

February 14, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results in the
Antidumping Duty Administrative Review of Polyethylene
Terephthalate Film, Sheet, and Strip from the People's Republic of
China

Summary

The Department of Commerce (the "Department") has analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced administrative review ("AR"). As a result of our analysis, we have made changes in the margin calculations for the final results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this AR for which we received comments from interested parties:

Issue 1: Selection of Surrogate Financial Statements

Issue 2: Whether the Department should select Thailand as the surrogate country rather than India

Issue 3: Whether the Department should continue to use Indian imports of Harmonized Tariff Schedule ("HTS") classification 3907.60.20 to value Bright Polyester Chip and Master Batch Chip

Issue 4: Whether the Department should revise the surrogate value ("SV") for steam

Issue 5: Whether Fuwei Films correctly reported PET film additives in its factors of production ("FOPs")

Issue 6: Whether Fuwei Films reported all suppliers of FOPs, and all raw materials that it purchased from suppliers and consumed during the period of review ("POR")

Issue 7: Whether the Department should revise its CONNUM methodology based on Fuwei

Films' FOPs allocation methodology

Issue 8: Whether the Department should make further revisions to its labor rate methodology revised after the Preliminary Results

Issue 9: Whether the Department should revise Fuwei Films' methodology for calculating indirect selling expenses

Issue 10: Whether the Department should have selected Wanhua as a mandatory respondent

Issue 11: Whether the Department should revise its methodology for calculating the separate rate for respondents not specifically reviewed

Background

On August 16, 2010, the Department published its preliminary results for the 2008-2009 AR of polyethylene terephthalate film, sheet, and strip ("PET film") from the People's Republic of China ("PRC"), covering the period November 6, 2008, through October 31, 2009. See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review, 75 FR 49893 (August 16, 2010) ("Preliminary Results"). We invited interested parties to comment on our Preliminary Results. Case briefs were submitted on September 28, 2010, by Respondents,¹ Petitioners,² and Bemis Company, Inc. ("Bemis") an industrial consumer of PET film. Rebuttal briefs were submitted on October 4, 2010 by Respondents and Petitioners. We also invited parties to comment on wage rate data that we released after the Preliminary Results in light of Dorbest Ltd. v. United States, 604 F.3d 1363 (Fed. Cir. 2010) ("Dorbest"), issued by the United States Court of Appeals for the Federal Circuit ("CAFC"). Respondents submitted comments on October 26, 2010. Petitioners submitted rebuttal comments on November 1, 2010. The Department conducted a public hearing of the arguments presented in Petitioners' and Respondents' submissions on November 22, 2010. On January 27, 2011, the Department met with representatives of Bemis.³ On February 9, 2011, the Department met with Petitioners.⁴

Discussion of the Issues

Issue 1: Selection of Surrogate Financial Statements

- Petitioners argue that surrogate financial ratios can be determined on the basis of

¹ The respondents are Fuwei Films (Shandong) Co., Ltd. ("Fuwei Films"), Shaoxing Xiangyu Green Packing Co., Ltd. ("Green Packing"), Tianjin Wanhua Co., Ltd. ("Wanhua") (collectively, "Respondents").

² Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. (collectively, "Petitioners").

³ See Memorandum to the File, "Ex Parte Conversation with Representatives of Bemis Company Inc." dated January 27, 2011.

⁴ See Memorandum to the File, "Ex Parte Conversation with Representatives of DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc." dated February 9, 2011.

publicly-available information from the audited Thai financial statements of Polyplex (Thailand) Public Company Ltd. (“Polyplex (Thailand)”) and A.J. Plast Public Company Ltd. (“A.J. Plast”), which are on the record. Petitioners argue that splitting the total cost of material usage and consumables in overhead on the basis of the ending inventory values, pursuant to the Department’s practice, is an adequate methodology, as is placing the entire amount in raw materials.

- Respondents state that the Thai financial statements on the record contain evidence of subsidies that disqualify Polyplex (Thailand) and A.J. Plast or are not fully translated into English. Respondents state that subsidies noted in the Thai financial statements were found to be countervailable by the Department even though the overall result of the countervailing investigation was negative.
- Respondents also claim the Thai financial statements contain no breakdown of any kind for a number of key expense categories.
- Respondents state that, if the Department uses Thai producer financial statements to calculate financial ratios, the rest of the SV should be from India.
- Respondents and Bemis state that the Department should not use the financial ratios of Polyplex Corporation, Ltd. (“Polyplex (India)”) in the final results because Polyplex (India) was the recipient of countervailable subsidies during the POR. Respondents state that if the Department uses the ratios of Polyplex (India), the ratios must be adjusted with respect to power and fuel expenses.
- Respondents and Bemis state that the Department should calculate financial ratios using two of the five financial statements supplied by Respondents, JBF Industries Limited (“JBF”) and Venelon Enterprises Limited (“Venelon”), because they are the only statements on the record without evidence of a countervailable subsidy.
- Petitioners argue that JBF’s financial statement should not be used because JBF does not produce the subject merchandise. Petitioners also argue that the PET chips that JBF produces are an input into its production process and thus are not comparable merchandise. Further, Petitioners argue that since JBF produces PET chips, its level of integration is not comparable to Respondents, who purchase PET chips.
- Petitioners also argue that Venelon’s financial statement should not be used because Venelon reported a loss in the fiscal period that overlaps the POR as well as in the prior period, eliminating the possibility of calculating a profit ratio. Petitioners state that the Department cannot make an adjustment for financial charges to correct for the reported loss since financial charges are a key component of the costs that should appropriately be included in a manufacturing company’s expenses.
- Petitioners state that Respondents made several errors in the financial ratio calculations based upon the financial statements of Garware Polyester Limited (“Garware”), Ester Industries Limited (“Ester”) Industries, and Jindal Poly Films Limited (“Jindal”).
- Respondents and Bemis argue that the Department should adjust the financial ratios for short-term interest and short-term investment income earned, and also indicate that all financial statements from Indian companies on the record include short-term investment income and/or short-term interest received.
- Petitioners argue that the Department should not make Respondents’ proposed adjustments to short term investment income because it is a well-established Department

practice that amounts related to investments are not related to the cost of production of merchandise and therefore are not to be included in the general expense category.

Department Position: In the instant review, for the Preliminary Results, the Department used the financial statement of Polyplex (India) to calculate surrogate financial ratios for the fiscal year ending March 31, 2009. However, in the Preliminary Results, we stated that Polyplex (India)'s financial statement showed evidence of participation in the Duty Entitlement Passbook Scheme (the "DEPB scheme"), which the Department has found to be a countervailable subsidy.⁵ However, because there were no other useable financial statements on the record of the AR at the time of the Preliminary Results, the Department determined that the Polyplex (India)'s financial statement was the best available information for calculating surrogate financial ratios.⁶ Since the Preliminary Results, Respondents have placed five additional financial statements on the record. Therefore, based on the parties' arguments, for the final results, we considered again which financial statements constitute the best available information.

For the final results, the Department has relied only on the JBF's fiscal year 2008-2009 financial statements to calculate Respondents' surrogate financial ratios. Generally, when calculating "manufacturing overhead, general expenses, and profit" for a non-market economy ("NME") respondent, the Department will use surrogate financial ratios calculated from "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country."⁷ Pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended ("the Act"), it is the Department's practice to use the best available information to derive the surrogate financial ratios. To do so, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information.⁸ Further, when choosing appropriate companies' financial statements to calculate surrogate financial ratios, the Court of International Trade ("CIT") has recognized the Department's discretion.⁹ However, it is also the Department's practice to reject the financial statements of a company that we have reason to believe or suspect may have benefited from countervailable subsidies, particularly when other sufficient, reliable, and representative data are available for calculating surrogate financial ratios.¹⁰

⁵ See Surrogate Country Memo at 9.

⁶ Id.

⁷ See 19 CFR 351.408(c)(4).

⁸ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

⁹ See, e.g., FMC Corp. v. United States, 27 C.I.T. 240 (Ct. Int'l Trade 2003) (where the CIT held that the Department can exercise discretion in choosing between reasonable alternatives); affirmed FMC Corp. v. United States, 87 Fed. Appx. 753 (Fed. Cir. 2004).

¹⁰ See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 17A ("Tires from PRC"); see also Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative Review and New Shipper Reviews, 72 FR 52049 (September 12, 2007) ("PRC Shrimp 2007"), and accompanying Issues and Decision Memorandum at Comment 2, citing Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) ("PRC Crawfish 2007") and accompanying Issues and Decision Memorandum at Comment 1; see

As an initial matter, we note that the financial statements of Polyplex (Thailand) and A.J. Plast show evidence of subsidies, specifically, promotional certificates from the Thailand Board of Investment.¹¹ The Department has found that such promotional certificates are countervailable subsidies.¹² Generally, the Department exercises “its discretion in deciding what constitutes a reasonable basis to believe or suspect that a value may be subsidized.”¹³ Specifically, regarding financial statements, “if a financial statement contains a reference to a specific subsidy program that the Department found countervailable in a formal countervailing duty determination that would constitute a reasonable basis to believe or suspect that the prices may be subsidized.”¹⁴ If a company receives countervailable subsidies, the ratios derived from the financial statements of the company receiving those subsidies may be less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization.¹⁵

Additionally, the Department stated in the Preliminary Results that we reviewed the 2008-2009 financial statements of Polyplex (Thailand) and A.J. Plast and based upon this review, we found that there is no information upon which to apply a reasonable methodology to apportion raw material expenses and consumable expenses for either company to calculate the surrogate overhead ratio.¹⁶ Although there is no specific information in the financial statements breaking down the combined raw material and consumables figure in each financial statement, we find that the amount of consumables in each combined figure is attributable to items used in production which belong in overhead. Thus, treating the entire sum as raw materials (i.e., placing the entire sum in the denominator of the overhead ratio) would be highly distortive to the overhead ratio. Additionally, as raw material expenses and overhead are included in the denominator of the selling, general and administrative expenses (“SG&A”) and profit ratios, the Department cannot calculate the SG&A and profit ratios without calculating raw material

also H.R. Conf. Rep. No. 576, 2d Sess., Vol. 4, 590 (1988) (“Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices”).

¹¹ See Letter from Petitioners to The Honorable Gary Locke, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Submission of Publicly Available Information to Value Factors of Production,” dated May 23, 2010, at Exhibit 14, Polyplex (Thailand) Public Company Ltd. at pages 19 and 108, and A.J. Plast Public Company Ltd. at page 16 n.19.

¹² See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 70 FR 13462, 13463-13464 (March 21, 2005) and accompanying Issues and Decision Memorandum at Part III, Subpart A.

¹³ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 8.

¹⁴ Id.

¹⁵ See PRC Crawfish 2007 and accompanying Issues and Decision Memorandum at Comment 1.

¹⁶ See Surrogate Country Memo at 9. The Department notes that Petitioners previously acknowledged that a third Thai producer of identical merchandise, Thai Film Industries Public Company Ltd., did not record a profit in the most contemporaneous fiscal year, which disqualifies its financial statement from consideration pursuant to the Department’s practice. The Department has a practice of disregarding financial statements of companies which show either no profit or a loss. See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2.B.; PRC Shrimp 2007 and accompanying Issues and Decision Memorandum at Comment 2.

expenses and overhead. Thus, the Department cannot calculate surrogate financial ratios with the financial statements of Polyplex (Thailand) and A.J. Plast.

Because the Department has determined that the Thai financial statements: (1) contain evidence of specific subsidies which the Department has found to be countervailable; (2) have no profit; and (3) do not report separate raw material costs and consumable costs, and there is no adequate methodology to divide these separate costs from the reported total cost, the Department continues to find, as it did in the Preliminary Results, that it is unable to use the Thai financial statements on the record to calculate surrogate financial ratios.

Regarding the six Indian financial statements on the record, all are contemporaneous with the POR.¹⁷ In addition, all companies produce either identical merchandise (PET film), or, in the case of JBF, PET yarn, which is comparable to PET film.¹⁸ Neither Petitioners nor Respondents contest the comparability of PET film and PET yarn. Thus, regarding product-line comparability, we find that all six financial statements are suitable as surrogates because they produce identical or comparable merchandise.

However, the Department agrees with Petitioners' assertion that four of the six Indian financial statements do not provide the best available information for calculating surrogate financial ratios because the Department has reason to believe or suspect that each received a specific countervailable subsidy. As stated above, the Department determined in the Preliminary Results that Polyplex (India)'s financial statement showed evidence of the DEPB scheme.¹⁹ Further, the Department has analyzed the financial statements of Garware,²⁰ Ester,²¹ and Jindal,²² and agrees with Petitioners and Respondents that each financial statement contains evidence of countervailable subsidies (*i.e.*, the DEPB scheme and the Advance License scheme). Therefore, we have reason to suspect that these four companies received a countervailable subsidy, which means that these financial statements are less likely to represent the financial experience of a manufacturer of PET film than the ratios derived from financial statements that do not contain evidence of subsidization. The fact that the companies' financial statements indicate the receipt of a countervailable subsidy is sufficient in and of itself for the Department to find reason to believe or suspect that they received countervailable benefits.

¹⁷ Four of the financial statements pertain to fiscal year 2008 and two pertain to fiscal year 2009, and thus all are partially contemporaneous with the POR.

¹⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) ("Chlorinated Isocyanurates from PRC") and accompanying Issues and Decision Memorandum at Comment 2.

¹⁹ See Letter from Petitioners to Secretary of Commerce, "Polyethylene Terephthalate Film, Sheet, and Strip from China; Submission of Publicly Available Information to Value Factors of Production," dated May 3, 2010 at Exhibit 28, at 61.

²⁰ See Memorandum from Respondents to Gary Locke, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Post-Preliminary Surrogate Value Information by TianJin Wanhua Co., Ltd., Shaoxing Xiangyu Green Packing Co., Ltd., and Fuwei Films (Shangdong) Co., Ltd., dated September 8, 2010 at Exhibit PSV-1, at 30 (Garware received subsidies pursuant to the DEPB scheme).

²¹ See *id.* at Exhibit PSV-2, at 93 (Ester received subsidies pursuant to the DEPB scheme).

²² See *id.* at Exhibit PSV-3, at 33 (Jindal received subsidies pursuant to the DEPB scheme and Advance Licenses).

Furthermore, after analyzing Venelon’s financial statement, the Department agrees with Petitioners’ assertion that the Department cannot use the financial statement because Venelon did not show a profit during the POR.²³ Regarding Petitioners’ proposed adjustment to the Venelon financial statement to remedy this deficiency, the Department’s practice is “to not make adjustments to the financial statements data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy. . . . In calculating overhead and SG&A, it is the Department’s practice to accept data from the surrogate producer’s financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.”²⁴ Moreover, since five of the six Indian statements had flaws, we found it unnecessary to contemplate any adjustment to these financial statements. Therefore, we have not adjusted the overhead expenses of any financial statements chosen as the basis for the surrogate financial ratios

Finally, we disagree with Petitioners’ argument that JBF’s financial statement cannot be used for calculating financial ratios because JBF’s production experience is not comparable to Respondents’ operations. Although the Department does prefer to match respondents to financial statements of companies with similar production experiences for calculating financial ratios, the Department would not give more weight to the financial statements of companies with a greater similarity of production experience if those financial statements showed evidence countervailable subsidies, than to other financial statements on the record that do not show evidence of countervailable subsidies.²⁵ Consequently, we agree with Respondents that JBF’s financial statements provide the best available information for calculating financial ratios in this review.

In sum, while we have on the record of this AR financial statements of six Indian producers of identical and comparable merchandise that are publicly-available and contemporaneous with the POR, we have reason to believe or suspect that four of these companies received a countervailable subsidy, and one company had no profit. As a result, we find that these five financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statement that does not contain evidence of subsidization or no profit (i.e., JBF’s financial statement). Thus, for the final results, the Department has

²³ See id. at Exhibit PSV-5, at 26.

²⁴ See Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 15 (citing Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People’s Republic of China, 72 FR 60632 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 4; PRC Shrimp 2007 and accompanying Issues and Decision Memorandum at Comment 2; and Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People’s Republic of China, 66 FR 49345 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 4).

²⁵ See, e.g., Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13 (where the Department excluded financial statements distorted by subsidies prior to assigning specific financial statements to specific respondents based upon the similarity of production experience for calculating financial ratios).

determined to use only JBF's 2008-2009 financial statement, which represents the best available information, to calculate surrogate financial ratios for the final results.²⁶

Regarding Respondents' contention that the Department should adjust the financial ratios for short-term interest and short-term investment income earned, the Department agrees generally. However, the JBF financial statement reports no interest income or expenses that are explicitly labeled short-term.²⁷ Regarding short-term investment income and expenses, the JBF financial statement reports "(p)rofit on sale of current investments," and "(l)oss on sale of current investments."²⁸ According to the definition of "current" in this context, such assets are short-term in nature. Although these reported amounts appropriately would be offsetting, JBF's reported current investment income earned is zero.²⁹ Additionally, we have not offset SG&A with short-term dividend income because it is not the Department's practice to adjust SG&A expenses for income from dividends and, further, it is unclear which expense this income would offset.³⁰

Issue 2: Whether the Department should select Thailand as the surrogate country rather than India

- Petitioners argue that the Department should have rejected as untimely Respondents' submission regarding the selection of India as the surrogate country.
- Respondents argue that the Department was free to select India as the surrogate country whether or not Respondents' comments had been accepted, and the Department was also free to accept the comments after the filing deadline.
- Petitioners argue that the Department should select Thailand as the surrogate country for the final results as it is at a level of economic development comparable to the PRC. Petitioners claim that Thailand's Gross National Income ("GNI") is closer to the PRC's GNI than that of India. Petitioners argue that the Department did not have a reasonable basis to select India over Thailand in the Preliminary Results.
- Respondents argue that Petitioners' argument does not indicate that Thailand is a more significant producer of subject merchandise or is otherwise more economically comparable to the PRC. Respondents state that Petitioners' argument that Thailand is a preferable surrogate country for the PRC compared to India because its GNI is closer is not an argument based on the statute or the Department's practice.
- Petitioners argue that if the Department chooses to use the Indian data to calculate

²⁶ See Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Selection of Factor Values for the Final Results of Review," dated February 14, 2011 ("Final Surrogate Value Memorandum") at Exhibit 3.

²⁷ See Respondents' Post Preliminary Results Surrogate Value Submission, dated September 8, 2010, at Exhibit PSV-4 at Schedules "I" and "O."

²⁸ Id.

²⁹ See Final Surrogate Value Memorandum at Exhibit 1.

³⁰ See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 5 (where the Department did not apply offsetting dividend income).

financial ratios, it should nevertheless use certain other Thai SVs placed on the record to value FOPs. Petitioners argue that the Department has used surrogate prices from countries other than the selected country when a particular input from an otherwise appropriate surrogate country is lacking.

- Respondents state that the data sources from India are well-known by the Department and published in English, making them superior to data sources from Thailand. Respondents state that Petitioners' claim that the Thai data sources are superior is based on the fact that the Thai SVs are high. Respondents also argue that the Indian tariff provision is more specific, making Infodrive and World Trade Atlas ("WTA") data superior. Respondents state that PET chip values in the Indian producer financial statements on the record confirm the reliability of the Indian data, even though they are not usable as SVs because they contain taxes and transportation costs.

Department Position: The Department agrees with Respondents, in part, and continues to use India as the surrogate country for this AR. As we stated in the Preliminary Results, India and Thailand are both at a level of economic development comparable to that of the PRC and are both significant producers of merchandise comparable to the subject merchandise.³¹ However, based upon our determination that both Thai financial statements on the record: (1) contain evidence of specific subsidies which the Department has found to be countervailable; (2) have no profit; and (3) do not report separate raw material costs and consumable costs, and there is no adequate methodology to divide these separate costs from the reported total cost, the Department is unable to use the Thai financial statements currently on the record to calculate surrogate financial ratios. Thus, due to the unavailability of other Thailand data on the record to calculate this key component of the margin calculation, and the availability of Indian data currently on the record, the Department has selected India as the surrogate country for this administrative review.

Further, as described in Policy Bulletin No. 04/1,³² the Department's practice is not to rank-order countries' comparability according to how close their per-capita GNI is to that of the NME country in question. The Department creates a list of possible surrogate countries which are to be treated as equally comparable in evaluating their suitability for use as a surrogate country, consistent with the statute's requirement that the Department use a surrogate country that is at a level of economic development comparable to that of the NME country. Policy Bulletin No. 04/1 explains that the Department's "current practice reflects in large part the fact that the statute does not require the Department to use a surrogate country that is at a level of economic development most comparable to the NME country."³³

Additionally, regarding Petitioners' argument that the Department can use surrogate prices from countries other than the selected surrogate country (i.e., India) when a particular input (i.e., PET

³¹ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Selection of a Surrogate Country," dated August 9, 2010 ("Surrogate Country Memo") at 5-7.

³² See Policy Bulletin No. 04/1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004 ("Policy Bulletin No. 04/1") at note 5.

³³ Id.

chips) from an otherwise appropriate surrogate country is lacking, we agree. However, we note that 19 CFR 351.408(c)(2) provides that the Department will normally source the FOPs from a single surrogate country. Though the Department can evaluate each specific SV to determine whether it may be necessary to look to another surrogate country, in the instant case, as explained above, it is not necessary. Therefore, for the final results, the Department has continued to use Indian data from Global Trade Atlas (“GTA”) to calculate all SVs. (See Issue 3, below).

Because the Department selects the surrogate country based upon a list of economically-comparable countries, and not necessarily the most comparable, the Department will continue to use India as the surrogate country for the final results. Further, the Department finds that there are no Thai financial statements on the record that the Department can use to calculate financial ratios, which are of key importance to the calculation of dumping margins.

Issue 3: Whether the Department should continue to use Indian imports of HTS classification 3907.60.20 to value Bright Polyester Chip and Master Batch Chip

- Respondents state that the Department should not value PET chips using Indian HTS subheading 3907.60.20 because: (1) the total quantity and value of imports in this provision are so small as to render the provision inherently unrepresentative and unreliable as the basis for a surrogate value; (2) an examination of the details of the importations demonstrate that the products imported into India under this provision were not PET chips; and (3) the raw material used by Respondents would not be categorized in this HTS provision upon importation into India.
- Bemis states that the Department erred in valuing PET chips with HTS subheading 3907.60.20, as the insignificant import quantity in Indian HTS 3907.60.20 does not provide a reliable basis for valuing Respondents’ PET chip input. Bemis states that 3907.60.10 is more representative of Respondents’ experience in purchasing PET chips and provides the best information of valuing this input.
- Bemis states that in the original investigation, the Department determined “the value derived from HTS category 3907.60.10 to be the best available information for valuing PET chips” and contends that the Department has provided no explanation in the Preliminary Results for deviating from this determination.
- Respondents argue that the Thai import data in the tariff basket category applicable to PET chip is clearly aberrational when compared with all of the other PET chip data on the record, and fifty percent higher than the selling price for finished PET film noted in the Polyplex (Thailand) financial statement submitted to the record by Petitioners. Respondents claim that this calls into question the quality of all of the Thailand import data, and by implication, all of the Thailand data on the record.
- Petitioners argue that, if the Department continues to select India as the surrogate country, the Department should continue to apply the surrogate value for PET chips that it applied in the Preliminary Results. Petitioners state that PET chip inputs using the Indian HTS 3907.60.20 have physical characteristics that most closely match Respondents’ PET chips, according to the viscosity of the chip. Petitioners state that the

- Department based its determination on certificates of analyses provided by Respondents.
- Petitioners contend that Respondents' concerns regarding the sample size of the quantity and value under Indian HTS 3907.60.20 are inconsequential because the GTA data for HTS 3907.60.20 are factor-specific, contemporaneous, and are not anomalous. Further, Petitioners state that Respondents' selected Indian HTS number 3907.60.10 is not factor-specific and is anomalous in comparison to the other values on the record. Petitioners state that, although the Department rejected the surrogate value based on Indian HTS number 3907.60.20 in the investigation because of low quantity, the quantity in this review is 3.8 times greater than the quantity at issue in the investigation.
 - Petitioners state that, in comparing the average prices across HTS numbers from the six countries selected as possible surrogate countries in this AR, it is clear that the Indian prices for PET chips under HTS 3907.60.20 are comparable to those of PET chips in the other countries, and the prices for HTS 3907.60.10 are not.
 - Respondents state that the Government of India uses a different testing methodology for calculating intrinsic viscosity for purposes of the HTS subheading, which results in a reported intrinsic viscosity which is lower than the reported intrinsic viscosity using the International Organization for Standardization ("ISO") testing methodology. Respondents state that all of the chips they used were 0.64 deciliters/gram or less using the ASTM International ("ASTM") standard. Accordingly, Respondents state that while on its face the chips would appear to be classified under HTS 3967.60.20, a more sophisticated analysis demonstrates that these chips are properly classified under HTS 3907.60.10.
 - Petitioners state Respondents' arguments that reported intrinsic viscosities for their chip inputs were not actually the viscosity that Fuwei Films or Green Packing reported them to be should be rejected because it is unsupported by any record evidence. Petitioners state that information placed on the record of the investigation by other respondents about intrinsic viscosity analysis has nothing to do with the experiences of Fuwei Films or Green Packing in this review.
 - Respondents and Bemis argue that the Department should use Infodrive India data to value imports from India under HTS 3907.60.10. Respondents and Bemis state that the Infodrive India data show the presence of items which are not PET chips under HTS 3967.60.20, such as polybutylene and PET film, and which do not represent an appropriate comparison with PET chips.
 - Respondents and Bemis state that if the Department determines to apply surrogate values using data representing imports into India as a whole, such data should be adjusted using the Infodrive India data. Respondents and Bemis state that this adjustment will remove from the data the quantity and value of items that are not PET chips.
 - Petitioners state that the Department should not use Infodrive India data to evaluate the Indian import data. Petitioners argue that the Department has found GTA data to be preferable, as they consist of average import prices that are representative of prices within the POR and which are product-specific, tax-exclusive prices. In contrast, Petitioners state that Infodrive India has been found by the Department to be unreliable on numerous occasions. Petitioners argue that Infodrive India data are under-inclusive, unreliable, and not reported uniformly. Petitioners note that the total value of merchandise imported into

- India during the POR reported by Infodrive India is 22 percent less than that reported by GTA for Indian HTS 3907.60.20, and 24 percent less for Indian HTS 3907.60.10.
- Petitioners also argue that if the Department does not use the Indian HTS 3907.60.20 as it did in the Preliminary Results, then it cannot use Indian data at all, since it is the only Indian HTS number which is factor-specific to Respondents' reported actual input. In such case, Petitioners state that the Department must use Thailand surrogate values to value PET chips, as this would be the only remaining surrogate value information on the record that would partially include PET chips of the type used by Respondents.
 - Respondents argue that Petitioners submitted surrogate value information regarding the importation of items of HTS 3907.60 that was not translated into English in accordance with the Department's regulations.
 - Petitioners state that all relevant information in its comparative chart of HTS codes for PET chips has been translated into English, as required by the Department's regulations.

Department's Position: When selecting surrogate values with which to value the FOPs used to produce subject merchandise, the Department is directed to use the "best available information" on the record. See Section 773(c)(1) of the Act. As noted by Petitioners, when selecting surrogate values for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the particular case-specific facts and with preference to data from a single surrogate country.³⁴ In the Preliminary Results, the Department selected a surrogate value based on an eight-digit basket category that was the most specific on record to the input in question. The Department valued PET chips with HTS 3907.60.20, "Polyethylene Terephthalate With Intrinsic Viscosity ≥ 0.64 DI/G & ≤ 0.72 DI/G," the HTS subheading applicable to Respondents' FOPs for PET chips with the intrinsic viscosity meeting this description.³⁵ However, the Department has reviewed the additional factual information placed on the record by Respondents regarding the methodologies employed for measuring intrinsic viscosity and, after further review of the certificates of analysis submitted by Respondents, the Department has determined that there is insufficient evidence on the record to support the selection of HTS 3907.60.20 as the only surrogate value for the inputs that comprise all, or nearly all, of Respondents' direct materials, and the great majority of Respondents' cost of manufacturing. Therefore, for the final results, the Department has determined to use the GTA Indian import data under both HTS subheadings 3907.60.10 and 3907.60.20. Data for both subheadings are publicly available, broad market averages, contemporaneous with the POR, tax-exclusive, and representative of significant quantities of imports, thus satisfying critical elements of the Department's surrogate value test.

Respondents have argued that the customs service of the Indian government uses a different testing methodology for calculating intrinsic viscosity than those used by Respondents in their

³⁴ See Certain Cut-To-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

³⁵ See Fuwei Films' June 30, 2010 submission at Exhibit 3SD-1, see also Green Packing's June 30, 2010 submission at 3 SD-1.

questionnaire responses. Information on the record regarding testing methods in India, *i.e.*, a letter from an Indian customs official secured by Respondents' counsel during the less than fair value investigation, indicates that to correctly classify merchandise entering India, importers should have intrinsic viscosity details for their product(s) based on ASTM³⁶ standards.³⁷ The letter, dated April 7, 2008, was written only six months prior to the beginning of the POR. Further, Respondents have also submitted information regarding intrinsic viscosity testing methods commonly used in the PRC, which are testing methods conforming to those set forth by ISO,³⁸ but which are not the same as the ASTM testing protocol for measuring PET chip intrinsic viscosity used in India. Finally, the Department has reviewed the submission of the DuPont Group,³⁹ respondents in the investigation, which Respondents submitted to the record of this review subsequent to the Preliminary Results. In the investigation, the DuPont Group submitted to the public record a list of its suppliers, the PET chips that it purchased from each supplier, the PET chip intrinsic viscosity by the suppliers' specification and, finally, conversions of these intrinsic viscosity values to demonstrate what the values would be using other testing methods. Thus, Respondents' submitted factual information indicates that there are several different testing methods for measuring the intrinsic viscosity of PET chips, which differ based upon the nature and proportion of solvents used in the testing process. The actual testing method used to measure the intrinsic viscosity of PET chips is done at the discretion of the tester. Depending upon the testing method used, the intrinsic viscosity of PET chips could be measured either above or below the 0.64 DI/G threshold which defines HTS 3907.60.20.⁴⁰

The record evidence in this review supports the Department's use of HTS 3907.60.20 as we concluded in our Preliminary Results. Nevertheless, we reviewed again the certificates of analysis that Respondents submitted to the record prior to the Preliminary Results, and it appears from the record that the testing method used by Respondents' suppliers to provide the intrinsic viscosity values reported on the certificates is not disclosed.⁴¹ Further, the certificates of analysis for Respondents' PET chips indicates that at least some of Respondents' PET chips have an intrinsic viscosity very near the 0.64 DI/G threshold which defines the upper limit of HTS 3907.60.10, and the lower limit of HTS 3907.60.20. Due to the absence of record evidence that would provide the Department with information for determining the correct intrinsic viscosity and the most accurate HTS subheading, the Department believes that some of Respondents' PET chips match the description for HTS 3907.60.10. Moreover, as the bright polyester chip FOP and master batch chip FOP make up the vast majority of the cost of manufacturing for

³⁶ ASTM, originally known as the American Society for Testing and Materials, is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services.

³⁷ See Respondents' September 8, 2010 Surrogate Value Submission at Exhibit PSV-8, DuPont Group Exhibit 1 (July 30, 2008).

³⁸ ISO is an international-standard-setting body composed of representatives from various national standards organizations, with the mission of promulgating worldwide proprietary industrial and commercial standards.

³⁹ DuPont Teijin Films China Limited, DuPont Teijin Hongji Films Ningbo Co., Ltd., and DuPont-Hongji Films Foshan Co., Ltd. (collectively the "DuPont Group").

⁴⁰ See Respondents' September 8, 2010 Surrogate Value Submission at Exhibit PSV-8, DuPont Group Exhibit 6-H (May 27, 2008).

⁴¹ See Fuwei Films' June 30, 2010 submission at Exhibit 3SD-1, see also Green Packing's June 30, 2010 submission at 3 SD-1.

Respondents, it is critical in this instance that the Department applies a comprehensive valuation for the inputs at issue.

Respondents and Bemis have noted various PET chip quantity and value examples on the record for other India HTS subheadings, and argued that the quantity in the surrogate value used in the Preliminary Results (i.e., HTS 3907.60.20) is lower when compared to these examples. In particular, Respondents have contrasted the quantity of HTS 3907.60.20 with the greater merchandise quantity of HTS 3907.60.10, the HTS subheading used to value DuPont Group's PET chip input in the original investigation.⁴² Respondents have presented information showing that the adjacent HTS 3607.60.10 represents a more reliable quantity than the Indian HTS 3907.60.20.⁴³ Generally, the Department's practice has found that the existence of lower commercial quantities and higher prices alone does not necessarily indicate that price data are distorted or misrepresented and, thus, are not sufficient to exclude particular surrogate values absent specific evidence that the values are otherwise aberrational.⁴⁴ Moreover, as stated in the preceding paragraph, the Department has determined to apply an equal balance of all surrogate values that are, or could potentially be applicable to, Respondents' PET chips. Therefore, due to: (1) the reasonable likelihood that Indian HTS 3907.60.10 may be applicable, at least in part, to Respondents' inputs; and (2) the magnitude of the surrogate value in relation to Respondents' cost of production, the Department has applied the simple-average of the two weighted-average unit values of Indian HTS subheadings 3907.60.10 and 3907.60.20 to calculate the surrogate values for bright polyester chips and master batch chips in order to calculate as accurately as possible Respondents' antidumping margins for the final results. The information on the record supports a finding that both HTS subheadings may be equally applicable to Respondents' inputs. The Department has applied the simple-average of the two weighted-average unit values of the Indian HTS subheadings 3907.60.10 and 3907.60.20, and not a weighted-average unit value of all merchandise under these HTS subheadings, to avoid an imbalanced result due to the greater merchandise quantity of HTS 3907.60.10.⁴⁵

⁴² See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

⁴³ Respondents note that Petitioners did submit to the record various average unit values ("AUVs") based on import statistics of several potential surrogate countries under HTS 3907.60. These would be appropriate comparative prices for the Indian SV data, as well as the Thai SV data advocated by Petitioners, based on the Department's benchmarking practices, had Respondents presented a "colorable claim" that the Indian data are aberrational. See, e.g., Mittal Steel Galati S.A. v. United States, 502 F. Supp. 2d 1295, 1308 (Ct. Int'l Trade 2007).

⁴⁴ See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) ("LTP from PRC") and accompanying Issues and Decision Memorandum at Comment 10; see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 6, citing Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 4, where the Department states, "The 8-digit Indian HTS category more closely reflects the factor input used by the respondent in the production of TRBs than the 6-digit categories from the other countries. As stated in Hangers, the Department finds that 'specificity is a compelling reason that supports using... data to value the steel wire rod input.'"

⁴⁵ See Final Surrogate Value Memorandum at Exhibit 1.

Finally, Respondents have submitted Infodrive India data as a corroborative tool to show that the GTA surrogate value data are distorted. Due to the Department's well-established reservations regarding the use of Infodrive data, either as a corroborative tool or price benchmark, the viability of this particular Infodrive dataset (and, thus, Respondents' claims that the GTA data are distorted) must be analyzed in accordance with Department practice and policy regarding the use of Infodrive data.⁴⁶ The Department has stated that it will consider Infodrive data to further evaluate import data, provided: (1) there is direct and substantial evidence from Infodrive reflecting the imports from a particular country; (2) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive India data; and (3) distortions of the surrogate value in question can be demonstrated by the Infodrive data;⁴⁷ but that the Department will not use Infodrive data when they do not account for a significant portion of the imports which fall under a particular HTS subheading.⁴⁸

On point (1), all countries but one⁴⁹ that are reported in GTA for HTS 3907.60.10 are reported in the Infodrive data, and the Infodrive data for HTS 3907.60.20 do indicate shipments from Germany to India as shown in GTA. Regarding point (2), we find that the Infodrive India is under-inclusive, representing only 48.44 percent of POR value and 53.05 percent of POR quantity for Indian HTS 3907.60.10, and only 79.16 percent of POR value and 84.72 percent of POR quantity for Indian HTS 3907.60.20, as reported in the official source.⁵⁰ Over half of the value in HTS 3907.60.10, and one-fifth of the value in HTS 3907.60.20, based on official Indian import statistics is not accounted for by the Infodrive. Information in this unaccounted for portion of the actual entries may contradict the claim that these HTS numbers produce a

⁴⁶ See Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews, 72 FR 58641 (October 16, 2007) ("Silicon Metal from PRC") and accompanying Issues and Decision Memorandum at Comment 5; Tires from PRC and accompanying Issues and Decision Memorandum at Comment 10; Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 35646 (June 24, 2008) ("Laminated Woven Sacks from PRC") and accompanying Issues and Decision Memorandum at Comment 2; Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006) ("Honey from PRC") and accompanying Issues and Decision Memorandum at Comment 1; and Chlorinated Isocyanurates from PRC and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁷ See LTP from PRC and accompanying Issues and Decision Memorandum at Comment 9.

⁴⁸ Id. at Comment 10.

⁴⁹ We note that the exporting country not reported in the Infodrive data, Thailand, is reported in GTA as the largest exporting country during the POR.

⁵⁰ The Department outlined some of these reservations in Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 11D, where we noted: "...the Department prefers not to use Infodrive data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports which fall under a particular HTS subheading. The Department has also determined that Infodrive India is unreliable because a majority of the HTS categories do not report the specific import items in a uniformly comparative manner (i.e., cans, bottles, pieces, sets, or numbers) from which we can calculate a reliable or accurate surrogate value. We note that this is not a problem with the GTA data because every HTS category is reported using a single uniform measurement (e.g., rupees per kilogram)." We note that, in this instance, Indian HTS 3907.60.10 includes some merchandise entered in area units, which we have not included in the calculation of the percentage of quantity coverage for the subheading.

distortive average value. In numerous cases, the Department has rejected Infodrive data because they did not account for a significant portion of the overall official import data.⁵¹ If the Department considers that Infodrive information is not conclusive regarding the validity of the surrogate value based on HTS 3907.60.10 and HTS 3907.60.20, the Department may continue to apply the surrogate value.⁵² As to point (3), Respondents and Bemis have not provided any benchmarks to show that the AUVs are abnormally high or the quantity is abnormally low. Furthermore, Infodrive India data are collected by a private party that only reviews bills of lading for commercial descriptions. The data in Infodrive may differ from the actual entries of the shipments as recorded in the Indian official import statistics.

In sum, the Department has applied the simple average of the two weighted-average unit values of the Indian HTS subheadings 3907.60.10 and 3907.60.20 to calculate the surrogate values for bright polyester chips and master batch chips for the final results. Further, Respondents' submitted Infodrive India data are not a reliable basis for the Department to abandon the surrogate value calculated by the Department in the Preliminary Results, as doing so would require a speculative interpretation of the data, and also because the data are an under-inclusive portion of the officially reported Indian import data. Therefore, because there is insufficient evidence that Indian HTS 3907.60.20 should be used exclusively for valuing Respondents' PET chips, as mentioned above for the final results, we will value Respondents' PET chip inputs using Indian import statistics HTS subheadings 3907.60.10 and 3907.60.20.

Because the Department has not departed from its selection of India as the surrogate country and has maintained the application of the selected surrogate value from India for PET chips in this AR, the Department need not address Respondents' arguments against the application of surrogate values from Thailand, and surrogate values from other potential surrogate countries that may or may not have been properly translated.

Issue 4: Whether the Department should revise the SV for steam

- Respondents state that instead of the steam SV used by the Department in the Preliminary Results, which applied an AUV obtained from an out-of-period financial statement, the Department should apply an SV submitted in its September 8, 2010, SV submission from the financial statement for Hindalco Industries, Ltd., which is contemporaneous with the POR.
- Petitioners did not comment on this issue.

Department Position: Because it is a contemporaneous value, the Department agrees with Respondents and has applied the updated SV for steam that Respondents have submitted to the administrative record for the final results of review.⁵³

⁵¹ See, e.g., id.; Silicon Metal from PRC and accompanying Issues and Decision Memorandum at Comment 5; Tires from PRC and accompanying Issues and Decision Memorandum at Comment 10; Laminated Woven Sacks from PRC and accompanying Issues and Decision Memorandum at Comment 2; Honey from PRC and accompanying Issues and Decision Memorandum at Comment 1.

⁵² Tires from PRC and accompanying Issues and Decision Memorandum at Comment 10.

⁵³ See Final Surrogate Value Memorandum at 3.

Issue 5: Whether Fuwei Films correctly reported PET film additives in its FOPs

- Petitioners argue that the Department should apply adverse facts available (“AFA”) against Fuwei Films with respect to PET additive FOPs. Petitioners contend that Fuwei Films failed to provide a reliable account of its use of PET additives in producing the subject merchandise.
- Respondents argue that the Department should not apply AFA to Fuwei Films, because Fuwei Films reported the additives as PET chips in its initial response to the Department. Respondents state that the additives are in fact PET chips with added materials, such as silicon dioxide, intended to convey specific properties to the PET film.
- Respondents state that alleged inconsistencies between Fuwei Films’ parent company financial statement and its FOP data are due to the differences in the full range of products that the parent company produces, which is not limited to PET film.

Department Position: The Department agrees with Respondents. As the Department stated in its SV memorandum for the Preliminary Results, Notes 4 and 5 of the explanatory notes at the beginning of chapter 39 of the HTS of India, covering “Plastics and articles thereof,” state that: (1) polymer blends are classified in the heading covering the polymer that predominates by weight; and (2) chemically modified polymers with appendages changed by chemical reaction are classified in the heading of the unmodified polymer. Thus, according to the HTS, any PET chip with additives blended in or added by chemical reaction would be included in the same HTS number as PET resin without such additives.⁵⁴ Petitioners have not contested Fuwei Films’ reported information that PET film additives are purchased and consumed in special PET chips, which are primarily composed of the same type of PET resin used in PET chips without additives.⁵⁵ On this basis, the Department valued these special PET chips using the same HTS classifications (i.e., 3907.60.10 and 3907.60.20) that the Department applied to other PET chips. As Petitioners have not specifically challenged the Department’s preliminary results methodology, the Department will continue to apply its preliminary results methodology for the final results.⁵⁶

Issue 6: Whether Fuwei Films reported all suppliers of FOPs, and all raw materials that it purchased from suppliers and consumed during the POR

- Petitioners argue that, based upon a review of the Fuwei Films chart of accounts, Fuwei Films purposefully excluded several suppliers of inputs for subject merchandise during the POR from its spreadsheet reporting distances from Fuwei Films’ raw material suppliers to its factories submitted with Fuwei Films’ Section D response. Petitioners also question the usage rates of material from suppliers that were not initially listed.

⁵⁴ See Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, “Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Selection of Factor Values,” dated August 9, 2010 (“Prelim Surrogate Value Memorandum”) at 3.

⁵⁵ See Fuwei Films Section D Response, dated July 16, 2010, at 3-6.

⁵⁶ See Prelim Surrogate Value Memorandum at 3.

- Respondents state that Fuwei Films reported all of its raw material suppliers to the Department. Respondents state that as all of the consumption is reported, the actual identity of the supplier is irrelevant, since Fuwei Films reported whether the supplier was a market or NME supplier, and also the distance from the supplier to the plant. Respondents state that generally accepted accounting principles require that specific accounts should not be deleted even if they are not used in a given year, and the existence of a specific account for a supplier does not mean that Fuwei Films purchased raw materials from the supplier during the POR.

Department Position: The Department agrees with Respondents. A chart of accounts is a list of the numerical categories used by a company to classify profit and loss accounts, and balance sheet accounts, into specific ledgers. The existence of an account number does not indicate that the associated ledger has an entry contained in it. Thus, although Fuwei Films may have accounts that are identified with certain raw material suppliers, the chart of accounts alone does not provide an indication that Fuwei Films had any transactions with these suppliers during the POR. Further, the Department requested and received from Fuwei Films raw material sub-ledgers from the POR for specific months and specific accounts, to support Fuwei Films' claims that it completely reported its purchased and consumed raw materials.⁵⁷ After examining the sub-ledgers, the Department found no discrepancies between these sub-ledgers and Fuwei Films' calculation worksheets. Therefore, we find that there is no basis to make a determination that Fuwei Films failed to report all of its suppliers and consumed raw materials during the POR based upon the listing of these suppliers and their associated account numbers in its chart of accounts.

Issue 7: Whether the Department should revise its CONNUM methodology based on Fuwei Films' FOPs allocation methodology

- Petitioners argue that Fuwei Films' cost of production should be adjusted in line with its cost accounting system, which distinguishes only one product characteristic. Petitioners state that Fuwei Films, in reporting the FOPs for the control numbers ("CONNUMS"), disregarded the usage incurred in two of its production lines on the unsupported basis that the usage in these two lines related solely to products not sold in the U.S.
- Petitioners argue that Fuwei Films' FOPs file demonstrates that there is just one product characteristic that results in a differentiated cost, in Fuwei Films' cost allocation. Petitioners argue that the Department should question the entire response because the individual characteristics of the product have not been accounted for in its cost calculation. Petitioners argue that if there is no difference in the product costs beyond the chip differences, then the CONNUM characteristics that have no associated cost should be disregarded for cost of production ("COP") purposes, and products with the same cost should be collapsed into a single CONNUM.
- Respondents argue that the Department should not eliminate product characteristics from Fuwei Films' models and consolidate consumption from all of its production lines,

⁵⁷ See Fuwei Films Section D response, dated July 16, 2010 at Exhibits 4SD-8 and Exhibit 4SD-11.

because Fuwei Films uses specific production lines as its cost centers. Respondents argue that the other production lines that Fuwei Films did not collapse into its FOP allocation were not used to make subject merchandise for sale in the United States, and that it submitted information to the record to support this in response to the Department's supplemental questionnaires.⁵⁸ Respondents state that, with limited exceptions, the costs of producing different PET film products are essentially identical, and thus they are not tracked on a product-specific basis. Respondents state that differentiation in costs occurs only when a product requires different material inputs (e.g., different PET chips).

Department Position: The Department disagrees with Petitioners that Fuwei Films' CONNUMs should be truncated in a manner to match the level of specificity of its cost allocation. We note that the Department bases CONNUM models on meaningful commercial differences among products, which may not always correspond to differences in the COP among products. In other words, some physical product characteristics utilized by manufacturers to describe PET film may not take into account differences in production cost, but which nonetheless are important for different reasons. If different products use the same or similar amounts of certain FOPs, it would nonetheless decrease the accuracy of the margin calculation if the Department reduced the specificity of its CONNUM models to eliminate meaningful commercial differences among products.

Further, it would be inconsistent for the Department to require Fuwei Films to allocate its consumption rates on a less-specific basis, by mixing consumption rates for products that Fuwei Films did not sell in the United States and accounts for in different cost centers. The Department has determined that Fuwei Films' allocation methodology for its raw material consumption is sufficiently specific to satisfy our regulatory standards. Pursuant to 19 CFR 351.401(g)(1), the Department may consider allocated expenses when CONNUM-specific reporting is not feasible, provided that the Department is satisfied that the allocation method used does not cause inaccuracies or distortions. Additionally, a respondent that reports an expense on an allocated basis must demonstrate that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology does not cause inaccuracies or distortions. See 19 CFR 351.401(g)(2). The Department examines whether the respondent's methodology is feasible based upon the party's record, as well as other factors, such as accounting practices and the number of sales and models made by the party. See 19 CFR 351.401(g)(3).

Here, the Department is satisfied that Fuwei Films' allocation methodology is as specific as feasible. Fuwei Films' accounts (i.e., cost centers) that are maintained in the normal course of business reflect that the company takes note of differences in cost only for products with different surface treatments (and thus different combinations of the FOPs). Further, based upon the available information on the record, the Department considers it to be reasonable that different products of varying thicknesses in microns do not necessarily have different rates of raw material consumption in terms of weight units of raw material consumed per weight unit of

⁵⁸ For specific sales and cost accounts for Fuwei Films' production lines, see Fuwei Films Supplemental Section A response, dated April 16, 2010, at Exhibit SA-11; see also Fuwei Films' July 19, 2010, Section D response at Exhibit 4SD-10.

PET film produced. Petitioners have made no argument challenging the reasonableness of this proposition on a theoretical basis. Thus, Fuwei Films demonstrated that its allocation is calculated on as specific a basis as possible and does not cause inaccuracies and distortions.

Moreover, Fuwei Films reported that the trial production line and its leased production line are separate cost centers, and we confirmed this statement by an examining Fuwei Films' chart of accounts.⁵⁹ Fuwei Films' trial production line is a production line for developing new products, and thus pertains to SG&A expenses which would not normally be included in the cost allocation.⁶⁰ Further, Fuwei Films closed its leased production line in early 2009, incurring various expenses which were related to the shut down.⁶¹ Fuwei Films sub-leased the workshop of the leased production line in April 2009, and thus the closure is of a complete and permanent nature.⁶² It is the Department's practice to consider the expenses stemming from the complete shutdown of a production facility to be separate from the COP of a company's products.⁶³ If the Department were to aggregate raw materials consumed and production quantities of Fuwei Films' leased production line with the raw materials consumed and production quantities for its main production lines, the Department would be including expenses associated with the closing of the leased production line in Fuwei Films' COP.⁶⁴ Thus, the Department disagrees with Petitioners that the raw materials consumed and production quantities of Fuwei Films trial production line and its leased production line must be added to Fuwei Films' cost allocation.

Finally, the Department notes that at the beginning of the investigation in this proceeding, and in the concurrent antidumping duty investigations of PET Film from Brazil, Thailand, and the United Arab Emirates, the Department set forth a period for comments on the appropriate product characteristics for defining individual products. See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552 (May 5, 2008). Subsequently, the Department determined the physical characteristics making up the CONNUM based upon the comments received. The Department does not have a practice of altering product characteristics for defining individual products in subsequent reviews based upon a specific respondent's reported sales and FOPs. However, should Petitioners submit comments on the appropriate CONNUM methodology at the beginning of a subsequent AR, the Department will consider the comments prior to issuing its antidumping questionnaire.

Thus, the Department finds that reducing the CONNUM physical characteristics and including

⁵⁹ See, e.g., Fuwei Films Supplemental Section A response, dated April 16, 2010, at Exhibit SA-11.

⁶⁰ See Memorandum from Thomas Martin to the File, "2009 Annual Report of Fuwei Films (Holdings) Co., Ltd.," dated June 29, 2010 ("Fuwei Films 2009 FS") at 22.

⁶¹ See Fuwei Films 2009 FS at 23.

⁶² See id. at 33.

⁶³ See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From Canada, 70 FR 73437 (December 12, 2005) and accompanying Issues and Decision Memorandum at Comment 8 ("The policy of not basing our decision on whether the facility in question produced the merchandise under review or merchandise not under review is consistent with our treatment of such costs in past {shut down cost} cases.").

⁶⁴ Fuwei Films allocated its shutdown costs to its products in the normal course of business. See Fuwei Films 2009 FS at 41.

FOP consumption for non-subject merchandise would not increase the accuracy of Fuwei Films' cost allocation. Therefore, for the final results, the Department has determined to continue using the product characteristics from our original questionnaire and applied the reported consumption rates from Fuwei Films' main production lines.

Issue 8: Whether the Department should make further revisions to its labor rate methodology revised after the Preliminary Results

- Respondents argue that the Department has proposed countries that are not comparable to the PRC to calculate the SV for labor. Respondents have placed information on the record that indicates that there is no production of PET film in Ecuador, Egypt, Jordan, Peru, Ukraine and the Philippines. Respondents further argue that the U.S. International Trade Commission's ("ITC") final determination for PET film did not indicate any production in these six countries, and an affidavit from a U.S. importer did not list the six countries as producers of PET film.
- Respondents further argue that the Department's export data does not show that Ecuador, Jordan, Peru, Egypt, Ukraine and the Philippines are "significant producers." Respondents contend that the remaining two countries used by the Department, Indonesia and Thailand, are not "major producers" according to the ITC.
- Respondents state that it would be an abuse of discretion for the Department to select SVs from countries that are not producers of PET Film, and if the Department uses export data, it should base the wage rate calculation on net exports, not raw exports.
- Respondents argue that if the Department continues to calculate the labor rate based on a simple average of significant producers with similar economic conditions, the Department must base its calculation on the net exports from Indonesia and Thailand, and not use information for countries that have no production of PET film.
- Respondents contend that the International Labour Organization ("ILO") labor rate for India, the primary selected surrogate country, should be used notwithstanding that it is not industry-specific. Respondents state that the Department has a preference to use a single surrogate country, and as India is unquestionably a significant producer of PET film, the Department should solely use the Indian data for valuing labor.
- Respondents argue that if the Department does not use India solely, it must include India as one of the countries in the countries of the "basket" calculation.
- Petitioners contend that Respondents' argument about the methodology's results in this case exceeds the "narrow issue" of the methodology itself, and should be rejected in accordance with the Department's instructions.
- Petitioners state that Respondents had the opportunity to argue about the status of Ukraine, the Philippines, and Peru as significant producers when the Department requested the parties to comment on potential surrogate countries, and they did not.
- Petitioners contend that evidence exists on record that, at least with respect to the countries included on the Department's initial list of possible surrogate countries, there are manufacturers operating in those countries that produce comparable merchandise.
- Petitioners state that Respondents fail to explain why they believe the wage rate methodology yields results that they find unsatisfactory, and Respondents have only

offered an arbitrary line for the Department to draw rather than some guidance or argument for how the Department ought to determine what “significant” means in this case or in the future to define significant producer countries.

- Petitioners claim that Respondents rely on ambiguous and dubious sources to support the assertion that the Department’s selected countries do not produce comparable merchandise, such as a webpage that does not indicate the countries in which the companies listed on it manufacture their merchandise.
- Petitioners state that the ITC table cited by Respondents shows only producers of PET film, not all comparable merchandise, and that it shows only exporting countries for the period 2002 through 2006, which is not contemporaneous with the POR.

Department’s Position: In Dorbest, the CAFC invalidated the Department’s regulation, 19 CFR 351.408(c)(3), which directs the Department to value labor using a regression-based method. As a consequence of the CAFC’s decision, the Department is no longer relying on the regression-based wage rate as proscribed by the regulation. The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For the final results of this review, we have calculated an hourly wage rate in valuing Respondents’ reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC. Although the Department is no longer using a regression-based method to value labor, the Department has determined that reliance on labor data from multiple countries, as opposed to labor data from a single country, constitute the best available information for valuing the labor input for the reasons discussed fully below.

Section 773(c)(4) of the Act requires the Department “to the extent possible” to use “prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the non-market economy country, and (B) significant producers of comparable merchandise.” Accordingly, to calculate a wage rate, the Department first looked to the Surrogate Country Memo issued in this proceeding to determine countries that were economically comparable to the PRC.⁶⁵

The Department disagrees with Respondents’ argument that we should use only the Indian wage rate from the ILO data. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists across wages from countries with similar GNI.⁶⁶ Using the high- and low-income countries identified in the Surrogate Country Memo as bookends provides more data points which the Department prefers as more preferable. While there is a strong worldwide relationship between

⁶⁵ See Surrogate Country Memo.

⁶⁶ The Department notes that 19 CFR 351.408(b) specifies that the Department “will place primary emphasis on per capita {gross domestic product (“GDP”)}.” However, it is Departmental practice to use “per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country’s level of total income and thus level of economic development.” See Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates, 72 FR 13246, 13247, fn. 2 (March 21, 2007).

wage rates and GNI, too much variation exists among the wage rates of comparable market economies (“MEs”).⁶⁷ As a result, we find reliance on wage data from a single country is not preferable where data from multiple countries are available for the Department to use.

For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 1,040 and USD 3,990), the hourly wage rate spans from USD 0.52 to USD 2.41.⁶⁸ Additionally, although both the Philippines and Indonesia have GNIs below USD 2,000, and both could be considered economically comparable to the PRC, Indonesia’s calculated industry-specific wage rate is USD 0.52, as compared to the Philippines’s observed wage rate of USD 1.38 – over two and a half times that of Indonesia.⁶⁹ There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For these reasons, and because labor is not traded internationally as other commodities are, the variability in labor rates that exists among otherwise economically comparable countries is a characteristic unique to the labor input. Moreover, the large variance in these wage rates illustrates why it is preferable to rely on data from multiple countries for purposes of valuing labor. The Department thus finds that reliance on wage data from a single country is not preferable where data from several countries are available. For these reasons, the Department maintains its long-standing position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department has employed a methodology that relies on as large a number of countries as possible that also meet the statutory requirement that a surrogate be derived from a country that is economically comparable and also a significant producer. Indeed, for this reason, although the Department is no longer using a regression-based methodology to value labor, the Department has determined that reliance on labor data from multiple countries, as opposed to labor data from a single country constitutes the best available information for valuing the labor input.⁷⁰

Furthermore, we disagree that 19 CFR 351.408(c)(3) represents the sole exception to valuing factors from a single surrogate country, as Respondents argue. The statute provides ample flexibility for the Department to source factor data from more than one country in order to value factors using the best available information.⁷¹ Additionally, although 19 CFR 351.408(c)(2)

⁶⁷ See e.g., ILO, *Global Wage Report: 2009 Update*, (2009) at 5, 7, 10. http://www.ilo.org/wcmsp5/groups/public/--dgreports/---dcomm/documents/publication/wcms_116500.pdf.

⁶⁸ See Memorandum from Thomas Martin to The File, “First Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Industry-Specific Wage Rate Selection,” dated October 18, 2010 (“Revised Labor Rate Memo”) at Exhibits 1 and 8.

⁶⁹ See *id.*

⁷⁰ Both the statute and our regulations recognize the need to source factor data from more than one country. Although 19 CFR 351.408(c)(2) provides that the Department will *normally* source the FOPs from a single surrogate country, the language in the regulation provides sufficient discretion for the Department to address situations in which sourcing an FOP from a single source is not preferable. Use of the word “normally” means that this is not an absolute mandate. As we explained, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country.

⁷¹ See section 773(c)(1) of the Act (“the valuation of the factors of production shall be based on the best available

expresses a preference for sourcing FOPs from a single surrogate country, it provides sufficient discretion for the Department to address situations in which sourcing an FOP from a single source is not preferable. The use of the word “normally” means that this is not an absolute mandate. As we explained, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country. Moreover, we disagree with Respondents that a finding that a global relationship exists between wages and GNI has not been established, or is based on outdated data. The regression analysis that the Department has performed nearly every year since 1997 – the most recent in 2009 – demonstrates on average, as GNI increases, so do hourly wage rates.⁷² While Dorbest invalidated the Department’s former method of valuing labor because it included data from countries that were not first determined to meet the statutory criteria, the opinion does not call into question the inherent relationship that exists between wage rates and GNI. Given this relationship, it is reasonable to look to GNI as a relevant factor in determining economic comparability for deriving the labor value.

In order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo.⁷³ At the time of the Preliminary Results, the Department compiled a non-exhaustive list of six countries, considered to be economically comparable to the PRC, for purposes of selecting the primary surrogate country for this review. In determining which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.⁷⁴ From the list of countries contained in the Surrogate Country Memo, the Department used the country with the highest GNI (i.e., USD 3,990) and the lowest GNI (i.e., USD 1,040) as “bookends” for economic comparability. The Department then identified all countries in the World Bank’s World Development Report with per capita GNIs for 2007 that fell between the “bookends.” This resulted in 43 countries, ranging from India (with USD 1,040 GNI) to Peru (with USD 3,990 GNI), that the Department considers economically comparable to the PRC.⁷⁵

Regarding the “significant producer” prong of the statute, the Department identified all countries which have exports of comparable merchandise (defined as exports under HTS 3920.62, the HTS code identified in the scope of this order) between 2007 and 2009.⁷⁶ In this case, we have defined a “significant producer” as a country that has exported comparable merchandise between 2007 through 2009. In this instance, there is a very close correspondence between the scope of the order and the description of the HTS code.⁷⁷ After screening for countries that had exports of comparable merchandise, we determine that 17 of the 43 countries designated as economically

information . . . in a market economy country or countries considered to be appropriate. . . .”) (emphasis added); see also section 773(c)(4) of the Act (“in valuing factors of production {the Department} . . . shall utilize . . . the prices or costs of factors of production in one or more market economy countries”) (emphasis added).

⁷² See <http://www.ita.doc.gov/wages>.

⁷³ See Surrogate Country Memo.

⁷⁴ See 19 CFR 351.408(b).

⁷⁵ See Revised Labor Rate Memo at Exhibit 1.

⁷⁶ The export data is obtained from GTA.

⁷⁷ The subject merchandise is polyethylene terephthalate film, with specific exclusions, as noted in the scope of the order. The full description of HTS 3920.60 is “Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: Of poly(ethylene terephthalate).”

comparable to the PRC are also significant producers. Accordingly, for purposes of valuing wages for the final results, the Department determines the following 17 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Bolivia, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Honduras, India, Indonesia, Jordan, Morocco, Peru, the Philippines, Sri Lanka, Thailand, Tunisia, and Ukraine.⁷⁸

Consistent with other recent decisions, for these final results, we have defined “significant producer” as a country that has exported comparable merchandise during the relevant period (in this case 2007 through 2009). We find the fact that a country exports comparable merchandise to other countries to be an indication that the country is a significant producer of such merchandise. Given the latitude provided by the Act and legislative history, we have done so in the instant proceeding as well as numerous other proceedings.⁷⁹ This methodology maximizes the size of the ultimate basket while still accounting for this criterion, which, in turn, provides the best available wage rate because multiple data points for labor will minimize potential variations in wage data that are normally present among otherwise economically comparable countries. The record evidence demonstrates that Ecuador, Egypt, Jordan, Peru, the Philippines, and Ukraine had exports of comparable merchandise. Additionally, using only labor data from the countries listed on the Surrogate Country Memo limits the number of potential surrogate countries for use in the Department’s wage rate calculation, and the Department’s long-standing and current practice is to value labor using as many data points as possible.⁸⁰ Although we have revisited our definition of “significant producer,” doing so does not disturb our selection of India as the primary surrogate country because India is also at a comparable level of economic development and a significant producer of comparable merchandise. Furthermore, India provides the best sources of data for the other FOPs in this proceeding.

Respondents argue that exports of PET film from Ecuador, Egypt, Jordan, Peru, the Philippines, and Ukraine are so small they cannot be considered significant producers and that the Department should not interpret the term “significant” to mean “any.” Respondents contend that Congress would not have used the term “significant” if its intent was to include any data in valuing FOPs. We do not agree with Respondents that defining “significant producer” as a country that exports comparable merchandise amounts to allowing “any” country to be considered a significant producer. The Department finds that a country’s ability to export comparable merchandise is indicative of substantial production because it is producing merchandise at a level that surpasses its internal consumption. The AD statute and regulations are silent in defining a “significant producer,” and the AD statute grants the Department

⁷⁸ See Revised Labor Rate Memo at Exhibit 2.

⁷⁹ See e.g., First Administrative Review of Sodium Hexametaphosphate From the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 64695 (October 20, 2010) (“Sodium Hexametaphosphate from PRC”); Certain Tissue Paper Products From the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review, 75 FR 63806 (October 18, 2010); Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 60725 (October 1, 2010); and Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010) (“Coated Paper from PRC”).

⁸⁰ See Coated Paper from PRC and accompanying Issues and Decision Memorandum at Comment 30; see Sodium Hexametaphosphate from PRC and accompanying Issues and Decision Memorandum at Comment 3.E.

discretion to look at various data sources for determining the best available information.⁸¹ Thus, in administering this provision, the Department has the discretion to consider all reasonable data on the administrative record in determining if a country is a “significant producer” of comparable merchandise, including information as to the countries that have sufficient production to permit export of that merchandise to other countries.⁸²

After determining the 17 countries which are economically comparable and significant producers, the Department then identified which of these 17 countries also reported the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B “earnings,” if available and “wages” if not.⁸³ We used the most recent data available (2008) and went back five years, resulting in wage data from 2003-2008. We then adjusted the wage data for countries where it was available to the period of review using the relevant consumer price index (“CPI”).⁸⁴ Of the 17 countries that the Department has determined are both economically comparable and significant producers, nine countries, *i.e.*, 1) Bolivia, 2) El Salvador, 3) Fiji, 4) Guatemala, 5) Honduras, 6) India, 7) Morocco, 8) Sri Lanka, and 9) Tunisia, were omitted from the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the prescribed six-year period.⁸⁵

Based on the selection methodology set forth above, the Department has determined it is most appropriate to rely on industry-specific wage data reported by the ILO for the final results.

⁸¹ See Section 773(c) of the Act.

⁸² The legislative history of the Act provides that the term ‘significant producer’ may include ‘any country that is a significant net exporter,’ but by no means does it prevent consideration of other relevant information as well. See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).

⁸³ The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes fewer countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. Thus, if earnings data is unavailable from the base year (2008) or the previous five years (2003-2007) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback, and Request for Comments, 71 FR 61716 (October 19, 2006) (“Antidumping Methodologies (2006)”) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

⁸⁴ Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies (2006), 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the CPI. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also Revised Labor Rate Memo at Exhibit 4 for the CPI data used in the instant case.

⁸⁵ See ILO’s Yearbook of Labor Statistics.

Determinations as to whether industry-specific ILO datasets constitute the best available information must necessarily be made on a case-by-case basis. In making these determinations, the Department considers a number of factors such as the appropriateness of the ILO industry-specific data in light of the subject merchandise and the availability of industry specific data.

Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, and because, absent evidence to the contrary, the industry-specific data would be at least more specific to the subject merchandise than the national manufacturing data, the Department used industry-specific data to calculate a surrogate wage rate for the final results, in accordance with section 773(c)(1) of the Act. Thus, for this review, the Department has determined to calculate the wage rate using a simple average of the data provided to the ILO under Sub-Classification 25 of the International Standard Industrial Classification ("ISIC")-Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. We have determined that this is the best available information from which to derive the surrogate wage rate based on the analysis set forth below.

The ISIC code is maintained by the United Nations Statistical Division and is updated periodically. The ILO, an organization under the auspices of the United Nations, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC-Rev.2, ISIC-Rev.3, and ISIC-Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

Due to concerns that the industry definitions may lack consistency between different ISIC revisions, the Department finds that averaging wage rates within the same ISIC revision (*i.e.*, not mixing revisions) constitute the best available information for the final results. While the Department finds that use of industry-specific information is the best available information herein, the fact remains that there is a lack of information available that indicates how the wages from the selected category and other manufacturing sectors are weighted or combined. The Department finds that averaging wage rates that were reported under the same revision standard provides specificity to the industry being examined, but also ensures some degree of consistency across multiple labor data points being averaged. Accordingly, for the final results, the Department has only used industry-specific wage data from a single revision.

It is the Department's preference to use data reported under the most recent revision; however, in this case we found that none of the countries found to be economically comparable and significant producers reported data pursuant to ISIC-Rev.4. Accordingly, in this case, we turned to the industry definitions contained in ISIC-Rev.3 to find the appropriate classification for PET film. Under the ISIC-Rev. 3 standard, the Department identified the two-digit series most specific to PET film as Sub-Classification 25, which is described as "Manufacture of Rubber and Plastics Products."⁸⁶ Accordingly, for this review, the Department has calculated the wage rate

⁸⁶ Further, the explanatory notes to ISIC-Rev.3.1 define the industry sub-classification as the industry "characterized

using a simple average of the data provided to the ILO under Sub-Classification 25 of the ISIC-Rev. 3 standard by countries determined to be economically comparable to the PRC and significant producers of comparable merchandise. Additionally, when selecting data available from the countries reporting under ISIC-Rev. 3, Sub-Classification 25, we used the most specific wage data available within this revision.

From the 17 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. Of these 17 countries, the following eight countries reported industry-specific data under the ISIC-Rev. 3, under Classification 25, “Manufacture of Rubber and Plastics Products,” 1) Ecuador, 2) Egypt, 3) Indonesia, 4) Jordan, 5) Peru, 6) the Philippines, 7) Thailand, and 8) Ukraine. The following nine, however, did not report wage data on an industry-specific basis, 1) Bolivia, 2) El Salvador, 3) Fiji, 4) Guatemala, 5) Honduras, 6) India, 7) Morocco, 8) Sri Lanka, and 9) Tunisia; accordingly, these nine countries are not included in our wage rate calculation.

While the Department prefers to use the most specific wage data available within the selected ISIC revision, because no country that was considered economically comparable and a significant producer reported earnings or wage data below the two-digit level, the Department has relied on the two-digit sub-classification in our industry-specific wage rate calculation. Accordingly, based on the above, the Department relied on data reported under ISIC-Rev.3. Sub-Classification 25, “Manufacture of Rubber and Plastics Products:” from the following countries to arrive at the industry-specific wage rate calculated for this review, 1) Ecuador, 2) Egypt, 3) Indonesia, 4) Jordan, 5) Peru, 6) the Philippines, 7) Thailand, and 8) Ukraine.

Based on the foregoing methodology, the revised wage rate to be applied in the final results is 1.45 USD/Hour. This wage rate is derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC’s ruling in Dorbest and the statutory requirements of section 773(c) of the Act.⁸⁷

Issue 9: Whether the Department should revise Fuwei Films’ methodology for calculating indirect selling expenses

- Petitioners argue that the Department should apply its normal methodology for indirect selling expenses, and base Fuwei Films’ U.S. selling expense ratio on the amounts recorded in the company’s financial statements. Petitioners argue that the Department usually calculates a ratio based on total selling expenses, which is divided by total sales in the same period, and then applied to the gross sales price to derive a per-unit indirect selling expense amount.
- Petitioners argue that the financial statements from Fuwei Films’ U.S. subsidiary

by the raw materials used {i.e., rubber and plastics} . . . (h)owever, this does not mean that all products made of these materials necessarily fall under this activity. . . Most notably, manufacture of apparel and footwear is classified in division 18 and 19, even when plastic or rubber is the main constituent.”

⁸⁷ See Revised Labor Rate Memo at Exhibit 8.

indicates that Fuwei Films made the mistake of assuming that the indirect selling expense category for U.S. subsidiaries include only specific indirect selling expenses, whereas it is the Department's longstanding practice to include all operating expenses other than those reported as direct expenses in indirect selling expenses for U.S. subsidiaries that are only involved in selling subject merchandise.

- Respondents state that Petitioners' proposal regarding Fuwei Films' U.S. affiliate's indirect selling expenses would result in the double-counting of direct selling expenses. Respondents further state that some of the proposed financial statements for calculating financial ratios are for entities with U. S. selling operations, and thus the calculated financial ratios would already include the amounts for the indirect selling expenses. On this basis, Respondents contend that Fuwei Films' reported indirect selling expenses should be excluded entirely to avoid double-counting the expenses.

Department Position: The Department agrees with Petitioners. The Act does not outline a particular methodology for calculating indirect selling expenses.⁸⁸ The Department's standard methodology, however, is to calculate indirect selling expenses based on expenses incurred and sales revenue recognized (or cost of goods sold) during the same period of time.⁸⁹ In other words, the Department considers actual indirect expenses incurred in the numerator of the indirect selling expense ratio, while revenue recognized is included in the ratio's denominator. It is our practice to base U.S. indirect selling expenses on all the expenses incurred in the U.S. market that the respondents have not been reported as direct expenses.⁹⁰ The only direct selling expenses that Fuwei Films reported were credit expenses.⁹¹ The Department has reviewed the financial statement of Fuwei Films' affiliated constructed export price ("CEP") seller and has determined that credit expenses are not included in its reported total operating expenses.⁹² Thus, the Department has recalculated Fuwei Films' reported indirect selling expenses by dividing Fuwei Films' total operating expenses by its net sales during the POR and reducing the gross unit price of each of Fuwei Films' CEP sales by the resulting percentage. For details regarding this calculation, see Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Final Analysis Memorandum for Fuwei Films (Shandong) Co., Ltd. ("Fuwei Films")," dated February 14, 2011 at 2.

⁸⁸ See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1314 (Fed. Cir. 2001); see also Heveafil Sdn. Bhd. v. United States, 25 C.I.T. 147, 159 (2001) ("The statute does not define indirect selling expenses"). See also the Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994) at 824 (explaining that the Department is not required to use a specific calculation methodology, merely stating that indirect selling expenses "would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales.").

⁸⁹ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Ecuador, 69 FR 76913 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 26.

⁹⁰ See Fuwei Films Section C Response, dated March 16, 2010, at 30 (instructions for Fields 41 and 42).

⁹¹ Id. at 25-30.

⁹² See Fuwei Films Section A response, dated February 26, 2010, at Exhibit A-17.

Issue 10: Whether the Department should have selected Wanhua as a mandatory respondent

- Respondents state that the Department should have individually reviewed separate rate respondent Wanhua, since the total initial pool of potential respondents was six. Respondents state that, as one of these did not ship during the POR and two of the others did not submit separate rate information and elected not to participate at a very early stage of the review, the Department's actual pool of respondents was only three. Respondents state that the Department's refusal to review Wanhua individually is contrary to the CIT's decisions in Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States, 637 F. Supp. 2d 1260 (Ct. Int'l Trade 2009) ("Zhejiang Native Products") and Carpenter Technology Corp. v. United States, 662 F. Supp 2d. 1337 (Ct. Int'l Trade 2009) ("Carpenter Tech. Corp.").
- Respondents submit that the Department must take into account the fact that only three entities have ever been individually reviewed under this order and received a rate based upon something other than AFA. Respondents state that two of these respondents will receive a rate of de minimis or lower in this review, and one of these respondents received a rate of less than 4% in the investigation.
- Petitioners state that the Department lawfully selected two of six potential respondents based upon practicability. Petitioners also state that, unlike in the prior cases cited by Respondents, Respondents have made their objections after the Preliminary Results, and after statutory deadlines have passed.

Department Position: The Department disagrees with Respondents' argument that it should review an additional respondent at this late stage in the AR. Put simply, given the statutory time constraints of an AR, it is not feasible at this time to identify an additional respondent, provide that respondent with time to respond to our questionnaires, analyze the data and develop preliminary results of review, provide parties with an opportunity to comment upon the results, solicit rebuttal comments, and then develop final results of review.

We note that Respondents did not take advantage of earlier opportunities to present its argument that the Department should review several respondents. Specifically, in its Initiation Notice, the Department solicited comments from interested parties on its respondent selection methodology.⁹³ The Department subsequently released U.S. import data obtained from U.S. Customs and Border Protection ("CBP") under administrative protective order ("APO") to all interested parties with an APO and offered an additional commentary period for all interested parties regarding the CBP data for use in respondent selection.⁹⁴ No comments were submitted by any interested parties regarding these CBP data or the Department's intention to use them for selecting the respondents in this AR.

Moreover, to the extent that Respondents' argument follows from Wanhua's failure to participate

⁹³ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 74 FR 68229 (December 23, 2009).

⁹⁴ See Letter from Robert Bolling to All Interested Parties, dated December 29, 2009.

in the AR, Respondents did not present their suggestion that the Department review an additional respondent at a point in the proceeding where the Department could have acted upon its request. Respondents had ample opportunity to raise this issue as early as January 2010, when the Department issued its antidumping questionnaire.⁹⁵ We reject the underlying implication of Respondents' argument, which is that the Department is obligated to review all applicants who seek a separate rate. Though section 777A(c)(2) of the Act affords the Department discretion to limit the total number of respondents selected for review, it contains no corresponding instruction that the Department must expand its AR when exporters seeking a separate rate identify themselves through the filing of a separate rate application.

Moreover, we also note that no interested parties submitted a voluntary response to the Department's full antidumping questionnaire.⁹⁶ Further, Wanhua never stated its intent not to participate in the AR, which distinguishes the instant case from Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560, 28562 (May 21, 2010) (where a respondent stated that it would not participate as a mandatory respondent).

Furthermore, we disagree with Respondents' argument that our selection of two respondents is contrary to the statute or precluded by Zhejiang Native Products and Carpenter Tech. Corp. Section 777A(c)(2) of the Act allows the Department to limit its examination of exporters and producers if "[i]t is not practicable to make individual weighted average dumping margin determinations...because of the large number of exporters or producers involved in the AR." There were six potential respondents in this AR, which we expressly identified as a large number of companies in the Respondent Selection Memo.⁹⁷ With respect to our reliance upon limited resources as part of our basis for limiting the number of respondents, although the CIT rejected this reasoning in Zhejiang Native Products, the CAFC has recognized the Department is afforded broad discretion in allocating its enforcement resources. See Torrington Co. v. United States, 68 F.3d 1347, 1351 (1995) (citing Heckler v. Chaney, 470 U.S. 821, 831 (1985)). Moreover, the Zhejiang Native Products case was dismissed pursuant to the plaintiff's request. With respect to Respondents' reliance upon Carpenter Tech. Corp., the decision is not final and the Department's remand results are pending before the CIT at this time.

Therefore, the Department finds that its respondent selection methodology in this AR is in full compliance with section 777A(c)(2)(B) of the Act.

Regarding Respondents' argument that Wanhua should have been selected as a mandatory respondent because only one company in the proceeding will have received a calculated rate that is not de minimis or AFA, the Department disagrees. The Department notes that it has calculated

⁹⁵ We note that, at the time the Department issued its questionnaire, Wanhua shared counsel with Fuwei Films, a mandatory respondent.

⁹⁶ See 19 CFR 351.204(d).

⁹⁷ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Respondent Selection in the First Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated January 19, 2010 ("Respondent Selection Memo").

two dumping margins above de minimis for both mandatory respondents in the instant review. Therefore, the Department has calculated a separate rate for Wanhua based upon these two calculated dumping margins.

Issue 11: Whether the Department should revise its methodology for calculating the separate rate for respondents not specifically reviewed

- Respondents submit that any calculated rate cannot reasonably exceed four percent, and would be absurd to approach or exceed the maximum rate that could be properly calculated under the statute when taking adverse inferences.
- Respondents submit that a reasonable method for calculating the separate rate would be an average of the two de minimis rates that should be calculated in this review, with the calculated rate from the investigation.
- Petitioners did not comment on this issue.

Department Position: In the Preliminary Results, the Department assigned the simple average of the calculated dumping margins of the two mandatory respondents as the separate rate for Wanhua, the only company not selected for individual examination receiving a separate rate in this AR. For these final results, the Department will continue to use the simple average of the calculated dumping margins of the two mandatory respondents to calculate the separate rate.

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an AR pursuant to section 777A(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and de minimis rates and rates based entirely on AFA. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not individually examine in an AR. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based on total facts available. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based on total facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possibility is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

Therefore, for the reasons describe above, for these final results, the Department is assigning the simple average of the calculated dumping margins of the two mandatory respondents (neither of which are zero, de minimis, or based on AFA) as the separate rate.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this AR and the final weighted-average dumping margins for the investigated firms in the Federal Register.

Agree ____

Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)