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Investigation
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September 17, 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: 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: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Polyethylene Terephthalate Resin from Taiwan

I. SUMMARY

The Department of Commerce (Commerce) determines that polyethylene terephthalate (PET) resin from Taiwan is being, 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 is July 1, 2016, through June 30, 2017.

We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification, we made certain changes to the preliminary calculations. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from parties.

- Comment 1: Whether Commerce Should Rely on Total Adverse Facts Available for Shinkong
- Comment 2: Whether Shinkong Reported the Correct Date of Sale for Its Home Market Sales
- Comment 3: Whether Shinkong Reported the Correct Shipment Date for Its Home Market Sales



- Comment 4: Whether Far Eastern Underreported Its Production Quantities for Blended Products
- Comment 5: Whether Far Eastern Manipulated Its Sales Reporting Between Cost and Sales Verifications
- Comment 6: Whether to Incorporate Findings from Commerce’s Cost Verification in the Final Determination for Far Eastern – Cost Adjustment Ratio
- Comment 7: Whether to Incorporate Findings from Commerce’s Cost Verification in the Final Determination for Far Eastern – General and Administrative Expense Ratio
- Comment 8: Whether Commerce Should Apply Adverse Facts Available to Far Eastern’s Report of Blended PET Resin
- Comment 9: Whether Far Eastern has Omitted Certain Subject Merchandise Sales from its U.S. Sales Database
- Comment 10: Whether one of Far Eastern’s U.S. Sales should be Excluded from the Margin Calculation
- Comment 11: Far Eastern’s U.S. Sales Channels
- Comment 12: Whether Far Eastern’s Correction to Packing Expenses Submitted at Verification Should be Rejected
- Comment 13: Whether Commerce Should Make a Finding of Critical Circumstances with respect to Far Eastern in the Final Determination

II. BACKGROUND

On May 4, 2018, Commerce published the *Preliminary Determination* of sales at less than fair value (LTFV) of PET resin from Taiwan.¹ On May 8, 2018, mandatory respondent, Far Eastern New Century Corporation (FENC), Far Eastern Textile Ltd. (FETL), and Worldwide Polychem (HK), Ltd. (WWP) (collectively, Far Eastern)² filed an allegation that Commerce made significant ministerial errors in the *Preliminary Determination*.³ On May 14, 2018, the petitioners⁴ rebutted Far Eastern’s ministerial error allegation.⁵ On July 16, 2018, we issued a memorandum determining that the allegations raised by Far Eastern were methodological in nature and did not constitute ministerial errors as defined by 19 CFR 351.224(f).⁶ Accordingly, we did not amend the *Preliminary Determination*.

Between May 7, 2018, and May 18, 2018, we conducted sales and cost verifications of

¹ See *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018) (*Preliminary Determination*).

² We found that FENC is the successor-in-interest of FETL, and that WWP and FENC are affiliated and should be treated as a single entity pursuant to 19 CFR 351.401(f). See *Preliminary Determination*.

³ See Far Eastern’s Letter, “Investigation of Polyethylene Terephthalate Resin from Taiwan – Request for Correction of Ministerial Errors,” dated May 8, 2018.

⁴ The petitioners are DAK Americas LLC; Indorama Ventures USA Inc.; M&G Polymers USA LLC; and Nan Ya Plastics Corporation, America.

⁵ See Petitioners’ Letter, “Polyethylene Terephthalate Resin from Taiwan – Petitioners’ Response to Far Eastern’s Ministerial Error Allegation,” dated May 14, 2018.

⁶ See Memorandum, “Ministerial Error Memorandum for the Affirmative Preliminary Determination of the Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Taiwan,” dated July 16, 2018.

mandatory respondents, Far Eastern, and Shinkong Synthetic Fibers Corporation (Shinkong), in accordance with section 782(i) of the Act.⁷ The petitioners and both mandatory respondents submitted case briefs on August 8, and August 9, 2018.⁸ On August 14, 2018, the petitioners and each of the mandatory respondents submitted rebuttal briefs.⁹ On August 16, 2018, Far Eastern requested that Commerce reject the petitioners' rebuttal brief regarding Far Eastern (Petitioners' Rebuttal Brief re Far Eastern) and remove it from the record of this proceeding. Far Eastern argued that the Petitioners' Rebuttal Brief re Far Eastern impermissibly expanded the scope of Far Eastern's case brief.¹⁰ On August 22, 2018, the petitioners responded to Far Eastern's letter, arguing that their rebuttal brief responded directly to issues raised in Far Eastern's case brief, complying with Commerce's regulatory requirements for written argument.¹¹ On August 23, 2018, we issued a memorandum stating that the Petitioners' Rebuttal Brief re Far Eastern did not expand the scope of issues raised in Far Eastern's case brief and, thus, complied with 19 CFR 351.309(d)(2). We further declined Far Eastern's request to reject and remove the petitioners' rebuttal brief from the record.¹² In that same memorandum, we also requested that the petitioners resubmit their rebuttal brief regarding Far Eastern, along with a letter explaining why this filing was late. On August 24, 2018, the petitioners re-submitted the rebuttal brief regarding Far Eastern,¹³ and a letter providing reasons for their late filing.¹⁴

⁷ See Memorandum, "Verification of the Sales Response of Shinkong Synthetic Fibers Corporation in the Antidumping Investigation of Polyethylene Terephthalate Resin from Taiwan," dated July 24, 2018 (Shinkong's Sales Verification Report); see also Memorandum, "Verification of Shinkong Synthetic Fibers Corporation in the Antidumping Duty Investigation of Polyethylene Terephthalate Resin from Taiwan," dated July 23, 2018 (Shinkong's Cost Verification Report); see also Memorandum, "Verification of the Cost Response of Far Eastern New Century Corporation in the Antidumping Duty Investigation of Polyethylene Terephthalate Resin from Taiwan," dated July 25, 2018 (Far Eastern's Cost Verification Report); see also Memorandum, "Verification of the Sales Response of Far Eastern New Century Corporation in the Antidumping Investigation of Polyethylene Terephthalate Resin from Taiwan," dated August 1, 2018 (Far Eastern's Sales Verification Report).

⁸ See Far Eastern's Letter, "Investigation of Polyethylene Terephthalate Resin from Taiwan – Case Brief," dated August 8, 2018 (Far Eastern's Case Brief); see also Shinkong's Letter, "Polyethylene Terephthalate (PET) Resin from Taiwan: Case Brief," dated August 8, 2018 (Shinkong's Case Brief); see also Petitioners' Letter, "Polyethylene Terephthalate Resin from Taiwan: Petitioners' Case Brief Concerning Far Eastern," dated August 9, 2018 (Petitioners' Case Brief re Far Eastern); see also Petitioners' Letter, "Polyethylene Terephthalate Resin from Taiwan: Petitioners' Case Brief Concerning Shinkong Synthetic Fibers Corp.," dated August 9, 2018 (Petitioners' Case Brief re Shinkong).

⁹ See Petitioners' Letter, "Polyethylene Terephthalate Resin from Taiwan: Petitioners' Rebuttal Brief Concerning Shinkong Synthetic Fibers Corp.," dated August 14, 2018 (Petitioners' Rebuttal Brief re Shinkong); see also Petitioners' Letter, "Polyethylene Terephthalate Resin from Taiwan: Petitioners' Rebuttal Brief Concerning Far Eastern," dated August 14, 2018; see also Far Eastern's Letter, "Far Eastern's Rebuttal Brief," dated August 15, 2018 (Far Eastern's Rebuttal Brief); see also Shinkong's Letter, "Polyethylene Terephthalate (PET) Resin from Taiwan: Rebuttal Brief," dated August 14, 2018 (Shinkong's Rebuttal Brief).

¹⁰ See Far Eastern's Letter, "Investigation of Polyethylene Terephthalate Resin from Taiwan – Request for Rejection of Petitioners' Rebuttal Brief," dated August 16, 2018.

¹¹ See Petitioners' Letter, "Polyethylene Terephthalate Resin from Taiwan – Petitioners' Response to Far Eastern's Request to Reject Petitioners' Rebuttal Brief," dated August 23, 2018.

¹² See Memorandum, "Antidumping Duty Investigation of Polyethylene Terephthalate (PET) Resin from Taiwan: the Petitioners' Rebuttal Case Brief," dated August 22, 2018.

¹³ See Petitioners' Letter, "Polyethylene Terephthalate Resin from Taiwan: Petitioners' Rebuttal Brief Concerning Far Eastern," dated August 24, 2018 (Petitioners' Rebuttal Brief re Far Eastern).

¹⁴ *Id.*

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is PET resin from Taiwan. Commerce did not receive any scope comments subsequent to the *Preliminary Determination* and, therefore, the scope has not been updated since the *Preliminary Determination*. For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

IV. FINAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

In the *Preliminary Determination*, in accordance with section 733(e)(1) of the Act and 19 CFR 351.206, Commerce found that critical circumstances existed for Far Eastern and “all other” producers or exporters not individually examined, and found that critical circumstances did not exist for Shinkong.¹⁵ From August 8, to August 24, 2018, Commerce received comments from Far Eastern and the petitioners regarding the affirmative determination of critical circumstances for Far Eastern made in the *Preliminary Determination*.

As explained further below in Comment 13, Commerce has taken these comments into consideration in making this final determination. For this final determination, Commerce continues to find that, in accordance with section 735(a)(3) of the Act and 19 CFR 351.206, critical circumstances exist for Far Eastern.¹⁶ Moreover, for this final determination, we determine that critical circumstances exist for Shinkong as adverse facts available (AFA), but do not exist for “all other” producers or exporters not individually examined.¹⁷ As explained in the preliminary critical circumstances determination, there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of PET resin exported from Taiwan, pursuant to section 735(a)(3)(A)(i) of the Act.¹⁸ Moreover, Commerce has determined that there has been a massive surge in imports of subject merchandise from Far Eastern to the United States based on the shipment data provided by Far Eastern over the course of this investigation.¹⁹

With regard to Shinkong, as explained below, pursuant to sections 776(a)(1) and (2) of the Act, we find, in this final determination, that Shinkong failed to cooperate to the best of its ability to comply with Commerce’s requests for information, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), and determine that it is appropriate to use an adverse inference when selecting from among the facts otherwise available. We, therefore, determine, on the basis of AFA, that pursuant to section 735(a)(3)(B) of the Act, there have been massive imports of the subject merchandise over a relatively short period of time by Shinkong. Thus, we find that critical circumstances exist for Shinkong.

¹⁵ See *Antidumping Duty Investigations on Polyethylene Terephthalate Resin from Indonesia, the Republic of Korea, and Taiwan; Preliminary Determination of Critical Circumstances*, 83 FR 17791, 17793 (April 24, 2018) (*Preliminary Critical Circumstances Determination*).

¹⁶ See Memorandum, “Antidumping Duty Investigation of Polyethylene Terephthalate Resin from Taiwan: Calculations for the Final Determination of Critical Circumstances,” dated concurrently with this notice (Final Critical Circumstances Memorandum).

¹⁷ *Id.*

¹⁸ See *Preliminary Critical Circumstances Determination*, 83 FR at 17792.

¹⁹ See Final Critical Circumstances Memorandum.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review and analysis of the comments from parties, minor corrections presented at verifications, and various errors identified, we made certain changes to the margins for both respondents. Specifically, we made the following changes for the final determination:

A. Far Eastern

1. We determined that Far Eastern and a U.S. company had a principal-agent relationship and reclassified certain Far Eastern's sales channels from EP to CEP. In addition, we used the price to the final unaffiliated customer as the starting U.S. price, and deducted all CEP-related expenses for these sales.
2. Based on Far Eastern's supplemental questionnaire data submission, we adjusted Far Eastern's blended resin product matching control number (CONNUM) in the home and U.S. sales databases, to reflect the actual blends CONNUMs, matching the cost database.
3. We made certain adjustments to the sales databases based on the sales verification minor corrections.
4. We made certain cost adjustments for the final determination based on the verification minor corrections.

B. Shinkong

1. As discussed below, we have applied total facts otherwise available with adverse inferences to Shinkong for the final determination.
2. As total facts available with adverse inferences, we find that critical circumstances exist for Shinkong.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.²⁰

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2)

²⁰ Under the Trade Preferences Extension Act of 2015, numerous amendments to the Antidumping Duty (AD) and Countervailing Duty (CVD) law were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated June 29, 2015 (TPEA); *see also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."²¹ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²²

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.²³ Secondary information is "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 concerning the subject merchandise."²⁴ It is Commerce's practice to consider information to be corroborated if it has probative value.²⁵ In analyzing whether information have probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.²⁶ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.²⁷

For the reasons explained below, Commerce determines that the application of facts otherwise available, with an adverse inference, is appropriate for the respondent Shinkong, pursuant to section 776(b) of the Act and 19 CFR 351.308(a).

A. Application of Facts Otherwise Available to Shinkong

As discussed further in the "Discussion of the Issues" section below, we discovered multiple deficiencies in Shinkong's reporting at verification, and we find that the application of AFA is appropriate under sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act. As evidenced by its ability at verification to identify factual information sought by Commerce, it is clear that Shinkong possessed, prior to verification, the records necessary to present complete and accurate sales and cost databases, including correctly reported CONNUMs, but did not conduct a comprehensive investigation of all relevant records to ensure that the reported information was accurate and complete in a timely manner. The failure to provide such information significantly impeded the conduct of this investigation. In addition, we find that

²¹ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum at 7; see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

²² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA), at 870.

²³ See also 19 CFR 351.308(d).

²⁴ See, e.g., SAA at 870.

²⁵ See, e.g., SAA at 870.

²⁶ See, e.g., SAA at 869.

²⁷ See SAA at 869-70.

Shinkong's failures to report the requested information accurately and in the manner requested, using the records over which it maintained control at all times, indicates that Shinkong did not act to the best of its ability to comply with our requests for information. Therefore, we find that the application of AFA is appropriate under section 776(b) of the Act for Shinkong's margin.

B. Use of Adverse Inferences

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) clarified that the "best of its ability" standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.²⁸ As discussed below, Shinkong's misreported product characteristics and, therefore, the majority of CONNUMs in its U.S. sales and home market sales databases are inaccurate. We note that the information in question is the type of information that a large international company such as Shinkong should reasonably be able to provide. Because a large portion of Shinkong's U.S. market, home market, and cost databases are incorrectly reported, we do not have a sufficient information to calculate accurately a dumping margin for Shinkong.

We find that Shinkong would have been able to provide this information if it had made the appropriate effort when it received Commerce's antidumping duty questionnaire.²⁹ Shinkong's failure to provide usable home market, U.S. market, and cost databases demonstrates that it has failed to cooperate to the best of its ability. Therefore, and pursuant to section 776(b) of the Act, we find that the application of adverse inferences is appropriate in selecting from among the facts available to determine Shinkong's dumping margin.

C. Selection and Corroboration of AFA Rate

Where Commerce uses AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes Commerce to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.³⁰ In selecting a rate based on adverse facts available, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.³¹ Under section 776(d)(1)(B) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping duty (AD) order when applying an adverse inference, including the highest of such margins. Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the

²⁸ See *Nippon Steel*, 337 F.3d at 1382.

²⁹ *Id.*, 337 F.3d at 1382-83 (explaining that while the "best of its ability" standard "does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping," and also holding that "'inadequate inquiries' may suffice" to evince a failure to cooperate).

³⁰ See 19 CFR 351.308(c)(1) & (2).

³¹ See SAA at 870.

highest calculated dumping margin of any respondent in the investigation.³² Here, we apply the highest rate alleged in the Petition, which is 45.00 percent, as Shinkong's AFA rate.³³

Section 776(c) of the Act provides that, when Commerce relies on secondary information (such as the petition), rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.³⁴ 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.³⁵ To corroborate means that Commerce will satisfy itself that the secondary information to be used has probative value.³⁶ Nonetheless, under section 776(c)(2) of the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.³⁷ Nonetheless, 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.³⁸

In order to determine the probative value of the 45.00 percent petition rate, we examined information on the record. We determine that the Petition dumping margin of 45.00 percent is reliable because, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this final determination.³⁹ During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations used in the Petition to derive estimated dumping margins. Specifically, we examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborated elements of the EP and NV calculations used in the Petition to derive estimated dumping margins.

³² See, e.g., *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

³³ See Petitioners' Letter, "Certain Polyethylene Terephthalate Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan: Antidumping Duty Petition Volume VI: Taiwan" dated September 26, 2017 (the Petition); see also Petitioners' Letter, "Polyethylene Terephthalate (PET) Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petitioners' Amendment to Volume VI Relating to Taiwan Antidumping Duties," dated October 3, 2017, at Exhibit AD-TW-S5.

³⁴ See 19 CFR 351.308(d).

³⁵ See SAA at 870.

³⁶ *Id.*

³⁷ See *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination*, 81 FR 61186 (September 6, 2016), and accompanying Preliminary Decision Memorandum at "4. Selection and Corroboration of the AFA Rate," unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017), and accompanying Issues and Decision Memorandum.

³⁸ See section 776(d)(3)(B) of the Act.

³⁹ See Memorandum, "Enforcement and Compliance Office of AD/CVD Operations Antidumping Duty Investigation Initiation Checklist," dated October 16, 2017 (Initiation Checklist).

As discussed in detail in the Initiation Checklist, we considered the EP and NV calculations in the Petition to be reliable. Because we obtained no other information that would make us question the validity of the information supporting the U.S. price or NV calculations provided in the Petition, we consider the EP and NV calculations from the Petition, and thus the dumping margins in the Petition, to be reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.⁴⁰

To corroborate the 45.00 percent AFA rate that we selected, we compared the 45.00 percent margin to the transaction-specific dumping margins that we calculated for Far Eastern. We found that the dumping margin of 45.00 percent is within the range of the transaction-specific dumping margins calculated for Far Eastern and, therefore, is relevant and has probative value.⁴¹ Accordingly, we find that the rate of 45.00 percent is corroborated within the meaning of section 776(c) of the Act.

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Rely on Total Adverse Facts Available for Shinkong

Petitioners' Case Brief

- Shinkong failed to report its Copolymer/Homopolymer field (COHOH/COHOU) in its CONNUMs properly in each of its databases, despite multiple opportunities to correct its submission. Correct reporting of CONNUMs is essential to Commerce's calculation of an accurate dumping margin.⁴²
- Shinkong's inability to correctly report its CONNUMs undermines the reliability of its cost, U.S. market, and home market databases, thus rendering them unusable for the final determination.⁴³
- Shinkong stated that it reported the CONNUMs, including the field regarding "Copolymer/Homopolymer" in accordance with Commerce's instructions.⁴⁴

⁴⁰ See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

⁴¹ See Memorandum, "Antidumping Duty Investigation of Polyethylene Terephthalate Resin from Taiwan: Final Determination Margin Calculation for Far Eastern New Century Corporation," dated concurrently with this memorandum (Far Eastern's Final Analysis Memo).

⁴² See Petitioners' Case Brief re Shinkong at 4; See also *Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017) (*CTL Plate from Italy*), and accompanying Issues and Decision Memorandum at 28.

⁴³ See Petitioners' Case Brief re Shinkong at 4-5.

⁴⁴ *Id.* at 5; see also Shinkong's January 16, 2018 Sections B, C, and D Questionnaire Response (Shinkong's January 16, 2018 BCDQR) at B 10, C 47, and D 116.

- However, Shinkong did not alert Commerce that it had failed to correctly report its CONNUMs until verification, when Shinkong presented the erroneous reporting as a minor correction.⁴⁵
- Commerce correctly considered the correction to be not minor and rejected it as a first day minor correction.⁴⁶
- Commerce should decline to rely on the information submitted by Shinkong and should, instead, apply total AFA in assigning an antidumping margin to Shinkong in the final determination.⁴⁷
- Shinkong's failure to report the proper CONNUMs prevents the proper matching of cost information to sales in both U.S. and home markets and the comparison of those sales in determining an antidumping margin.⁴⁸
- The extent of Shinkong's reporting errors demonstrates that Shinkong failed to provide complete and accurate responses to Commerce's questionnaires. As there is no way for Commerce to calculate an accurate dumping margin for Shinkong without the proper CONNUM assigned to each sale in each of its databases, and because that error is so pervasive that Commerce does not have a reliable database from which to draw a partial adverse inference, Commerce should rely on total AFA in assigning a dumping margin to Shinkong.⁴⁹
- All three of Shinkong's reported databases are plagued with significant and comprehensive inaccuracies, inconsistencies, and misreported information, which undermines the reliability of the databases, and Shinkong's questionnaire responses in their entirety.⁵⁰
- Shinkong had more than enough opportunities to submit complete and accurate information to Commerce. Instead, Shinkong provided conflicting and inaccurate information that cannot be used by Commerce to calculate an accurate margin.⁵¹
- The record lacks accurate information concerning Shinkong's CONNUMs, date of sale, and shipment date, and contains various errors characterized as "minor," that have not been corrected.⁵²
- The costs reported by Shinkong are not reliable for use in calculating an accurate dumping margin for Shinkong, due to the misreported CONNUMs.⁵³
- Furthermore, Shinkong's misreporting of the date of sale and shipment dates in its home market database undermines the reliability and accuracy of its questionnaire responses.⁵⁴

⁴⁵ See Petitioners' Case Brief re Shinkong at 5; *see also* Shinkong's Sales Verification Report at 3; *see also* Shinkong's Cost Verification Report at 2.

⁴⁶ *Id.*

⁴⁷ See Petitioners' Case Brief re Shinkong at 6.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.* at 6-7.

⁵⁰ *Id.* at 11.

⁵¹ *Id.*

⁵² *Id.* at 12.

⁵³ *Id.*

⁵⁴ *Id.*

- Commerce provided Shinkong with multiple opportunities to correct its deficient submissions, in accordance with section 782(d) of the Act. As such, Shinkong had ample opportunity to respond fully and accurately to Commerce's requests for information.⁵⁵
- Commerce correctly declined to allow Shinkong to place new information on the record at verification in an attempt to cure its misreported COHOH/COHOU. Commerce has long held that verification is not an opportunity for respondents to provide information that had been requested in questionnaires.⁵⁶
- Commerce is required to consider submitted information only if it was: (1) submitted by the established deadlines; (2) can be verified; (3) is not so incomplete that it cannot be used; (4) can be used without undue difficulties; or (5) if the interested party has demonstrated that it acted to the best of its ability in submitting information requested by Commerce.⁵⁷
- Shinkong's responses in this investigation are so inaccurate and incomplete that they cannot be used without undue difficulty. Furthermore, Commerce's verification reports confirm that significant parts of Shinkong's questionnaire responses could not be verified.⁵⁸
- Commerce has found that a pattern of behavior that causes Commerce to have to seek information that the respondent should have submitted with its initial questionnaire response is uncooperative behavior that is grounds for the application of AFA.⁵⁹
- Moreover, Shinkong's failure to act to the best of its ability to comply is also grounds for the application of adverse inferences, in accordance with section 776(b) of the Act.⁶⁰
- It is the respondent's responsibility to build the administrative record, and, conversely, it is not Commerce's job to reconstruct the record when a respondent has failed to do so.⁶¹
- Commerce sent Shinkong several questionnaires, and Commerce granted Shinkong at least one extension to respond to each of those questionnaires. Despite being directed otherwise, Shinkong continuously submitted exhibits that were not fully translated.⁶²

⁵⁵ *Id.* at 13.

⁵⁶ *Id.*; see also *Reiner Brach*, 26 CIT at 559-60; see also *Am. Alloys, Inc. v. United States*, 30 F.3d 1469, 1475 (Fed. Cir. 1994) (*Am. Alloys*).

⁵⁷ See Petitioners' Case Brief re Shinkong at 14; see also section 782(e) of the Act; see also *Papierfabrik August Koehler S.E. v. United States*, 7 F. Supp. 3d 1304, 1314 (CIT 2014) (*Papierfabrik*) (because the respondent did not satisfy all five conditions in section 782(e), Commerce was not obligated to accept the information and the remedial provisions of section 782(d) were not triggered); see also *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 789 (CIT 2001) (*Tung Mung*).

⁵⁸ See Petitioners' Case Brief re Shinkong at 14; see also Shinkong's Sales Verification Report; see also Shinkong's Cost Verification Report.

⁵⁹ *Id.* (citing *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 Issues and Decision Memorandum (*Power Transformers from Korea*) at 4).

⁶⁰ See Petitioners' Case Brief re Shinkong at 15; see also *Nippon Steel*, 337 F.3d at 1382.

⁶¹ See Petitioners' Case Brief re Shinkong at 15 (citing *Shandong Huarong Gen. Group Corp. v. United States*, 27 CIT 1568, 1590-91 (CIT 2003) (*Shandong Huarong*)).

⁶² See Petitioners' Case Brief re Shinkong at 15-16; see also Petitioners' Letter, "Polyethylene Terephthalate Resin from Taiwan – Petitioners' Comments Concerning Shinkong Synthetic Fibers Corporation in Advance of the Department's Preliminary Antidumping Determination," dated April 13, 2018 (Petitioners' Pre-Prelim Comments) at 14-15.

- Shinkong's actions demonstrate that it has not provided a good faith effort in responding to Commerce's requests for information. Commerce should follow its practice and apply the higher of the highest rate alleged in the Petition or the highest calculated rate in this investigation to Shinkong as AFA.⁶³
- Alternatively, if Commerce decides to use information on the record to calculate a margin for Shinkong, it should apply partial facts available with an adverse inference.⁶⁴
- In that instance, Commerce should: (1) apply the highest individual margin to all sales where the CONNUM was misreported; or apply the highest cost of production and lowest U.S. price to each of those sales in the U.S. market, and the highest cost of production and price for the home market sales; (2) assign the single longest credit period found and the most adverse exchange rate to all home market sales; and (3) apply the single highest inventory carrying cost to every sale.⁶⁵

Shinkong's Case Brief

- Commerce should accept Shinkong's correction to the COHOH/COHOU fields as a minor correction in the final determination because of the clerical nature of the error, the minimal impact of the correction on the validity of Shinkong's submissions, and the simple manner in which the error can be corrected.⁶⁶
- If Commerce does not accept the correction as minor, it should still use the corrected information in its final calculations, in accordance with section 782(e) of the Act.⁶⁷
- In its verification agenda, Commerce stated that new information would be accepted at verification when the information makes minor corrections to previously submitted information.⁶⁸
- Shinkong timely submitted its minor correction to the COHOH/COHOU fields at the outset of verification. This correction involves one simple change to the coding of the fields. However, Commerce did not accept this correction as minor, due to the number of sales and CONNUMs involved.⁶⁹
- Commerce should reverse its decision for the final determination and accept Shinkong's correction to the COHOH/COHOU fields.⁷⁰

⁶³ See Petitioners' Case Brief re Shinkong at 16; see also section 776(b) of the Act; see also *Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 14514 (March 31, 2009), and accompanying Issues and Decision Memorandum (*Line Pipe from China*) at 22-24.

⁶⁴ See Petitioners' Case Brief re Shinkong at 16.

⁶⁵ *Id.* at 17.

⁶⁶ See Shinkong's Case Brief at 5.

⁶⁷ *Id.*

⁶⁸ *Id.*; see also Commerce's Letter, "Polyethylene Terephthalate Resin from Taiwan: Verification Outline for Shinkong Synthetic Fibers Corporation," dated May 2, 2018 at 2; see also Commerce's Letter, "Antidumping Duty Less Than Fair Value Investigation of Polyethylene Terephthalate Resin from Taiwan," dated April 27, 2018.

⁶⁹ See Shinkong's Case Brief at 5-6; see also Shinkong's Sales Verification Report at 2-3; see also Shinkong's Cost Verification Report at 2.

⁷⁰ See Shinkong's Case Brief at 6; see also *Maui Pineapple Co., Ltd. v. United States*, 264 F. Supp. 2d 1244, 1258 (CIT 2003) (*Maui Pineapple*) (in reference to minor corrections, "the issue is not the value of the errors as a percentage of total U.S. sales, or the number of instances of errors. Rather the issue is the nature of the errors and their effect on the validity of the submission." (citing *Tatung Co. v. United States*, 18 CIT 1137, 1141 (CIT 1994) (*Tatung*))).

- Shinkong’s misreporting of the COHOH/COHOU fields was discovered during the preparation for verification and was the result of human input error by Shinkong’s staff.⁷¹
- The submitted minor correction provides a simple and straightforward remedy for the error and does not affect the validity of Shinkong’s submissions, as a whole. Moreover, the correction would not impact the weighted-average of CONNUM-specific sales prices or costs, nor would it change Shinkong’s dumping margin calculations.⁷²
- The correction was successfully verified by Commerce at both the sales and cost verifications.⁷³

Petitioners’ Rebuttal Brief

- Shinkong’s proposed changes to its reported CONNUMs do not fit any of the instances in which Commerce will accept new information at verification.⁷⁴
- The need to accurately report CONNUMs was evident from the outset of this investigation; the information provided by Shinkong at verification was not a minor correction of information already on the record; and the information provided by Shinkong did not corroborate, support, or clarify information already on the record (in contrast, it contradicted information on the record).⁷⁵
- Corrections of an error that is fundamental, affect an overwhelming majority of sales, or affect the accuracy of a respondent’s submissions, are not minor.⁷⁶
- CONNUMs provide the basis for Commerce to match similar sales and, therefore, the calculation of an accurate dumping margin.⁷⁷
- The Court of International Trade (CIT) has consistently found that reporting issues with CONNUMs are not minor.⁷⁸
- Shinkong’s reliance on *Maui Pineapple* is misplaced. In that case, the respondent “indicated to Commerce before verification that it had not submitted the {data regarding the sales at issue} based upon {a prior segment}” in which the respondent was not required to submit information about that particular type of sale.⁷⁹
- Not only did the CIT consider the number of sales affected in *Maui Pineapple*, it also stated that, “Commerce had sufficient time to verify the information and use it in the calculations of {respondent’s} dumping margin.”⁸⁰

⁷¹ See Shinkong’s Case Brief at 6; see also Shinkong’s Sales Verification Report at 2-3; see also Shinkong’s Cost Verification Report at 2.

⁷² *Id.*

⁷³ *Id.* at 8; see also Shinkong’s Sales Verification Report at 2-3 and Exhibits 10, 12-18; see also Shinkong’s Cost Verification Report at 2 and Exhibits 7-8.

⁷⁴ See Petitioners’ Rebuttal Brief re Shinkong at 5 (citing *National Candle Association v. United States*, 366 F. Supp. 2d 1318, 1321 (CIT 2005) (*National Candle*)).

⁷⁵ See Petitioners’ Rebuttal Brief re Shinkong at 5.

⁷⁶ *Id.* (citing *Carbon and Alloy Steel Wire Rod from Ukraine: Affirmative Final Determination of Sales at Less Than Fair Value*, 83 FR 2135 (January 16, 2018), and accompanying Issues and Decision Memorandum (*Wire Rod from Ukraine*) at 19-20).

⁷⁷ *Id.*; see also *Wire Rod from Ukraine*, accompanying Issues and Decision Memorandum at 19-20; see also *An Giang Fisheries Imp. & Exp. Joint Stock Co. v. United States*, 287 F. Supp 3d 1361, 1367 (CIT 2018).

⁷⁸ See Petitioners’ Rebuttal Brief re Shinkong at 7 (citing *Hyundai Steel Co. v. United States*, 2018 CIT Lexis 93, 53-54, Slip Op. 2018-80 (June 2018)).

⁷⁹ See Petitioners’ Rebuttal Brief re Shinkong at 7-8 (citing *Maui Pineapple*, 27 CIT at 598 and 582).

⁸⁰ See Petitioners’ Rebuttal Brief re Shinkong at 8 (citing *Maui Pineapple*, 27 CIT at 595, 596, and 598; see also

- The CIT also distinguished *Reiner Brach* from *Maui Pineapple*, “{u}nlike the respondent in *Reiner Brach*, {the respondent in this case} indicated to Commerce before verification” of its omission.⁸¹
- Contrary to Shinkong’s claims, the “minor” correction requested by Shinkong is not minimal, and the corrected information has not been verified by Commerce.⁸²
- Shinkong’s argument that the mistake was unintentional is also irrelevant. The CIT has held that the fact that “{a respondent’s} errors may not have been intended is not relevant to Commerce’s decision to use an adverse inference...”⁸³
- Shinkong also requests that Commerce should accept the correction even if it does not consider it to be minor. Doing this would require Commerce to accept corrections to a respondent’s questionnaire responses at any time in a proceeding.⁸⁴
- Shinkong’s failure to correctly report CONNUMs undermines the reliability of its cost database, as well as its U.S. and home market databases, rendering them unsuitable for use by Commerce. Therefore, Commerce should rely on total adverse facts available in assigning a dumping margin to Shinkong.⁸⁵

Shinkong’s Rebuttal Brief

- Shinkong submits that there is no scenario under which Commerce may apply AFA to Shinkong in this investigation.⁸⁶
- Shinkong’s reporting error with respect to the COHOH/COHOU fields is clerical in nature and very minor in scope. As argued above, Commerce should either accept the corrected information, or rely on the information, pursuant to section 782(e) of the Act.⁸⁷
- Furthermore, Shinkong correctly reported its home market date of sale, along with the shipment dates for the home market sales mentioned in the verification report.⁸⁸
- Shinkong has been completely cooperative throughout this investigation and has, in no way, impeded it.⁸⁹
- Under Commerce’s practice, total AFA is only warranted if the information on the record is so incomplete that it cannot serve as a reliable basis to calculate a dumping margin.⁹⁰
- The CIT has found that “the simple fact of a respondent’s failure to report information within its control does not warrant an adverse inference.”⁹¹

Flores v. United States, 705 F. Supp. 582, 587 (CIT 1988); *see also Tatung*, 18 CIT at 1140).

⁸¹ *See* Petitioners’ Rebuttal Brief re Shinkong at 8 (citing *Maui Pineapple*, 27 CIT at 598).

⁸² *See* Petitioners’ Rebuttal Brief re Shinkong at 9.

⁸³ *Id.* at 10 (citing *Hyundai Steel*, 2018 CIT Lexis at 55 (citing *Nippon Steel*, 337 F.3d at 1383)).

⁸⁴ *See* Petitioners’ Rebuttal Brief re Shinkong at 10-11; *see also Reiner Brach*, 26 CIT at 559 (“Commerce clearly cannot complete its work unless it is able at some point to ‘freeze’ the record and make calculations and findings based on that fixed and certain body of information.”).

⁸⁵ *See* Petitioners’ Rebuttal Brief re Shinkong at 11-12.

⁸⁶ *See* Shinkong’s Rebuttal Brief at 10.

⁸⁷ *Id.* at 11.

⁸⁸ *Id.*

⁸⁹ *Id.* at 12.

⁹⁰ *Id.*; *see also Hand Trucks and Certain Parts Thereof from the People’s Republic of China; Final Results of 2005-2006 Administrative Review*, 73 FR 43684 (July 28, 2008), and accompanying Issues and Decision Memorandum (*Hand Trucks from China*) at Comment 1.

⁹¹ *See* Shinkong’s Rebuttal Brief at 14 (citing *Nippon Steel Corp. v. United States*, 146 F. Supp. 2d 835, 840 (CIT 2001) (*Nippon Steel CIT*)).

- Moreover, if a respondent does have the ability to comply, but has not submitted the requested information, Commerce “must demonstrate a willingness...or behavior below the standard of a reasonable respondent in order to apply adverse inferences.”⁹²
- Shinkong’s misreporting of the COHOH/COHOU fields was the result of human error, was clerical in nature, and was timely presented as a minor correction on the first day of verification.⁹³
- The correction would not change the weighted-average calculations of CONNUM-specific prices or cost of manufacturing. Therefore, it would not change Shinkong’s dumping margin.⁹⁴
- The petitioners’ reliance on *CTL Plate from Italy* is misplaced. In that case, the respondent’s CONNUM coding error “affected a variety of control numbers in ways that are not able to be isolated and corrected.”⁹⁵
- Shinkong’s error can be easily corrected, and in no way affects the accuracy of Commerce’s dumping margin calculation.⁹⁶
- Shinkong’s error is not so extensive as to raise concerns about the overall integrity of Shinkong’s databases.⁹⁷
- Commerce should either accept Shinkong’s correction as minor, or nonetheless use the corrected information pursuant to section 782(e) of the Act.⁹⁸

Commerce’s Position:

We determine that the application of total facts available to Shinkong with an adverse inference is warranted for the final determination. As noted in the “Use of AFA” section above, section 776(a)(1) and 776(a)(2)(A)-(C) of the Act provide that if necessary information is not available on the record or if an interested party:

- (A) withholds information that has been requested by Commerce;
- (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act;
- (C) significantly impedes a proceeding under the antidumping statute.

Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.⁹⁹ Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce

⁹² See Shinkong’s Rebuttal Brief at 14 (citing *Reiner*, 206 F. Supp. 2d at, 1337).

⁹³ See Shinkong’s Rebuttal Brief at 2.

⁹⁴ *Id.* at 3.

⁹⁵ *Id.* (citing *CTL Plate from Italy* accompanying Issues and Decision Memorandum at 28).

⁹⁶ See Shinkong’s Rebuttal Brief at 3-4.

⁹⁷ *Id.* at 4.

⁹⁸ *Id.*

⁹⁹ See TPEA at 362; see also *TPEA Application Dates*, 80 FR at 46794.

may, subject to section 782(e) of the Act,¹⁰⁰ disregard all or part of the original and subsequent responses, as appropriate.

On the first day of verification, Shinkong notified Commerce that it had incorrectly reported the product characteristic copolymer/homopolymer, the third characteristic in the product matching hierarchy, for a significant number of sales in both the U.S. and home markets, along with a significant number of the cost CONNUMs. Our verification report states:

Shinkong presented a minor correction to the CONNUM field for Copolymer/Homopolymer content (COHOH/COHOU), the fourth digit of the CONNUM, in both the sales and cost databases. We did not however, accept this change because the proposed correction would revise the previously-reported CONNUMs of {a large portion} home market sales and {a large portion} of U.S. sales, we did not consider the correction to be minor. Consequently, this error, which was reported on the first day of both the sales and cost verifications, was rejected as a first day minor correction.

The change presented by Shinkong asserted that all Copolymer products which Shinkong previously reported as “2 = Copolymer content less than or equal to 1.5%” should have been reported as “3 = Copolymer content greater than 1.5% but less than or equal to 2.3%.”¹⁰¹

The reporting instructions for Copolymer content were clear.¹⁰² Shinkong failed to report the proper range of copolymer content of a substantial portion of its PET resin products. Regardless of the cause of the error, Shinkong misreported the data at issue. Furthermore, we disagree with Shinkong that the correction was verified by Commerce. Our report merely notes that the problem exists, but because we did not accept this as a minor correction, we did not verify it. For the selected sales reviewed, we noted that the copolymer content field should be a “3,” not that the data were correctly reported.¹⁰³

In this case, Shinkong failed to establish the accuracy and completeness of its reported information at verification, and the errors and omissions were substantial. Shinkong incorrectly reported the COHOH/COHOU product characteristic (and by extension, the CONNUMs) for a nearly all of its U.S. and a substantial portion of its home market sales, along with its

¹⁰⁰ Section 782(e) of the Act states that 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 the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

¹⁰¹ See Shinkong’s Sales Verification Report at 3 (BPI omitted).

¹⁰² See, e.g., Shinkong’s January 16, 2018 BCDQR at B-10.

¹⁰³ See Shinkong’s Sales Verification Report at 11. We noted, specifically, that “we found no discrepancies with the reported transaction-specific sales information, as revised in SVE 1 (or rejected in SVE 1), where applicable, except as noted in the ‘Summary of Issues’ section.”

CONNUM-specific costs. The significance of the errors and the extent of the CONNUMs it affects leads Commerce to conclude that Shinkong's data are not useable.

We disagree with Shinkong that the problems identified above are curable, because they are within Commerce's discretion either to accept the data as reported, or to request new factual information to correct the errors and omissions after verification. While we agree that these courses of action are, theoretically, possible, we find that they both are unreasonable, as the former would lead to the calculation of a dumping margin that is based on inaccurate information, and the latter would violate Commerce's practice and regulatory obligations with regard to the acceptance of new factual information. This latter action would be particularly inappropriate, given that Shinkong had adequate opportunity to submit the correct information or to request guidance from Commerce throughout the course of this investigation.

With respect to the product characteristic error, we disagree that the data are acceptable as reported. The ability to make appropriate product comparisons goes to the core of Commerce's dumping methodology. Comparing two products/models with different product characteristics rather than identical or similar model matches is likely to distort dumping calculations. Because Shinkong misreported its CONNUMs and certain product characteristics for a substantial portion of its U.S. sales, we are unable to compare sales of those products to the most similar foreign like product, as required by section 773(1)(B) of the Act. Further, Shinkong's equivalent errors with respect to home market products undermines our confidence in accurately identifying the "best" match for the remaining U.S. products. Finally, these errors affected how individual products are grouped into CONNUMs for cost reporting purposes and, therefore, we do not have correct cost of production (COP), constructed value (CV), and difference-in-merchandise adjustment information for affected sales.

While Shinkong provided corrections to much of its misreported data at verification, it did not do so in all instances. Further, the existence of so many prevalent errors undermines our confidence that other data, not specifically examined at verification, do not also suffer from similar defects. Verification, by its nature, is a spot check (somewhat akin to sampling), and when spot checks reveal that the data sample examined at verification is replete with errors, omissions, and discrepancies, we have no confidence in the accuracy of other pieces of a respondent's information not specifically examined.

In sum, we find that necessary information is not on the record, and that Shinkong withheld information requested by Commerce, failed to provide essential information on request and in a timely manner, provided information that could not be verified, and, as a result, significantly impeded the proceeding, in accordance with sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act. To the extent that some information was provided,¹⁰⁴ it was unverifiable and/or

¹⁰⁴ Other information that Shinkong attempted to present as corrections at verification demonstrated that the changes necessary to fill the omissions from, and errors in, Shinkong's data were so significant that Commerce could not accept this new information. See *Brother Industries, Ltd. v. US*, 771 F. Supp. 374, 384 (CIT 1991) (*Brother*), where the Court held, "Presumably, a 'correction' correlates to matter already part of the record while an 'omission' lacks such correlation. That is, a submission of previously-omitted information may well be the equivalent of entirely new data and beyond the ability of the agency to digest and incorporate." Accordingly, we find that certain changes Shinkong offered at verification were not minor and amounted to new factual information within the meaning of 19

so incomplete that it could not serve as a reliable basis for reaching the determination in this investigation.¹⁰⁵ Therefore, Shinkong's reliance on *Hand Trucks from China* is misplaced.

While Shinkong provided timely responses to the various questionnaires issued by Commerce in this investigation, we disagree with Shinkong's argument that doing so demonstrated its full cooperation in this proceeding. Rather, as noted above, Commerce was compelled to issue Shinkong multiple questionnaires, because its prior submissions contained flawed, missing, or incomplete data. Rather than undertaking a thorough review of its data, Shinkong's response to Commerce's questionnaire contained inaccurate statements concerning the accuracy of its reported product characteristics, home market date of sale, and shipment dates.¹⁰⁶ Accordingly, we find that merely submitting timely responses, irrespective of whether they contain incomplete or inaccurate information, does not qualify Shinkong as acting to the best of its ability to cooperate in this proceeding.

As explained by the CAFC:

{b}efore making an adverse inference, Commerce must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information. Compliance with the "best of ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.¹⁰⁷

Even though Commerce does not require perfection in questionnaire responses and recognizes that mistakes sometimes occur, we find that the scope of the errors and omissions identified at verification in Shinkong's data are the result of both inattentiveness and carelessness. Therefore, Shinkong's submission was incomplete and replete with errors and discrepancies. While Shinkong argues that some of its errors were clerical in nature, we considered Shinkong's arguments and disagree.¹⁰⁸ Accepting such revisions would amount to accepting a wholly-new response because the errors were not clerical.¹⁰⁹

We find that Shinkong incorrectly reported its COHOH/COHOU product characteristic, and, by extension, its CONNUMs for a substantial portion of its home market and U.S. sales listings, along with its cost database. This error renders the entire dumping calculation inaccurate, because the CONNUM is fundamental to Commerce's calculation, as it controls the allocation of costs and determines the product matches between the U.S. and home markets.

CFR 351.301(c)(5).

¹⁰⁵ See section 782(e)(2)-(3) of the Act.

¹⁰⁶ See, e.g., Shinkong's January 16, 2018 BCDQR at B-10, B-15, and B-16.

¹⁰⁷ See *Nippon Steel*, 337 F. 3d at 1382-83.

¹⁰⁸ See e.g., Shinkong's Sales Verification Report at 2-3.

¹⁰⁹ See Shinkong's Sales Verification Report at 2-3. Commerce did accept certain minor changes at verification. However, we did not accept wholesale revisions to Shinkong's data.

We agree the petitioners that the refusal to accept Shinkong's correction to its CONNUMs was in accordance with the statute, and Commerce's practice. We have stated in the past that the correct reporting of CONNUMs is essential for the calculation of an accurate dumping margin.¹¹⁰ Furthermore, Shinkong's failure to report accurate CONNUMs for a large portion of its U.S. and home market sales, along with its cost database leads us to conclude that the entirety of Shinkong's databases are unreliable to be used in the calculation of a potential dumping margin for Shinkong. We find that Shinkong was given ample opportunities to correct its submitted data prior to verification.¹¹¹ We also note that Shinkong provided a total of three home market sales databases, two U.S. sales databases, and two cost databases.

We also agree with the petitioners that Shinkong's reliance on *Maui Pineapple* is misplaced.¹¹² In *Maui Pineapple*, the Court stated that “[the respondent’s] response was not replete with errors and the military sales omissions did not make up a significant percentage of the total United States sales.”¹¹³ Given the significance of Shinkong's reporting errors, and the degree to which they impact Commerce's ability to rely on the submission to calculate accurately a dumping margin, we find that it would be inappropriate to accept the corrections offered at verification. These errors are not minor clerical errors but, rather, they reach the threshold for new factual information. Furthermore, accepting such substantive corrections at verification precludes Commerce and other interested parties from having the opportunity to thoroughly analyze, examine, and/or submit comments on the new factual information. While Shinkong argues that these errors were unintentional, accurate control numbers are fundamental to calculating an accurate antidumping duty rate. Shinkong's failure to report accurate control numbers invalidates all the allocations, sales matches, and antidumping duty calculations that follow.

We disagree with Shinkong's arguments concerning *Reiner Brach*. As stated above, Shinkong's error is so pervasive that we have concluded that Shinkong did not act to the best of its ability to comply with our requests for information. Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.¹¹⁴

Finally, we note that both the petitioners¹¹⁵ and Shinkong¹¹⁶ rely on *Nippon Steel* to bolster their respective arguments. We note that Shinkong utilizes the arguments found in underlying trial court decision, for which the ruling relevant to AFA was overturned by the appellate court.¹¹⁷ Therefore, Shinkong's reliance on *Nippon Steel* is inapposite. The CAFC, in *Nippon Steel*, found that “Commerce need only make two showings” to conclude that a party has not cooperated to

¹¹⁰ See, e.g., *Uncoated Paper from Indonesia*, Issues and Decision Memorandum at Comment 1.

¹¹¹ See, e.g., Commerce's Letter, “Polyethylene Terephthalate Resin from Taiwan: Shinkong Synthetic Fibers Corporation – Supplemental Questionnaire Sections B and C,” dated February 6, 2018; see also Commerce's Letter, “Polyethylene Terephthalate Resin from Taiwan: Shinkong Synthetic Fibers Corporation – Second Round Supplemental Questionnaire,” dated March 21, 2018.

¹¹² See Shinkong's Case Brief at 6.

¹¹³ See *Maui Pineapple*, 264 F. Supp. 2d at 1259-60.

¹¹⁴ See, e.g., *Nippon Steel*, 337 F.3d at 1382-83.

¹¹⁵ See, e.g., Petitioners' Rebuttal Brief re Shinkong at 10 (citing *Nippon Steel*, 337 F.3d at 1383).

¹¹⁶ See, e.g., Shinkong's Rebuttal Brief at 14 (citing *Nippon Steel CIT*, 146 F. Supp. 2d at 840).

¹¹⁷ See *Nippon Steel*, 337 F.3d at 1377 (“Because Commerce's decision to apply partial adverse facts available to the theoretical weight sales is supported by substantial evidence and is otherwise in accordance with law, we reverse the {CIT's} judgement to the contrary.”)

the best of its ability and to draw an adverse inference under section 776(b).

First, {Commerce} must make an objective showing that a reasonable and responsible {respondent} would have known that the requested information was required to be kept and maintained...Second, Commerce must then make a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.¹¹⁸

Importantly, the CAFC continues by stating that “{t}he statutory trigger for Commerce’s consideration of an adverse inference is simply a failure to cooperate to the best of a respondent’s ability, *regardless of motivation or intent*.”¹¹⁹ As noted in the “Use of Adverse Inferences” section above, we have found that the information in question is the type of information that a large international company such as Shinkong should reasonably be able to provide. We conclude that Shinkong’s failure to put forth its maximum effort to investigate and report the correct information from its records was the result of Shinkong’s lack of cooperation. Thus, we find that the statutory obligation, as enumerated in *Nippon Steel*, has been met in this case.

Therefore, for the foregoing reasons, we conclude that Shinkong failed to cooperate to the best of its ability to comply with our requests for information, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), and determine that it is appropriate to use an adverse inference when selecting from among the facts otherwise available. As AFA, we have assigned a rate of 45.00 percent, which is the highest rate alleged in the Petition. For the discussion of the selection of this rate, *see* the “Selection and Corroboration of AFA Rate” section above.

Comment 2: Whether Shinkong Reported the Correct Date of Sale for Its Home Market Sales

Petitioners’ Case Brief and Rebuttal Brief

- The petitioners argue that Commerce’s verification report shows that Shinkong should have reported order date, instead of the Government Uniform Invoice (GUI) date as its date of sale for its home market sales.¹²⁰

Shinkong’s Case Brief and Rebuttal Brief

Shinkong made a number of arguments to support its contention that the GUI date is the correct date of sale for its home market sales. These include the fact that, as Commerce verified, the terms of sale set at the time of order can and do change until the GUI is issued.¹²¹

¹¹⁸ *Id.*, 337 F.3d at 1382-83.

¹¹⁹ *Id.*, 337 F.3d at 1383 (emphasis added).

¹²⁰ *See* Petitioners’ Case Brief re Shinkong at 7; *see also* See Petitioners’ Rebuttal Brief re Shinkong at 3..

¹²¹ *See* Shinkong’s Case Brief at 3; *see also* Shinkong’s Rebuttal Brief at 4.

Commerce's Position:

As mentioned in Comment 1 above, we have found that Shinkong's submissions are unreliable in their entirety due to the application of AFA in this investigation. Therefore, the issue of the proper date of sale for Shinkong's home market sales is moot.

Comment 3: Whether Shinkong Reported the Correct Shipment Date for Its Home Market Sales

Petitioners' Case Brief

- The petitioners argued that Commerce verified that Shinkong reported the incorrect shipment dates for many of its home market sales. This erroneous reporting hinders Commerce's ability to accurately calculate Shinkong's credit expense rate and inventory carrying costs applicable to its home market sales. As such, Shinkong's reported credit expenses and inventory carrying costs, relied upon by Commerce in calculating Shinkong's preliminary dumping margin, are unreliable.¹²²

Shinkong's Rebuttal Brief

- Shinkong made a number of arguments to support its contention that it reported the correct shipment date for its home market sales. These include Shinkong's position that Commerce's verification report does not conclude that Shinkong incorrectly reported shipment dates for the certain sales at issue.¹²³

Commerce's Position:

As mentioned in Comment 1 above, we have found that Shinkong's submissions are unreliable in their entirety due to the application of AFA in this investigation. Therefore, the issue of whether Shinkong reported the proper shipment date for its home market sales is moot.

Comment 4: Whether Far Eastern Underreported Its Production Quantities for Blended Products

Petitioners' Case Brief

- There are significant discrepancies between the blended product quantities reported in: 1) the cost database and the sales databases; and, 2) the cost database and the verified production data. Specifically, the sales quantities reported for CONNUM 408311 in the sales databases significantly exceed the production quantities reported for CONNUM 408311 in the cost database, and, the blended production quantities verified by Commerce significantly exceed the blended production quantities reported in the cost database.¹²⁴
- These discrepancies undermine the reliability of Far Eastern's cost reporting for all products, *i.e.*, for both the blended and non-blended products, thus, Commerce cannot

¹²² See Petitioners' Case Brief re Shinkong at 9-10.

¹²³ See Shinkong's Rebuttal Brief at 6-7.

¹²⁴ See Petitioners' Case Brief re Far Eastern at 14-16.

rely on Far Eastern's deficient and inconsistent data to calculate an antidumping margin.¹²⁵

Far Eastern's Rebuttal Brief

- The petitioners' analyses of blended product production and sales quantities are flawed, as they fail to use the appropriate pool of CONNUMs from the cost database when comparing the reported production quantities to the reported sales quantities and verified production data.¹²⁶

Commerce's Position:

We disagree with the petitioners' assertions that Far Eastern's blended production quantities are underreported. In its normal books and records, Far Eastern assigns a single internal product code, CB-612M, to products that are a mixture of virgin and recycled PET resins (*i.e.*, "blended products").¹²⁷ For reporting the blend characteristic to Commerce, Far Eastern assigned CB-612M production to the CONNUMs in the cost database using the actual blending ratios from production records.¹²⁸ In the sales databases, Far Eastern reported all sales of CB-612M using the "as sold" or standard blending ratio for CB-612M.¹²⁹ Consequently, all sales of blended products were reported under a single CONNUM in the sales databases, while blended production was reported under multiple CONNUMs in the cost database. When the relevant quantities are compared, the sales quantities for blended products do not inexplicably exceed the production quantities for blended products.¹³⁰ Similarly, the total blended production quantity verified by Commerce reflects the total production of CB-612M, Far Eastern's internal product code for blended resins. When this production quantity is compared to the production quantities for all CONNUMs that include CB-612M, there is no discrepancy. Hence, we do not find that the petitioners' arguments with regard to the reported blended product sales and production quantities demonstrate that Far Eastern's cost reporting is unreliable or unusable.¹³¹

Comment 5: Whether Far Eastern Manipulated Its Sales Reporting Between the Cost and Sales Verifications

Petitioners' Case Brief

- Far Eastern presented a table at both the cost and sales verifications to support the concordance between the company's internal product codes and the reported CONNUMs;

¹²⁵ *Id.* at 16-17.

¹²⁶ See Far Eastern's Rebuttal Brief at 7-8.

¹²⁷ See Far Eastern Cost Verification Report at 7.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ As a general matter, while such a comparison may serve as a reasonableness test, the total production quantities typically do not equal the total sales quantities reported to Commerce. This is due to a variety of reasons such as unreportable sales quantities, *e.g.*, sales to third countries, and inventory timing differences, *e.g.*, finished products in inventory at the beginning and end of the relevant time period, *etc.*

¹³¹ For additional discussion of the business proprietary details related to this issue, see Memorandum, "Less Than Fair Value Investigation of Polyethylene Terephthalate (PET) Resin from Taiwan, Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Far Eastern New Century Corporation," dated concurrently with this memorandum (Far Eastern Final Cost Calculation Memorandum).

however, subsequent to the cost verification, Far Eastern manipulated the data and presented a different version of the table at the sales verification. Specifically, for several product codes on the document, Far Eastern changed the mathematical sign from less than fifty percent (*i.e.*, “< 50%”) and potentially within scope, to greater than fifty percent (*i.e.*, “> 50%”) and outside scope.¹³²

- It is unlikely that these changes were inadvertent clerical errors, but even if the changes were legitimate, Commerce does not accept new information at verification, therefore, Far Eastern should not be allowed to make these substantive changes to its previously submitted sales reporting.¹³³

Far Eastern’s Rebuttal Brief

- The changes to the tables presented at the cost and sales verifications merely represent typographical errors discovered in the description of four recycled products.¹³⁴
- Far Eastern has consistently and correctly treated the four recycled products as non-subject products, thus, this correction of a typographical error does not represent new information.¹³⁵

Commerce’s Position:

We find that Far Eastern’s changes to its sales reporting table represent corrections of typographical errors and not manipulations of source documents. The document under scrutiny is an informational table prepared for Commerce that merely summarizes Far Eastern’s classification of its internal product codes to CONNUMs and does not embody source documentation or provide support for those classifications.¹³⁶ Further, we find that the changes to the mathematical signs on the table do not reflect new information. While we agree that the version presented at the cost verification shows four recycled products as having “< 50%” recycled inputs, while the version presented at the sales verification identifies the same products as having “> 50%” recycled inputs, in both versions the four products are clearly marked as non-subject products. Most importantly, Far Eastern did not include these products as subject merchandise prior to the verifications and did not change the classification of these products as non-subject at either the sales or cost verifications.¹³⁷ Furthermore, at verification, Commerce examined production records for these products, confirming that they contained greater than 50

¹³² See Petitioners’ Case Brief re Far Eastern at 17-18.

¹³³ *Id.* at 18.

¹³⁴ See Far Eastern’s Rebuttal Brief at 8-9.

¹³⁵ *Id.*

¹³⁶ See Far Eastern’s Cost Verification Report at Exhibit 7; *see also* Far Eastern’s Sales Verification Report at Exhibit 6.

¹³⁷ *See, e.g.*, Far Eastern’s December 29, 2017 Section A Questionnaire Response (Far Eastern’s December 29, 2017 AQR) at Appendix A-7-a (Detailed Description of Each Type of Subject Merchandise); *see also* Far Eastern’s January 17, 2018 Section B Questionnaire Response (Far Eastern’s January 17, 2018 BQR) at Appendix B-4-1 (Listing Internal Product Codes Reported as Subject Merchandise); *see also* Far Eastern’s January 17, 2018 Section C Questionnaire Response (Far Eastern’s January 17, 2018 CQR) at Appendix C-4 (Reportable Product Codes Sold in the United States); *see also* Far Eastern’s Cost Verification Report at 2-3 (Minor Corrections to the Previously Submitted Cost Information) and Exhibit 7 (Listing the Four Recycled Products as Non-Subject); *see also* Far Eastern’s Sales Verification Report at 3-4 (Minor Corrections to the Previously Submitted Sales Information) and Exhibit 6 (Listing the Four Recycled Products as Non-Subject).

percent recycled inputs and were appropriately excluded as non-subject.¹³⁸ Thus, we find that Far Eastern's reversals of the mathematical signs on this informational table constitute corrections of typographical errors and do not represent either new information or changes to the previously submitted cost and sales data.

Comment 6: Whether to Incorporate Findings from Commerce's Cost Verification in the Final Determination for Far Eastern – Cost Adjustment Ratio

Petitioners' Case Brief

- Commerce should correct Far Eastern's reported cost adjustment ratio for the error discovered at the cost verification.¹³⁹

Far Eastern did not comment on this issue.

Commerce's Position:

We agree with the petitioners that it is appropriate to make the change to the cost adjustment ratio as noted in the cost verification report.¹⁴⁰ Accordingly, we have adjusted Far Eastern's submitted costs to reflect our verification finding related to the cost adjustment ratio.

Comment 7: Whether to Incorporate Findings from Commerce's Cost Verification in the Final Determination for Far Eastern – General and Administrative Expense Ratio

Petitioners' Case Brief

- Commerce should correct Far Eastern's general and administrative (G&A) expense ratio for the errors discovered at the cost verification.¹⁴¹

Far Eastern's Rebuttal Brief

- The other income items questioned in the cost verification report, such as the customer overpayments, are appropriately classified as offsets to G&A expenses, since they are related to the general operations of the company.¹⁴²
- The new facility construction administrative fees are related to new production facility located outside of Taiwan which will ultimately be operated by a subsidiary and are not related to Far Eastern's operations concerning subject merchandise. Therefore, these fees are related to the activities of the overseas subsidiary and were appropriately excluded from Far Eastern's reported G&A expenses.¹⁴³

¹³⁸ See, e.g., Far Eastern's Cost Verification Report at 14 and 17.

¹³⁹ See Petitioner's Case Brief re Far Eastern at 31-32.

¹⁴⁰ See Far Eastern's Cost Verification Report at 2.

¹⁴¹ See Petitioners' Case Brief re Far Eastern at 31-33.

¹⁴² See Far Eastern's Rebuttal Brief at 10-11.

¹⁴³ *Id.*

Commerce's Position:

We agree with both parties, in part. Commerce's cost verification report draws attention to three elements of Far Eastern's reported G&A expense ratio: (1) the inclusion of other income received on certain technical and administrative services provided to affiliates; (2) the inclusion of other income recognized on unclaimed customer overpayments; and, (3) the exclusion of administration fees related to the construction of a new production facility located outside of Taiwan.¹⁴⁴ For the final determination, we have revised Far Eastern's G&A expense ratio to exclude the income received on certain services provided to affiliates and to include the new facility administration fees. We did allow, however, the reported offset for the other income recognized on unclaimed customer overpayments.¹⁴⁵

To determine whether it is appropriate to include or exclude a particular income or expense item in the calculation of a company's net G&A expense, Commerce reviews the nature of each item and its relationship to the general operations of the company.¹⁴⁶ Consistent with prior practice, we consider the unclaimed customer overpayments to be related to the general operations of a company.¹⁴⁷ Therefore, we have continued to allow the unclaimed customer overpayments as offsets to Far Eastern's reported G&A expenses. For the other income received on services provided to affiliates, the cost verification report elucidates that for a portion of this income the underlying expense of the service was not included in the submitted G&A expenses.¹⁴⁸ Thus, consistent with past practice, we have excluded the other income received on services where the related expenses were not included in the reported costs.¹⁴⁹

Finally, with regard to the new facility construction administration fees, we disagree with Far Eastern that the amount should be excluded because the facility under construction is located outside of Taiwan and will ultimately be operated by an overseas subsidiary. At verification, we found that the new fees were recognized by Far Eastern on its audited income statement.¹⁵⁰ Further, company officials confirmed that the fees were related to administrative activities and

¹⁴⁴ See Far Eastern's Cost Verification Report at 2.

¹⁴⁵ See Far Eastern Final Cost Calculation Memorandum.

¹⁴⁶ See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, (November 7, 2006) and accompanying Issues and Decision Memorandum (*Rebar Final Turkey 2006*) at Comment 9.

¹⁴⁷ See, e.g., *Certain Preserved Mushrooms from Indonesia: Final Results of Antidumping Duty Administrative Review*, 66 FR 36754 (July 13, 2001), and accompanying Issues and Decision Memorandum at Comment 17, where Commerce stated that "other income" consisted of overpayment of sales. Consistent with past reviews, we consider this type of income to be of a general nature, arising from the company's operations. Therefore, we have continued to allow it as an offset to G&A."

¹⁴⁸ See Far Eastern's Cost Verification Report at 25.

¹⁴⁹ See, e.g., *Rebar Final Turkey 2006*, accompanying Issues and Decision Memorandum at Comment 9, where Commerce excludes rental income where the related expenses were not included in G&A expenses; see also *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part*, 70 FR 67665 (November 8, 2005), and accompanying Issues and Decision Memorandum at Comment 17, where Commerce allowed offsets for office rental and services fees where the related costs incurred to provide the office space and utility services were included in the reported G&A expenses.

¹⁵⁰ See Far Eastern's Cost Verification Report at 12.

were not inventoried production costs.¹⁵¹ Therefore, we have included the new plant administrative fees in Far Eastern's G&A expenses for the final determination.¹⁵²

Comment 8: Whether Commerce Should Apply AFA on Far Eastern's Report of Blended PET Resin

Petitioners' Case Brief

- Far Eastern inconsistently reported its blended PET resin in its cost and sales databases. Far Eastern reported production quantity and unit cost of manufacture for blended PET resin on a CONNUM-specific basis; however, it classified its sales of blended PET resin within a single product code (CB-612M) under a single CONNUM.¹⁵³
- Far Eastern misreported BLENDH/BLENDU codes for its home market and U.S. market sales by using a single CONNUM; such reporting is inaccurate and incorrect.¹⁵⁴
- Far Eastern's use of a single CONNUM in its U.S. and home market sales database to report blended PET resin is inconsistent with Commerce's cost verification findings.¹⁵⁵
- Information discovered by Commerce officials at verification indicates that Far Eastern's benchmark used to assign a single CONNUM to sales of blended PET resin with different recycled PET content is inaccurate and incorrect.¹⁵⁶
- Far Eastern's reliance on a single CONNUM to report its sales of blended PET resin products is not supported by documentation it generated and maintained in the ordinary course of business.¹⁵⁷
- Commerce should rely on total AFA due to Far Eastern's failure to report its sales of blended PET resin accurately and its manipulation of sales reporting between the cost and sales verifications.¹⁵⁸
- If Commerce does not rely on total AFA to assign an antidumping margin to Far Eastern, it should apply partial AFA to Far Eastern's sales and cost data for blended PET resin.¹⁵⁹

Far Eastern's Rebuttal Brief

- Far Eastern provided complete information regarding its sales of blended products, including a breakdown of the actual composition of the material sold in each home-market and U.S. sales transaction.¹⁶⁰

¹⁵¹ *Id.*

¹⁵² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 7; see also *Rebar Final Turkey 2006*, accompanying Issues and Decision Memorandum at Comment 9; see also *Notice of Final Results of the Eighth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination to Revoke in Part*, 70 FR 71464 (November 29, 2005), and accompanying Issues and Decision Memorandum at Comment 5.

¹⁵³ See Petitioners' Case Brief re Far Eastern at 3-7.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 8-9.

¹⁵⁶ *Id.* at 10-12.

¹⁵⁷ *Id.* at 13-14.

¹⁵⁸ *Id.* at 19-25.

¹⁵⁹ *Id.* at 25-26.

¹⁶⁰ See Far Eastern's Rebuttal Brief at 2.

- In its sales databases, Far Eastern reported all sales of blended CB-612M products using a single CONNUM (408311) that reflects the standard product characteristics for that product as set forth in Far Eastern’s specification sheets. Far Eastern also provided supplemental files that identified the actual composition of the material sold in each transaction including the actual blend ratio.¹⁶¹
- These supplemental files identified not only the actual characteristics of the different blends sold in each transaction, but also the quantities associated with each set of characteristics. The supplemental files could be merged to the sales listing to obtain the actual characteristics of each blend sold in each transaction.¹⁶²

Commerce’s Position:

As explained in “Comment 4: Whether Far Eastern Underreported the Production Quantities for Blended Products,” above, the total blended production quantity verified by Commerce reflects the total production of CB-612M during the POI. The production quantity of the blended PET resin matches the production quantities for various CONNUMs that are included in the product code of CB-612M PET resin during the POI. Therefore, we determined that Far Eastern’s cost reporting and databases are usable and reliable.

In addition, although the relevant CONNUM in Far Eastern’s sales databases contains standard rather than the actual blending ratio of the PET resin, Far Eastern reported the actual blended ratios, quantities sold and the actual CONNUMs for all U.S. and home market sales in its supplemental questionnaire responses.¹⁶³ We determined these supplemental data could be used in Far Eastern’s final dumping margin analysis for matching of the blended CONNUMs in the sales databases to the cost database.

Therefore, for Far Eastern’s reported BLENDH/BLENDU for the blended PET resin sales in its home and U.S. market, we merged the supplemental data files that Far Eastern submitted with the home and U.S. market sales databases for the final dumping margin analysis, to ensure the match between the sales and cost databases for the blended products produced and sold during the POI.¹⁶⁴

Comment 9: Whether Far Eastern has Omitted Certain Subject Merchandise Sales from Its U.S. Sales Database

Petitioners’ Case Brief

- Record information indicates that Far Eastern made sales of PET resin to a U.S. customer that was not identified on Far Eastern’s U.S. customer list and Far Eastern did not report these sales in its U.S. sales database.¹⁶⁵

¹⁶¹ *Id.* at 3.

¹⁶² *Id.* at 4.

¹⁶³ See Far Eastern’s February 21, 2018 Supplemental Questionnaire Response (Far Eastern’s February 21, 2018 SQR) at Appendices 2SE-15 and 2SE-31.

¹⁶⁴ See Far Eastern’s Final Analysis Memo.

¹⁶⁵ See Petitioners’ Case Brief re Far Eastern at 26-28.

- During the sales verification, Commerce examined sales documentation relates to this customer and certain documents could reasonably indicate the sale of subject merchandise from Far Eastern to this customer.¹⁶⁶
- The absence of reported sales to this customer in Far Eastern's U.S. sales database provides additional evidence that Far Eastern's reported U.S. sales data are not reliable and Commerce should apply total AFA in assigning an antidumping margin to Far Eastern in the final determination.¹⁶⁷

Far Eastern's Rebuttal Brief

- Commerce verified, as part of its "completeness test," that Far Eastern's sales of PET resin to this customer consisted entirely of non-subject recycled PET resin with product code CB-608R.¹⁶⁸

Commerce's Position:

We agree with Far Eastern that all PET resin sales to this customer were only of recycled PET resin, which is non-subject merchandise. At Commerce's sales verification, we reviewed Far Eastern's sales ledger and randomly selected several commercial invoices with corresponding packing lists, export declaration forms, bills of lading, and other documentation to confirm the sales to this customer only consisted non-subject recycled PET resin.¹⁶⁹

Comment 10: Whether One of the Far Eastern's U.S. Sales should be Excluded from the Final Margin Calculation

Petitioners' Case Brief

- Commerce should exclude a U.S. sale from the final margin calculation as the sale price for this transaction is aberrational and Far Eastern erroneously reported the U.S. sales price.¹⁷⁰
- Information included in Far Eastern's response regarding this sale contradicts Far Eastern's previous claims on this sale in shipping terms, delivery terms, date of sale, transaction amount, shipment receipt, and other sales documentation.¹⁷¹
- If Commerce continues to calculate an antidumping margin for Far Eastern, Commerce should apply partial facts available and exclude this sale from its final margin analysis.¹⁷²

Far Eastern's Rebuttal Brief

- The petitioners did not provide any analysis indicating that the price for this transaction was outside normal price variations for this product.¹⁷³

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ See Far Eastern's Rebuttal Brief at 9.

¹⁶⁹ See Far Eastern's Sales Verification Report at 9.

¹⁷⁰ See Petitioners' Case Brief re Far Eastern at 28-31.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ See Far Eastern's Rebuttal Brief at 9-10.

- The inconsistencies and errors among the export declaration, shipping receipt, commercial invoice and other Far Eastern documents were due to the errors made by shipping companies, not by Far Eastern.¹⁷⁴
- All of the Far Eastern documents, including the official GUI, the payment received from the customer, is consistent with the total invoice value as reported in Far Eastern's sales listing.¹⁷⁵

Commerce's Position:

We agree with the petitioners. Based on record information, due to the various inconsistencies and errors among the sales documentation and the aberrational per-unit price of the PET resin, we are removing this sale from the U.S. sales database and excluding this transaction for the final margin analysis.

Comment 11: Far Eastern's U.S. Sales Channels

Far Eastern reported five different sales channels for the U.S. market (1A, 1B, 1C, 2B, and 2C). In Channel 1A, Far Eastern sells directly to an unaffiliated U.S. customer prior to importation. We treated these sales as EP in the *Preliminary Determination*. In sales Channels 1B and 2B, Far Eastern sells through WWP, its wholly-owned trading company. We treated these sales as CEP in the *Preliminary Determination*. In Channels 1C and 2C, Far Eastern sells to an unaffiliated company in the United States who acts as the importer of record. This company then sells the PET resin back to Far Eastern's affiliate, WWP. WWP then sells to the final unaffiliated U.S. customer. We treated these sales as EP in the *Preliminary Determination*.

Far Eastern's Case Brief

- Under the antidumping statute, the first price agreed with an unaffiliated U.S. customer must be used as the starting point for Commerce's analysis.¹⁷⁶
- For all U.S. sales, Far Eastern staff in Taiwan negotiates the sale with the final U.S. customer, Far Eastern staff in Taiwan also make all the decisions on quality and price of subject merchandise, arranges the production, sets the shipment schedule, and issues the invoice.¹⁷⁷
- Far Eastern is not importer of record for any of its sales to the United States, rather, Far Eastern uses intermediary companies. When the intermediary company was unaffiliated with Far Eastern, Far Eastern sold the merchandise to the intermediary company, then purchased it back from the same company.¹⁷⁸
- Commerce should use the price paid by the final unaffiliated U.S. customer to WWP as the basis for Channel 1B and 2B sales; and use the sales agreement between Far Eastern

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ See Far Eastern's Case Brief at 4-11.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

and the ultimate customer as the agreement for Channel 1C and 2C sales in its final determination.¹⁷⁹

- Commerce should treat all of Far Eastern's U.S. sales as EP sales, as all of these sales were made outside of the United States, because all of these sales transactions were negotiated with the ultimate customer in all instances by Far Eastern from Taiwan, without the involvement of any U.S. affiliates.¹⁸⁰
- In its questionnaire response, Far Eastern classified Type 2B and 2C sales as CEP sales, as they involved U.S. warehousing prior to the final delivery to the unaffiliated U.S. customer. However, as the warehousing was performed by an unaffiliated service provider, Commerce should treat these sales as EP sales, as the first sale to the unaffiliated customer occurred outside the United States.¹⁸¹
- Commerce incorrectly deducted expenses, including U.S. duties, U.S. brokerage and handling costs, U.S. warehousing, and U.S. inland transport charges, that were not included in the starting price used in its calculation of the net U.S. price for sales made on a CIF basis for the Type 1B and Type 2B sales.¹⁸²
- The intermediate prices that Far Eastern reported do not include the import-related and post-import movement expenses incurred by the intermediate companies and should not be deducted from the CIF U.S. prices for the Type 1B and Type 2B sales.¹⁸³
- If Commerce use the final price agreed by Far Eastern and the ultimate U.S. customer as the starting point, then these import-related and post-import movement costs could appropriately be deducted from the U.S. price.¹⁸⁴

Petitioners' Case Brief

- The petitioners agree with Commerce's preliminary determination to classify Types 1B and 2B as CEP sales, and Types 1C and 2C as EP sales. However, Commerce should calculate the U.S. net price for EP sales with the price from Far Eastern to the EP purchaser, as the starting U.S. price.¹⁸⁵

Far Eastern's Rebuttal Brief

- Commerce should start its analysis for all U.S. sales with the price agreed by Far Eastern with the final unaffiliated U.S. customer, and not with any intermediate prices set subsequently in order to provide agreed-upon mark-ups to intermediaries.¹⁸⁶
- Commerce should classify all U.S. sales as EP sales.¹⁸⁷
- Commerce should limit adjustments for movement expenses to costs that are included in the price used as the starting point for its calculations.¹⁸⁸

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See Petitioners' Case Brief re Far Eastern at 33-36.

¹⁸⁶ See Far Eastern's Rebuttal Brief at 11.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

Petitioners' Rebuttal Brief

- Commerce should reject Far Eastern's untimely attempt to reclassify its sales in its case brief and apply AFA to Far Eastern, or at least apply partial AFA to sales for Channels 2B and 2C sales.¹⁸⁹
- Far Eastern made unsolicited changes to its classification of U.S. sales channels multiple times, Commerce corrected Far Eastern's reporting errors on the U.S. sales channels at the preliminary determination.¹⁹⁰
- The court of international trade has ruled that a respondent must provide accurate information promptly to allow Commerce sufficient time for review. The untimely arguments made by Far Eastern to change its U.S. sales classification are substantive and not minor adjustments.¹⁹¹
- If Commerce accepts Far Eastern's reclassification of its U.S. sales channels, as argued in Far Eastern's case brief, the dates of sales on the record for Channels 2B and 2C are incorrect, as the date of sales for these two channels were reported as the date when PET resin was shipped from Far Eastern's U.S. warehouses, not the date prior to importation as defined in EP sales. Because the incorrect sales reporting is the results of Far Eastern's own failure to act to the best of its ability to report its U.S. sales properly, the facts available should be applied with an adverse inference.¹⁹²
- If Commerce continues to calculate a margin for the final determination, it should continue to apply its preliminary classification of Far Eastern's EP and CEP sales. Commerce should continue to treat sales in Channels 1A, 1C and 2C as EP and sales in Channels 1B and 2B as CEP.¹⁹³
- For Channels 1C and 2C sales that are classified as EP sales, Commerce should use the price sold to the first unaffiliated U.S. party as the starting U.S. price.¹⁹⁴
- For Channels 1B and 2B sales that are classified as CEP sales, Commerce should also continue to use the price sold to WWP as the starting U.S. price, as the price sold to the final U.S. customer contains unreported expenses and unreliable post-sale adjustments.¹⁹⁵

Commerce's Position:

We have continued to treat Far Eastern's Channel 1A sales as EP and its Channels 1B and 2B sales as CEP sales. However, we have changed our classification of Far Eastern's Channels 1C and 2C from EP to CEP sales for the final determination.¹⁹⁶

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." Section 772(b) of

¹⁸⁹ See Petitioners' Rebuttal Brief re Far Eastern at 4-33.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See Far Eastern's Final Analysis Memorandum.

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

We have continued to treat Far Eastern’s Channels 1B and 2B sales as CEP sales, pursuant to section 772(b) of the Act, because the record shows that Far Eastern made these sales through its affiliate WWP, and then WWP sold the subject merchandise to unaffiliated customers. We verified that Far Eastern makes these sales through its affiliate WWP who acts as the importer of record, and then sells the PET resin to unaffiliated customers in the United States.¹⁹⁷ Notwithstanding Far Eastern’s belated arguments to the contrary, there is no basis to find these sales to be EP sales.

We have reexamined the record with respect to Far Eastern’s Channels 1C and 2C sales. At verification, we confirmed that Far Eastern “sells” the PET resin on a CIF basis to an unaffiliated company in the United States. This company acts as the importer of record and resells the PET resin back to WWP on a DDP basis within a short period (usually less than 24 hours) of when it purchases the PET resin from Far Eastern. (This company manages duty drawback for Far Eastern and other unrelated exporters of finished products using PET resin as inputs.) The only difference between the price Far Eastern sells to this company and the price this company sells back to WWP is the relevant amount of U.S. duty and customs processing fees, which are separate line items on the latter’s invoices. Furthermore, this importer of record sells the PET resin to WWP for the same per-unit price it paid to Far Eastern. WWP then sold the PET resin to the final U.S. customer under DDP terms.

Given these facts on the record, we found it appropriate to conduct a principal-agent analysis to this relationship and apply the seven criteria of the principal-agent analysis, to determine whether a foreign producer and a reseller are acting as principal and agent. Commerce considers various factors for such principal-agent relationship, including:¹⁹⁸

- (1) the foreign producer’s role in negotiating price and other terms of sale;

¹⁹⁷ The statute defines CEP as: “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.”

¹⁹⁸ See, e.g., *Steel Threaded Rod from India: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 9164 (February 18, 2014), and accompanying Issues and Decision Memorandum (*Threaded Rod from India*) at 14-15 (upon applying the seven-part test, affiliation was found on “the totality of circumstances,” where Mangle maintained control over the terms of sale, the end user customers knew Mangle was the producer, Mangle marketed to those customers, the reseller did not take inventory and performed no further manufacturing, but it did take title and had risk of loss) (unchanged in the final determination, 79 FR 40714 (July 14, 2014), accompanying Issues and Decision Memorandum at Comment 2); see also *Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 12199 (March 15, 2010) (upon applying the seven-part test affiliation was not found because there was “no evidence that Ambica has any knowledge of its customer’s customers, or has had any involvement with its customers’ sale”) (unchanged in the final results, 75 FR 54090 (September 3, 2010)).

- (2) the extent of the foreign producer's interaction with the U.S. customer;
- (3) whether the agent/reseller maintains inventory;
- (4) whether the agent/reseller takes title to the merchandise and bears the risk of loss;
- (5) whether the agent/reseller further processes or otherwise adds value to the merchandise;
- (6) the means of marketing a product by the producer to the U.S. customer in the pre-sale period; and
- (7) whether the identity of the producer on sales documentation inferred such an agency relationship during the sales transactions.

Based on our analysis, we have determined that Far Eastern and this importer of record have a principal-agent relationship, because the majority of the criteria above are present. Specifically, the record indicates that this importer of record: 1) has no role in negotiating price and terms of sale with the final U.S. customer; 2) has no direct or indirect interaction with the U.S. customer; 3) does not maintain inventory for the PET resin before or after the selling; 4) does not further process and add value to PET resin; 5) does not market the PET resin for itself or for Far Eastern. In addition, the contract between Far Eastern and this company states that this company acts as the importer of record for some of Far Eastern's imports of PET resin to allow it to take advantage of duty drawback.

Based on our principal-agency analysis, we find that the totality of the record evidence indicates that this company acted as an agent for Far Eastern and, thus, they are affiliated for the purposes of determining U.S. price. As such, we determined that the sales from Far Eastern to this company do not constitute *bona fide* sales and it is not appropriate to use the selling price between Far Eastern to this company as the starting price in our antidumping margin analysis. Like the Channels 1B and 2B sales described above, pursuant to section 772(b) of the Act, we find it is appropriate to use the sale price from Far Eastern's affiliate WWP to unaffiliated customers in the United States as the starting price. As such, it is appropriate to treat sales through Channels 1C and 2C as CEP sales, similar to the Channels 1B and 1C sales discussed above. As Far Eastern has appropriately reported these sales as CEP in its responses and databases, we have relied on the information that Far Eastern reported for these sales. As such, contrary to the petitioners' argument, application of AFA is not warranted.

Finally, we disagree with the petitioners' argument that WWP's price sold to the final U.S. customer contained unreported expenses and unreliable post-sale adjustments. At verification, Commerce reviewed relevant sales documentation and conducted various sales traces for each of the five sales channels discussed above and found that Far Eastern accurately reported its sales expenses and post-sale adjustments.¹⁹⁹

¹⁹⁹ See Far Eastern's Sales Verification Report, at Exhibits 19 through 28.

Comment 12: Whether Far Eastern's Correction to Packing Expenses Submitted at Verification should be Rejected

At the sales verification, Far Eastern attempted to submit changes to its reported packing costs in the home and U.S. market as minor correction. Commerce rejected these corrections because they were not minor.

Far Eastern's Case Brief

- The corrections to packing expenses presented at verification would have resulted in *de minimis* changes to unit packing costs for home market sales and unit packing labor costs for all products.²⁰⁰
- In *World Finer Foods, Inc. v. United States*, the CIT has held that even when minor errors affect a “significant percentage” of a calculation, it does not change that “the errors themselves were minor.” The CIT also stated Commerce should accept the corrections if the party tries to correct information following a preliminary determination in a timely manner.²⁰¹

Petitioners' Rebuttal Brief

- Commerce correctly rejected the extensive changes proposed by Far Eastern regarding its reported packing expenses for U.S. and home market sales at the outset of Commerce's sales verification.²⁰²
- The statutory and regulatory language Far Eastern referenced in its case brief, that Commerce's regulations define minor or ministerial errors as “an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like,” relates to ministerial errors made by Commerce in its preliminary or final determinations, it is not the standard Commerce uses for errors alleged by respondents at the outset of verification regarding respondents' own data, and Far Eastern did not submit a ministerial error allegation regarding these “errors.”²⁰³
- Far Eastern was warned not to use verification as an opportunity to submit new factual information by Commerce's sales and cost verification outlines.²⁰⁴
- *World Finer Foods, Inc. v. United States* does not address a respondent submitting substantial corrections to its information at verification, as is the case here.²⁰⁵
- The proposed packing expenses change would have a favorable impact to Far Eastern's export sales but the changes in the home market sales were negligible.²⁰⁶
- Commerce should continue to use the packing expenses already on the record for the final margin analysis.²⁰⁷

²⁰⁰ See Far Eastern's Case Brief at 12-13.

²⁰¹ *Id.*

²⁰² See Petitioners' Rebuttal Brief re Far Eastern at 34-36.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

Commerce's Position:

We agree with the petitioners and continue to reject Far Eastern's corrections on packing expenses. As the proposed correction would affect numerous packing expense calculations, we did not consider the corrections to be minor. Contrary to Far Eastern's argument, *World Finer Foods, Inc. v. United States* does not apply here, as that case concern a respondent submitting corrections to its responses from the time of publication of the preliminary results, rather than at verification. As the petitioners argued, Commerce has a well-established practice of only accepting minor adjustments to or corroboration or clarification of information already on the record at verification, and rejecting substantial revisions presented at verification. Therefore, we agree with the petitioners and continue to use the packing expenses already on the record for the final antidumping margin analysis.

Comment 13: Whether Commerce should Make a Finding of Critical Circumstances with respect to Far Eastern in the Final Determination

Far Eastern's Case Brief

- Commerce calculated in its *Preliminary Determination* a dumping margin of 11.89 percent for Far Eastern, which is below the threshold used by Commerce to impute knowledge of dumping to the exporter.²⁰⁸
- Because Far Eastern's dumping margin is lower than the threshold to support a finding of critical circumstances, Commerce should find that critical circumstances do not exist with respect to Far Eastern in the final determination.²⁰⁹

Petitioners' Rebuttal Brief

- Commerce's initial critical circumstance finding was correct, and Commerce should continue to determine that critical circumstances exist with regard to Far Eastern in its final determination.²¹⁰
- In instances where Commerce makes an early critical circumstances finding before the preliminary determination, Commerce relies on the margin alleged in the petition to determine if an importer has knowledge exporters were selling subject merchandise at less than fair value.²¹¹
- Commerce properly relied on the Petition margin for its determination that Far Eastern knew or should have known that PET resin was being sold at less than fair value. The petition margin for Taiwan was 45 percent, well above the threshold of 15 percent or more to be sufficient to impute knowledge of dumping for CEP sales, and margins of 25 percent or more for EP sales.²¹²
- The petitioners expect that Commerce will apply AFA to Far Eastern which will result in a higher final margin. Far Eastern's higher margin will satisfy the statutory requirement that "importers know or should have known that Far Eastern was selling

²⁰⁸ See Far Eastern's Case Brief at 13.

²⁰⁹ *Id.*

²¹⁰ See Petitioners' Rebuttal Brief re Far Eastern at 36-40.

²¹¹ *Id.*

²¹² *Id.*

- the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales” for a critical circumstance finding.²¹³
- Far Eastern does not dispute the other two statutory requirements in the petitioners’ critical circumstances allegation for a finding that critical circumstances exist. As a result, Commerce should continue to find that critical circumstance exist for Far Eastern in the final determination.²¹⁴

Commerce’s Position:

Section 735(a)(3) of the Act does not require that the importer knew or should have known that the exporter was selling the subject merchandise at less than fair value. Rather, it requires *either* such knowledge²¹⁵ *or* a history of dumping and material injury by reason of dumped imports.²¹⁶ The record evidence does not demonstrate that Commerce should make any changes to its *Preliminary Critical Circumstances Determination*. As explained in the *Preliminary Critical Circumstances Determination*, there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of PET resin exported from Taiwan.²¹⁷ It is, therefore, not necessary to impute knowledge of dumping to the importer and, thus, it is not necessary to find dumping in excess of 15 or 25 percent. Moreover, we have determined that there has been a massive surge in imports of subject merchandise from Far Eastern to the United States based on the shipment data provided by Far Eastern over the course of this investigation.²¹⁸ We, therefore, determine for this final determination that critical circumstances exist with respect to Far Eastern.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ See section 735(a)(3)(A)(ii) of the Act.

²¹⁶ See section 735(a)(3)(A)(i) of the Act.

²¹⁷ See *Preliminary Critical Circumstances Determination*, 83 FR at 17791-92.

²¹⁸ See Final Critical Circumstances Memorandum.

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the *Federal Register*.

☒

Agree

☐

Disagree

9/17/2018

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