



A-570-924
Administrative Review
11/01/2011 - 10/31/2012
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

CASE: Polyethylene Terephthalate Film, Sheet, and Strip from the
People's Republic of China

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2011 - 2012 Administrative Review

SUMMARY

On December 26, 2013, the Department of Commerce (the "Department") published its Preliminary Results¹ for the fourth antidumping duty ("AD") administrative review of polyethylene terephthalate ("PET") film, sheet, and strip from the People's Republic of China ("PRC").

Shaoxing Xiangyu Green Packing Co., Ltd. ("Green Packing") and Tianjin Wanhua Co., Ltd. ("Wanhua") (collectively "Respondents") submitted publicly available surrogate value ("SV") data on January 23, 2014 and January 31, 2014, respectively.² On February 4, 2014, Mitsubishi

¹ See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2011-2012, 78 FR 78333 (December 26, 2013) ("Preliminary Results") and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary, Enforcement and Compliance, "Decision Memorandum for Preliminary Results of 2011-2012 Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated December 18, 2013 ("Preliminary Decision Memorandum").

² See Letter from Green Packing to the Secretary of Commerce "Polyethylene Terephthalate Film, Sheet, and Strip," dated January 23, 2014 ("Green Packing Final SV Comments"); see also letter from the Wanhua to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film (A-570-924): Surrogate Value Information for the Final Results," dated January 31, 2014 ("Wanhua Final SV Comments"). The Department rejected Wanhua's original submission of publicly available SV data (submitted timely on January 23, 2014) because the submission contained information the Department determined was not factual information to value factors of production ("FOP").



Polyester Film, Inc. and SKC, Inc. (“Petitioners”) submitted rebuttal comments regarding Wanhua’s SV Comments.³ We received case briefs from Wanhua, Petitioners and Green Packing on February 11, 2014 and February 12, 2014, respectively.⁴ We received a resubmitted case brief from Wanhua on February 28, 2014,⁵ rebuttal briefs from Petitioners and Wanhua on February 18, 2014, and a resubmitted rebuttal brief from Petitioners on March 17, 2014.⁶ Additionally, on February 11, 2014, the Department received comments on the draft liquidation instructions from Bemis Company, Inc. and its affiliate, Milprint Inc. (collectively “Bemis”), and a letter in lieu of a case brief from Terphane, Inc., in which Terphane, Inc. states that it supports all arguments made by Petitioners in Petitioners’ case brief.⁷ We have analyzed these documents and recommend that you approve the positions provided below in the “Discussion of the Issues” section of this Issues and Decision Memorandum.

SCOPE OF THE ORDER

The products covered by the order are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (“HTSUS”). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

³ See Letter from Petitioners, “Subject: Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: SV Rebuttal,” dated February 4, 2014.

⁴ See Letter from Petitioners, “Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Petitioners’ Case Brief,” dated February 11, 2014; see also letter from Green Packing, “Polyethylene Terephthalate (PET) Film from China,” dated February 12, 2014 (“Green Packing Brief”).

⁵ See Letter from Wanhua, “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Case Brief of Tianjin Wanhua Co., Ltd.,” dated February 11, 2014 (“Wanhua Brief”); see also letter from Howard Smith, Program Manager, Office IV, Enforcement and Compliance to Wanhua dated February 27, 2014 in which the Department rejected Wanhua’s Brief for the inclusion of untimely filed information and requested a redacted version be filed by March 5, 2014.

⁶ See Letter from Wanhua, “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Rebuttal Brief of Tianjin Wanhua Co., Ltd.,” dated February 18, 2014; see also letter from Petitioners, “Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Petitioners’ Rebuttal Brief,” dated February 18, 2014; see also letter from Howard Smith, Program Manager, Office IV, Enforcement and Compliance to Petitioners dated March 14, 2014 in which the Department rejected Petitioners’ rebuttal brief for its reference to untimely filed information found in Wanhua’s original case brief and requested a redacted version be filed by March 17, 2014.

⁷ See Letter from Bemis, “Comments on Draft Liquidation Instructions,” dated February 11, 2014; see also letter from Terphane, Inc., “Administrative Review Of The Antidumping Duty Order On Polyethylene Terephthalate (PET) Film, Sheet, And Strip From The People's Republic Of China/Letter In Lieu Of Case Brief,” dated February 11, 2014.

DISCUSSION OF THE ISSUES

I. General Issues

Issue 1: Surrogate Country Selection

Consistent with Policy Bulletin 04.1, the Office of Policy produced a list of potential surrogate countries that are at the same level of economic development as the NME.⁸ “The surrogate countries on the list are not ranked”⁹ and reflect the Department's long standing practice that, for the purpose of surrogate country selection, the countries on the list “should be considered equivalent” from the standpoint of their level of economic development.¹⁰ Once the Department identifies the countries that are at the same level of economic development as the PRC, it then identifies those countries that are significant producers of comparable merchandise. From the countries which are found to be both at the same level of economic development as the PRC and significant producers of comparable or identical merchandise, the Department will then select a primary surrogate country based upon whether the data for valuing FOPs are available and reliable.

In the Preliminary Results, the Department found that Indonesia and South Africa are both at the same level of economic development as the PRC and significant producers of comparable merchandise.¹¹ However, in the Preliminary Results, the Department found that Indonesia was the only country that had complete and reliable data for valuing FOPs, and thus, selected Indonesia as the surrogate country.¹² Subsequently, Wanhua placed on the record all the necessary surrogate value data from South Africa for the Department to use in the final results. Wanhua and Green Packing argue that the quality of the data for in Indonesia is not better than that of South Africa for valuing FOPs and that, as a result, the Department should select South Africa as the primary surrogate country for the final results.¹³ On the other hand, Petitioners challenge the Department’s preliminary finding that South Africa is a significant producer of comparable merchandise. For the reasons detailed below, the Department disagrees with Petitioners’ contention that South Africa is not a significant producer of comparable merchandise. The Department also disagrees with Wanhua’s arguments regarding the quality of the Indonesian data, and continues to find that Indonesia is the appropriate surrogate country.

⁸ See the Department's Policy Bulletin No. 04.1, regarding, "Non-Market Economy Surrogate Country Selection Process," (March 1, 2004) (“PB 04.1”), available on the Department's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

⁹ See the Department's memorandum entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated April 2, 2013 (“Surrogate Country List Request”); see also PB 04.1.

¹⁰ Surrogate Country List Request; see also PB 04.1.

¹¹ See Preliminary Decision Memorandum 11-13;

¹² Id. at 13-14.

¹³ The Department notes that Green Packing made a general argument that “South Africa has best quality of data, as compared to the others. The Department should use South Africa as the surrogate country in the final determination.” See Green Packing Case Brief at 17.

A. Whether South Africa is a Significant Producer of Comparable Merchandise

Petitioners' Argument

- South Africa is not a significant producer of comparable merchandise.
- South Africa's exports of PET film accounted for approximately .05 percent of world exports in 2011, and .07 percent in 2012. Indonesia accounted for 9.2 and 11.1 percent, respectively.
- Several other countries are much larger producers of comparable and identical merchandise than South Africa. There is no evidence demonstrating that South Africa's PET film production is significant relative to worldwide production levels, which is the metric cited by the Department's own policy.¹⁴ Wanhua fails to explain why it believes South Africa is a significant producer of comparable merchandise.

Wanhua's Argument

- The Court of International Trade ("CIT") has stated that the significant producer prong concerns whether the country is a significant producer of comparable, and not identical, merchandise.¹⁵ South Africa exports PET film and other comparable products such as PET yarn and other plastic films. Therefore, South Africa is a significant producer of comparable merchandise.
- The Department has made a legal determination in both this review and in another segment of this proceeding that South Africa is a substantial producer of PET film for purposes of surrogate country selection.
- The Department found that South Africa data was appropriate for use in DuPont v. US.¹⁶

Department's Position: In the Preliminary Results, the Department obtained worldwide export data from each country listed in the Surrogate Country Memorandum under Harmonized Tariff Schedule ("HTS") classification 3920.62 "Plates, Sheets, Film, Foil And Strip Of Plastics, Not Self-Adhesive, Non-Cellular, Not Reinforced Etc., Of Polyethylene Terephthalate."¹⁷ Because the Department obtained export data from each country for the same six-digit HTS number, which specifically covers PET film, our comparison covers comparable merchandise. In order to determine whether a country was a "significant producer" we examined whether the country exported comparable merchandise during the period 2011 through 2012.¹⁸ In 2011 and 2012, South Africa exported 143,780 kg and 103,229 kg of PET film under the HTS classification 3920.62, respectively. These export data show that South Africa was an exporter of products under the relevant HTS number, and thus the Department preliminarily determined that it was significant producer of comparable merchandise.

¹⁴ See Policy Bulletin 04.1 ("The extent to which a country is a significant producer. . . should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics)").

¹⁵ See Jiaying Brother Fastener Co. v. United States, 961 F. Supp. 2d 1323 (CIT 2014).

¹⁶ See Dupont Teijin Films v. United States, 931 F. Supp. 2d 1297 (CIT 2013) ("DuPont v. US"). The Department notes that final results of redetermination are pursuant to court order.

¹⁷ See Surrogate Country List at Attachment I, where the Department identified the Philippines, Indonesia, Thailand, Colombia, South Africa, and Costa Rica as potential surrogate countries; see also memorandum from Thomas Martin, Case Analyst, AD/CVD Operations, Office IV through Howard Smith, Program Manager, AD/CVD Operations, Office IV to The File "World Export Data for PET Film, 2011-2012," dated December 20, 2013 ("World Export Data") at Attachment.

¹⁸ See Preliminary Decision Memorandum at 12-13; World Export Data at Attachment.

Petitioners argue that in accordance with Policy Bulletin 04.1, South Africa is not a significant producer of comparable merchandise because it has a relatively small quantity of exports when compared to total world production. Specifically, Petitioners contend that South Africa is not a significant producer because it is one of the smallest producers based on the World Export Data.¹⁹ However, Policy Bulletin 04.1 also states that “the meaning of ‘significant producer’ can differ significantly from case to case,” and that “fixed standards such as ‘one of the top five producers’ have not been adopted” in the Department’s surrogate country selection process. Furthermore, the antidumping statute and regulations are silent in defining a “significant producer,” and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information.²⁰ Moreover, although the legislative history provides that the “term ‘significant producer’ includes any country that is a significant net exporter,”²¹ it does not preclude reliance on additional or alternative metrics based on record evidence to determine which countries might be included as significant producers. For example, in WBF/PRC Prelim (March 3, 2010), the Department relied on production data for selecting the primary surrogate country.²² In this case, we have considered countries with exports of comparable merchandise as significant producers.²³ Furthermore, the exports from South Africa, while relatively small, are not negligible. Therefore, for the final results, the Department continues to find that South Africa is a significant producer of comparable merchandise.

B. Quality of the Indonesian and South African Surrogate Data to Value FOPs

Wanhua’s Argument

South Africa

- The record contains high quality data from South Africa, which are superior to the data from Indonesia on the record.
- The record contains useable data to value PET chips and all other FOPs from the Trade Statistics Division of the South African Revenue Service, a primary source of information from the South African government.
- For the most critical input, PET chips, the South African data report nearly 12 million kilograms of PET chips from 15 non-excluded countries. The Department’s practice is to give more weight to the data which best values the most significant inputs.

¹⁹ See Policy Bulletin 04.1 stating that (“{i}f there are ten large producers and a variety of small producers, the term ‘significant producer’ could be interpreted to mean one of the top ten.”).

²⁰ See section 773(c)(1)(B) of the Act; see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012, 78 FR 39708 (July 2, 2013), and accompanying Issues and Decision Memorandum at comment I(B).

²¹ 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).

²² See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 75 FR 9581 (March 3, 2010) (“WBF/PRC Prelim (March 3, 2010)”), unchanged in Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 75 FR 44764, 44766 (July 29, 2010).

²³ Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review, 76 FR 37321 (June 27, 2011), and accompanying Issues and Decision Memorandum at Comment 7 (relying on export data for comparable merchandise to identify significant producers).

- South Africa was chosen as the surrogate country in DuPont v. US.²⁴ Therefore, the Department has recognized that South Africa has useable data to value FOPs.

Indonesia

- The Indonesian import data on the record to value FOPs are from a secondary source, i.e., Global Trade Atlas (“GTA”), making the South African data from a primary source inherently better and more reliable.
- Approximately two thirds of the Indonesian PET chips import volume on the record are from Singapore. Petitioners in the previous administrative review argued that the Indonesian import data were badly flawed due to imports from Singapore.²⁵ The same flaw is apparent in the import data on the record which is contemporaneous with the period of the instant review. Therefore, the Indonesian import data on the record are distorted and unusable.
- The price of PET chips is closely tied to petroleum prices. Indonesia subsidizes petroleum, and therefore the PET chip manufacturing industry is subsidized because it is tied closely to the cost of a related commodity product.

Green Packing’s Argument

- South Africa has the best data quality and should be used as the surrogate country in the final results.

Petitioners’ Rebuttal

- Indonesian GTA import data are reported by Statistics Indonesia, a government institute of Indonesia which provides statistical data. Thus, Indonesia GTA import data are a primary source of import data, and are at least as reliable as the South African data on the record.
- Wanhua fails to explain why Singaporean export data render the Indonesian PET chip import data unusable.
- The Department rejected Petitioners’ arguments regarding Indonesian imports of Singaporean PET chips in the previous administrative review.²⁶
- The alleged Indonesian subsidies are for gasoline, gasoil, and kerosene, i.e., fuels that consumers use for automobiles, motorcycles, and home heating, not petroleum. There is no relationship between Indonesian fuel prices that receive consumer subsidies and world petroleum prices.

Department’s Position: As an initial matter, the record of this review contains import data from the Trade Statistics Division of the South African Revenue Service, as well as Indonesian GTA import data sourced from Statistics Indonesia, to value FOPs.²⁷ After reviewing the South

²⁴ Final Results of redetermination pursuant to court order.

²⁵ Polyethylene Terephthalate Film, Sheet, and Strip Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35245 (June 12, 2013) (“PET Film/PRC (2013)”) and Issues and Decision Memorandum at Issue 2.

²⁶ Id.

²⁷ See generally Letter from Wanhua, “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Rebuttal Surrogate Country Selection Comments and Information,” dated May 10, 2013; see also generally letter from Green Packing, “Polyethylene Terephthalate (PET) Film from China” dated April 30, 2013 (“Green Packing SV Comments”); see also generally letter from Petitioners, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Comments on Surrogate Country Selection;” see also

African import data, the Department has determined that the data are official,²⁸ publicly available, broad market averages, contemporaneous with the period of review (“POR”), tax-exclusive and representative of significant quantities of imports, thus, satisfying critical elements of the Department’s criteria for selecting SVs.²⁹ Furthermore, no party challenged the South African import data placed on the record. Therefore, the Department has determined that the South African import data from the Trade Statistics Division of the South African Revenue Service are suitable for use in valuing FOPs. Although we agree with Wanhua that, on remand in DuPont v. US, we recognized that South Africa has usable data to value FOPs in the second administrative review, we do not find this determination dispositive as to whether the Department should select South Africa as the appropriate surrogate country in the instant review.³⁰ The Department considers surrogate country selection on a segment-by-segment basis, and is not bound to select the same surrogate country in a subsequent review that it selected in a prior review.³¹

With regard to Indonesia, the Department disagrees with Wanhua’s claim that the Indonesian GTA import data are secondary information, and thus are not as reliable as the South African import data. As an initial matter, Wanhua has not submitted any evidence in support of its claim. Furthermore, the source of the GTA import data from Indonesia is Statistics Indonesia, “a government institute of Indonesia that is responsible for official Indonesian import statistics.”³² Therefore, the Department continues to find that the Indonesian GTA import data are a primary source of import data, and agree with Petitioners that the data are equally as reliable as the South African import data on the record with regard to this point.

The Department does not find Wanhua’s claim of distortion in the Indonesian GTA import data for PET chips convincing. Wanhua claims that the Indonesian GTA import data for PET chips

generally Wanhua Final SV Comments; see also generally Green Packing Final SV Comments.

²⁸ The source of the import data from South Africa is Trade Division of the South African Revenue Service, which is “the legislatively empowered controlling entity for statistics on the importation and exportation of goods.” See Wanhua Final SV Comments at SVFII-1-SVFII-4.

²⁹ See Fuwei Films (Shandong) Co. v. United States, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (indicating the Department’s preference for “data that reflects a broad market average, is publicly available, contemporaneous with the period of review, specific to the input in question, and exclusive of taxes on exports”); see also Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 159 (January 2, 2008), and accompanying Issues and Decision Memorandum at Comment 1; Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2007) and accompanying Issues and Decision Memorandum at Comment 1; Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

³⁰ See DuPont Teijin Films v. United States, Final Results of Redetermination Pursuant to Court Order, at 2 (February 7, 2014), available at <http://enforcement.trade.gov/remands/13-111.pdf> (DuPont v. US Remand Redetermination).

³¹ See PB 04.1 (“In each NME investigation and review, the team considers potential surrogate countries in terms of their economic comparability to the NME country, and whether they are significant producers of comparable merchandise”) (emphasis added).

³² See PET Film/PRC (2013) at Issue 2(A) & n.35 (citing Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007), and accompanying Issues and Decision Memorandum at Comment 2B (where the Department notes we typically find that official government publications are reliable and credible sources of information).

are distorted due to the presence of Singaporean imports in that data. However, in support of its argument, Wanhua simply referred to Petitioner's argument in the preceding third administrative review that the Indonesian import data was badly distorted due to imports of Singaporean PET chips, observed that two thirds of the Indonesian import data for PET chips in the instant review come from Singapore, and concluded that in the current review the same flaw (regarding Indonesian GTA import data) is apparent.

First, Wanhua makes no specific argument regarding the Indonesian GTA import data. Wanhua merely relies on arguments made in the previous administrative review to question the GTA data in the instant review. Second, the Department notes that in the previous review, Petitioners also challenged the validity of the Indonesian GTA import data based on a comparison to Singaporean export data. The record of the instant review does not contain any Singaporean PET chips export data to be used to analyze Indonesian GTA import data. If the Department found it appropriate to conduct such an analysis based on Wanhua's claims, and Wanhua's observations alone, without the support of record evidence, this is not enough for the Department to question the validity of the Indonesian GTA import data in the instant review. Third, even if the Department were to question the validity of the Indonesian import data based on Singaporean export data, the Department found the export data placed on the record by Petitioners in the preceding review inappropriate for benchmarking purposes because the Department finds country-specific export data are not suitable benchmarks to test the validity of selected SV data.³³ The Department stated that given different reporting and inspection requirements and timing considerations, it would be unrealistic to expect export statistics to correspond with import statistics for any given shipment of merchandise.³⁴ The Department further stated that it "does not expect one country's export quantities to be a one-to-one ratio to another country's import data."³⁵ As such, the Department found that the Singaporean export data are not reliable for purposes of evaluating the legitimacy of the corresponding import volumes into Indonesia.³⁶ Wanhua has not presented any evidence for the Department to reconsider its view in this review from the preceding third administrative review, and thus the Department continues to find that the Indonesian GTA import data for PET chips are reliable for purposes of valuing PET chips.

Finally, the Department disagrees with Wanhua's contention that domestic Indonesian fuel subsidies provide sufficient reason for the Department to dismiss Indonesia as a potential surrogate country. The Argha Karya Prima Industry Tbk.'s ("Argha Karya") financial statements on the record state that "{t}he prices of these raw materials {PET chips} are directly affected by petroleum price fluctuations and the level of demand and supply in the market."³⁷ Wanhua uses this statement to incorrectly tie the PET chip manufacturing industry to domestic

³³ PET Film/PRC (2013) at Issue 2A (citing First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009), and accompanying Issues and Decision Memorandum at Comment 3f).

³⁴ PET Film/PRC (2013) at Issue 2A.

³⁵ Id.

³⁶ Id. (citing 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) ("Thermal Paper/PRC (2008)"), and accompanying Issues and Decision Memorandum at Comment 9 ("We do not normally consider export statistics from the relevant exporting country reliable for purposes of evaluating the legitimacy of the corresponding import values into the importing country"))).

³⁷ See Green Packing SV Comments at Exhibit 2 (quoting note 31).

Indonesian fuel subsidies through the use of two internet articles which Wanhua claims discuss petroleum subsidies.³⁸ However, the Department found that both articles contain opinions by the authors regarding the domestic supply and demand of Indonesian fuel, the future of Indonesian domestic fuel subsidies, and the impact of domestic fuel subsidies on the overall Indonesian economy, not world petroleum prices.³⁹ The Department agrees with Petitioners that Wanhua incorrectly tied domestic Indonesian fuel subsidies to world petroleum markets using these articles. Wanhua has not demonstrated with record evidence that domestic Indonesian fuel subsidies have any impact on world petroleum prices, and the Department has no reason to believe that any such impact exists. Finally, with respect to Indonesian fuel subsidies and the domestic Indonesian PET chip production industry, in the Preliminary Results, the Department did not use domestic Indonesian prices to calculate a PET chip SV. Specifically, as stated in the Preliminary Results regarding the calculation of a PET chip SV, the Department stated that it has “found WTA {GTA} *import data* to represent the best information available for valuation purposes because when taken as a whole -- after excluding non-market, unspecified, and subsidized data points -- they represent an average of multiple price points within a specific period and are tax-exclusive.”⁴⁰ Therefore, the Department’s calculation of a PET chip SV is based on import data.

For the reasons explained in item C below, the Department finds the quality of the Indonesian SV data better than that of the South African data when it comes to financial statements. Thus, based on the entirety of the SV data on the record, the Department disagrees with Wanhua’s position that the South African SV data are superior to the Indonesia data.

C. Surrogate Financial Statements to Value Financial Ratios

Wanhua’s Argument

South Africa

- The record contains two sets of financial statements from a South African producer of comparable merchandise, specifically the 2012 and 2013 financial statements of Astrapak. The use of more than one set of financial statements to calculate surrogate financial ratios is more accurate.
- The Department’s practice in multiple reviews and DuPont v. US is to use the surrogate financial statements of producers of comparable merchandise where the financial statements of the identical producers suffer from defects which, as noted below, is the case for the financial statements of the Indonesian producer, PT Argha Karya.⁴¹

Indonesia

- The annual financial report on the record for an Indonesian company is incomplete pursuant to Indonesian law, and thus unusable. The Department has a well-established

³⁸ See Wanhua’s Final SV Comments at Exhibit SVFI-2 (84).

³⁹ Id.

⁴⁰ See Preliminary Decision Memorandum at 22 (citing 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 7) (emphasis added).

⁴¹ See Polyethylene Terephthalate Film, Sheet, and Strip Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753 (February 22, 2011); see also PET Film/PRC (20013); see also DuPont v. US (Final Results of redetermination pursuant to court order.)

practice of not using financial information that is incomplete or illegible.⁴² Although Wanhua was able to locate a more complete version, it is not Wanhua's role to perfect Petitioners' incomplete submission that is missing some 75 pages of the financial statement.

- Indonesia is a country which the Department has found maintains broadly available, non-industry-specific export subsidies. Approximately one third of PT Argha Karya's total sales constituted exports. Therefore, the data contained in PT Argha Karya's financial statements should be excluded, and not used to calculate surrogate financial ratios. The South African data should be used instead.

Petitioners' Rebuttal

South Africa

- The 2011 and 2012 Astrapak financial statements only cover four and eight months of the POR, respectively.
- The Department stated that it "has a preference for selecting the financial statements of a producer of identical merchandise over a producer of comparable merchandise when such information is available."⁴³ PT Argha Karya is a producer of identical merchandise while Astrapak is a producer of comparable merchandise.

Indonesia

- The 2012 PT Argha Karya financial statements cover 10 months of the POR.
- Wanhua failed to prove based on Wire Decking/PRC (2010), Thermal Paper/PRC (2008), and OTR Tires PRC (2008), that the Department requires a complete annual financial report on the record to value FOPs.
- Although the complete PT Argha Karya annual report is absent from the record, the financial statements are complete, and that is what the Department needs to value FOPs under section 773(c)(1) of the Act.⁴⁴ There is nothing in the 2012 PT Argha Karya annual report that is relevant to the Department's determination.

Department's Position: We continue to find in these final results that the 2012 financial statements of Argha Karya constitute "the best available information" for valuing surrogate financial ratios within the meaning of section 773(c)(1) of the Tariff Act of 1930 as amended ("the Act"), and we have continued to use the financial ratios of Argha Karya to value overhead, selling general and administrative ("SG&A") expenses, and profit.

In valuing FOPs, section 773(c)(1) of the Act instructs the Department to use the "best available information" from a market economy country considered to be appropriate by the Department. Both the Court of Appeals for the Federal Circuit and the CIT have recognized that what

⁴² See Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32905 (June 10, 2010) ("Wire Decking/PRC (2010)") and accompanying Issues and Decision Memorandum at Comment 2, see also 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) ("Thermal Paper/PRC (2008)") and accompanying Issues and Decision Memorandum at Comment 2; see also Certain New Pneumatic Off-The-Road Tires Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("OTR Tires/PRC (2008)") and accompanying Issues and Decision Memorandum at Comment 17A.

⁴³ See Preliminary Decision Memorandum at 13-14.

⁴⁴ See 19 CFR 351.408(c).

constitutes the “best available information” rests largely within the Department’s discretion.⁴⁵ In choosing surrogate financial ratios, the Department’s policy is to use data from the market-economy surrogate companies based on the “specificity, contemporaneity, and quality of the data.”⁴⁶ Furthermore, in valuing factory overhead, SG&A, and profit, the Department uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.⁴⁷

First, Wanhua argues that the Department needs a complete annual report on the record in order to calculate surrogate financial ratios. Wanhua cites three antidumping duty administrative reviews in support of its argument. However, the Department agrees with Petitioners that Wanhua has failed to support its claim that Argha Karya’s financial statements are incomplete. First, in Wire Decking/PRC (2010), the Department was faced with partial financial statements (not a partial annual report) from an Indian producer that did not include key data necessary to calculate SVs. Specifically, the financial statements did not contain schedules A through D accompanying the balance sheet. Thus, the Department was unable to calculate surrogate financial ratios.⁴⁸ In this case, Argha Karya’s financial statements include the schedules necessary for the calculation of surrogate financial ratios.⁴⁹ Second, in Thermal Paper/PRC (2008), the Department declared a set of financial statements incomplete because they did not include a fixed asset schedule.⁵⁰ The fixed asset schedule is necessary as it supports the Department’s use of a depreciation expense in its calculation of financial ratios. Argha Karya’s financial statements on the record of the instant review include this schedule.⁵¹ Third, in OTR Tires/PRC (2008), the Department disregarded certain financial statements from the calculation of surrogate financial ratios because the financial statements did not contain the auditor’s statements, extensive data on the income statement, and accompanying schedules, or were not legible.⁵² Argha Karya’s financial statements on the record of this administrative review include an auditor’s statement, the income statements are complete, the necessary schedules (as previously stated) are present, and the financial statements are legible.⁵³ Therefore, for these final results, the Department continues to find Argha Karya’s financial statements usable for the calculation of the surrogate financial ratios.

Second, the Department disagrees with Wanhua’s contention that Argha Karya’s financial statements are unusable due to the Department’s determination that Indonesia maintains broadly available, non-industry-specific export subsidies. The Department agrees with Wanhua that it

⁴⁵ See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999); FMC Corporation v. United States, 27 C.I.T. 240, 251 (CIT 2003) aff’d 2004 U.S. App. Lexis 3096 (Fed. Cir. 2004) (citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (CIT 1992)).

⁴⁶ See, e.g., Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum at Comment 5.

⁴⁷ See 19 CFR 351.408(c)(4) and section 773(c)(4) of the Act.

⁴⁸ Wire Decking/PRC (2010) at Comment 2.

⁴⁹ See Letter from Jonathan Hill and Thomas Martin to The File “Preliminary Results of the Fourth Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Surrogate Value Memorandum,” dated December 18, 2013 at Exhibit 9, in which the Department properly calculated surrogate financial ratios without comment by interested parties.

⁵⁰ Thermal Paper/PRC (2008) at Comment 2.

⁵¹ See Green Packing SV Comments at Exhibit 2.

⁵² OTR Tires/PRC (2008) at Comment 17.A.

⁵³ See Green Packing SV Comments at Exhibit 2.

has reason to believe or suspect that prices of inputs from Indonesia may have been subsidized because we have found in other proceedings that Indonesia maintain broadly available, non-industry-specific export subsidies.⁵⁴ Therefore, it is reasonable to infer that all exports to all markets from Indonesia may be subsidized, and to therefore disregard import prices from Indonesia.⁵⁵ However, the Department notes that this decision typically pertains to import-based SVs, not the calculation of surrogate financial ratios.⁵⁶ Imports into a surrogate country from an exporting country that has broadly available export subsidies may reflect such subsidies in their prices as these are broad price averages. Thus, the Department avoids using such import prices. In contrast, the Department's calculation of surrogate financial ratios is based on a specific company's costs and sales experience within Indonesia. In valuing FOPs (in this case, surrogate financial ratios), Congress has directed Commerce to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."⁵⁷ Therefore, where the Department has reason to believe that a company received subsidies, based on information in the company's financial statements, the Department may find that the financial ratios derived from that company's financial statements are less representative of the financial experience of the company or the relevant industry compared to ratios derived from financial statements that do not contain evidence of subsidies.⁵⁸ It is our policy not to reject financial statements based on the grounds that the company received export subsidies unless we have previously found the specific export subsidy program to be countervailable.⁵⁹ Here, Wanhua does not cite or identify any specific subsidy program which the Department has previously found to be countervailable. Therefore, the Department continues to find that Argha Karya's financial statements are suitable for use in the calculation of surrogate financial ratios.

Finally, Wanhua argues that the record contains multiple financial statements from South Africa, and the Department has a preference for using multiple financial statements to calculate surrogate financial ratios. The Department agrees that it does have a preference for using

⁵⁴ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

⁵⁵ See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

⁵⁶ Id. (referring to "market-economy purchases from Indonesia, Korea, and Thailand")

⁵⁷ See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988).

⁵⁸ See, e.g., 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), and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁹ See, e.g., Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 16379 (March 23, 2011), and accompanying Issues and Decision Memorandum at Comment 3; Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 1592 (January 12, 2010), and accompanying Issues and Decision Memorandum at 37-38; Certain Steel Threaded Rod From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 68400 (November 4, 2011) and accompanying Issues and Decision Memorandum at 11-12.

multiple financial statements to calculate surrogate financial ratios.⁶⁰ Using multiple financial statements allows the Department to average the factory overhead, SG&A, and profit ratios and, thus, to normalize any potential distortions that may arise from using those of a single producer. Thus, by using the average of multiple surrogate companies, we arrive at a broader-based surrogate valuation that minimizes the particular circumstances of any one producer. However, in this case, the record contains multiple financial statements from the same company. Using such financial statements defeats the Department's purpose for using multiple financial statements and the potential for distortion in the surrogate financial ratios still exists. Therefore, the Department finds that having multiple financial statements from the same company does not provide a benefit in the calculation of surrogate financial ratios. Thus, the Department finds that the Indonesian and South African financial statements are equally contemporaneous with the POR. However, the Department has a preference for selecting the financial statements of a producer of identical merchandise over a producer of comparable merchandise when such information is available.⁶¹ In the Preliminary Results, the Department determined that AstraPak produces comparable merchandise such as polyethylene film and PET containers while Argha Karya produces identical merchandise.⁶² Therefore, the merchandise Argha Karya produces is more specific to merchandise subject to this order, and therefore its financial statements constitute the best available information on the record. For this reason, the Department is continuing to use Argha Karya's financial statements for the final results for purposes of calculating the surrogate financial ratios. By using the financial statements of Argha Karya, all FOPs employed by the respondents can be valued using contemporaneous, specific SV data from Indonesia.

Summary

The Department found both South Africa and Indonesia to be significant producers of comparable merchandise, and also to be at the level of economic development of the PRC.⁶³ In addition, the Department found that data from both countries are available to value the factors of production. However, the Department determined that the Indonesian financial statements are the best available information for surrogate financial calculations because the Indonesian financial statements pertain to the production of identical merchandise, while the South African

⁶⁰ 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.

⁶¹ See, e.g., Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part, 78 FR 42932 (July 18, 2013) and accompanying Issues and Decision Memorandum at Comment 1 (where the Department chose the data for one country over another country because the selected country's data included financial statements from an identical producer which better approximated the production experience of the respondent); see also 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), and accompanying Issues and Decision Memorandum at Comment 2 (where the Department used the financial statements of companies that produced stable bleaching powder and/or calcium hypochlorite, rather than the financial statement of a company that produced caustic soda, because it had determined that both calcium hypochlorite and stable bleaching powder were more comparable to subject merchandise than was caustic soda, even though caustic soda was still found to be comparable merchandise).

⁶² See Preliminary Decision Memorandum at 14.

⁶³ See Preliminary Decision Memorandum 11-13.

financial statements pertain to the production of only comparable merchandise. Thus, the Department will continue to use Indonesia as the surrogate country, value FOPs based on Indonesian GTA import data, and use Argha Karya's financial statements to calculate the surrogate financial ratios.

Issue 2: PET Chip Surrogate Value

Wanhua's Argument

- Green Packing has submitted market economy information regarding its purchases of PET chips. The Department should use this information to assign a surrogate value to Respondents' PET chips.

No interested parties rebutted this comment.

Department's Position: Wanhua argues that Green Packing's "price paid . . . for market economy inputs reasonably represents a surrogate price for inputs in this review that should be uniformly applied."⁶⁴ Wanhua cites to no law, regulation, or administrative practice in support of its argument. Accordingly, and as discussed further below, the Department rejects Wanhua's argument.

Pursuant to 19 CFR 351.408(c)(1), when a respondent reports raw material inputs sourced from and produced by ME suppliers in meaningful quantities (*i.e.*, not insignificant quantities) and paid for in an ME currency during the POR, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted such as by findings of dumping or subsidization.⁶⁵ Where the Department finds ME purchases to be of significant quantities (*i.e.*, 33 percent or more), the Department uses the actual purchase prices to value the inputs.⁶⁶ Here, Wanhua did not purchase the required quantity of PET chips from a market economy supplier as set forth in 351.408(c)(1). Accordingly, this regulation is inapplicable to Wanhua.

Therefore, for the final results, the Department will continue to value PET chips for Green Packing using Green Packing's own specific market economy purchase data in calculating its NV, and will not entertain Wanhua's request to use Green Packing's market economy purchase data to value Wanhua's PET chips in calculating its NV.

Issue 3: Treatment of Generated and Reintroduced By-Product

Respondents' Argument

- Reintroduced chips are not a new raw material input, but a by-product of the PET film production process, and, although reintroduced into production, should be assigned a value of zero in calculating NV because they have already been valued when introduced

⁶⁴ See Wanhua's Case Brief at 18.

⁶⁵ See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997); Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 29, 2006) (Market Economy Inputs Policy).

⁶⁶ See Market Economy Inputs Policy, 71 FR at 61717-61718.

as a raw material. Should the Department assign a value of zero to the reintroduced PET chips, it would comport with CIT case law and the Department's previous practice in multiple administrative reviews of PET products.⁶⁷

- The statute requires the Department to value the “quantities of raw materials employed,”⁶⁸ not an “intermediate product” produced from the raw material as a result of the production process. By mechanically applying the statute and valuing reintroduced chips without regard to Congressional intent, the Department violated its legal obligation to calculate margins as accurately as possible.⁶⁹
- In the original investigation of this case, the Department stated that reintroduced PET chip was waste collected and transformed into PET chip, and therefore it was a re-use of purchased material and a value should not be assigned to it in the production process (unchanged in the final determination).⁷⁰
- The Department incorrectly stated in the Preliminary Results that the methodology used to account for reintroduced PET chips to calculate NV for Green Packing follows its practice from the most recently completed administrative review in this proceeding. However:
 - The Department was actually citing the methodology used to calculate the DuPont Group's NV.
 - In the most recently completed administrative review, Green Packing did not report reintroduced PET chips as a raw material input. This method was accepted by the Department in the preliminary and final results of that review.
- The Department's practice requires that respondents reconcile their FOP database to the cost of goods sold (“COGS”) reported in their financial statements, and because the Department has requested an FOP for recycled PET chips that Green Packing does not account for, its FOP database cannot be reconciled with its COGS.
- All raw materials, including those for producing reintroduced PET chips, are fully reported in the FOP database. Thus, to include a value for reintroduced PET chips again

⁶⁷ See E.I. DuPont de Nemours & Co. v. United States, 4 F. Supp. 2d 1248, 1253 (CIT 1998) (“E.I. DuPont”); see also Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part, 61 FR 35777 (July 5, 1998); see also Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 60 FR 42835 (August 17, 1995); see also Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from the People's Republic of China, 69 FR 7908 (February 20, 2004) (“Retail Bags/PRC (2004)”).

⁶⁸ See section 773(c)(3)(B) of the Act.

⁶⁹ See Church of the Holy Trinity v. United States, 143 U.S., at 457 and 459 (1892) which states “It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers;” see also Public Citizen v. Dep't of Justice, 491 U.S., at 440 and 454 (1989) which states “{w}here the literal reading of the statutory term would compel ‘an odd result,’ . . . we must search for other evidence of Congressional intent to lend the term its proper scope”); see also Wirtz v. Bottle Blowers Ass'n, 389 U.S., 463 and 468 (1968) which states “a proper construction frequently requires consideration of {a statute's} wording against the background of its legislative history and in light of the general objectives Congress sought to achieve;” see also Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (“Rhone Poulenc”).

⁷⁰ See Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China: Program Analysis for the Preliminary Determination (“Preliminary Investigation Memorandum”) at 3 (April 25, 2008) as cited by Green Packing in its July 8, 2013 response to question 1 of the third supplemental Section D questionnaire.

leads to double-counting, and violates the Department's statutory mandate to accurately calculate dumping margins.

- The CIT found that reintroduced PET material is not entirely substitutable with virgin material, and it is thus inappropriate to require respondents to base their material costs of reintroduced PET material on the market value equivalent of virgin PET material.⁷¹ To apply a SV equivalent to virgin PET chip input would double-count the processing costs of transforming the PET waste back into recycled PET chip. Therefore, if the Department values reintroduced PET material it should do so using HTS classification 3915.10 which includes "Waste, Parings And Scrap, Of Polymers of Ethylene," of Indonesia or South Africa.

Petitioners' Rebuttal

- The Department rejected arguments very similar to those made by Green Packing in the most recently completed administrative review.
- Specifically, in accordance with section 773(c) of the Act, the Department is required to value reintroduced PET chip, as it is utilized in the production of subject merchandise.
- The Department found that presuming that the by-product generated from production will match, or even roughly correspond to, the by-product used as an input is not supported by data.
- The respondents fail to address the reasoning provided in the most recently completed third administrative review.

Department's Position: The Department disagrees with both Wanhua's and Green Packing's arguments that the Department should assign a value of zero to the reintroduced PET chip FOP. In NME cases, the Department's practice is to value all FOPs used to produce subject merchandise, including "quantities of raw materials employed," in accordance with the Act.⁷² The Department's practice with regard to recycled inputs, such as reintroduced PET chip FOPs, is to determine surrogate values for them.⁷³

First, in the context of a NME case such as PET film from the PRC, assigning a zero value to Wanhua's and Green Packing's reintroduced PET chips FOP is methodologically inaccurate, and would conflict with the Department's past practice in this regard. The record indicates that each product manufactured by Wanhua and Green Packing is made according to a formula (or recipe) that specifies how much (if any) reintroduced PET chips will be used.⁷⁴ There is no record evidence to indicate that the quantity of reintroduced PET chips will be equivalent to, or closely match, the recyclable PET waste by-product generated during any given period such that the

⁷¹ Id.

⁷² See sections 773(c)(1)(B) and (c)(3)(B) of the Act.

⁷³ See, e.g., PET Film/PRC (2013) at Issue 5; Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012), and accompanying Issues and Decision Memorandum at Issue 9.

⁷⁴ See Letter from Wanhua, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Supplemental Section D Response by Tianjin Wanhua Co., Ltd.," dated May 7, 2013 ("Wanhua May 7th Response") at Exhibit SD-3; see also letter from Wanhua, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Supplemental Section D Response by Tianjin Wanhua Co., Ltd.," dated July 9, 2013 at Exhibit 3SD-1.75; see also letter from Green Packing, "Polyethylene Terephthalate (PET) Film from China," dated July 9, 2013 ("Green Packing July 9th Response") at Exhibit S3D-3.

Department. Therefore, the Department cannot exclude the reintroduced PET chips from its NV calculation (or assign a zero value to them) on the basis that they are completely balanced out by the recyclable PET waste by-product generated.⁷⁵ Wanhua's and Green Packing's product-specific input requirements bear no relationship to the rate at which the production process generates the scrapped material that the respondents reclaim.

Second, in NME cases, unlike ME cases, the Department generally must apply SVs, and not the respondent's own costs.⁷⁶ In applying SVs, as stated above, section 773(c) of the Act requires the Department to value all inputs utilized in producing the subject merchandise. Particularly, section 773(c)(3)(B) requires the Department to value the "quantities of raw materials employed." Green Packing claims that the reintroduced PET chips are an intermediate material and should therefore not be valued as a raw material in the calculation on NV. However, respondents' recipes show that certain PET film products are to be produced using reintroduced PET chips, as well as other raw chip inputs.⁷⁷ Thus, it would not be accurate to claim that reintroduced PET chips are not one of the factors or production simply because it is an "intermediate" material. The Department needs the quantities of all of the materials necessary to produce each product in order to calculate an accurate and complete NV. For instance, if one product has significant amounts of reintroduced PET chips as an input, then to exclude the reintroduced PET chips altogether, or assign them a value of zero, would lead to undervaluing NV for that particular product.⁷⁸ Thus, to value a material input at zero in an NME case would be equivalent to removing that input altogether from the calculation of NV. Therefore, the Department continued to treat Green Packing's reintroduced PET chips as an input and valued it as a raw material in the calculation of NV.

Finally, Respondents rely on a CIT case, E.I. DuPont, in which a foreign producer, SKC, reported that it produced PET film using both virgin and recycled PET chips reprocessed from PET film scrap from prior production runs.⁷⁹ In the context of calculating the cost of production and constructed value, SKC assigned a cost to its recycled PET chip "equal to the processing cost involved in recovering the scrap material into chips and treats the recycled material as having a zero materials cost," meaning that "from a materials cost standpoint, SKC assigns a zero value for recycled PET transferred to the receiving film, but includes the cost of processing the edge trimmings into recycled PET."⁸⁰ The CIT sustained the Department's acceptance of SKC's methodology, "because {that methodology} fully accounts for the cost of producing the recycled PET chips," and while "SKC assigns a zero value to recycled PET chips, SKC does not subtract the value of recycled chips from the cost of producing film" such that "there is no basis for adding any recycled chip value back into the cost of film manufactured with chip material input."⁸¹ Although respondents request that the Department apply the methodology accepted in

⁷⁵ See, e.g., PET Film/PRC (2013) at Issue 5.

⁷⁶ See, e.g., Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1368 (Fed. Cir. 1999) (explaining that costs of production in an NME case cannot be used to determine fair market value of any product because NME prices are subject to discrepancies which distort their value).

⁷⁷ See Wanhua May 7th Response at Exhibit SD-3, see also Letter from Green Packing, "RE: Polyethylene Terephthalate (PET) Film from China," dated July 8, 2013 ("Green Packing July 8th Response") at Exhibit SD-3.

⁷⁸ See PET Film/PRC (2013) at Issue 5.

⁷⁹ E.I. DuPont, 4 F. Supp. 2d at 1251-52.

⁸⁰ Id. at 1252.

⁸¹ Id. at 1253 (citations omitted).

E.I. DuPont, a ME case, to this review, assigning a zero value to Respondents' reintroduced PET chips (or excluding the input altogether) not only is inapplicable in a NME case for the two reasons articulated above, but also leads to further inaccuracies in applying an accurate surrogate overhead ratio.⁸² Unlike E.I. DuPont, the Department in a NME proceeding, captures the processing cost of transforming the recyclable PET waste back into the reintroduced PET chips input through its calculation of overhead. The Department calculates overhead by multiplying the surrogate overhead ratio by a respondent's cost of manufacturing, which is comprised of raw materials, labor, and energy. Therefore, the overhead ratio is applied to all three components of the cost of manufacturing. Even if the labor and energy expenses associated with Respondents' recycling process have been reported, overhead would be understated if the overhead ratio is not multiplied by the total value of all of the materials used in production, including the reintroduced PET chips. This is why the Department, in calculating a respondent's overhead costs, must determine SVs for all inputs, including recycled inputs such as reintroduced PET chips.⁸³

Respondents also argue that the Department unreasonably changed its practice from Retail Bags/PRC (2004) and the underlying investigation of PET film from the PRC because the Department did not value the mandatory respondents' reintroduced PET chips as an input in those instances.⁸⁴ However, as explained above, a decision not to value Green Packing's (or Wanhua's) reintroduced PET chip input would be methodologically inaccurate. This is precisely why the Department revised its approach with regard to the treatment of reintroduced PET chip FOPs since the original less-than-fair-value investigation of this case, that reason being to facilitate the calculation of a more accurate dumping margin.⁸⁵ With regard to Green Packing's argument that the Department violated Congressional intent by mechanically applying the statute, Green Packing cites to no authority for this claim.

Additionally, although the Department did not value Green Packing's reintroduced PET chips as an FOP in the previous administrative review, for the reasons explained above, it is correct to value the reintroduced PET chips in this review in order to calculate the margin as accurately as possible. Section 773(c)(3)(B) of the Act requires the Department to value the "quantities of raw materials employed." In the instant review, the Department extensively questioned Green Packing regarding its reintroduced PET chip input quantities. Through several supplemental questionnaires, Green Packing demonstrated its ability to report a methodology for estimating the quantities of reintroduced PET chips used during the POR. Therefore, the Department used Green Packing's data to calculate its margin as accurately as possible.⁸⁶

We disagree with Green Packing's claim that the Department incorrectly cited the methodology from the third administrative review that was used to calculate the DuPont Group's NV. In the Preliminary Results, the Department specifically stated, "{f}urthermore, including Green Packing's reintroduced PET chip input in the cost of direct materials follows the *practice* from

⁸² PET Film/PRC (2013) at Issue 5.

⁸³ Id.

⁸⁴ Retail Bags/PRC (2004), 69 FR at 7909.

⁸⁵ The Department may change its past practice where there are good reasons for the new policy. See, e.g., Huvis Corp. v. United States, 570 F.3d 1347, 1353, 1354-55 (Fed. Cir. 2009).

⁸⁶ See Rhone Poulenc, 899 F.2d at 1191 (basic purpose of statute is to determine current margins as accurately as possible).

the most recently completed administrative review in this proceeding.”⁸⁷ The Department cited its previous practice to value all raw material inputs in deriving NV, not a specific methodology used to calculate the DuPont Group’s NV. Further, the Department followed the same practice in the second administrative review.⁸⁸ Based on the above analysis, the Department’s intent was clear in determining a surrogate value for Green Packing’s reintroduced PET chips, in accordance with Section 773(c)(3)(B) of the Act and in accordance with the general practice from previous two administrative reviews.

The Department agrees with Green Packing that, because it does not assign a cost to the reintroduced PET input in its raw material accounts, the Department cannot reconcile this FOP to Green Packing’s COGS. However, this alone does not mean that the Department would decide to contravene section 773 of the Act and eliminate an FOP from a respondent’s surrogate cost of manufacturing. Although Green Packing does not track reintroduced PET chips in its COGS, there is uncontroverted evidence that it uses reintroduced PET chips in its production.⁸⁹ The fact that the untracked FOP will not reconcile to the COGS because it is not recorded in COGS does not diminish the evidence that the FOP was used and thus it needs to be valued.

Further, the Department disagrees with Wanhua’s and Green Packing’s claims that the methodology for valuing its reintroduced PET chip input double-counted the costs of virgin PET chips. Pursuant to the Department’s methodology, the Department grants by-product offsets to avoid double-counting where it values recycled material inputs recovered from prior production runs. The Department notes that it granted Wanhua’s by-product offset. Specifically, in the Preliminary Results, the Department granted “Wanhua an offset to production costs for by-product material generated during production where the quantity of such material generated is supported by record evidence.”⁹⁰ Therefore, the Department did not double-count any raw materials associated with Wanhua’s production of subject merchandise. With regard to Green Packing, and as discussed in more detail below in Issue 4, the Department continues to deny Green Packing’s request for a by-product offset corresponding to its purported recyclable PET waste generated during production of subject merchandise, because Green Packing has not substantiated its request for this by-product offset. Therefore, any perceived double-counting, or increase in yield loss of its virgin PET chip input was caused by Green Packing’s own failure to substantiate a by-product offset.⁹¹ Green Packing has the burden for providing the relevant information for the Department to properly value any claimed offset, and it did not provide it.

Finally, the Department disagrees with Green Packing’s claim that it should value its recycled PET chip input using the SV for “waste, pairings & scrap, of other plastic” based on HTS

⁸⁷ See Preliminary Decision Memorandum at 25 (emphasis added).

⁸⁸ See Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012) and the accompanying Issues and Decision Memorandum at Issue 9.

⁸⁹ See Green Packing July 8th Response at Exhibit S3D-5.

⁹⁰ See Preliminary Decision Memorandum at 25 (citing 19 CFR 351.401(b)(1)).

⁹¹ See 19 CFR 351.401(b)(1)-(2) (although “{t}he Secretary will not double-count adjustments” to normal value, “{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment”); see also QVD Food Co., Ltd. v. United States, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (“the burden of creating an adequate record lies with {interested parties} and not with Commerce”) (citations omitted).

subheading 3915.10. The International Convention on the Harmonized Commodity and Coding System applies the same HTS six-digit prefix to products subject to international trade.⁹² Wanhua has placed Chapter 39 of South Africa's HTS "PLASTICS AND ARTICLES THEREOF," on the record, and note seven states "Heading 3915 does not apply to waste, parings and scrap of a single thermoplastic material, transformed into primary forms (headings 3901 to 3914)."⁹³ Because the same HTS six-digit prefix is applicable to Indonesia and South Africa, waste, parings, and scrap produced using PET of HTS classification 3907.60.90 cannot be classified under Indonesian HTS 3915.10. Consequently, based on the above reasoning, the Department will continue to use Indonesian HTS subheading 3907.60.90 to value Respondents' reintroduced PET FOP and the corresponding by-product offset.

II. Company-Specific Issues

Green Packing

Issue 4: Treatment of Green Packing's Reintroduced PET Waste By-Product

Green Packing's Argument

- If the Department does not assign a zero value to the recycled PET chip input, then it should grant a reasonable recycled PET chip by-product offset.
- The Department should accept the quantity of by-product reintroduced as a proxy for the by-product generated in calculating a sufficiently accurate by-product offset, because it is reasonable to believe that all PET by-product reintroduced into production during the POR was also generated during the POR. The only difference between the quantity of reintroduced PET chips and the generated quantity of PET chip by-product must be very small, given the amount of PET film production and the estimated reintroduced by-product that the Department accepted (see Issue 3).
- Green Packing's reintroduced PET chip input and offset was reported in the method specifically instructed by the Department. Since it was not until the release of the Preliminary Results that Green Packing found out that the reintroduced PET chip input methodology would be accepted by the Department and the offset methodology rejected, Green Packing should be provided the opportunity to provide more information for consideration in the final results. Therefore, the Department should allow Green Packing to submit data in support of a new PET chip allocation methodology which will minimize double-counting of the PET chip input.
- Green Packing's practice and approach with regard to its recyclable PET waste is to exhaust it first by instantaneously and immediately returning it into production of PET film; it does not keep an inventory of it. Green Packing did not, and has no way to, record the reclaimed PET in the normal course of business.

⁹² See 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) and accompanying Issues and Decision Memorandum at Comment 3.

⁹³ See Letter from Wanhua, "Re: Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Rebuttal Surrogate Country Selection Comments and Information," dated May 10, 2013, at Exhibit SCR-1.

Petitioners' Rebuttal

- In accordance with 19 CFR 351.401(b)(1), Green Packing must support its by-product offset with company records indicating the quantity of by-product generated during the POR.

Department's Position: With regard to Green Packing's recyclable PET waste by-product reintroduced into production, the Department continues to find that Green Packing has not substantiated its request for this by-product offset. 19 CFR 351.401(b)(1) states that "(t)he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." For the reasons below, the Department finds that Green Packing has not met this regulatory burden.

The Department notes that it provided several opportunities for Green Packing to report its by-product offset, but Green Packing repeatedly responded that it does not record the by-product generated or reintroduced PET chip input quantities, and that one should cancel out the other.⁹⁴ Thus, Green Packing merely characterized the quantity of PET chips that it reintroduced into production as the generated quantity for its recyclable PET waste by-product offset.⁹⁵ However, as stated above in Issue 3, there is no indication that the by-product output material generated during production of a particular product is, or can be, controlled such that the amount generated is the same as the amount reintroduced during production, and there is no evidence on the record to support such a proposition.⁹⁶ The methodology proposed by Green Packing suggests that each product generates the same amount of PET by-product material that is required to produce the product. However, there is insufficient evidence to support a finding that reintroduced PET by-product input quantities and generated recyclable PET by-product output quantities should be equal during the POR for Green Packing. Therefore, the Department continues to find the by-product offset reporting methodology used by Green Packing to be unreasonable and has not granted an offset.

The Department also disagrees with Green Packing's claim that its reintroduced PET chip input and by-product offset were reported using a method requested by the Department. The Department never instructed Green Packing to report its reintroduced PET chip input and by-product offset in any specific manner. In its supplemental questionnaires, the Department stated the following:

Because production techniques determine the amount of PET by-product in specific products, the Department requests that Green Packing report the amount of waste film (or reintroduced PET chips made from waste film) reentered into production on a per-unit basis as FOP.⁹⁷

⁹⁴ See Letter from Green Packing, "RE: Polyethylene Terephthalate (PET) Film from China," dated August 27, 2013, at 6 ("These two figures are the flip side of the same thing.")

⁹⁵ Id.

⁹⁶ See e.g., PET Film/PRC (2013) at Issue 5 (where the Department disagreed with a respondent's contention that the by-product generated from production will match, or even roughly correspond to, the by-product used as an input).

⁹⁷ See Letter from Howard Smith to Green Packing, "Re: Fourth Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated May 20, 2013, at 2.

The Department made an additional follow-up request to Green Packing regarding the reintroduced PET chip input and by-product offset:

The Department has noted in prior segments of this proceeding that it requires the quantity of new and reclaimed PET chips in order to properly calculate normal value.... Therefore, please respond to the following items: ... a. Please identify methodologies that could be used for reporting the quantity of reclaimed PET reintroduced into production during the POR.”⁹⁸

With specific regard to the reintroduced PET chip input, the Department followed this request with an additional request:

It appears that you could report consumption rates (e.g., Bright PET chip, Master batch PET chip, reclaimed PET chip) on a CONNUM-specific basis using the production technique standard percentages developed by Green Packing in the normal course of business and the overall variances between the standard percentages and actual consumption. ... Please revise your section D database by reporting CONNUM-specific consumption rates based on the production technique standard percentages and actual variances or either explain why this reporting methodology is inappropriate or why you cannot use this reporting methodology.”⁹⁹

Specifically regarding the PET by-product offset, the Department followed this request with an additional request:

If Green Packing claims an offset for PET by-product generated from the production of subject merchandise during the POR, please: a. identify the quantity of the PET by-product generated from the production of subject merchandise during the POR; ... c. if the company does not record the actual quantity of PET by-product generated, please identify the possible methodologies for reporting the by-product offset and explain why you selected the methodology used to report the by-product offset.”¹⁰⁰

Thus, it is manifest in the record of this administrative review that the Department afforded Green Packing several opportunities to report its reintroduced PET chip as a FOP, and to calculate an offset for the recyclable PET waste by-product, using its own allocation methodology. When Green Packing did not report the requested information, the Department went as far as providing an example of an allocation methodology for Green Packing’s reintroduced PET chip input using its own records which Green Packing could have used if it believed it was appropriate or rejected if it believed it was inappropriate.¹⁰¹ The Department

⁹⁸ See Letter from Howard Smith to Green Packing, “Re: Fourth Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China,” dated June 20, 2013, at 1-2.

⁹⁹ *Id.* at 4.

¹⁰⁰ See Letter from Howard Smith to Green Packing, “Re: Fourth Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China,” dated August 20, 2013, at 1-2.

¹⁰¹ See Letter from Howard Smith to Green Packing, “Fourth Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China,” dated June 20, 2013 at 4 and Appendix A.

never instructed Green Packing to report its reintroduced PET chip FOP in any specific manner. In fact, in its supplemental questionnaire, the Department provided Green Packing with the opportunity to “either explain why this reporting methodology {the example provided by the Department} is inappropriate or why you cannot use this reporting methodology.”¹⁰² The example of a potential methodology that the Department provided was an attempt to give Green Packing every opportunity to develop a methodology for reporting the quantity of reintroduced PET chip used in production; it was not a methodology dictated by the Department as seen by the fact that the Department also gave Green Packing the opportunity to explain why the example provided may not be a proper methodology.

Subsequently, Green Packing reported its reintroduced PET chip input using the methodology that the Department provided as an example. Specifically, Green Packing divided its product-specific standard consumption for reintroduced PET material by the product-specific standard consumption for virgin bright PET chips and multiplied the result by the product-specific quantity of virgin bright PET chips consumed to estimate the quantity of the PET by-product material used.¹⁰³ After reviewing Green Packing’s estimate of the quantity of the PET by-product material reintroduced into production, the Department found it to be reasonable and appropriately based on the company’s production information.¹⁰⁴ Thus, the record shows that the Department afforded Green Packing multiple opportunities to report its reintroduced PET chip FOP in accordance with its own methodology and Green Packing chose to use the Department’s example of a potential reporting methodology as a guideline. Consequently, Green Packing’s claim that it was unaware that the Department would accept its allocation methodology for its reintroduced PET chip input is unconvincing. The Department notes that it would be disingenuous to provide an example for use as a guideline for allocating reintroduced PET chip input only to reject it. Furthermore, the Department afforded Green Packing several opportunities to select an appropriate methodology for reporting its by-product offsets prior to the Preliminary Results. Thus, the Department finds it unnecessary to open the record at such a late stage in this proceeding and allow Green Packing more time to submit information in support of a new raw material allocation methodology.

Additionally, the Department also disagrees with Green Packing’s claim that because it immediately returns its PET by-product into production, and does not inventory the material, it has no way to record the reintroduced PET chip in the normal course of business. As discussed above, after extensive analysis and supplemental questioning, the Department found that each product manufactured by Green Packing features a formula (or recipe) that specifies how much (if any) reintroduced PET chip input will be used.¹⁰⁵ Using these formulae, Green Packing reported its consumption of reintroduced PET chip to the Department. Although Green Packing does not inventory the reintroduced PET chip, in the absence of actual inventory and consumption records these formulae provide Green Packing with the necessary information to reasonably estimate consumption and ultimately report its reintroduced PET chip consumption to the Department.

¹⁰² Id.

¹⁰³ See Green Packing July 8th Response at Exhibit S3D-5.

¹⁰⁴ See Preliminary Decision Memorandum at 25.

¹⁰⁵ See Green Packing July 9th Response at Exhibit S3D-3.

Issue 5: Treatment of Green Packing's Sold By-Product

Green Packing's Argument

- Green Packing provided supporting documentation that demonstrates that the quantity of the by-product that cannot be reintroduced and which is sold is the same as the quantity of that by-product that was generated during production.¹⁰⁶ Therefore, the Department should grant Green Packing's requested by-product offsets for the quantity of waste film, waste chip, and waste bag sold during the POR.

No interested parties rebutted this comment.

Department's Position: Green Packing requested a by-product offset for the quantity of waste bag and waste chip that it sold. 19 CFR 351.401(b)(1) states that "(t)he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." Furthermore, the Department recently explained its practice as follows: "the by-product offset is limited to the total production quantity of the byproduct ... produced during the POR, so long as it is shown that the by-product has commercial value."¹⁰⁷ The antidumping questionnaire issued to Green Packing explicitly asked for both production records and records such as sales invoices demonstrating the disposition of its by-product(s).¹⁰⁸ Thus, Green Packing needed to provide and substantiate the quantity of by-products it generated from the production of subject merchandise during the POR as well as demonstrate that the by-product has commercial value. Providing the production quantity is important because, in considering a by-product offset, the Department examines whether the by-product was produced from the quantity of FOPs reported and whether the respondent's production process for the merchandise under consideration actually generated the amount of the by-product claimed as an offset.¹⁰⁹ When the respondent substantiates the quantity of a by-product generated during production of the merchandise under consideration, as required by Department practice, the Department uses the quantity generated to determine an offset to NV.

Based on this practice, for the by-products (*i.e.*, waste film, waste chip) which Green Packing claims were produced and sold during the POR the Department denied Green Packing's requested offsets for the final results. Green Packing has supported that the waste film and waste chip has commercial value.¹¹⁰ However, the supporting documentation for the quantities of waste film and waste chip that were generated, specifically, quarterly stock taking sheets¹¹¹ that were used to record the balance of the waste film and waste chip at specific points in time prior

¹⁰⁶ See Green Packing July 8th Response at 21-22 and Exhibit S3D-6.

¹⁰⁷ See Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 70706 (November 15, 2011), and accompanying Issues and Decision Memorandum at Comment 18.

¹⁰⁸ See Letter from Robert Bolling, Program Manager, Office 4, Import Administration to Green Packing "Fourth Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated August 31, 2013 at D-10.

¹⁰⁹ See Mid Continent Nail Corporation v. United States, 2010 Ct. Intl. Trade LEXIS 48, at *30-31 (CIT May 4, 2010).

¹¹⁰ See Green Packing Section D Response at Exhibits D-11a through D-11d.

¹¹¹ See Green Packing July 8th Response, at Exhibit S3D-6.

to, and after the POR, do not constitute a record of generated waste film and waste chip for the Department to use to determine an offset to NV. A balance is a net figure after considering total quantity generated and consumed in a period, and does not indicate the quantity of waste film and waste chip that Green Packing generated between the two points in time. Because Green Packing has not substantiated the quantity of the waste film and waste chip generated during the POR in producing the merchandise under consideration, we have not granted Green Packing a by-product offset for these items.

Issue 6: Treatment of Market Economy Purchases (“MEP”)

Green Packing’s Argument

- The Department found that Green Packing provided documentation which supports its claim that the merchandise sold to the United States was produced using PET chips imported under bond and under its “processing trade” accounts.¹¹² The Department should base its calculation of the MEP percentage of PET chips according to its “processing trade” accounts and not the combination of its “processing trade” and “normal trade” accounts.

No interested parties rebutted this comment.

Department’s Position: The Department disagrees with Green Packing. The Department does not require respondents to demonstrate that their reported FOPs were the actual inputs used in the production of merchandise exported to the United States, and therefore subject to an antidumping duty order. The Department calculates a company’s costs of production (in market economy cases) and factors of production (in NME cases) based on the merchandise the company has produced, and not on the market in which such merchandise is sold. The inputs used in the production of subject merchandise are often fungible and thus may be used in the production of merchandise destined for the home market, the United States, or other export markets. Indeed, it is the Department’s experience that, although companies may in some cases have the ability to distinguish between otherwise fungible inputs based solely on the source and/or price of the input and the destination of the subject merchandise,¹¹³ the calculation of NV may also be subject to distortion on this basis. Specifically, a determination of NV should not depend upon a respondent’s ability to demonstrate that it selected particular inputs for use in the production of merchandise destined for the United States versus the production of merchandise sold in other markets, particularly when such a selection might have been based solely on the price of inputs that were otherwise fungible.

For this reason, the Department’s NME questionnaire, at Section D, specifically requires that respondents report factors of production information for all models or product types of the “merchandise under consideration,”¹¹⁴ which the Department defines as merchandise that meets

¹¹² See Preliminary Decision Memorandum at 19.

¹¹³ See Sulfanilic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 63 FR 63834, 63838 (Nov. 17, 1998) (Comment 3) (finding that “aniline is a generic, fungible input” and that it did not matter whether it was imported or sourced in China—“the factor to be valued in this case is not domestic aniline but simply aniline.”).

¹¹⁴ See The Department’s Section D Questionnaire, at D-1. See also D-4 and D-6, which require that respondents provide not only the factors used to produce all models and product types sold to the United States, but also “the

the physical description of the scope of the antidumping duty order, “regardless of whether or not destined for the U.S. market.”¹¹⁵ Consistent with Labor Methodologies, which states “...that market economy input prices are the best available information for valuing an entire input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the *total volume of the input purchased from all sources* during the period.”¹¹⁶ We note the Department recently changed its methodology in NME cases, and now requires respondents’ purchases of market economy inputs to exceed 85 percent to warrant use of market economy prices to value the input.¹¹⁷ However, this review initiated prior to the effective date of this new methodology (September 3, 2013). Accordingly, the Department will continue to base its calculation of the MEP percentage of PET chips on all of Green Packing’s PET chips purchases which include both “processing trade” and “normal trade” accounts.

Issue 7: U.S. Sales Database

Green Packing’s Argument

- The Department omitted two sales from Green Packing’s U.S. sales database for the Preliminary Results.

No interested parties rebutted this comment.

Department’s Position: The Department disagrees with Green Packing. 19 CFR 351.213(e)(1)(i) permits the Department to define the universe of transactions examined during an administrative review using “entries, exports or sales of the subject merchandise” during the POR. The Department’s normal preference and practice is to identify the merchandise subject to a given review period by entry date.¹¹⁸ The U.S. sales observations cited by Green Packing were excluded from the POR because Green Packing reported that the sales had entry dates outside of the POR.¹¹⁹ Thus, the Department will make no change from the Preliminary Results with respect to these sales.

Issue 8: Plastic Stopper SV

Green Packing’s Argument

- The Department incorrectly used the HTS classification for PE Belt/Strap to calculate a SV for its plastic stopper in its calculation of NV.

No interested parties rebutted this comment.

portion of production of those models or product types not destined for the United States.”

¹¹⁵ See The Department’s Section D Questionnaire at I-6.

¹¹⁶ See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61718 (October 19, 2006) (emphasis added) (Labor Methodologies).

¹¹⁷ See Use of Market Economy Input Prices in Nonmarket Economy Proceedings, 78 FR 46699 (August 3, 2013).

¹¹⁸ See e.g., Certain Lined Paper Products From the People’s Republic of China: Notice of Final Results of the Second Administrative Review of the Antidumping Duty Order, 74 FR 63387 (December 3, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

¹¹⁹ See Green Packing’s Supplemental Section C Questionnaire Response, dated June 3, 2013, at 6.

Department’s Position: We agree with Green Packing. The Department did not assign the correct variable in Green Packing’s margin program with respect to the SV applicable to Green Packing’s plastic stopper FOP. However, the correct variable was in the SV database. The Department has corrected the assignment of the SV to this FOP, to calculate Green Packing’s packing material cost.

Wanhua

Issue 9: Value-Added Tax (“VAT”) Adjustment to Wanhua’s U.S. Sales Price

Wanhua’s Argument

- The amount of VAT paid (17 percent) is based on the raw materials consumed in production, while the reimbursement (13 percent) is based on the value of the exported finished product. Because finished goods have a higher value than raw materials, the VAT tax reimbursement rate is lower than the payment rate so that the reimbursement will cover the VAT paid. Further, the amount of reimbursement is capped at the amount of VAT paid. Thus, no VAT adjustment to the U.S. price is necessary or proper.

Petitioners’ Rebuttal

- Wanhua reported that 4 percent of its VAT is not refunded by the PRC government. Therefore, the Department’s adjustment of Wanhua’s U.S. sales price for the VAT not refunded is consistent with its longstanding policy that dumping comparisons be tax-neutral.

Department’s Position: In 2012, the Department announced a change of methodology with respect to the calculation of export price (“EP”) and constructed export price (“CEP”) which includes adjustments of any un-refunded (herein “irrecoverable”) VAT in certain non-market economies in accordance with section 772(c)(2)(B) of the Act.¹²⁰ In this announcement, the Department stated that when a non-market economy government has imposed an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent’s EP and CEP prices accordingly by the amount of the tax, duty or charge paid, but not rebated upon export.¹²¹ Where the irrecoverable VAT is a fixed percentage of EP, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the EP downward by this same percentage.¹²²

The Department’s methodology, as explained above and applied in the Preliminary Results, amounts to performing three basic steps: (1) determine the irrecoverable VAT rate on subject merchandise, (2) apply the irrecoverable VAT rate to an FOB export price, and (3) reduce the

¹²⁰ See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481 (June 19, 2012) (“Methodological Change”).

¹²¹ See Methodological Change, 77 FR at 36482-83; see also Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5(A).

¹²² See Methodological Change, 77 FR at 36483.

reported U.S. price by the amount determined from steps one and two. Information placed on the record of this review by Wanhua indicates that according to the PRC VAT schedule, the standard VAT levy on inputs is 17 percent and the rebate rate upon export for subject merchandise is 13 percent.¹²³ Accordingly, Wanhua's irrecoverable VAT rate for PET film, as determined by the Chinese government and as reported by the respondent, is four percent.¹²⁴ Wanhua contends that no VAT adjustment to the U.S. price is necessary considering the lower VAT refund rate is applied to the value of finished goods, which is higher than the value of the raw materials/inputs on which VAT was paid, such that the VAT refund would be equal to the amount of VAT paid on the inputs. However, the record evidence provided by Wanhua, which is summarized below, does not support Wanhua's assertions and the Department disagrees with these assertions. For the final results, the Department continued to adjust U.S. price for the irrecoverable VAT that Wanhua incurred on its sales of subject merchandise to the United States.¹²⁵

Wanhua provided PRC tax documents for two months of the POR which show the calculation of the amount of VAT exempted, offset, and refunded.¹²⁶ Line 21 of these PRC tax documents specifically show the amount of Wanhua's Non-exempt and Non-Offset VAT (also known as irrecoverable VAT), which is four percent of the value of its exported goods. These monthly tax filings demonstrate that the irrecoverable VAT on exports reduces the amount of input VAT that can be deducted from, or used as an offset to, the company's VAT payable to the Chinese government. For clarification, we also note that the PRC tax documents Wanhua provided are separated into three sections, *i.e.*, "Export Amount," "Non-Exemption and Non-offset," and "Refund Amount and exemption and setoff amount."¹²⁷ The first section contains the total value of exports for the month, or free-on-board ("FOB") value. The second section contains the calculation of the non-exempt and non-offset value (again, irrecoverable VAT). Irrecoverable VAT is calculated as: (1) FOB value of the exported good, multiplied by the difference between (2) the standard VAT levy rate (17 percent) and (3) the VAT rebate rate applicable to exported goods (13 percent).¹²⁸ Only the first variable, export value, is unique to Wanhua, while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are set by the PRC government.¹²⁹ The third section of the PRC tax documents contain the calculation of the amount by which Wanhua can offset its monthly VAT obligation, and demonstrates that the irrecoverable VAT reduces the amount of input VAT that can be deducted from, or used as an offset to, VAT payable.¹³⁰ Based on the calculation within the final section of these PRC tax documents, it is apparent to the Department that the irrecoverable VAT increases the company's VAT liability and is a cost for Wanhua that is incurred upon export.¹³¹ In simple terms, because Wanhua's tax refund rate is lower than the applicable tax rate, the amount of tax calculated

¹²³ See Letter from Wanhua, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Supplemental Section C Response by Tianjin Wanhua Co., Ltd.," dated November 20, 2013 ("Wanhua VAT Response") at 1-2 and Exhibits S3C-1 and S3C-2.

¹²⁴ *Id.* at 2.

¹²⁵ *Id.* at 2 and Exhibit S3C-4.

¹²⁶ *Id.* at Exhibit S3C-4.

¹²⁷ *Id.*

¹²⁸ *Id.* at Exhibit S3C-4 (Lines 20-26).

¹²⁹ *Id.* at 3-4 and Exhibits S3C-2 and S3C-3.

¹³⁰ *Id.*

¹³¹ *Id.*

according to the difference in rates is a cost imposed on the exported goods. Therefore, the Department disagrees with Wanhua's contention that the PRC VAT system is designed to provide a full rebate of its VAT obligation upon exportation of its merchandise. The record shows that is not how China's VAT system operates with respect to the subject merchandise. For PET film, the VAT paid on inputs is not fully rebated or exempted on export and, therefore, the exports are subject to VAT. Wanhua's assertions to the contrary are not supported by the record evidence.

Further, in its response to the Department's antidumping duty questionnaire, Wanhua stated that "VAT payable for export is 4% of the FOB value of exported subject merchandise."¹³² Subsequently, Wanhua stated that "in implementing the actual payments the Chinese government has determined that a certain percentage (in the case of PET film – 4 percent) of the VAT paid on exports is non-refundable." Thus, by Wanhua's own admission, its VAT burden on exports is four percent.¹³³

Finally, 19 CFR 351.401(c) requires that the Department rely on price adjustments that are "reasonably attributable to the subject merchandise." As Wanhua acknowledges, the PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry.¹³⁴ These are, by definition, product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise. Wanhua's proposal to calculate a "net" VAT significantly reduces the impact of this product-specific tax and is contrary to the PRC VAT regulation.¹³⁵ As is apparent by record evidence including the VAT payable formulae and VAT documentation provided by Wanhua, the PRC VAT system and how export sales are treated within the system itself is more involved than simply subtracting the VAT input from VAT output as Wanhua suggests. The Department's methodology is precisely tied to Wanhua's books and records, and relies on the prices in Wanhua's U.S. sales database. Finally, the Department's deduction of product-specific VAT from subject merchandise is a reasonable and accurate methodology considering the VAT is a product-specific expense that is directly linked with the exportation of subject merchandise. Wanhua's methodology, in contrast, effectively ignores the irrecoverable VAT as applied by the PRC. Ignoring the adjustment for irrecoverable VAT would introduce distortions into the dumping margin calculation and not result in a comparison of U.S. price with NV on a tax exclusive basis.¹³⁶ Therefore, for the final results, the Department will continue to reduce Wanhua's U.S. sales price by four percent, *i.e.*, the irrecoverable VAT for PET film exports, consistent with the Preliminary Results.¹³⁷

Bemis

Issue 10: Importer of Record for Certain Sales to the U.S.

¹³² See Letter from Wanhua, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Section C and D Response by Tianjin Wanhua Co., Ltd.," dated March 22, 2014 at C30 – C31.

¹³³ See Wanhua VAT Response at 2.

¹³⁴ *Id.* at Exhibit S3C-2 and S3C-4.

¹³⁵ *Id.* at S3C-2 ("PRC Import and Export Tariff Schedule").

¹³⁶ See Methodological Change, 77 FR at 36483 (citing Antidumping Duties: Countervailing Duties, 62 FR 27296, 27369 (May 19, 1997) and Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1, 827, reprinted in 1994 U.S.C.C.A.N. 3773, 4172).

¹³⁷ See Preliminary Decision Memorandum at 18-19.

Bemis's Argument

- The Department's draft Customs and Border Protection ("CBP") instructions presume that Wanhua's customer is always the U.S. importer. Milprint Inc. ("Milprint") is an importer not listed on the invoice or included in the CBP instructions. Therefore, where the importer (Milprint Inc.) can demonstrate, by commercial invoice or otherwise, that the sale from Wanhua was made to a customer, then the customer's rate should apply to that specific entry, even when another entity acted as the importer of record.

Wanhua's Argument

- Although Wanhua has reported its U.S. customers, the U.S. customs laws allow other entities other than the owner of goods to act as importer of record. Wanhua does not always know the importer of record. If the formal importer of record is not one of the "importers" named in the instructions, then the formal importer of record should be allowed to provide a copy of an invoice establishing that the shipment at issue was connected to one of the "importers" named in the instruction.
- Record sales documents submitted by Wanhua in response to section A of the Department's antidumping duty questionnaire support Bemis' claim.

Petitioners' Rebuttal

- The purpose of Wanhua's proposal is to allow Milprint to pay Wanhua's rate, not the NME-wide entity rate, on PET film produced by Wanhua but not necessarily exported by Wanhua. If Milprint properly identified the antidumping case number and the producer on its CBP entry forms, it would pay the correct antidumping duty rate.

Department's Position: The Department disagrees with Bemis. Wanhua reported its U.S. customers as the U.S. importers, but noted that it did not know for certain the identity of the importer of record for each of its U.S. sales.¹³⁸ For purposes of calculating customer-specific assessment rates in the Preliminary Results, we accepted Wanhua's reported U.S. customer to assign customer-specific assessment rates pursuant to 19 CFR 351.212(b), consistent with our standard practice.¹³⁹ The Department's draft CBP customs instructions state the following:

1. For all shipments of polyethylene Terephthalate film, sheet, and strip from the People's Republic of China ("PRC") exported by Tianjin Wanhua Co., Ltd. (A-570-924-011), imported by or **sold to (as indicated on the commercial invoice or Customs documentation)** the firms listed below, and entered, or withdrawn from warehouse, for consumption during the period 11/01/2011 through 10/31/2012, assess an antidumping liability equal to the per-unit amounts assess an antidumping liability equal to the per-unit amounts listed below. (Emphasis added).

Therefore, the Department recognizes in its CBP customs instructions that it has calculated a rate for Wanhua's customers (not importers). However, the Department agrees with Bemis and Wanhua that where the importer can demonstrate, by commercial invoice or otherwise, that the

¹³⁸ See Wanhua's Section C Questionnaire Response, dated March 22, 2014, at C-33 through C-34.

¹³⁹ See PET Film/PRC (2013) at Issue 11.

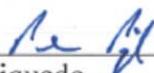
sale from Wanhua was made to a customer, then the customer's rate should apply to that specific entry, even when another entity acted as the importer of record.

Furthermore, we note that Bemis and Wanhua did not raise this issue until their case briefs, after the record of this review had closed. Although Milprint has claimed that it imported some merchandise exported by Wanhua,¹⁴⁰ no parties with knowledge of these specific facts provided the information to either the Department or to Wanhua for any U.S. sales reported by Wanhua, for the Department to use in its margin calculation.¹⁴¹ Further, the Department did not make a determination in this review that Milprint was the importer of record for any of Wanhua's U.S. sales. For these final results, the Department will continue to assign customer-specific assessment rates to Wanhua's U.S. customers, consistent with our standard practice.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review in the Federal Register.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 JUNE 2014

Date

¹⁴⁰ See Letter from Bemis, "Request for Administrative Review," dated November 30, 2012.

¹⁴¹ See e.g., Wanhua Section A Questionnaire Response, dated March 4, 2013 at Exhibit A-8; Wanhua's Supplemental Section A Questionnaire Response, dated April 23, 2013 at Exhibit SA-9; Wanhua's Supplemental Section C Questionnaire Response, dated April 26, 2013 at Exhibit SC-1.