ We also disagree with Pidilite that the assigned AFA rate for Pidilite creates a punitive result.¹⁰⁷ In *KYD, Inc.*, the CAFC stated that "antidumping laws are remedial," and that "an AFA dumping margin determined in accordance with the statutory requirements is not a punitive measure, and the limitations applicable to punitive damages assessments therefore have no pertinence to duties imposed based on lawfully

include with your response copies of source documents necessary to understand your response."); at A-3 ("In your response to Section B and Section C, provide a complete package of documents and worksheets demonstrating how you identified the sales you reported to the Department in your quantity and value chart and in your comparison market and U.S. market sales databases and reconciling the reported sales to the total sales listed in your general ledger."); at A-9 to A-10 ("Provide a copy of each type of agreement and all sales-related documentation generated in the sales process (including the purchase order, internal and external order confirmation, invoice, and shipping and export documentation) for a sample sale in the foreign market and U.S. market during the POR.")

¹⁰⁵ See Pidilite Case Brief at 4.

¹⁰⁶ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel*) ("The statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent.").

¹⁰⁷ See Pidilite Case Brief at 4.

derived margins.”¹⁰⁸ Therefore, we continue to find that Pidilite has failed to cooperate to the best of its ability, in accordance with section 776(b) of the Act. Consequently, Commerce finds it appropriate to continue to assign Pidilite a margin based on AFA for the final results based on the totality of the circumstances in this case.

As AFA, section 776(b) of the Act authorizes Commerce 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, Commerce 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 Trade Preferences Extension Act (TPEA) also makes clear that when selecting an AFA margin, Commerce 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 in general that, to the extent practicable, Commerce corroborate secondary information from independent sources that are reasonably at its disposal, except that Commerce 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 have applied to Pidilite the AFA rate determined in the 2006-2007 administrative review segment of this proceeding, which is 66.59 percent.¹⁰⁹ Pursuant to section 776(c)(2) of the Act, Commerce need not corroborate this antidumping duty rate because it was applied in a separate segment of this same proceeding.

¹⁰⁸ See *KYD, Inc. v. United States*, 607 F.3d 760, 767 (Fed. Cir. 2010) (*KYD, Inc.*) (“The antidumping laws “are remedial not punitive,” and an antidumping rate based on AFA is designed “to provide respondents with an incentive to cooperate, not to impose punitive . . . margins.””).

¹⁰⁹ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 73 FR 74141 (December 5, 2008).

VI. CONCLUSION

We recommend applying the above methodology for these final results.



Agree

Disagree

4/6/2018

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