

DATE: December 3, 2007

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Sixth Antidumping Duty  
Administrative Review of Certain Polyester Staple Fiber from  
Taiwan

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## **SUMMARY**

We have analyzed the case and rebuttal briefs of interested parties in the sixth administrative review of certain polyester staple fiber from Taiwan. As a result of our analysis, we have made changes to the preliminary results. We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is a complete list of the issues in this review for which we received comments and rebuttals from interested parties:

### Comments

Comment 1: Application of Total Adverse Facts Available  
Comment 2: Fluctuating Monthly Costs

## **BACKGROUND**

On June 6, 2007, the Department of Commerce (“the Department”) published in the Federal Register the preliminary results of the sixth administrative review of the antidumping duty order

on certain polyester staple fiber (“PSF”) from Taiwan.<sup>1</sup> The period of review (“POR”) is May 1, 2005, through April 30, 2006. We invited interested parties to comment on the preliminary results.

On October 24, 2007, we received case briefs from Wellman, Inc. and Invista, S.a.r.l. (collectively, “the petitioners”), and Far Eastern Textile Limited (“FET” or “respondent”). On November 6, 2007, we received rebuttal briefs from the FET and Fibertex Corporation (“Fibertex” or “importer”).

## **DISCUSSION OF ISSUES**

### **Comment 1: Application of Total Adverse Facts Available**

*Petitioners’ Argument:* The petitioners urge the Department to reverse the preliminary results by rejecting FET’s responses/datasets in their entirety and applying total adverse facts available (“AFA”) for the final results. The petitioners take this position because they believe that FET (1) withheld information requested by the Department, and (2) significantly impeded the investigation by failing to respond to the Department’s September 11, 2007, supplemental questionnaire and September 26, 2007, second chance letter. See section 776(a) of the Act.

According to the petitioners, FET’s October 9, 2007, submission was non-responsive because it provided only legal argument that the 2005-2006 European Commission (“EC”) antidumping proceeding is not relevant to the instant proceeding. The petitioners also argue that FET did not provide any evidentiary support (namely, the EC home market sales database) in support of its statement that the EC antidumping proceeding generally involved different products. The petitioners state that, given the possibility that the datasets and supporting documents are fictitious and the Department’s duty to avoid fraud in its proceedings, the Department must reject FET’s responses in their entirety and apply total AFA. The petitioners insist that if FET believed that the sales transactions found by the EC to be fictitious did not overlap with this case, then FET should have provided its entire EC home market sales database and responses, so that Commerce could compare these data with the responses provided in the Department’s proceeding.

The petitioners disagree with FET’s argument that the Department’s questions in the September 11, 2007, supplemental questionnaire deny due process to FET by requiring it to answer fact-laden, substantive, and detailed questions involving the extraneous, unconfirmed EC antidumping proceeding. The petitioners also dispute FET’s assertion that by answering the September 11, 2007, supplemental questionnaire, petitioners’ counsel would have access to business proprietary information in the Department’s antidumping proceeding that was denied to petitioners’ counsel in the EC antidumping proceeding. The petitioners argue that FET has due

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<sup>1</sup> See Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 31283 (June 6, 2007).

process through recourse to the Court of International Trade (CIT) if it is unhappy with the Department's results in this administrative review. The petitioners also argue that the Department's APO process protects FET.

Further, as another basis for total AFA, the petitioners state that the EC found that FET's home market invoices and delivery notes did not agree with FET's shipping register. The petitioners argue that the delivery notes provided in Sales Verification Exhibit 16 breach the chronological delivery note system required by accounting. See Verification of the Sales Response of Far Eastern Textile Limited in the 2005-2006 Antidumping Duty Administrative Review of Polyester Staple Fiber from Taiwan, dated May 31, 2007. Petitioners therefore conclude that the Department possesses substantial evidence on the record that indicates that FET has relied on the same fraudulent system in the Department's administrative review, as in the EC antidumping proceeding.

The petitioners further argue that the Department has previously rejected ostensibly "verified" information in favor of AFA where submitted data was inconsistent with other record data. The petitioners cite two cases in support of this proposition: Gerber Food (Yunnan) Co. v. United States, Slip Op. 07-85 (CIT 2007) ("Gerber"), and Shanghai Taoen Intern. Trading Co. Ltd. v. United States, 360 F. Supp. 2d 1339, 1345 (CIT 2005) ("Shanghai"). Thus, consistent with the holding of these two cases, the petitioners argue in this proceeding that despite conducting an extensive two-week sales and cost verification in which the Department verified FET's sales and cost responses, the Department must apply total AFA for the reasons discussed above.

*FET's Argument:* FET argues that Commerce should affirm its preliminary results and not apply total AFA. FET contends that it answered all of the Department's questions in its October 9, 2007, supplemental questionnaire response. FET refutes the petitioners' claim that FET only provided legal argument in its October 9, 2007, supplemental questionnaire response. Therefore, FET argues that adverse inferences are impermissible. Moreover, FET states that, contrary to the petitioners' assertion, the Department never asked for the EC database in its September 11, 2007, supplemental questionnaire and, therefore, FET should not be penalized for not providing it. FET cites to Queen's Flowers de Colombia v. United States, 21 CIT 968, 981 F. Supp 617, 628-629 (CIT August 25, 1997), in support of this proposition.

Further, FET argues that possession by the Department of FET's home market sales database would serve no practical purpose in the Department's administrative review. According to FET, the reason for this is because the Department has no means available to verify FET's sales to the EU. FET posits that the Department should base its determination on the sales files it has received and verified, not the EC's databases as the EC has refused to share its files with the Department or to share its thinking with the Department. FET argues that the EC antidumping proceeding is not relevant to this review because the EC's proceeding involved different products. FET argues that the EC treats certain information as confidential, such as not linking a particular company to particular allegations in the EC preliminary results notice.

FET argues that it is impermissible to fault FET for a decision in the EC antidumping proceeding and cites Matsushita Electric Industrial Co. v. United States, 750 F. 2d 927, 932 (Fed. Cir. 1984); Roller Chain from Japan, 61 Fed. Reg. 64322, 64326 (Comment 13) (1997); NSK Ltd. v. United States, 788 F. Supp. 1228, 1229 (CIT 1992); and Extruded Rubber Thread from Malaysia, 62 Fed. Reg. 33588, 33590 and 33592 (Comments 4 and 10) (1997) in support of its argument.

FET argues that the Department verified FET's sales and costs, including FET's delivery notes, and did not find any discrepancies. FET argues that its delivery note system conforms to accounting and auditing protocols, and cites its July 30, 2007, submission where it provides extensive discussion on this point. According to FET, the petitioners never rebutted this argument. Moreover, FET argues that the petitioners' cited accounting authority does not support their own argument. In addition, FET argues that it provided a timely response to the petitioners' claims as to verification, but that the petitioners' verification arguments are untimely.

Additionally, FET argues that the petitioners' cited cases supporting the use of AFA involve factual circumstances wherein the Department found in the review or investigation (at verification) falsified documents on its own. As no such documents were found in this review, and the Department verified FET's questionnaire responses as accurate, FET argues that the petitioners' own cases do not support the application of AFA. FET cites U.S. Steel Group v. United States, 177 F. Supp. 1325, 1329 (CIT 2001), as an example in which Commerce found no evidence to raise a suspicion of fraud.

Further, FET argues that confidentiality interests support FET's concerns about answering questions about the EC antidumping proceeding. Specifically, FET states that it is wrong for the petitioners to seek to have FET breach the confidentiality determinations the EC made in its antidumping proceeding, expressing concern that the petitioners would seek to publicly misuse information obtained in the Department's antidumping proceeding, irrespective of any APO in place.

*Fibertex's Rebuttal:* Similar to FET, Fibertex argues that Commerce should affirm its preliminary results and not apply total AFA. According to Fibertex, FET has not significantly impeded the Department's administrative review, nor has FET withheld documents from the Department. Fibertex further argues that FET's response in its October 9, 2007, supplemental questionnaire response was responsive given the constraints imposed by the fact that the EC did not issue public versions of its documents, such as the verification report. Fibertex posits that if the Department was not satisfied with FET's response to the October 9, 2007, or if there were deficiencies in that response, the Department must identify the deficiencies and afford FET an opportunity to correct them. Fibertex argues that it would be highly inappropriate for Commerce to use the "preliminary" finding of the EC for the Department's final determination, when the Department has actually verified FET's sales and costs and did not uncover fraud.

According to Fibertex, the petitioners' allegations of fraud in the reporting of home market sales cannot be squared with the record, which otherwise suggests that for macroscopic reasons,

dumping in the United States during the period of alleged home market tampering would have been extremely unlikely. Fibertex argues that such fraud by FET defies common sense considering the effect of Hurricane Katrina (2005) on PSF pricing. Thus, Fibertex argues that natural market conditions would not cause FET to engage in fraud to eliminate its dumping margin because of higher U.S. market prices due to Hurricane Katrina.

Further, Fibertex argues that Commerce cannot satisfy the petitioners' claims without seriously violating Fibertex's due process rights. According to Fibertex, the Department cannot supplant FET's substantial questionnaire responses, successful verification, and the Department's preliminary results with a judgment as to the adequacy of the short September 11, 2007, supplemental questionnaire, which was due just days before final briefing in this administrative review. If the Department does, then Fibertex argues that this would not have afforded either Fibertex or FET with sufficient notice of the Department's intent in this review.

*Department's Position:* The Department has determined that application of total AFA to FET for the final results is unwarranted for the reasons discussed below. As an initial matter, we have detailed the history of this issue to date, to put the interested parties' arguments, above, into context:

- In January 2007, the Department first examined the issue of potential fraud by FET. Specifically, on January 5, 2007, the petitioners submitted a letter along with the EC's 2005-2006 antidumping duty preliminary results, in which FET received a facts available margin of 29.5 percent.
- On April 4, 2007, prior to the sales and cost verifications, the petitioners met with Department officials to be sure that the verification teams would take into consideration the petitioners' January 5, 2007 letter at the verification of FET in Taiwan. See Memorandum from Devta Ohri to the File: Ex-Parte Meeting with Counsel to Wellman Inc. and Invista S.a.r.l., dated April 5, 2007.
- Cognizant of the petitioners' January 5, 2007 letter, on April 9-13, 2007, and April 16-20, 2007, the Department conducted cost and sales verifications, respectively, of FET in Taiwan.
- On May 31, 2007, the Department issued its preliminary results, with FET getting a 0.37 percent *de minimis* dumping margin.
- On June 4, 2007, following the preliminary results, the petitioners requested that the Department: (1) ensure that the fraudulent documents presented by FET to the EC were not relied upon by the Department either at the sales or cost verifications, (2) identify and categorize the specific fraud schemes implemented by FET in the EC's antidumping proceeding, (3) schedule a second verification of FET, and (4) direct FET to provide all documents submitted to the EC dumping authorities in the EC's 2005-2006 antidumping duty proceeding to the Department. See petitioners' June 4, 2007 letter at 3.
- On June 13, 2007, the petitioners met with Department officials to discuss the Department's verification reports. See Memorandum from Devta Ohri to the File: Ex-Parte Meeting with Counsel to Wellman Inc. and Invista S.a.r.l., dated June 14, 2007.

- On June 14, 2007, FET submitted a rebuttal to petitioners' allegations contained in the petitioners' June 4, 2007 letter.
- On June 19, 2007, the EC published a notice in the Official Journal of the European Union which stated that the EC had decided that, under its anti-commerce provision, the imposition of the facts available rate of 29.5 percent to FET would not be in the best interest of the Community.
- On July 13, 2007, the petitioners responded to FET's June 14, 2007 rebuttal.
- On July 30, 2007, FET responded to the petitioners' July 13, 2007 submission.
- On August 13, 2007, the Department spoke on the telephone with Mr. Wolfgang Mueller, head of the Antidumping Duty Unit for the EC. Mr. Mueller stated that due to EC laws regarding the use of submitted information by parties in the EC's antidumping proceedings, he could only provide Department officials with information about FET which is in the public domain and is publicly available to any party not participating in the EC's proceeding. Thus, Mr. Mueller was unable to answer any questions which would divulge business proprietary information. See Memorandum from Brandon Farlander to the File: Ex-Parte Phone Call with Mr. Wolfgang Mueller, head of the Antidumping Duty Unit for the European Commission, dated September 24, 2007.
- On September 11, 2007, the Department issued a supplemental questionnaire to FET in which the Department asked FET questions relating to the EC's antidumping duty proceeding.
- On September 21, 2007, FET responded to the Department's September 11, 2007 supplemental questionnaire and indicated that it felt that the Department's questions were impermissible and irrelevant. FET stated that the EC antidumping proceeding is a different proceeding in a different jurisdiction, involving different FET individuals. FET said that the EC antidumping proceeding was ultimately terminated without final resolution on the merits and exercise of any appeal rights. FET posited that Department and U.S. court precedent state that events in other reviews or investigations are not relevant in an instant U.S. antidumping review. Further, FET expressed concern that the petitioners might use FET's answers out of context against FET in other forums, official and market.
- On September 26, 2007, the Department issued a letter to FET giving it a second chance to respond to the Department's September 11, 2007 supplemental questionnaire.
- On October 9, 2007, FET responded to the Department's September 11, 2007 supplemental questionnaire by identifying which paragraphs it thinks describe FET in the EC's December 22, 2006 preliminary report and how FET's U.S. and EC PSF proceedings are different, with very different export and home market sales databases.

In the EC's antidumping proceeding, FET was preliminarily found to have provided false and misleading information to the EC verifiers by providing forged delivery notes and invoices for certain domestic transactions. See Commission Regulation (EC) No 2005/2006 of 22 December 2006 imposing provisional anti-dumping duties on imports of synthetic staple fibers of polyesters (PSF) originating in Malaysia and Taiwan at ¶ 58 ("EC Preliminary Report"). The EC concluded that these forged documents were part of FET's integrated system and consequently, that any

document in FET's system could be manipulated and would be, therefore, unreliable. See EC Preliminary Report at ¶ 58.

The Department was cognizant of the EC Preliminary Report during the course of its antidumping proceeding, including the sales and cost verifications in April 2007. In fact, at verification, the Department performed additional tests of FET's data to investigate potential fraud in the Department's proceeding. Specifically, the sales verification team did the following:

- We tested the quantities and values reported for a sample of FET's delivery notes and Government Uniform Invoices ("GUI") from four months of the POR to FET's reported home market sales database and found that the quantity and value of subject merchandise was properly reported/included, and that non-subject merchandise was properly excluded. See Verification of the Sales Response of Far Eastern Textile Limited in the 2005-2006 Antidumping Duty Administrative Review of Polyester Staple Fiber from Taiwan, dated May 31, 2007 at Sales Verification Exhibit 16, and pages 20-22 ("Sales Verification Report").
- We requested two shipment reports from FET's factory to compare the quantities reported in these shipment reports to the quantities reported by FET in its reported sales databases. In reviewing the two shipment reports, we confirmed that sales of non-subject merchandise were properly excluded from the sales databases. We also tied the quantities of all subject merchandise sales from the shipment reports to FET's sales databases. For one of the sales of subject merchandise, we tied the quantity and the delivery note number from the shipment report (see Sales Verification Exhibit 17) to FET's delivery note at page 7 of Sales Verification Exhibit 16. Then, we linked the quantity and delivery note number from the delivery note to FET's GUI at page 8 of Sales Verification Exhibit 16. We then tied the quantity and gross unit price in the GUI to FET's home market sales database. See Sales Verification Exhibit 16 and 17 and Sales Verification Report at 22.
- We tied FET's reported quantity and value for the U.S. market and the home market to FET's audited financial statements. Of our 37-page sales verification report, 10 pages were dedicated to the Department's numerous tests of FET's reported sales databases in comparison with both source documents and FET's accounting system. In particular, the sales verification team, with the assistance of FET's computer programmers, recreated FET's home market and U.S. sales databases from FET's live SAP accounting system. See Sales Verification Report at 23 (Completeness Test 3). From this newly created database, the team conducted numerous tests to confirm that FET had accurately reported its U.S. and home market sales.
- For each of the three home market sales traces, including two surprise sales traces, we tied the quantity and product code from the delivery note to the GUI and to FET's sales database. We also tied the gross unit price and invoice date from the GUI to FET's reported sales database. See Sales Verification Exhibit 10, 13, and 14.

These extensive testing procedures yielded no discrepancies.

The Department further finds that FET's explanation of the inconsistencies in the sequence of its delivery notes provided in its June 14, 2007, and July 30, 2007, submissions is reasonable. See FET's (business proprietary) explanation of its delivery note sequencing in its June 14, 2007, submission at 2-5; and July 30, 2007, submission at 1-4. Although petitioners point to an accounting authority, the cited references do not mention delivery note sequencing standards. Thus, the petitioners have not identified any record evidence of fraud based on FET's data submitted in this case. In summary, despite additional checks, there is no evidence of fraud or any other indication that undermines the integrity of FET's response.

With regard to FET's October 9, 2007, supplemental questionnaire response, we determine that it was responsive to the Department's September 11, 2007, questionnaire, and that FET has not withheld information requested by the Department. In the September 11, 2007, questionnaire, the Department asked FET to answer the following two questions:

1. It appears that the EC Preliminary Report discusses FET either in paragraphs 51-54 or paragraphs 55-57, as the two companies described (one of which is FET) received a facts available rate of 29.5%. See EC Preliminary Report at ¶ 67. Please confirm whether paragraphs 51-54 or paragraphs 55-57 pertain to FET, and provide evidence to support your response.
2. Please respond to each of the findings made by the EC in the relevant paragraphs (i.e., paragraphs 51-54 or paragraphs 55-57). Please support your factual statements with evidence for the record of this case.

FET's response was adequate. First, FET responded to the first of the Department's two questions by identifying itself and proving reasons for this identification. Second, FET provided an adequate explanation in response to the specific EC allegations relating to the purported fraud. While FET did not submit its home market sales database to the EC for the Department's review, the Department did not specifically ask FET to submit any specific sales database. Therefore, the Department does not find that FET: (1) withheld information requested by the Department, or (2) significantly impeded the investigation. See section 776(a) of the Act.

We disagree with the petitioners that total AFA is warranted. As mentioned above, the Department at verification specifically looked for fraud by examining FET's delivery notes and shipment reports without uncovering any evidence of fraud. See Sales Verification Report. Also, the Department tied FET's reported quantity and value of sales to FET's audited financial statements without discrepancy.

In short, the petitioners base their arguments against FET on the EC's proceeding, the details of which are not on the record in the Department's administrative review. However, in this case, the Department specifically attempted to obtain details of the EC's antidumping proceeding directly from Mr. Wolfgang Mueller. As noted above, Mr. Mueller was unable to provide certain



answers because these answers would divulge proprietary information. Thus, while there may be evidence that FET provided fraudulent documents to the EC, there is no evidence of such behavior in the Department's proceeding. Accordingly, the cases cited by the petitioners are distinguishable because they involved the situation where the Department found evidence of fraud.

For the reasons noted above, the Department finds that FET did not withhold information requested by the Department, or significantly impede the investigation by failing to respond to the Department's September 11, 2007, supplemental questionnaire and September 26, 2007 letter. See section 776(a) of the Act, which lists each basis to make a determination for facts available. Nor does the Department determine that the delivery notes examined by the Department at Sales Verification Exhibit 16 constitute evidence of a fraudulent scheme. Thus, the Department has no basis to apply total AFA to FET in the final results. The Department will, however, continue to examine FET rigorously in the 2006-2007 administrative review.

## **Comment 2: Fluctuating Monthly Costs**

*FET's Argument:* For the preliminary results, the Department weight-averaged the direct material costs of products of the same fiber loft, specialty fiber, and fiber type to reflect an average material cost for the POR. FET argues that the Department should not make this adjustment for the final results and should instead rely on FET's reported costs.

FET argues that it is the Department's long-established policy to use a company's actual costs for purposes of determining normal value and in support of this position cites Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538, (August 4, 2003) (Comment 3), and Hynix Semiconductor v. United States, 424 F.3d 1363, 1369 (Fed. Cir. 2005).

FET argues that the Department failed to explain why significant fluctuations in the cost of direct materials, due solely to the timing of production, distort the dumping analysis. FET argues that its reported annual average costs were based on the product-specific monthly costs, using the prevailing raw material cost of each month. FET argues that under this method, the reported POR costs are nothing but the natural outgrowth of the monthly costs and the reported POR average is a mathematical exercise.

FET further argues that when raw material prices fluctuate from month-to-month, it is natural that the costs of the finished products and selling prices vary accordingly. Thus, FET indicates that differences in unit costs among control numbers is not a distortion when the costs of raw materials used to produce these control numbers fluctuate between months. FET concludes that there is no logical reason why POR average costs of control numbers must stay proportionate to one another when the key raw material costs fluctuate from month-to-month.

FET also argues that in calculating an average cost of materials for ethylene glycol ("EG") and purified terephthalic acid ("PTA"), the Department's weight averaging adjustment from the

preliminary results averaged out differences relating to the input ratios of PTA and EG, and of input quantities of recycled chips. FET states that these differences have been eliminated by this adjustment, even when the differences can be shown to be present in costs calculated in the same month. In addition, FET argues that differences in finishing are averaged out by this adjustment, because the direct material costs related to finishing are also reported in the direct material costs field. Thus, the calculation eliminates cost differences due to legitimate differences in finish or coating, according to FET.

Finally, FET argues that the largest volume control number sold in the U.S. was produced in 10 of the 12 months of the POR with consistent production volumes. According to FET, the relatively high frequency of production of this control number and the stability in production levels throughout the POR greatly reduce the effect of any distortion in the dumping analysis.

*Petitioners' Rebuttal:* Petitioners did not comment on this issue.

*Department's Position:* For the preliminary results, the Department weight-averaged FET's direct material costs. However, for the final results, we have decided not to weight-average FET's direct material costs and, instead, we are relying on the costs calculated using FET's normal books and records. Despite this change from the preliminary results, we disagree with FET's assertion that if a company calculates monthly average costs as part of its records, the Department must accept the mathematical weighted-average cost for the POR that results from those records. Moreover, we disagree with FET's assertion that, "There is no logic to say that POR-average costs of control numbers must stay proportionate to one another when the key raw material costs fluctuate." FET's October 24, 2007, case brief at 3. For product costs to be of any value, they must provide some understanding of the relative costs of producing products of different physical characteristics.

The annual weight-averaging of monthly costs, when raw material prices fluctuate month-to-month, can result in distortions if product-specific relative monthly production quantities vary or the production of certain models are periodic. Under these circumstances, two nearly identical products, comprised of the same raw materials, but produced only a month or two apart, can end up with significantly different reported unit costs. See *Stainless Steel Bar from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007) and accompanying Issues and Decision Memorandum at Comment 1 (where the Department found that a respondent's books and records do not reasonably reflect the actual cost to the company, and explained that "Because Enpar produced and sold each product only a limited number of times during the cost reporting period and assigned a unique raw material purchase price to each product produced, Enpar's specific billet costs do not represent the unit cost normally experienced by Enpar to produce the product during the time period. The distortion caused by Enpar's billet-specific cost method is demonstrated by the fact that the resulting cost differences do not reflect the physical differences between unique products.") Such distortions can cause the amounts calculated for the difference-in-merchandise ("DIFMER") adjustment, constructed value ("CV"), and cost of production ("COP") to not

represent any logical result (i.e., the differences are not based on the physical characteristics).

The Department's preference is to rely on the normal books and records of the producer. In accordance with section 773(f)(1)(A) of the Act, the Department will normally rely on the books and records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles ("GAAP") of the exporting country and reasonably reflect the costs associated with the production of the merchandise. Therefore, this issue comes down to whether the reported costs taken from the FET's books and records reasonably reflect the costs for the production and sale of the merchandise under review.

As such, we have re-examined the record evidence to determine the impact of FET's methodology on the dumping analysis. For example, we reviewed the magnitude of the price fluctuations of EG and PTA during the POR (see exhibit SD-14.a.1 of the February 12, 2007, section D supplemental response), as well as the production timing of key products. We also found that because the control numbers ("CONNUMs") sold in the U.S. market had identical matches in the home market, DIFMER adjustments were not necessary in this proceeding. We also found that of the two CONNUMs sold in the United States, one had the same average raw material cost after all CONNUMs were weight averaged based on fiber loft, specialty fiber, and fiber type, and the other CONNUM was produced in 10 of the 12 months of the POR, with consistent production volumes. The relatively high frequency in production of this CONNUM throughout the POR, and the relatively stable production levels of the control number over the POR resulted in a very small difference between the raw material cost reported and the average calculated by the Department.

Finally, we agree with FET that by weight-averaging direct material costs for the preliminary results, the Department eliminated cost differences due to finish and coating. This was due to the fact that the finishing and coating costs were included in the direct material costs reported to the Department.

This is consistent with Polyvinyl Alcohol from the People's Republic of China, referred to by FET, in which the Department stated that, "Where we find that a respondent's books and records do not reasonably reflect the actual cost to the company, our practice has been to adjust these costs as necessary." Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538, (August 4, 2003) (Department's Position at Comment 3). We also note that in Hynix Semiconductor v. United States, cited by FET, the issue was related to Hynix's change from expensing R&D (i.e., deducting all of its R&D expenditures as costs in the same year) to amortizing R&D (i.e., reporting R&D expenditure as cost over a number of years) and not average POR production costs.

Therefore, we find that our concerns about FET's methodology were mitigated by certain factors noted above and that the adjustment eliminates desirable cost differences in the reported costs. Thus, we find that FET's costs reported for both CONNUMs sold in the U.S. market were not distorted by FET's methodology. Therefore, we have relied on the costs reported by FET (i.e.,

based on its normal books and records) and have not weight-averaged the raw material costs based on fiber loft, specialty fiber, and fiber type of the CONNUMs for the final results.

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final weighted-average dumping margins for all firms reviewed in the Federal Register.

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date