A-570-060
POI: 10/01/2016-03/31/2017
Public Document
E&C/OVI: EAA, JCM

DATE: May 23, 2018

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: Scot Fullerton
Director, Office VI
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Fine Denier Polyester Staple Fiber from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at the Less-Than-Fair-Value

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I. SUMMARY

The Department of Commerce (Commerce) finds that fine denier polyester staple fiber (fine denier PSF) from the People's Republic of China (China) is, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2016 through March 31, 2017.

After analyzing interested parties' comments, we made certain changes to the margin calculations to Jiangyin Hailun Chemical Fiber Co., Ltd. (Hailun), and Jiangyin Huahong Chemical Fiber Co., Ltd. (Huahong), the two mandatory respondents in this case. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. LIST OF ISSUES

General Issues
Comment 1: Surrogate Country and Surrogate Value Selections for PTA
Comment 2: Hailun and Huahong's Double Remedy Adjustments

<u>Company-Specific Comments</u>
Comment 3: Calculations for Hailun's Purchased and Consigned PET Melt

III. BACKGROUND

On January 5, 2018, Commerce published the *Preliminary Determination* of this investigation.[1] As part of the *Preliminary Determination*, we found that each mandatory respondent had affiliates which, for purposes of this investigation, should be treated as a single, collapsed entity with the respondent. For Hailun, we determined that it should be collapsed with the following affiliates: (1) Jiangyin Xinlun Chemical Fiber Co., Ltd. (Xinlun), (2) Jiangyin Yunlun Chemical Fiber Co., Ltd. (Yunlun), (3) Jiangyin Bolun Chemical Fiber Co., Ltd. (Bolun), (4) Jiangyin Fenghua Synthetic Fiber Co., Ltd. (Fenghua), (5) Jiangyin Huamei Special Fiber Co., Ltd. (Huamei), (6) Jiangyin Huasheng Polymerization Co., Ltd. (Huasheng), (7) Jiangyin Huayi Polymerization Co., Ltd. (Huayi), (8) Jiangyin Huaxing Synthetic Co., Ltd. (Huaxing) and (9) Jiangyin Xingsheng Plastic Co., Ltd. (Xingsheng).[2] For Huahong, we determined that it should be collapsed with affiliates Jiangyin Huakai Polyester Co., Ltd. (Huakai), and Jiangyin Hongkai Chemical Fiber Co., Ltd. (Hongkai).[3] No parties commented on these affiliation and collapsing decisions, and so they remain unchanged for purposes of this final determination. Further, we determined that Hailun and Huahong had demonstrated their entitlement to a rate separate from that of the China-wide entity. No parties commented on these separate rate decisions, and so they also remain unchanged for purposes of this final determination.[4]

On December 22, 2017, in accordance with 19 CFR 351.224(c)(2), we invited interested parties to comment on our preliminary calculations.[5] On December 27, 2017, Hailun submitted a request that Commerce correct certain alleged ministerial errors in these calculations.[6] We responded to these allegations in a memorandum issued on March 20, 2018, in which we found

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[1] *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 665 (January 5, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *See* PDM at 16; *see also* Memorandum from Commerce, "Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Affiliation and Collapsing Status for Jiangyin Hailun Chemical Fiber Co. Ltd.," dated December 18, 2017 (Hailun Collapsing Memorandum). We will refer to the collapsed entity as "Hailun" throughout the remainder of this document.
[3] *See* PDM at 18; *see also* Memorandum from Commerce, "Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Affiliation and Collapsing Memorandum for Jiangyin Huahong Chemical Fiber Co., Ltd., Jiangyin Huakai Polyester Co., Ltd., and Jiangyin Hongkai Chemical Fiber Co., Ltd., dated December 18, 2017 (Huahong Collapsing Memorandum). We will refer to the collapsed entity as "Huahong" throughout the remainder of this document.
[4] *See* PDM at 12-16.
[5] *See* Memorandum from Commerce, "Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Deadline to Submit Ministerial Error Allegations," dated December 22, 2017.
[6] *See* Letter from Hailun, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Hailun Allegation of Ministerial Errors in Preliminary Determination," dated December 27, 2018*; see also* Letter from Hailun, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Hailun Allegation of Ministerial Errors in Preliminary Determination – Errata," dated December 28, 2018.

that none of the alleged ministerial errors were made in the preliminary calculations and declined to make the requested corrections.[7]

In January 2018, we conducted verification of Huahong's U.S. affiliate, Hua Hong Fiber USA Inc. (Huahong USA). We issued this verification report on March 2, 2018.[8] Further, in March 2018, we conducted verification of the sales and factors of production information submitted by Hailun and Huahong. We issued verification reports on April 2, 2018.[9]

We invited parties to comment on the *Preliminary Determination*. On April 10, 2018, we received timely-filed case briefs from each Hailun and Huahong.[10] On April 16, 2018, we received a timely-filed rebuttal brief from the petitioners, DAK Americas LLC, Nan Ya Plastics Corporation, America, and Auriga Polymers, Inc. (petitioners).[11] Both mandatory respondents submitted a request for a hearing but subsequently withdrew this request.[12]

In the *Preliminary Determination*, Commerce announced that it would be extending the deadline for the final determination of this investigation, until May 20, 2018.[13] Commerce exercised its discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. [14] The revised deadline for the final determination of this investigation is now May 23, 2018.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter.

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[7] *See* Memorandum from Commerce, "Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber: Allegations of Ministerial Errors in the Preliminary Determination," dated March 20, 2018.

[8] *See* Letter from Commerce, "Verification of the Questionnaire Responses of Hua Hong Fiber USA, Incorporated in the Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China," dated March 2, 2018.

[9] *See* Letter from Commerce, "Verification of the Questionnaire Responses of Jiangyin Hailun Chemical Fiber Co., Ltd. in the Antidumping Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China," dated April 2, 2018; Letter from Commerce, "Verification of the Questionnaire Responses of Jiangyin Huahong Chemical Fiber Co, Ltd. in the Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China," dated April 2, 2018.

[10] *See* Letter from Hailun, "Fine Denier Polyester Staple Fiber from the People's Republic of China: Hailun Case Brief," dated April 10, 2018 (Hailun Case Brief); Letter from Huahong, "Fine Denier Polyester Staple Fiber from the People's Republic of China: Huahong Case Brief," dated April 10, 2018 (Huahong Case Brief).

[11] *See* Letter from the petitioners, "Fine Denier Polyester Staple Fiber from the People's Republic of China: Petitioners' Rebuttal Brief," dated April 16, 2018 (Petitioners' Rebuttal Brief).

[12] *See* Letter from the respondents, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Request for Hearing," dated February 8, 2018; *L*etter from the respondents, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Withdraw Request for Hearing," dated May 8, 2018.

[13] *See Preliminary Determination*, 83 FR at 667-68.

[14] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding affected by the closure of the Federal Government, including the deadline for the final determination, have been extended by 3 days.

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 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 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 the investigations is dispositive.

V. SELECTION AND CORROBORATION OF THE ADVERSE FACTS AVAILABLE RATE APPLIED TO THE CHINA-WIDE ENTITY

In the *Preliminary Determination*, we explained that we had not received timely responses to the quantity-and-value (Q&V) questionnaire or separate rate applications from five Chinese exporters and/or producers of fine denier PSF named in the Petition and to whom we issued Q&V questionnaires.[15, 16] Because these companies did not demonstrate that they were eligible for separate-rate status, Commerce considered them to be part of the China-wide entity and preliminarily determined that the China-wide entity, which included these companies, failed to provide necessary information and, therefore, withheld information requested by Commerce and significantly impeded this proceeding by not submitting the requested information.[17] Accordingly, Commerce preliminarily determined that use of facts available was warranted in determining the rate of the China-wide entity, pursuant to sections 776(a)(1), (a)(2)(A) and (a)(2)(C) of the Act.[18] Moreover, we found that the China-wide entity failed to file documents indicating that it was having difficulty providing the information, nor did it request to submit the information in an alternate form. Therefore, we preliminarily find that an adverse inference was warranted in selecting from the facts otherwise available with respect to the China-wide entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[19]

To determine the appropriate rate for the China-wide entity based on adverse facts available, Commerce examined whether the highest petition margin was less than or equal to the highest calculated margin, and determined that the highest calculated margin for Hailun of 181.46 percent was the higher of the two.[20] Because this rate was a calculated rate, based on a mandatory respondent's data in this segment of the proceeding, it did not constitute secondary information and, therefore, there was no need to corroborate it. Thus, for the preliminary

[15] *See* PDM at 19.
[16] *See* Letter from the petitioners 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 – Petition for the Imposition of Antidumping and Countervailing Duties," dated May 31, 2017 (Petition).
[17] *See* PDM at 19-21.
[18] *Id*.
[19] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[20] *Id*. at 21-22.

determination, as adverse facts available, we assigned a dumping margin of 181.46 percent to the China-wide entity.

For the final determination, we continue to find that use of facts available, with an adverse inference, is warranted in determining the rate of the China-wide entity. However, due to revisions in the final margin calculations for Hailun, as described below in our position to Comment 3, the highest petition rate of 103.06 percent is now higher than the highest calculated rate for a mandatory respondent. Thus, we must select and corroborate, if necessary, a rate other than Hailun's rate as the rate of the China-wide entity.

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce 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.[21] 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."[22] The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.[23] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although under section 776(d)(3) of the Act, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

It is Commerce's practice in an investigation is to select, as adverse facts available, the higher of the: (a) highest margin alleged in the petition; or (b) the highest calculated rate of any respondent in the investigation.[24] To determine the appropriate rate for the China-wide entity based on adverse facts available, Commerce first examined whether the highest petition margin was less than or equal to the highest calculated margin, and determined that the highest petition margin of 103.06 percent was the higher of the two. Next, in order to corroborate 103.06 percent as the potential China-wide rate, we compared it to the highest control-number-specific (CONNUM-specific) margin calculated for the mandatory respondents. Neither respondent had a CONNUM-specific margin higher than the petition rate.[25] We next compared the normal value and U.S. price in the petition with the normal values and U.S. prices calculated for the respondents. We determined the petition normal value was below the calculated normal values and the U.S. price in the petition was within the range of the U.S. prices calculated for the

[21] *See also* 19 CFR 351.308(d).
[22] *See* SAA at 870; *see also* 19 CFR 351.308(c)(1).
[23] *See* SAA at 870; *see also* 19 CFR 351.308(d).
[24] *See, e.g., Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).
[25] *See* margin-calculation output for Hailun and Huahong in the company-specific final analysis memoranda, dated May 23, 2018. *See also Certain Circular Welded Carbon Quality Steel Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FR 75042 (October 28, 2016) and accompanying Issues and Decision Memorandum, 5.

respondents.[26] Thus, we were able to find the petition rate of 103.06 percent of probative value and were therefore able to corroborate this rate for use as the China-wide rate.

VI. ADJUSTMENTS TO CASH DEPOSIT RATES

Section 772(c)(1)(C) of the Act 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." Accordingly, in antidumping investigations, where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation. In the *Preliminary Determination*, we made certain adjustments to the cash deposit rates for Hailun, Huahong, the non-selected separate rate companies, and the China-wide entity, based on the preliminary determination of the companion CVD investigation.[27]

We have re-examined these adjustments for purposes of this final determination and determine that an offset that was provided for in the *Preliminary Determination* with respect to a certain program in the companion CVD investigation is not appropriate.[28] Therefore, Commerce is making no adjustment to Hailun's antidumping duty cash deposit rates in this investigation because Commerce has made no findings in the companion CVD investigation that any of the programs used by Hailun are subsidies that are export subsidies. Regarding Huahong, as certain programs in the CVD proceeding were found countervailable as export subsidy programs, Commerce will continue to adjust Huahong's antidumping duty cash deposit rate where a benefit for an export subsidy program was calculated.[29]

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[26] *Id*.

[27] *See* PDM at 30-31. Specifically, we made an export subsidy adjustment of 10.54 percent to the cash deposit for Hailun, which was based on the countervailable subsidy rate of 10.54 percent for Hailun for the program entitled, "Export Buyer's Credit." *See Fine Denier Polyester Staple Fiber from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 51396 (November 6, 2017), and accompanying PDM at 31-32 (*Fine Denier PSF China CVD Prelim*). For Huahong's cash deposit rate, we made an export subsidy adjustment of 10.60 percent based on the following: Huahong's 10.54 percent countervailable subsidy rate for the "Export Buyer's Credit" program; Huahong's 0.05 percent countervailable subsidy rate for the program entitled "Government of the PRC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands;" and Huahong's 0.01 percent countervailable subsidy rate for the program entitled "Export Assistance Grants." *Id.* at 31-32 and 36-37. The separate rate companies' cash deposit rate was adjusted by 10.57 percent, a simple average of the export subsidy adjustments for Hailun and Huahong, and the China-wide entity's cash deposit rate was adjusted by 10.54 percent, the lowest export subsidy rate determined for any party in the companion CVD investigation. *See* PDM at 30-31.

[28] The "Export Buyer's Credit" program which was offset for purposes of the *Preliminary Determination* for both Hailun and Huahong was alleged to be an export subsidy, however, as a result of certain non-cooperation, Commerce's final determination that the alleged program provided a countervailable subsidy was based on facts available with adverse inferences, and therefore the program was not found to be an export subsidy. *See Fine Denier PSF China CVD Prelim* at 31-32 (explaining that the program is found to be specific within the meaning of section 771(5A) of the Act), unchanged in *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination*, 83 FR 3120 (January 23, 2018) and accompanying Issues and Decision Memorandum at Comment 2 (*Fine Denier PSF China CVD Final*).

[29] *See Fine Denier PSF China CVD Prelim* at 36-37 (for Huahong, finding "Government of the PRC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands" and "Export Assistance Grants" to be export subsidy programs, *i.e.*, contingent upon export pursuant to section 771(5A)(B) of

With respect to the cash deposit rate for the non-selected separate rate companies, we are applying an export subsidy adjustment of 0.06 percent, which is the export subsidy adjustment for the all others' rate in the companion CVD proceeding.[30] For the China-wide entity, we would normally rely on the lowest export subsidy adjustment for either respondent, as an extension of the use of adverse inferences under section 776(b) of the Act,[31] which in this investigation also is 0.06 percent.

In addition, as discussed further below under Comment 2, we will not be adjusting the antidumping duty cash deposit rates for Hailun, Huahong, non-selected separate rate respondents, and the China-wide entity for domestic subsidy pass-through under section 777A(f) of the Act, because both Hailun and Huahong failed to demonstrate the requisite subsidies-to-cost and a cost-to-price link.

VII. DISCUSSION OF THE ISSUES

A. General Issues

Comment 1: Surrogate Country and Surrogate Value Selections for PTA

Hailun and Huahong Comments:

- In the *Preliminary Determination*, Commerce relied on import data from Thailand to value all inputs, except PTA, which was valued based on import data from Brazil. For the final determination, Commerce should use Thai import values for all inputs.[32]
    - In *PET Resin from China*, Commerce found that a low quantity of imports does not alone indicate that an import value is unreliable, however, in this proceeding, Commerce rejected Thai import values for PTA on this basis.[33]
    - Thai import values for PTA represent broad market averages, and have been

the Act), unchanged in *Fine Denier PSF China CVD Final* at 8 (for Huahong, finding a countervailable subsidy rate of 0.05 percent for the program "Government of the PRC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands," and a countervailable subsidy rate of 0.01 percent for the program "Export Subsidy Grants").

[30] *See Fine Denier PSF China CVD Prelim* at 15-17, 27-29, 31-32, and 36-37; *see also Fine Denier PSF China CVD Final* at 7-8.

[31] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858 (November 2, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282, (March 5, 2018).

[32] *See* Hailun Case Brief at 1 and Huahong Case Brief at 1.

[33] *See* Hailun Case Brief at 1-2 and Huahong Case Brief at 1-2 (citing *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 13331 (March 14, 2016) (*PET Resin from China*), and accompanying Issues and Decision Memorandum at 25 (PET Resin IDM)).

corroborated with the prices of downstream products (*i.e.*, PET resin and PSF).[34]

- In addition, Commerce has a regulatory preference and practice of valuing all FOPs in a single primary surrogate country.[35]

- Asian, and therefore Thai, PTA prices are more representative of prices that would be available in China, if China was a market economy.[36]

- By adding freight and insurance to the Brazilian PTA import value, Commerce has made this value more difficult to corroborate, and less reliable.[37]

The Petitioners' Rebuttal Comments:

- In the final determination, Commerce should continue to rely on Brazilian import statistics to value the mandatory respondents' consumption of PTA.[38]

  - Regarding PTA pricing, Commerce's reasoning for using Thai import values for PTA and evidence on the record in *PET Resin from China* differs significantly from the facts of this proceeding/the record evidence available.[39]

  - Commerce's decision to reject the Thai import value for PTA does not solely rest on the miniscule import quantity (*i.e.*, less than one-half of a container load), but also on record evidence which indicates Asian overcapacity of PTA and Japanese export values that are not reflective of broad, or market based, value.[40]

  - It is Commerce's practice to convert imports values from FOB to CIF. Further, record evidence demonstrates the volatility of Thai PTA prices, corroborates Brazilian CIF-based PTA prices with broad market averages, and undermines Asian PTA and PET resin export values.[41]

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[34] *See* Hailun Case Brief at 2-3 and Huahong Case Brief at 2-3 (citing *Clearon Corp. v. United States*, Slip Op. 15-91 at 29-30, Ct. No. 13-00073 (CIT August 20, 2015); *Jiaxing Brother Fastener Co., Ltd., v. United States*, 961 F. Supp. 2d 1323, 1334 (CIT February 6, 2014)).
[35] *See* Hailun Case Brief at 3-5 and Huahong Case Brief at 3-5 (citing 19 CFR 351.408(c)(2); PET Resin IDM at 21; *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review: 2013-2014*, 80 FR 61172 (October 9, 2015), and accompanying Issues and Decision Memorandum at Comment 2 and Comment 5 (Activated Carbon 2013-2014 AR IDM); *Nation Ford Chemical Company v. United States*, 166 F.3d 1373, 1365 (Fed. Cir. February 2, 1999)).
[36] *See* Hailun Case Brief at 5 and Huahong Case Brief at 5.
[37] *See* Hailun Case Brief at 4-5 and Huahong Case Brief at 4-5.
[38] *See* Petitioners' Rebuttal Brief at 2.
[39] *Id*. at 2-3 (citing PET Resin IDM at 21).
[40] *Id*. at 3-8 (citing PET Resin IDM at 6-28).
[41] *Id*. at 9-15 (citing Import Administration Policy Bulletin 10.2; *Certain Activated Carbon from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017), and accompanying Issues and Decision Memorandum at 22; *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018), and accompanying Issues and Decision Memorandum at 13-14 (Aluminum Foil from China IDM)).

- The respondents’ claim that Commerce prefers to value factors of production from a single surrogate market economy cannot ignore specific instances of aberrant or unreliable data.[42] Additionally, the respondents’ argument relating to surrogate value dissymmetry from having two surrogate countries is speculative, and unsupported by a mathematical explanation.[43]

Commerce’s Position:
With respect to valuing PTA using import data for Brazil, we agree with the petitioners, and continue to find that, based on the totality of the record evidence submitted in this proceeding, Brazilian *Global Trade Atlas* (GTA) import data under Brazilian HTS 2917.36 provides the best information available for valuing PTA.[44]

Section 773(c)(1) of the Act instructs Commerce to value factors of production (FOPs) based upon the best available information from a market economy country, or countries, that Commerce considers appropriate. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, “to the extent possible, the prices or costs of {FOPs} in one or more market economy countries that are-- (A) at a level of economic development comparable to that of the nonmarket economy {(NME)} country; and (B) significant producers of comparable merchandise.” With regard to determining what constitutes the best available information, Commerce will consider several criteria, including whether the surrogate value (SV) data is contemporaneous, publicly available, tax- and duty-exclusive, representative of a broad market average, and specific to the input.[45]

In this proceeding, the petitioners placed surrogate value import data on the record for Mexico for each FOP, and, for PTA, they also placed surrogate value import data on the record for Brazil.[46] Both mandatory respondents placed surrogate value import data on the record for Thailand for each FOP, including PTA.[47] In the *Preliminary Determination*, all three of these countries were identified by Commerce as countries at the same level of economic development as China, and Mexico and Thailand were identified as significant producers of comparable merchandise.[48] These determinations remain unchallenged by the parties. We also preliminarily

[42] *Id*. at 16.
[43] *Id*.
[44] *See* PET Resin IDM at comment 1 (citing *Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4542 (January 28, 2015), and accompanying Issues and Decision Memorandum at Comment 2) (PSF 2012-2013 AR IDM)); *see also Qingdao Sea-Line Trading Co. v. United States*, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (“Commerce has broad discretion to determine what constitutes the best available information, as this term is not defined by statute.”).
[45] *See* PSF 2012-2013 AR IDM at 19; *see also* Letter from Commerce, “Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber from the People’s Republic of China: Surrogate Values for the Preliminary Determination,” dated December 18, 2017 at 1-2 (Prelim SV Memo).
[46] *See* PDM at 11; *see also* Prelim SV Memo at 1-3.
[47] *See* PDM at 11; *see also* Prelim SV Memo at 1-3.
[48] *See* PDM at 10. Commerce inadvertently referred to Brazil as a significant producer of comparable merchandise, *see* PDM at 12, however, this statement was unintended. *See also* Prelim SV Memo at 1-3; Letter from Commerce, “Investigation of Fine Denier Polyester Staple Fiber from the People’s Republic of China: Request for Economic

determined that data for Thailand was the best available data for valuing the reported FOPs, excluding PTA, because the record contained "complete, publicly available, contemporaneous, and specific data for Thailand which represent a broad market average and are tax and duty exclusive for the majority of inputs used by the mandatory respondents to produce subject merchandise during the POI."[49] Further, we found that the record contained financial statements from Thailand which were publicly available, contemporaneous, and were comparable to the respondents' experience.[50]

We found that the data for Mexico are not the best available data for valuing the reported FOPs because the financial statement on the record is not reflective of revenues and expenses incurred in Mexico.[51] To value PTA, we found that data for Brazil represented the best available information on the record because the data are contemporaneous, publicly available, tax- and duty-exclusive, representative of a broad market average, and specific to the input.[52] With respect to the Thai PTA import data on the record, we determined that it is not representative of a broad market average, primarily due to the fact that an extremely low quantity was exported from one country (*i.e.*, Japan) to Thailand during the POI.[53] In contrast, PTA import data for Brazil represented significant quantities and multiple transactions, which far exceeded the total import quantities of PTA for other potential surrogate countries.[54] Further, PTA import data from other surrogate countries (*i.e.*, Mexico, South Africa, and Romania) represented quantities of PTA imports that were at least five and a half times greater than the Thai PTA import quantity.[55] Therefore, we find that Brazil still provides the best available information for valuing PTA.

The mandatory respondents contest this decision by asserting that, in *PET Resin from China*, Commerce used Thailand as the surrogate country to value PTA, despite the low quantity of imports.[56] Further, to support their claim that Thai PTA import prices still represent broad market averages, the respondents cite a PCI Wood Mackenzie (PCI) report, which contains average East Asian PTA prices for 2016 and 2017,[57] and a Tecnon Orbichem (Orbichem) report containing similar information.[58] The respondents argue that Thai import and export prices of downstream products (*i.e.*, PET and PSF), Asian PTA import prices, and COMTRADE world

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Development, Surrogate Country and Surrogate Value Comments and Information," dated August 24, 2017 at Attachment I.

[49] *See* PDM at 11; *see also* Prelim SV Memo at 1-3.

[50] *See* PDM at 27.

[51] *Id.* at 11.

[52] *Id.*; *see also* Prelim SV Memo at 1-3.

[53] *See* PDM at 11.

[54] *Id*. at 11; *see also* Prelim SV Memo at 1-3; *see also* Petitioners' Nov. 20 SV Submission at 10-11 and Attachment 4.

[55] *See* Petitioners' Nov. 20 SV Submission at 5-6, and attachment 4.

[56] *See* Hailun Case Brief at 1-2 and Huahong Case Brief at 1-2.

[57] *See* Hailun Case Brief at 2 and Huahong Case Brief at 2; *see also* Letter from respondents, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Rebuttal Preliminary Surrogate Value Submission, dated October 27, 2017 at Exhibits SVR-19 and SVR-20 (Respondents' Oct. 27 SV Rebuttal Submission).

[58] *See* Hailun Case Brief at 2 and Huahong Case Brief at 2; *see also* Letter from respondents, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Rebuttal Preliminary Surrogate Value Submission – Part II, dated November 20, 2017 at Exhibits SV2-6 and SV2-7 (Respondents' Nov. 20 SV Rebuttal Submission II).

PTA import data corroborate the use of Thai import data to value PTA.[59] Finally, the respondents claim that Commerce has a regulatory preference for valuing all FOPs in one surrogate country, and Thai import data should therefore be used to value PTA.[60]

As an initial matter, we continue to find that PTA import data for Brazil, constitutes a complete and reliable source to value PTA. As indicated above, Brazilian imports of PTA were significant and are representative of multiple transactions, totaling 145,624.5 tons during the POI.[61] This quantity far exceeded the total import quantities of PTA for other potential surrogate countries. In addition, a comparison of historical pricing patterns of PTA in five of the countries named by Commerce as being at the same level of economic development as China demonstrates the volatility of Thai PTA import prices and the stability of Brazilian PTA prices.[62] Specifically, when Thai PTA prices are removed as a historical benchmark, a more stable pricing pattern emerges when averaging the value from the other four countries.[63] Furthermore, aside from a single argument concerning adding insurance and freight to Brazilian PTA import prices addressed below, respondents have provided no evidence or argument to impugn the reliability of the Brazilian data.

With respect to valuing PTA, we disagree with the respondents that the facts of this case are similar to *PET Resin from China*. As explained in *PET Resin*, "{Commerce} reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the 'best available information regarding the values of such factors in a market economy country or countries considered to be appropriate.'"[64] In *PET Resin from China*, parties narrowly argued whether (1) Thai import data or (2) Thai data from separate reports (*i.e.*, PCI and Asian Pacific ICIS) should be used to value Thai (emphasis added) PTA. Specifically, in *PET Resin from China*, the petitioners argued that for the final determination we should continue to use Thai import statistics to value PTA,[65] while the respondents asserted that we should use PTA pricing information from one of the two reports (which we ultimately determined were significantly flawed), to value Thai PTA import prices.[66] We selected the Thai import data as the best available information to value PTA in *PET Resin from China* because, although the Thai import data was not perfectly contemporaneous with the POI, we found that the data from the two reports were significantly flawed based on Commerce's surrogate value criteria.[67] In the instant investigation, the respondents and petitioners are more generally asserting that Thai or Brazilian GTA import data, respectively, constitutes the best available information on the record. In other words, we are examining the best available information among multiple countries, not

[59] *See* Hailun Case Brief at 2 and Huahong Case Brief at 2; *see also* Letter from respondents, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Final Surrogate Value Submission," dated November 20, 2017 at Exhibits SV2-5 and SV2-2; Respondents' Oct. 27 SV Rebuttal Submission at SVR-16.
[60] *See* Hailun Case Brief at 3-4 and Huahong Case Brief at 3-4.
[61] *See* Petitioners' Nov. 20 SV Submission at Attachment 4.
[62] *See* Petitioners' Nov. 20 SV Submission at 7-9, and Attachment 8.
[63] *Id*.; *see also* Petitioners' Rebuttal Brief at 12-14.
[64] *See* PET Resin IDM at 21 (citing section 773(c)(1) of the Act and *Lightweight Thermal Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 9).
[65] *See* PET Resin IDM at 15.
[66] *Id*. at 10-12, 15.
[67] *Id.* at 22-26.

just the best available information on the record with respect to one country. As discussed here and in the *Preliminary Determination*, we find that the Brazilian import data are superior to the Thai import data and thus the Brazilian import data are the best available information on the record of this investigation. Therefore, the circumstances/nature of the arguments presented in *PET Resin from China* differ substantially from the instant investigation.

Further, regarding the use of Thai import data to value PTA in *PET Resin from China*, Commerce included Thai PTA import data covering the calendar year 2014 in its analysis, as the quantity of PTA imported during the POI (*i.e.*, July 2014 – December 2014) was commercially insignificant.[68] Therefore, by using a one-year period to evaluate Thai PTA imports, Commerce was able to get a more representative value for PTA, based on one transaction for 20.332 tons.[69] Similarly, in this proceeding, the data indicates that only one transaction (from Japan to Thailand) accounts for 99.95 percent of the Thai PTA import quantity during the POI.[70] However, the import quantity of this transaction is only for 12 tons – or far less than one container full of merchandise.[71] In addition, even when Thai import statistics under HTS 2917.36 are included covering a one-year period (*i.e.*, April 2016 through March 2017), the 12 ton transaction still accounts for 99.90 percent of Thai PTA imports.[72] In comparison, United Nations COMTRADE (COMTRADE) export data does not reveal any Japanese exports of PTA to Thailand in 2016 or 2017.[73]

We also disagree with the respondents that Thai PTA import prices are corroborated by record evidence. As stated in the *Preliminary Determination*, "{w}hen evaluating SV data, the Department {Commerce} considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued."[74] Although these criteria are not directly applicable to the PCI and Orbichem reports, which are on the record to evaluate the reliability of the potential SV sources, we use these criteria as guidance. The PCI and Orbichem reports fail to meet our SV selection criteria, and thus, while we may still rely on them to evaluate the potential SV sources, we find their reliability to be limited. In *PET Resin from China*, Commerce officials determined that PCI data was not usable/reliable because it was unclear if the data were publicly available, if the data existed prior to the respondents request, and how the respondent had customized its data query.[75] In this case, we are also unsure if these data are publicly available, how the respondents obtained the data, and how the data search was customized.[76] Regarding the Orbichem report, the data are not specific to Thailand or

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[68] *Id*. at 8.
[69] *Id*.
[70] *See* Letter from respondents, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Preliminary Surrogate Value Submission," dated October 10, 2017 at Attachment SV-2 (Respondents' Oct. 10 SV Submission); *see also* Petitioners' Nov. 20 SV Submission at Attachment 4.
[71] *See* Petitioners' Rebuttal Brief at 4.
[72] *See* Petitioners' Nov. 20 SV Submission at Attachment 4.
[73] *See* Letter from the petitioners, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Petitioners' Final Surrogate Value Rebuttal Submission," dated November 30, 2017 at 5, and Attachment 4 (Petitioners' Nov. 30 SV Rebuttal Submission).
[74] *See* PDM at 11.
[75] *See* PET Resin IDM at 22-23.
[76] *See* Respondents' Oct. 27 SV Rebuttal Submission at SVR-19 and SVR-20.

contemporaneous with the POI, and certain Chinese PTA prices appear closer to Brazilian PTA import values, rather than the corresponding Thai ones.[77]

The petitioners have further argued that the Thai shipment is not an arm's length transaction, and that the Thai data and other evidence placed on the record by respondents to corroborate the Thai data is distorted because of a significant PTA oversupply in Asia. Because we have discounted the Thai PTA data for the reasons above, we have not further considered petitioners' arguments, with one exception: Regarding additional COMTRADE import data provided by the respondents,[78] we agree with the petitioners that when shipments of PTA from non-market economies, countries that provide widely available export subsidies,[79] and Asian countries suffering from an alleged significant PTA overcapacity are removed, the world average PTA import price increases by more than 10 cents (*i.e.*, from \$0.70 to \$0.84 per kg), and is quite similar to the Brazilian PTA import value.[80] Therefore, based on this analysis, this information corroborates Brazilian PTA prices. It also indicates that Thai PTA import prices are similar to the import prices of non-market economies and countries found by Commerce to provide widely available export subsidies.

In terms of the respondents' contention that Commerce has a regulatory preference for valuing all FOPs in a single country, we also find this argument unpersuasive in this instance.[81] Pursuant to 19 CFR 351.408(c)(2), Commerce "normally will value all factors in a single surrogate country." This regulatory preference is balanced with the statutory directive that we rely on the best information available for each input. Here, for the reasons discussed herein, we find that the Thai PTA import data are not reliable, and the Brazilian PTA import data are the best information available, in accordance with section 773(c)(1) of the Act.

Additionally, we find the respondents' argument that "{a} Thai producer would not pay raw material costs available in Brazil," inapposite.[82] As stated above, section 773(c) of the Act requires Commerce to determine normal value in a NME country based on the best available information from one or more market economy countries that are (1) at a level of economic development comparable to that of the NME country and (2) significant producers of comparable merchandise. As previously indicated, Thailand and Brazil were identified as countries at the same level of economic development as China and Thailand as a significant producer of comparable merchandise. Based on our analysis, as Thai PTA import values are unreliable, Commerce has an obligation to select the best information available, which, in this case, we find

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[77] *See* Respondents' Nov. 20 SV Rebuttal Submission II at SV2-6 and SV2-7; *see also* Prelim SV Memo at Attachment 1.
[78] *See* Respondents' Oct. 27 SV Submission at 3, and Exhibit SVR-16.
[79] *See* PDM at 25.
[80] *See* Petitioners' Nov. 30 SV Rebuttal Submission 1-2, and Attachments 1 and 2; *see also* Prelim SV Memo at 1-3, and Attachment 1; Petitioners' Nov. 20 SV Submission at 10-11, and Attachment 4.
[81] *See* Hailun Case Brief at 3-4 and Huahong Case Brief at 3-4 (citing 19 CFR 351.408(c)(2); PET Resin IDM at 21; Activated Carbon 2013-2014 AR IDM).
[82] *See* Hailun Case Brief at 4 and Huahong Case Brief at 4.

are Brazilian PTA import data. Thus, as explained above, we find that the record contains reliable data from both countries that can be used to value FOPs.

Finally, the respondents argue that adding insurance and freight (*i.e.*, converting from free-on-board (FOB) to cost, insurance, and freight (CIF)) to Brazilian PTA import prices, which are reported in GTA on a FOB basis, makes the data more difficult to corroborate with "Asian PTA benchmarks" and less accurate.[83] Three of the six potential surrogate countries named by Commerce maintain GTA data on a FOB basis.[84] As explained in *Aluminum Foil from China*, "{l}imiting Commerce's selection of SV source countries to countries that report HTS data on a CIF basis would have the disadvantage of unreasonably limiting the pool of SV source countries."[85] Further, it is Commerce's practice to add freight and insurance values to adjust an import value from FOB to CIF.[86] Therefore, we have appropriately applied ocean freight and marine insurance values, which reasonably reflect the derivation of FOP values from Brazilian CIF values.

In conclusion, for the foregoing reasons, we find that the Brazilian import-based data are the best available information on this record to value the mandatory respondents' PTA inputs. Consequently, as noted, we are continuing to value PTA based on the Brazilian GTA import data for HTS number 2917.36 for the POI.

Comment 2: Hailun and Huahong's Double Remedy Adjustments

Hailun and Huahong's Comments:

- Commerce is required, by law, to adjust for double remedies with respect to the simultaneous application of countervailing duty and antidumping duty laws to Chinese exporters.[87]

- In its double remedy questionnaire response, Hailun demonstrated a subsidies-to-cost and a cost-to-price link. In Huahong's double remedy response, company officials

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[83] *See* Hailun Case Brief at 4 and Huahong Case Brief at 4.
[84] South Africa, Mexico, and Brazil maintain GTA data on a FOB basis.
[85] *See* Aluminum Foil from China IDM at 13.
[86] *See* Import Administration Policy Bulletin 10.2, "Inclusion of International Freight Costs When Import Prices Constitute Normal Value," dated November 1, 2010 at 1 ("{W}hen the import statistics of the surrogate country do not include such costs, Commerce has added surrogate value international freight and foreign brokerage and handling charges to the calculation of normal value.").
[87] *See* Hailun Case Brief at 13 and Huahong Case Brief at 5 (citing section 777A of the Act; *Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 1; *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission of New Shipper Review; 2015-2016*, 82 FR 46965 (October 10, 2017), and accompanying Preliminary Decision Memorandum at 29-30; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 93888 (December 22, 2016), and accompanying Preliminary Decision Memorandum at 30-31).

demonstrated a cost-to-price link. Commerce did not issue any notifications regarding deficiencies in either of the respondents' double remedy responses.[88]

- Although Commerce officials did not verify this issue, raw material inputs (*i.e.*, PTA and ethylene glycol (MEG)) and electricity were reviewed.[89]

The Petitioners' Rebuttal Comments:

- For Commerce to grant a double remedy adjustment, respondents are required to demonstrate: (1) a subsidies-to-cost link; and (2) a cost-to-price link.[90]

- In its response, Huahong failed to substantiate either a subsidies-to-cost link, or a cost-to-price link. Further, data on the record does not support Huahong's claim that the costs of inputs are linked to prices obtained when selling subject merchandise in the United States.[91]

- The documentation submitted by Hailun in its double remedies questionnaire response also does not support an adjustment, as Hailun failed to demonstrate a subsidies-to-cost link and a cost-to-price link.[92]

Commerce's Position:
We disagree with Hailun and Huahong, and find that both respondents failed to substantiate a subsidies-to-cost link and a cost-to-price link with respect to its purchases of PTA, MEG, and electricity for less than adequate remuneration (LTAR).

In applying section 777A(f) of the Act, Commerce examines (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to the class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of normal value determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[93] For a subsidy meeting these criteria, the statute requires Commerce to reduce the antidumping duty cash deposit rate by the estimated amount of the increase in the weighted-average dumping margin, subject to a specified cap.[94]

In conducting this analysis, Commerce has not concluded that concurrent application of NME antidumping duties and countervailing duties necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting

[88] *See* Hailun Case Brief at 15-17 and Huahong Case Brief at 7-9.
[89] *See* Hailun Case Brief at 15 and Huahong Case Brief at 7.
[90] *See* Petitioners' Rebuttal Brief at 23.
[91] *Id*. at 24-26.
[92] *Id*. at 26-28.
[93] *See* section 777A(f)(1)(A)-(C) of the Act.
[94] *See* section 777A(f)(1)-(2) of the Act.

adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

In order to examine the effects of concurrent countervailable subsidies in calculating antidumping margins for respondents in this investigation, Commerce requested that Hailun and Huahong submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated weighted-average dumping margin. Commerce issued its double remedy questionnaire to Hailun and Huahong, which instructed the respondents to "provide full documentary support" for each response.[95] Huahong and Hailun submitted responses to Commerce's double remedy questionnaire.[96] Following these submissions, Commerce examined whether Hailun and Huahong demonstrated: (1) a subsidies-to-cost link, *e.g.*, the subsidy's impact on cost of manufacture (COM); and (2) a cost-to-price link, *e.g.*, the COM's impact on the respondent's prices. Commerce determined that, based upon the information submitted, Hailun and Huahong failed to substantiate a subsidies-to-cost link and a cost-to-price link.[97]

Hailun identified two programs that potentially impact COM: Provision of electricity for LTAR, and MEG for LTAR.[98] However, Hailun did not provide underlying evidence to fully support its claims that Commerce should grant double remedy adjustments for these programs. Specifically, Commerce's double remedy questionnaire requested: "For each subsidy program you listed in the above table where you identified an impact to your cost of manufacturing, please provide the information requested below. **Please provide full documentary support for each of your responses**."[99] Hailun did not provide monthly purchase information for PTA, even though it claimed that PTA prices are a key consideration when setting export prices. In fact, to substantiate its claims, Hailun was only able to provide sales information (*i.e.*, invoice, sales contract, *etc*.) for one sale in November 2016 and one sale in March 2017, and PCI Wood Mackenzie (PCI) reports containing regional MEG prices from the months during the POI when each of the two sales contracts were concluded.[100] This information is not sufficient to draw a connection between the prices in the sales contracts and the prices of input materials (*i.e.*, MEG). Additionally, in response to the question asking Hailun to explain how many times it identified changes in cost items (*e.g.*, MEG) during the POI, Hailun simply stated that MEG prices change each day, however, Hailun did not submit any supporting documentation, such as discussions between company officials concerning price changes in raw material inputs.[101] With respect to the provision of electricity for LTAR, Hailun stated that its "purchase price of the electricity and overall processing cost did not change significantly, and, therefore, there was no specific change

[95] *See* Letter from Commerce, "Fine Denier Polyester Staple Fiber from the People's Republic of China," dated December 13, 2017 (Hailun and Huahong DRQ).
[96] *See* Letter from Huahong, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Huahong Double Remedy Questionnaire Response," dated December 19, 2017 (Huahong DRQ Response); Letter from Hailun, "Fine Denier Polyester Staple Fiber from the People's Republic of China – Hailun Double Remedy Questionnaire Response," December 22, 2017 (Hailun DRQ Response).
[97] *See* Letter from Commerce, "Less-Than-Fair-Value Investigation of Fine Denier Polyester Staple Fiber from the People's Republic of China: Double Remedies Calculation Memorandum for the Final Determination," dated concurrently with this memorandum.
[98] *See* Hailun DRQ Response at 4-5.
[99] *Id*. at 5.
[100] *Id*. at Exhibit DR-3.
[101] *Id*. at 5.

of such costs during the POI in its normal course of business."[102] Therefore, as there is not sufficient record evidence or documentation to support this claim (*i.e.*, the cost-to-price link), Commerce cannot substantiate this claim.

Hailun also argues that as Commerce verified certain input factors consumed in production of fine denier PSF (*i.e.*, MEG, and electricity), a subsidies-to-cost link and a cost-to-price link for both of the aforementioned programs was substantiated, and therefore a double remedy adjustment is warranted in each case.[103] This statement is contradicted, however, by Hailun's assertion that we elected not to verify double remedy questionnaire responses at verification, and are thus "bound to accept Hailun's double remedy responses and claims of a cost to price linkage in this investigation."[104] Further, we did not verify Hailun's double remedy questionnaire response because Hailun had not, to the best of its ability, provided "full documentary support" for each of its responses, as per the instructions in the questionnaire, and the documentation provided did not substantiate Hailun's claim that there was a subsidies-to-cost and cost-to-price link for the two LTAR programs.

In its response, Huahong identified three programs that potentially impact COM: Provision of electricity for LTAR, PTA for LTAR, and MEG for LTAR.[105] However, Huahong did not provide underlying evidence to fully support its claims that Commerce should grant double remedy adjustments for these programs. For example, Commerce's double remedy questionnaire requested: "For each subsidy program you listed in the above table where you identified an impact to your cost of manufacturing, please provide the information requested below. **Please provide full documentary support for each of your responses**."[106] For all three programs, Huahong was unable to provide any supporting documentation generated in the normal course of business (*e.g.*, accounting vouchers, invoices, *etc*.).[107] In response to the question asking Huahong to note whether there is a threshold for changes in cost items (*e.g.*, PTA or MEG) under which your company would not adjust prices, Huahong generally stated that it sets prices according to current input purchase prices, but did not provide any specific examples of how this is done for certain sales.[108] Commerce's double remedy questionnaire also instructed Huahong to "describe your company's policy or practice with regard to price reductions, and provide the most recent example during the relevant period when you lowered the price of subject merchandise in response to a decrease in an input cost or the cost of manufacturing."[109] Huahong referred to Exhibit DR-3 (i.e., price comparison), which provides a table comparing "raw material purchase prices and the net export price sold to the United States."[110] In response, the petitioners compared the percent change in the "combined monthly unit value of PTA and MEG" to the percent change in the "monthly unit value of U.S. sales" using figures from Exhibit DR-3 and found that the results did not support a cost-to-price

[102] *Id*.
[103] *See* Hailun Case Brief at 15.
[104] *Id*. at 16.
[105] *See* Huahong DRQ Response at 3-4.
[106] *Id*. at 4.
[107] *Id.* at 4 and Exhibit DR-2.
[108] *Id*. at 2, 4.
[109] *See* Hailun and Huahong DRQ at 6.
[110] *See* Huahong DRQ Response at 7.

linkage, which undermines Huahong's assertion that its prices quotes are based on current input prices.[111] Regarding the provision of electricity for LTAR, Huahong indicated that "electricity price had no change during the relevant period, but the energy cost is also one of the factors determining the export price…"[112] However, Huahong was not able to demonstrate that the cost of electricity influenced the price of fine denier PSF. As there is no record evidence or documentation to support this claim (*i.e.*, the cost-to-price link), Commerce cannot substantiate this claim.

Huahong claims that as Commerce verified certain input factors consumed in production of fine denier PSF (*i.e*., PTA, MEG, and electricity), a subsidies-to-cost link and a cost-to-price link for all three of the aforementioned programs was substantiated, and therefore a double remedy adjustment is warranted in each case.[113] This statement is contradicted, however, by Huahong's assertion that Commerce elected not to verify double remedy questionnaire responses at verification, and should then "accept Huahong's double remedy responses and claims of a cost-to-price-linkage in this investigation."[114] Further, we did not verify Huahong's double remedy questionnaire response because Huahong had, to the best of its ability, provided "full documentary support" for each of its responses, as per the instructions in the questionnaire, and the documentation provided did not substantiate Huahong's claim that there was a subsidies-to-cost and cost-to-price link for the three LTAR programs.

Finally, Hailun and Huahong argue that Commerce did not notify them of any deficiencies in either of their double remedies questionnaire responses and, as such, Commerce is bound to accept the respondents' responses and claims of cost-to-price linkage.[115] Neither Hailun nor Huahong cite to any legal authority for this argument. Presumably, Hailun and Huahong are referring to Commerce's obligation under section 782(d) of the Act, which requires that Commerce promptly inform a person that submits a deficient response to a request for information of the nature of the deficiency and, to the extent practicable, provide that person with an opportunity to timely remedy or explain the deficiency. However, Commerce did not determine that the double remedies questionnaire responses submitted by Hailun and Huahong were deficient. In the double remedies questionnaire, Commerce requested that Hailun and Huahong submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated weighted-average dumping margin and instructed the respondents to "provide full documentary support" for each response.[116] Given this clear instruction, and the responses from Hailun and Huahong, there was no indication that the parties possessed additional documentary support to support their claims or that there was a "deficiency" in the responses requiring additional questions. The responses therefore were not "incomplete" or "deficient." Rather, as discussed above, the information submitted in both responses did not establish a subsidies-to-cost and a cost-to-price link such that a double remedy adjustment was appropriate. In other words, Commerce accepted the double remedy questionnaire responses as

[111] *See* Petitioners' Rebuttal Brief at 25-26.
[112] *See* Huahong DRQ Response at 7.
[113] *See* Huahong Case Brief at 7.
[114] *Id*. at 8.
[115] *See* Hailun Case Brief at 16 and Huahong Case Brief at 8.
[116] *See* Hailun and Huahong DRQ.

complete submissions and used the information submitted as the basis for its decision to deny Hailun and Huahong a double remedy adjustment under section 777A(f) of the Act. Commerce did not disregard the responses. Therefore, section 782(d) of the Act does not apply under these circumstances.[117]

Based on the above, we find that Hailun and Huahong failed to substantiate a subsidies-to-cost and a cost-to-price link with respect to purchases of PTA, MEG, and electricity for LTAR. Accordingly, we have made no adjustment under section 777A(f) of the Act in the final determination.

Comment 3: Calculations for Hailun's Purchased and Consigned PET Melt

Hailun's Comments:

- When Commerce collapses affiliated companies and treats them as a single entity, Commerce has a practice of valuing an intermediate input produced by the collapsed entity based on the reported raw material inputs used in the production of the intermediate input. Because Commerce collapsed the Hailun affiliates involved in the production of PET melt as well as those involved in the production of fine denier PSF, Commerce should adjust its methodology and use the inputs consumed in the production of the purchased and consigned PET melt in Hailun's margin calculations.[118]
- The producers of fine denier PSF have affiliated companies that produced or toll-processed an intermediate input for the production of the subject merchandise and Commerce determined these companies to be part of the collapsed, single entity. Accordingly, Commerce should follow its practice and use the reported consumption of all inputs used by the collapsed entity in its margin calculations.[119]
- Commerce's normal value calculation should not include valuation of the amounts of purchased and consigned melt that was consumed by the fine denier PSF producers. Instead, this calculation should include valuation of the inputs used to produce the purchased and consigned melt, each of which are designated in the FOP database with a name ending in "_M" or "C".[120]
- As all PTA and MEG purchased by and reported as consumed by the producers of the subject merchandise was actually consumed in the production of the consigned melt

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[117] *See Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Affirmative Final Determination of Sales at Less Than Fair Value and Affirmative Finding of Critical Circumstances*, 83 FR 2141 (January 16, 2018) and accompanying Issues and Decision Memorandum at Comment 3 (providing that section 782(d) of the Act "only applies when there is a deficiency in one's response").

[118] *See* Hailun Case Brief at 6-8 (citing *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at 65; *Monosodium Glutamate from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014) and accompanying Issues and Decision Memorandum at 15; *Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People's Republic of China*, 73 FR 15726, 15729 (March 25, 2008) (*unchanged in final*) (*Hangers from China*)).

[119] *Id.* at 8-9.

[120] *Id*. at 9-10.

(reported as "CONSIGNEDMELT" in the FOP database), Commerce double-counted the PTA and MEG inputs in its preliminary margin calculations. The record, including findings at verification, confirm the use of the PTA and MEG by the PET melt producers in the production of the consigned melt. To avoid the double-counting of these inputs in the final margin calculations, the most accurate way to calculate normal value is to delete the CONSIGNEDMELT variable from the direct-materials equation and to add each of the toll-processing inputs (*i.e.*, the inputs ending in a "_C" in the factors-of-production database) to the equation.[121]

The Petitioners' Rebuttal Comments:

- If Commerce determines that Hailun is correct in its assertions and that normal value should be calculated using the factor inputs consumed by each of its collapsed affiliates, then Commerce should continue to include all inputs consumed by the fine denier PSF producers in the direct-materials calculation and should modify the calculations for energy and labor costs to include the energy and labor usage of the PET melt producers. Commerce's revised calculations should also include any reported factors for freight related to an input.[122]

Commerce's Position:

As noted in the "Background" section above, we collapsed Hailun and nine of its affiliates in the *Preliminary Determination*.[123] Hailun and five of the affiliates produced fine denier PSF during the POI, while four other affiliates produced PET melt, an intermediate input used in the production of fine denier PSF. These latter four affiliates supplied the PET melt to the six PSF producers through direct purchase or on a consignment basis. In our preliminary margin calculations, we calculated normal value by including amounts based on the valuation of the reported amounts of purchased and consigned PET melt supplied to the PSF producers, as opposed to the reported factors consumed by the melt producers [124]

Our practice is to treat a collapsed entity as a single entity; thus, we find that we should use the raw material input consumption rates, as reported by the affiliated PET melt producers, in our final margin calculations. For example, in *Hangers from China*, we found it appropriate to use an integrated FOP database that captured the inputs used by the respondent, Shaoxing Gangyuan Metal Manufactured Co., Ltd. (Shaoxing Gangyuan), and three of its affiliates after we determined that Shaoxing Gangyuan and the affiliates constituted a single entity for purposes of that LTFV investigation.[125] Based on this practice, we find that, for Hailun's final margin calculations, we should rely on the factors used by certain Hailun affiliates to produce PET melt (*i.e.*, the factors used in the production of the purchased and consigned melt) and also the factors used by Hailun and other affiliates in the production of the subject merchandise. In doing so, we

[121] *Id*. at 10-13.
[122] *See* Petitioners' Rebuttal Brief at 17-23.
[123] *See* PDM at 16; *see also* Hailun Collapsing Memorandum.
[124] *See* Memorandum, "Analysis Memorandum for Jiangyin Hailun Chemical Fiber Co. Ltd., in the Preliminary Determination of the Less-than-Fair-Value of Fine Denier Polyester Staple Fiber from the People's Republic of China," dated December 18, 2017, at 3.
[125] *See Hangers from China*, 73 FR at 15729.

agree with the petitioners' comments that normal value should reflect all energy and labor used in both the production of PET melt and fine denier PSF, as well as reflect any freight related to material, energy or labor inputs. Therefore, we have revised Hailun's final margin calculations to implement each of these changes. By making these adjustments, we will value the PET melt obtained from affiliated and collapsed suppliers in accordance with our practice and avoid any double-counting of PTA and MEG inputs.

VIII. RECOMMENDATION

We recommend following the above methodology for this final determination.

☒ ☐

Agree Disagree

5/23/2018

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