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Investigation
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December 18, 2017

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

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

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

I. SUMMARY

We preliminarily determine that fine denier polyester staple fiber (fine denier PSF) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the Preliminary Determination section of the accompanying *Federal Register* notice.

II. BACKGROUND

On May 31, 2017, the Department received an antidumping duty (AD) petition concerning imports of fine denier polyester staple fiber from Korea,¹ which was filed in proper form by DAK Americas LLC, Nan Ya Plastics Corporation, America, and Auriga Polymers Inc. (the petitioners). On June 5, 2017² and June 12, 2017, the Department requested information and clarification of certain areas of the petition.³ The petitioners filed timely responses to these requests. On June 27, 2017, the Department published the notice of the initiation of the AD

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

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

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



investigation of fine denier PSF from Korea in the *Federal Register*.⁴

On June 27, 2017, the Department released U.S. Customs and Border Protection (CBP) import data to interested parties which it intended to use for purposes of selecting mandatory respondents.⁵ On July 27, 2017, Toray Chemical Korea Inc. (TCK) submitted comments on the results of the CBP trade database query. However, the deadline for comments was July 4, 2017; as a result, the Department rejected TCK's submission.⁶ No other parties submitted comments.

On July 31, 2017, the Department selected Down Nara Co., Ltd. (Down Nara) and Huvis Corporation (Huvis) as mandatory respondents for this investigation and issued Down Nara and Huvis AD questionnaires. On August 7, 2017, counsel for Toray Chemical Korea Inc. (TCK) requested that the Department examine TCK as a voluntary respondent in the investigation.⁷ On August 10, 2017, counsel for Huvis notified the Department that Huvis would not participate in the investigation.⁸ Down Nara did not respond to the Department's AD questionnaire. On August 18, 2017, the Department also selected TCK as a mandatory respondent. TCK submitted timely responses to the Department's AD questionnaire (sections A, B, C, and D) and corresponding supplemental questionnaires between August 31, 2017, and November 17, 2017. In addition, in the *Initiation Notice*, the Department set aside time for parties to comment on the appropriate physical characteristics of fine denier PSF to be reported in response to the Department's AD questionnaire.⁹ On July 10, 2017, the Department received timely scope comments from David C. Poole Company Inc. (Poole), Suominen Corporation (Suominen), and Consolidated Fibers, Inc. (Consolidated Fibers).¹⁰ On July 10, 2017, the Department extended the deadline for scope comments to July 12, 2017, and rebuttal comments to July 24, 2017.¹¹ On July 11, 2017, the Department received timely scope comments from Reliance Industries, Ltd. (Reliance).¹² On July 12, 2017, the Department received timely scope comments from the

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

⁵ See Memorandum, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Customs Data," dated June 27, 2017 (Customs Data Memorandum).

⁶ See Memorandum, "Rejection of Toray Chemical Korea Inc.'s July 27, 2017, Respondent Selection Comments on the Record of the Antidumping Investigation," dated July 31, 2017.

⁷ See TCK's Letter, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Request for Voluntary Respondent Selection," dated August 7, 2017.

⁸ See Huvis's Letter, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Notice of Intent Not to Participate," dated August 10, 2017.

⁹ See *Initiation Notice*.

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

¹¹ See Memorandum, "Extension of Deadline to Submit Comments on the Scope of the Investigations," dated July 10, 2017. Because July 22, 2017, was a Saturday, the deadline for filing of rebuttal comments to the scope comments was no later than the close of business on Monday July 24, 2017.

¹² See Reliance's Letter, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Reliance Industries, Ltd.'s Comments Regarding the Scope of the Investigation," dated July 11, 2017 (Reliance Scope Comments).

petitioners.¹³ On July 24, 2017, the Department received timely scope rebuttal comments from the petitioners and interested parties.^{14 15} Based on the comments received, the Department issued a memorandum to interested parties which contained the product characteristics for this and the companion AD investigations.¹⁶ On August 17, 2017, the petitioners submitted comments concerning the product matching hierarchy released by the Department.¹⁷

On October 25, 2017, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fine denier PSF from Korea.¹⁸

On October 13, 2017, the petitioners requested a postponement of the preliminary determination.¹⁹ On October 24, 2017, and pursuant to section 733(c)(1)(B) of the Act, and 19 CFR 351.205(f)(1), the Department published in the *Federal Register* a postponement of the preliminary determination.²⁰

On November 22, 2017, the Department notified parties of an opportunity to comment on the forthcoming preliminary determination.²¹ On November 20, 2017, the petitioners filed comments for the Department to consider in its preliminary determination.

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2016, through March 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was May 2017.²²

¹³ See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam – Petitioners' Scope Comments," dated July 12, 2017 (Petitioners' Scope Comments).

¹⁴ See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, and Taiwan – Petitioners' Rebuttal Comments to the Importers' Scope Exclusion Requests," dated July 24, 2017 (Petitioners' Rebuttal Scope Comments).

¹⁵ See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea and Taiwan – Petitioners' Rebuttal Comments to the Importers' Scope Exclusion Requests," dated July 24, 2017; see Jiangyin Hailun Chemical Fiber Co., Ltd.'s Letter, "Fine Denier Polyester Staple Fiber from The People's Republic of China, India, the Republic of Korea, and Taiwan - Rebuttal Product Matching Comments," dated July 24, 2017.

¹⁶ See Memorandum, "Product Characteristics for Use in Sections B, C, and D Questionnaire Responses," dated August 11, 2017.

¹⁷ See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from India, the People's Republic of China, the Republic of Korea, and Taiwan - Petitioners' Request to Modify the Product Matching Criteria," dated August 17, 2017 (Petitioners' Product Matching Modification Request).

¹⁸ See *Fine Denier Polyester Staple Fiber from China, India, Korea and Taiwan - Submission of ITC Preliminary Report*, (Investigation Nos. 701-TA-579-580 and 731-TA-1369-1372, Preliminary) (October 25, 2017).

¹⁹ See Petitioner's Letter, "Fine Denier Polyester Staple Fiber from India, the People's Republic of China, the Republic of Korea, and Taiwan – Petitioners' Request to Postpone the Antidumping Duty Preliminary Determinations," dated October 13, 2017.

²⁰ See *Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, and Taiwan: Postponement of Preliminary Determinations in Less-Than-Fair-Value Investigations*, 82 FR 49178 (October 24, 2017) (Postponement of Preliminary Determination).

²¹ See Memorandum, "Less than Fair Value Investigation of Fine Denier Polyester Staple Fiber from the Republic of Korea: Notice of Opportunity to Submit Pre-Preliminary Determination Comments," dated November 22, 2017.

²² See 19 CFR 351.204(b)(1).

IV. POSTPONEMENT OF PRELIMINARY DETERMINATION

On October 24, 2017, pursuant to section 733(c)(1)(A) of the Act and the petitioners' request, the Department postponed the preliminary determination by 41 days until December 18, 2017.²³

V. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, TCK requested that the Department postpone the final determination, and that provisional measures be extended from four months to six months.²⁴ In addition, the petitioners also requested that, in the event of a negative preliminary determination, the Department postpone its final determination in accordance with 19 CFR 351.210(b)(c)(i).²⁵ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporter, TCK, accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the accompanying preliminary determination notice in the *Federal Register*.

Also, we are extending the provisional measures from four months to a period not to exceed six months pursuant to section 773(d) of the Act and 19 CFR 351.210(e)(2). Suspension of liquidation described in the accompanying preliminary determination notice will be extended accordingly.

VI. SCOPE OF THE INVESTIGATION

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

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

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

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

²³ See Postponement of Preliminary Determination.

²⁴ See TCK's Letter, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Request to Postpone the Final Determination," dated November 13, 2017.

²⁵ See Petitioners' Letter, "Fine Denier Polyester Staple Fiber from China, India, Korea and Taiwan – Petitioners' Request to Extend the Antidumping Duty Final Determinations," dated November 10, 2017.

of the scope of this investigation is dispositive.

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

VII. SCOPE COMMENTS

In accordance with the *Preamble* to the Department’s regulations,²⁶ in the initiation notices the Department invited interested parties to comment on the scope of the investigations. On July 10, 2017, the Department received timely scope comments from David C. Poole Company Inc. (Poole), Suominen Corporation (Suominen), and Consolidated Fibers, Inc. (Consolidated Fibers).²⁷ On July 10, 2017, the Department extended the deadline for scope comments to July 12, 2017 and rebuttal comments to July 24, 2017.²⁸ On July 11, 2017 the Department received timely scope comments from Reliance Industries, Ltd. (Reliance).²⁹ On July 12, 2017, the Department received timely scope comments from petitioners.³⁰ On July 24, 2017, the Department received timely scope rebuttal comments from petitioners.³¹

Additionally, in accordance with the preamble to the Department’s regulations, we set aside a period of time for interested parties to raise issues regarding product coverage.³² The Department specified that any such comments were due July 10, 2017, which was 20 calendar days from the signature date of the *Initiation Notice*, and any rebuttal comments were due by July 20, 2017.³³ On July 7, 2017, the Department extended the deadline for comments on product characteristics to July 14, 2017 and rebuttal comments to July 24, 2017.³⁴ On July 14, 2017, the petitioners and various other interested parties in this investigation, and the companion AD investigations for the PRC, India, Taiwan, and Vietnam, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be

²⁶ See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁷ See Poole Scope Comments; see also Suominen Scope Comments; see also Consolidated Fibers Scope Comments.

²⁸ See Memorandum, “Extension of deadline to submit comments on the scope of the investigations,” dated July 10, 2017. Because July 22, 2017, is a Saturday, the deadline for filing of rebuttal comments to the scope comments is no later than the close of business on Monday July 24, 2017.

²⁹ See Reliance’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Reliance Industries, Ltd.’s Comments Regarding the Scope of the Investigation,” dated July 11, 2017 (Reliance Scope Comments).

³⁰ See Petitioner’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam—Petitioners’ Scope Comments,” dated July 12, 2017 (petitioners’ Scope Comments).

³¹ See Petitioner’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan—Petitioners’ Rebuttal Comments to the Importers’ Scope Exclusion Requests,” dated July 24, 2017 (Petitioners’ Rebuttal Scope Comments).

³² See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

³³ See *Initiation Notice*.

³⁴ See Memorandum, “Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, Taiwan, and the Socialist Republic of Vietnam: Extension of Deadline to Submit Comments on Product Characteristics,” dated July 7, 2017.

used for reporting purposes.³⁵ On July 24, 2017, interested parties filed rebuttal comments.³⁶ Based on the comments received, the Department issued a memorandum to interested parties which contained the product characteristics for this and the companion AD investigations.³⁷

On August 17, 2017, the petitioners submitted comments concerning the product matching hierarchy released by the Department.³⁸ The petitioners requested that the Department modify the product matching characteristics. Specifically, the petitioners advocated eliminating the first product matching characteristic “Fiber Loft” (or listing it as the last characteristic) and including “tenacity” as a product matching characteristic. The petitioners stated that “fiber loft” (which involves either a conjugate (bi-component) fiber or a single component (non-conjugate), crimped fiber) is only relevant to non-subject coarse denier PSF; as “conjugate” fine denier PSF is not produced in the United States and is not a commercially significant physical characteristic for fine denier PSF. The petitioners noted that non-subject coarse denier polyester fibers are primarily used for fill applications where loft is necessary to provide added filling capacity. However, the Department finds that record evidence shows conjugate fine denier PSF is relevant in the U.S. market. Furthermore, the Department finds that fiber loft is a commercially meaningful product characteristic because conjugate or non-conjugate characteristics deal with the fiber’s fundamental structure.

Regarding tenacity, the petitioners stated that “[s]ubject products may be of low, mid, high or very high tenacity, representing the strength of the fibers”³⁹ and later noted that “[i]f the Department wishes to ensure reporting for different crimping levels, it should require “tenacity” to be reported as a matching variable within the control numbers.”⁴⁰ However, the petitioners did not explain why it is important to consider different crimping levels. Based on the foregoing, the Department has made no changes or modifications to the product matching criteria.

Reliance Industries, Ltd., a respondent in the AD investigation of fine denier PSF from India, and several importers argued to exclude from the scope short-cut, siliconized, certified post-consumer recycled, and/or dope dyed black fine denier PSF and polyester fiber fill. The

³⁵ See Petitioner’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan – Petitioner’s Comments on the Hierarchy of Product Matching Characteristics,” dated July 14, 2017; see Tainan Spinning Co., Ltd.’s Letter, “Comments on Product Characteristics,” dated July 14, 2017.

³⁶ See Petitioner’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea and Taiwan – Petitioners’ Rebuttal Comments to the Importers’ Scope Exclusion Requests,” dated July 24, 2017; see Jiangyin Hailun Chemical Fiber Co., Ltd.’s Letter, “Fine Denier Polyester Staple Fiber from The People’s Republic of China, India, the Republic of Korea, and Taiwan - Rebuttal Product Matching Comments,” dated July 24, 2017.

³⁷ See Memorandum, “Product Characteristics for Use in Sections B, C, and D Questionnaire Responses,” dated August 11, 2017.

³⁸ See Petitioner’s Letter, “Fine Denier Polyester Staple Fiber from India, the People’s Republic of China, the Republic of Korea, and Taiwan - Petitioners’ Request to Modify the Product Matching Criteria,” dated August 17, 2017 (Petitioners’ Product Matching Modification Request).

³⁹ See Petitioner’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan – Petitioner’s Comments on the Hierarchy of Product Matching Characteristics,” dated July 14, 2017.

⁴⁰ See Petitioner’s Letter, “Fine Denier Polyester Staple Fiber from the People’s Republic of China, India, the Republic of Korea, and Taiwan – Petitioners’ Request to Modify the Product Matching Characteristics,” dated August 17, 2017.

petitioners requested that we broaden the scope exclusion for low-melt PSF because, as currently written, it does not exclude certain products within the scope of the ongoing low-melt PSF investigations. The petitioners also opposed interested parties' exclusion requests. For the reasons discussed in the Preliminary Scope Decision Memorandum, we have preliminarily revised the low-melt exclusion to avoid overlap of the scopes in the fine denier and low-melt PSF investigations but we have not revised the scope to exclude any other products.⁴¹

VIII. DISCUSSION OF METHODOLOGY

Application of Adverse Facts Available (AFA)

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁴² The amendments to the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this investigation.⁴³

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁴⁴ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final

⁴¹ See Memorandum, "Fine Denier Polyester Staple Fiber from the People's Republic of China, India, Republic of Korea, and Taiwan, : Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 8, 2017. (Preliminary Scope Decision Memorandum).

⁴² See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). See also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at <https://www.congress.gov/bills/114/congress/house-bill/1295/text/pl>.

⁴³ See *Applicability Notice*, 80 FR at 46794-95.

⁴⁴ See section 776(b)(1)(B) of the Act.

determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.⁴⁵ The SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁶ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁴⁷

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁴⁸ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁴⁹ Further, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁵⁰

Finally, under section 776(d) of the Act, the Department may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.⁵¹ When selecting facts available with an adverse inference, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁵²

In this case, Down Nara and Huvis received our questionnaires. Huvis notified the Department that Huvis would not participate in the investigation.⁵³ Down Nara did not respond to the Department’s AD questionnaire or otherwise participate in the proceeding. As a consequence, we preliminarily find that necessary information is not available on the record and that Down Nara and Huvis withheld information requested by the Department, failed to provide information by the specified deadlines, and significantly impeded the proceeding.⁵⁴ Moreover, because Down Nara and Huvis failed to provide any information, section 782(e) of the Act is inapplicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available for the preliminary dumping margins of both Down Nara and Huvis.

Next, we considered whether it is appropriate to use an adverse inference in applying the facts otherwise available based on a failure of Down Nara and Huvis to act to the best of their abilities

⁴⁵ See also 19 CFR 351.308(c).

⁴⁶ See Statement of Administrative Action (SAA), H.R. Doc. 103-316, 103d Cong., 2d Session, vol 1 (1994) at 870.

⁴⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340; and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

⁴⁸ See also 19 CFR 351.308(d).

⁴⁹ See SAA at 870.

⁵⁰ See section 776(c)(2) of the Act.

⁵¹ See section 776(d)(1)(B) and 776(d)(2) of the Act.

⁵² See section 776(d)(3)(B) of the Act.

⁵³ See Huvis’s Letter, “Fine Denier Polyester Staple Fiber from the Republic of Korea: Notice of Intent Not to Participate,” dated August 10, 2017.

⁵⁴ See sections 776(a)(2)(A), (B), and (C) of the Act.

to comply with a request for information. The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the meaning of failure to act to “the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that “ability” refers to “the quality or state of being able.”⁵⁵ Thus, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum that it is able to do.⁵⁶ The CAFC acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.⁵⁷ Hence, compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.⁵⁸

The failure of Down Nara and Huvis to respond to the Department’s questionnaire or otherwise participate in the proceeding indicates that these companies have not put forth their maximum effort to provide the Department with full and complete answers to the inquiries made in this investigation. Accordingly, the Department preliminarily concludes that Down Nara and Huvis failed to cooperate to the best of their ability to comply with a request for information by the Department, in accordance with section 776(b) of the Act and 19 CFR 351.308(a). Therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.⁵⁹

As noted above, section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the Petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.⁶⁰ In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁶¹ In this investigation, we have selected the petition dumping margin of 45.23 percent as the AFA rate applicable to Down Nara and Huvis.

Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where the Department relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.⁶² 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

⁵⁵ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

⁵⁶ *Id.*

⁵⁷ *Id.* at 1380.

⁵⁸ *Id.* at 1382.

⁵⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁶⁰ See also 19 CFR 351.308(c).

⁶¹ See SAA at 870.

⁶² See also 19 CFR 351.308(d).

previous review under section 751 of the Act concerning the subject merchandise.”⁶³ Thus, because the 45.23 percent AFA rate applied to Down Nara and Huvis is derived from the Petition and, consequently, is based upon secondary information, the Department must corroborate it to the extent practicable.

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁶⁴ The SAA and the Department’s regulations explain that independent sources used to corroborate such information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁶⁵ To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.⁶⁶

We determine that the highest Petition dumping margin of 45.23 percent is reliable because, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.⁶⁷ During our pre-initiation analysis, we also examined the key elements of the export price (EP) and normal value (NV) calculations used in the Petition to derive estimated dumping margins. Specifically, we examined information (to the extent that such information was reasonably available) from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates elements of the EP and NV calculations used in the Petition to derive estimated dumping margins.

As discussed in detail in the Initiation Checklist, we considered the EP and NV calculations in the Petition to be reliable.⁶⁸ Because we obtained no other information that would make us question the validity of the information supporting the U.S. price or NV calculations provided in the Petition, we preliminarily consider the EP and NV calculations from the Petition, and thus the dumping margins in the Petition, to be reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.⁶⁹

To corroborate the 45.23 percent AFA rate that we selected, we compared the 45.23 percent margin to the transaction-specific dumping margins that we calculated for TCK. We found that

⁶³ See SAA at 870; *see also* 19 CFR 351.308(c)(1).

⁶⁴ See SAA at 870; *see also* 19 CFR 351.308(d).

⁶⁵ See SAA at 870; *see also* 19 CFR 351.308(d).

⁶⁶ See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 82 FR 55574 (Nov. 22, 2017) and accompanying Preliminary Decision Memorandum at “Corroboration of the AFA Rate.”

⁶⁷ See AD Investigation Initiation Checklist, “Fine Denier Polyester Staple Fiber from the Republic of Korea,” dated June 20, 2017 (*Initiation Checklist*).

⁶⁸ See Initiation Checklist.

⁶⁹ See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (CIT 1999).

the dumping margin of 45.23 percent is not significantly higher than the highest transaction-specific dumping margin calculated for TCK, and therefore is relevant and has probative value.⁷⁰ Accordingly, we find that the rate of 45.23 percent is corroborated within the meaning of section 776(c) of the Act.

All-Others Rate

Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.” However, when the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act permits the Department to “use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.” Because in this investigation we assigned a dumping margin based entirely on AFA to two non-responsive companies, Down Nara and Huvis, and calculated a company-specific dumping margin for the only cooperative mandatory respondent, TCK, that is zero percent pursuant to section 735(c)(5)(B) of the Act and according to the Department’s practice, we preliminarily determine that it is reasonable to calculate the all-others rate based on a simple average of the zero percent dumping margin and the two dumping margins based totally on AFA.⁷¹

Comparisons to Normal Value

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

A) Determination of the Comparison Method

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

In recent investigations, the Department has applied a “differential pricing” analysis for

⁷⁰ See Memorandum, “Analysis Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea Inc.” (Analysis Memorandum), dated concurrently with this memorandum.

⁷¹ See *Certain Uncoated Paper from Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 51771, 51772 (August 26, 2015); unchanged in *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁷² The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average comparison method in calculating weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that

⁷² See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 3 and *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

pass the Cohen's *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen's *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average comparison method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average comparison method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average comparison method cannot account for differences such as those observed in this analysis and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average comparison method and the appropriate alternative comparison method where both rates are above the *de minimis* threshold; or (2) the resulting weighted-average dumping margin between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

B) *Results of the Differential Pricing Analysis*

For TCK, based on the results of the differential pricing analysis, the Department finds that 89.14 percent of the value of U.S. sales pass the Cohen's *d* test which confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.⁷³ Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for TCK.

IX. DATE OF SALE

⁷³ See Analysis Memorandum.

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁷⁴ The material terms of sale normally include the price, quantity, delivery terms, and payment terms.⁷⁵ Finally, the Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.⁷⁶

TCK reported shipment date as the date of sale for its home market sales because it issued the invoice after shipment. We preliminarily followed the Department's long-standing practice of basing the date of sale for all home market sales on the earlier of the invoice date or the shipment date.⁷⁷

TCK also reported the date of shipment from the factory as the date of sale for its U.S. sales. TCK explained that in some cases, the terms of sale could change, and an invoice may be issued after shipment from the factory. The invoice could also be issued before shipment from the factory. As with TCK's home market sales, we used the earlier of factory shipment date or date of the invoice as the date of sale for purposes of this preliminary determination, in accordance with our practice.⁷⁸

The petitioners contend that TCK withheld information from the Department by failing to disclose the fact that it sold fine denier PSF in the home and U.S. markets using long term contracts. The petitioners base their allegation on certain price comparisons in both markets over the POI. As a result, the petitioners argue, the Department should apply total adverse facts available, or at least partial adverse facts available, to TCK because the nature of TCK's selling arrangements and the lack of disclosure regarding the details of these arrangements have precluded the Department from making a determination of the appropriate date of sale for the company's home market sales of the foreign like product.⁷⁹

⁷⁴ See 19 CFR 351.401(i); see also *Allied Tube*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁷⁵ See, e.g., *Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Issue 2 "Date of Sale," Comment 1.

⁷⁶ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

⁷⁷ See, e.g., *Shrimp from Thailand* at Comment 11 and *Steel Beams from Germany* at Comment 2.

⁷⁸ *Id.*

⁷⁹ See Petitioner's Letter, "Fine Denier from the Republic of Korea – Petitioner's Comments on Sections A-C Responses of Toray Chemical in Advance of the Preliminary Determination," dated November 20, 2017.

In response to the petitioners' allegation, TCK stated that the petitioners pointed to no actual evidence contradicting TCK's statement regarding the existence of written agreements. TCK stated that the petitioners conducted a selective review of a portion of TCK's sales databases, ignored record evidence corroborating TCK's statements and reported pricing, failed to show that the alleged long-term sales arrangements would meet the requirements for determining date of sale, and did not point to any evidence that other material terms of sale were also established by long-term sales arrangements besides price. Consequently, TCK asks that the Department use TCK's submitted data in the preliminary determination.⁸⁰

We have preliminarily determined not to apply total or partial AFA to TCK for the following reasons. First, TCK specifically stated that it did not use long term sales contracts during the POI.⁸¹ Second, thus far, we found no evidence that TCK sold fine denier PSF pursuant to long term sales contracts during the POI. We do not find the petitioners' price analysis sufficient to reach a conclusion that TCK used long term contracts during the POI. While TCK does issue purchase orders to its U.S. market customers, TCK provided evidence that the terms of sale can change after the purchase order, demonstrating that a revised purchased order was issued before issuance of the commercial invoice.⁸² With regard to HM market sales, TCK explained that it receives the orders via telephone or fax and that the terms of sale such as price, quantity and delivery dates are not finalized until issuance of the tax invoice at the end of the month.⁸³ All of the foreign like product sold to home customers during the POI was shipped to the customers on or before the invoice date.⁸⁴ Therefore, as noted above, we based the date of sale on the earlier of factory shipment date or date of the invoice.

X. U.S. PRICE

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." In accordance with section 772(a) of the Act, we used the EP methodology for TCK's sales because TCK sold the merchandise under consideration directly to the first unaffiliated purchaser in the United States before the date of importation.⁸⁵

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

⁸⁰ See TCK's Letter, "Fine Denier Polyester Staple Fiber from the Republic of Korea: Toray Chemical Korea's Pre-Preliminary Determination Comments and Response to Petitioners' Comments on TCK's Sections A-C Responses," dated November 28, 2017.

⁸¹ See TCK AQR at p. 23 and TCK SAQR at p. A-5, question 12.

⁸² See TCK SAQR at p. A-5, question 11 and Exhibit A-6.

⁸³ See TCK AQR at p. 23.

⁸⁴ *Id.*

⁸⁵ See TCK September 18, 2017 CQR.

TCK reported that it received a duty drawback.⁸⁶ Section 772(c)(1)(B) of the Act states that the price used to establish EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.” In determining whether a respondent is entitled to duty drawback we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for this adjustment to be made to U.S. prices.⁸⁷ The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation). The second prong of the test is that the company must demonstrate that there were sufficient imports of materials to account for the duty drawback or exemption granted for the export of the manufactured product.⁸⁸

TCK provided the regulation governing duty drawback in Korea, a detailed list of the duty drawback refunds received by TCK for all of its U.S. sales of fine denier PSF during the POI, and detailed calculations of the refunds of duties requested from the Korean government based on the amount of duties paid on the raw materials which were consumed in the corresponding month in the production of the exported PSF.⁸⁹ Also TCK identified the raw materials on which it paid an import duty and provided worksheets (1) detailing how it calculated the duty drawback on a transaction-specific basis, (2) linking the raw materials to production of the merchandise under consideration, and (3) demonstrating that it imported sufficient volumes of raw materials to account for the duty drawback received on U.S. sales.⁹⁰ Based on the above, we preliminarily determine that TCK met the two prong test. Because TCK demonstrated that it meets the two-prong test, we preliminarily made a duty drawback adjustment to U.S. price pursuant to section 772(c)(1)(B) of the Act.

We will make an upward adjustment to U.S. price based on the amount of the duty imposed on the input and rebated or not collected on the export of the subject merchandise by properly allocating the amount rebated or not collected to all production for the relevant period based on the cost of inputs during the POI.⁹¹ This ensures that the amount added to both sides of the dumping calculations is equal, *i.e.*, duty neutral.

Thus, based on the facts of this investigation, the Department finds that the import duty costs, based on the consumption of imported inputs during the POI, properly accounts for the amount of duties imposed, as required by section 772(c)(1)(B) of the Act. We have added this per unit amount to the U.S. price.⁹²

⁸⁶ See TCK September 18, 2017 CQR at Exhibit SC-7 and TCK’s November 6, 2017 Supplemental Sections A-C Questionnaire Response (TCK SACQR) at S-24 - S-27.

⁸⁷ See *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*).

⁸⁸ *Id.*; Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

⁸⁹ See TCK SACQR and Exhibits SC-7-SC-9.

⁹⁰ *Id.*

⁹¹ See *Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 63 (January 4, 2016), and accompanying Preliminary Decision Memorandum at 15.

⁹² See Analysis Memorandum.

XI. NORMAL VALUE

A) *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

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

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

During the POI, TCK made sales of the foreign-like product in the home market to an affiliated party, as defined in section 771(33)(F) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, where appropriate, we compared the unit prices of sales to affiliated and unaffiliated customers net of movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length.⁹³ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.⁹⁴

C) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales.⁹⁵

Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁹⁶ Substantial differences in selling activities are a necessary, but not sufficient,

⁹³ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

⁹⁴ See section 771(15) of the Act and 19 CFR 351.102(b)(35).

⁹⁵ See also section 773(a)(7)(A) of the Act.

⁹⁶ See 19 CFR 351.412(c)(2).

condition for determining that there is a difference in the stages of marketing.⁹⁷ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for comparison market sales, *i.e.*, NV based on either home market or third country prices, we consider the starting prices before any adjustments.⁹⁸ For EP sales, the LOT is based on the starting price, which is usually the price from the exporter to the importer.⁹⁹

To determine if TCK's home-market sales are made at a different LOT than EP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between TCK and the unaffiliated customers.¹⁰⁰ If home-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home-market sales made at the LOT of the export transaction, then we make a LOT adjustment to NV. Namely, when the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market and where available data make it possible, will make an LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412.¹⁰¹

TCK reported two channels of distribution in the home market: (1) sales to unaffiliated end-users and distributors (HM Channel 1) and (2) sales to the affiliated end-users for the production of a downstream product (HM Channel 2).¹⁰² In determining whether separate LOTs exist in the home market, we compared the selling functions performed by TCK in each of the home market channels of distribution. For purposes of examining the different selling activities reported by TCK for sales made through each home market channel of distribution, we grouped the selling activities into three selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; and (3) inventory maintenance.

We compared the selling activities TCK performed in each channel, and found that there is no significant difference between the selling functions performed between the channels.¹⁰³ As a result, we found that TCK performed the same selling functions for both home market distribution channels. Accordingly, we determined that all home market sales constitute one LOT.

⁹⁷ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

⁹⁸ See 19 CFR 351.412(c)(1)(iii).

⁹⁹ See 19 CFR 351.412(c)(1)(i).

¹⁰⁰ See 19 CFR 351.412(c)(2).

¹⁰¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-61733 (November 19, 1997).

¹⁰² See AQR at 11 and Exhibit A-8.

¹⁰³ *Id.*

TCK reported the following two channels of distribution in the U.S. market: (1) sales directly to unaffiliated end-users and distributors in the United States (U.S. Channel 1) and (2) sales to unaffiliated Korean trading companies who export merchandise to the United States and other markets (U.S. Channel 2).¹⁰⁴ In determining whether separate LOTs exist in the U.S. market, we compared the selling functions performed by TCK in each of the U.S. market channels of distribution. For purposes of examining the different selling activities reported by TCK for sales made through each U.S. market channel of distribution, we grouped the selling activities into three selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; and (3) inventory maintenance.

We compared the selling activities TCK performed in each channel, and found that there is no significant difference between the selling functions performed in the two channels.¹⁰⁵ As a result, we found that TCK performed the same selling functions for both U.S. market distribution channels. Accordingly, we determined that all U.S. market sales constitute one LOT.

Next, we compared the selling activities in the one LOT in the home market to the selling activities in the one LOT in the U.S. The selling function chart submitted by TCK in Exhibit A-9 of its August 30, 2017, Section A questionnaire response, shows that for each of the following items, TCK performed corresponding selling activities at the same or a similar level of intensity in both the U.S. and comparison markets: (1) sales and marketing; (2) freight and delivery services; and (3) inventory maintenance.¹⁰⁶

Although in certain instances the level of intensity for sales and marketing services differed between the U.S. and comparison markets, that difference alone does not mean these different levels of intensity constitute different marketing stages given that (1) all of the listed selling activities were performed in the U.S. and comparison markets, and (2) in most cases, the respondent performed corresponding selling activities at the same or a similar level of intensity in the U.S. and comparison markets. Thus, while there appears to be a greater focus in the home market on “sales and marketing services,” based on the totality of the information reported with respect to selling activities and the intensity levels at which these activities were performed, we do not find that TCK sold foreign like product and subject merchandise at significantly different marketing stages. Therefore, we preliminarily find that, during the POI, TCK sold the foreign like product and subject merchandise at the same LOT. Accordingly, all comparisons of EP to NV are at the same LOT, and thus a LOT adjustment pursuant to section 773(a)(7)(A) of the Act, is not warranted.¹⁰⁷

D) Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the cost of production (COP), we based NV on comparison market prices. We calculated NV based on packed, delivered or ex-works prices to unaffiliated customers in Korea. We made a deduction from the starting price for movement expenses, including inland freight and inland insurance under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See AQR at Exhibit A-9.

¹⁰⁷ See Preamble, 62 FR at 27372 (“{t}he Department will not make a CEP offset where the Department bases normal value on home market sales at the same LOT as the CEP”).

packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and for circumstances of sale (imputed credit expenses and other selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sales with home market sales of merchandise similar to that sold in the U.S. market, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.¹⁰⁸

E) *Calculation of NV Based on Constructed Value (CV)*

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of TCK's material and fabrication costs, selling general, and administrative (SG&A) expenses, profit and U.S. packing costs, as adjusted. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by TCK in connection with the production and sale of the foreign like product at the most similar LOT as the U.S. sale, as discussed above, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

F) *Cost of Production (COP) Analysis*

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A) and interest expenses. We examined TCK's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual average costs based on the reported data except as follows.

- We increased TCK's reported total cost of manufacturing for inputs purchased from affiliates in accordance with the transactions disregarded rule at section 773(f)(2) of the Act; and
- We increased TCK's reported total cost of manufacturing to include the unreconciled difference between the cost of manufacturing from the normal books and records and the reported cost of manufacturing.

For additional details, see Memorandum to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Toray Chemical Korea, Inc.," dated December 18, 2017.

2. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we

¹⁰⁸ See 19 CFR 351.411(b).

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

We found that, for certain products, more than 20 percent of TCK's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

XII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.

XIII. VERIFICATION

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

XIV. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.



Agree

Disagree

12/18/2017

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

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