



A-570-924
Administrative Review
11/01/2012-10/31/2013
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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of the 2012-
2013 Antidumping Duty Administrative Review of Polyethylene
Terephthalate Film, Sheet, and Strip from the People's Republic of
China

SUMMARY

In response to requests from interested parties, the Department of Commerce (the "Department") is conducting an administrative review of the antidumping duty ("AD") order on polyethylene terephthalate ("PET") film, sheet, and strip ("PET film") from the People's Republic of China ("PRC"). The period of review ("POR") is November 1, 2012, through October 31, 2013. The Department initiated the review with respect to five companies. We preliminarily find that two of the mandatory respondents, Shaoxing Xiangyu Green Packing Co., Ltd. and Tianjin Wanhua Co., Ltd. made sales of subject merchandise at less than normal value ("NV"). We are rescinding the review with respect to Huangshi Yucheng Trade Co. Ltd. ("Yucheng"). Further, we preliminarily find that Fuwei Films (Shandong) Co., Ltd. ("Fuwei Films") and Sichuan Dongfang Insulating Material Co., Ltd., ("Dongfang"), did not have any reviewable transactions during the POR.

If these preliminary results are adopted in our final results of review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess ADs on all appropriate entries of subject merchandise during the POR. Interested parties may comment on these preliminary results of review by submitting case briefs no later than 30 days after the date of publication of these preliminary results.¹ Rebuttal briefs may be filed no later than five days after case briefs are filed and may only respond to arguments raised in the case briefs.² The Department intends to issue the final results of this review no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the "Act").

¹ See 19 CFR 351.309(c).

² See 19 CFR 351.309(d).



Background

On November 10, 2008, the Department published in the Federal Register the AD order on PET film from the PRC.³ On November 27, 2013, Wanhua, Fuwei Films, Dongfang, and Green Packing requested an administrative review of their exports and sales.⁴ In addition, on December 2, 2013, Now Plastics Inc. (“Now Plastics”) requested an administrative review of subject merchandise exported by Huangshi Yucheng Trade Co. Ltd. (“Yucheng”). Also, on December 2, 2013, Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively “Petitioners”) requested an administrative review of Fuwei Films, Green Packing, Dongfang, and Wanhua.⁵ On December 30, 2013, the Department published the notice of initiation of the instant review of Fuwei Films, Green Packing, Wanhua, Dongfang, and Yucheng covering the period November 1, 2012, through October 31, 2013.⁶

On January 15, 2014, the Department placed on the record U.S. Customs and Border Protection (“CBP”) import data, related to the companies under review, and invited parties to comment on the data.⁷ On January 15, 2014, the Department issued its AD questionnaire to Green Packing, Wanhua, and Yucheng. Subsequently, on February 12, 2014, Now Plastics timely withdrew its request for an administrative review of Yucheng’s exports. In April and May 2014, the Department issued supplemental questionnaires to Green Packing and Wanhua. Green Packing and Wanhua submitted timely responses to the AD questionnaire and supplemental questionnaires from February through May 2014. The Department received timely separate rate certifications from Fuwei Films and Dongfang on February 28, 2014.

³ See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People’s Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates, 73 FR 66595 (November 10, 2008).

⁴ See Letter from Wanhua to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Request for Administrative Review of Exports by Tianjin Wanhua Co., Ltd.,” dated November 27, 2013; see also letter from Fuwei Films to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Request for Administrative Review of Exports by Fuwei Films (Shandong) Co., Ltd.,” dated November 27, 2013; see also letter from Dongfang to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Request for Administrative Review of Exports by Sichuan Dongfang Insulating Material Co., Ltd.,” dated November 27, 2013; see also letter from Green Packing to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from China” dated November 27, 2013.

⁵ See Letter from Petitioners to the Department, regarding “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Request for Antidumping Duty Administrative Review,” dated December 2, 2013; see also letter from Now Plastics to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Request for Administrative Review of Exports by Huangshi Yucheng Trade Co. Ltd.,” dated December 2, 2013; see also Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

⁶ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 78 FR 79392 (December 30, 2013) (“Initiation Notice”).

⁷ See Letter from Howard Smith, Program Manager, AD/CVD Operations to All Interested Parties dated January 15, 2014.

On July 25, 2014, the Department fully extended the time period for issuing the preliminary results by 120 days,⁸ in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

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.

Preliminary Determination of No Shipments

As noted above, on January 15, 2014, the Department placed CBP data on the record which showed no POR entries of subject merchandise from Fuwei Films or Dongfang. Both Fuwei Films and Dongfang submitted a separate rate certification in which each certified that it made at least one export or sale to unaffiliated parties in the United States during the POR. Therefore, we issued supplemental questionnaires to Fuwei Films and Dongfang in which we requested that each company provide documents to support its claim that it made at least one export or sale of subject merchandise to the United States during the POR and to demonstrate that its subject merchandise entered the United States during the POR. Fuwei Films and Dongfang did not provide evidence of a POR entry of merchandise declared as subject merchandise.⁹

Based on the foregoing, we preliminarily determine that Fuwei Films and Dongfang did not have reviewable transactions during the POR. Consistent with the refinement in assessment practice in non-market economy (“NME”) cases, the Department has not rescinded the review of Fuwei Films and Dongfang and issued corresponding instructions to CBP, but rather, will issue appropriate instructions to CBP based on the final results of the review.¹⁰ Specifically, pursuant to the NME Reseller Policy, when the Department makes a determination that a company under review had no shipments during the POR, any suspended entries under that company’s AD case

⁸ See Memorandum from Jonathan Hill, International Trade Compliance Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding “Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated July 25, 2014.

⁹ See Dongfang’s supplemental separate rate certification questionnaire responses dated July 8, 2014 and October 23, 2014. Dongfang did not provide a U.S. Customs 7501 Entry Summary to verify shipment and entry of subject merchandise during the POR; see also letter from Howard Smith, Program Manager, AD/CVD Operations to All Interested Parties dated January 15, 2014 at Attachment 1.

¹⁰ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011) (“NME Reseller Policy”); see also Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China: Preliminary Results of Antidumping Administrative Review and Preliminary Determination of No Shipments, 77 FR 47593 (August 9, 2012).

number that were subject to that company's cash deposit requirements will be liquidated at the rate for the NME-wide entity. Therefore, if the Department continues to find, in the final results of review, that there is no evidence of Fuwei Films' and Dongfang's merchandise having been entered as subject merchandise during the POR, we will instruct CBP to liquidate any existing suspended entries of subject merchandise entered under the case number for Fuwei Films or Dongfang at the rate for the PRC-wide entity.¹¹

Selection of Respondents

As discussed in the "Background" section above, on December 30, 2013, the Department initiated the instant review with respect to five companies, Fuwei Films, Green Packing, Wanhua, Dongfang, and Yucheng. On January 15, 2014, based on record information showing no POR shipments or entries of subject merchandise from Fuwei Films or Dongfang, we issued the Department's AD questionnaire to all of the remaining respondents (Green Packing, Wanhua, and Yucheng). Also, on January 15, 2014, we placed the results of our CBP data query on the record and provided interested parties with an opportunity to comment on the results. Our query searched for U.S. imports during the POR classified under the HTSUS subheadings identified in the scope of this proceeding. On January 23, 2014, the Department received comments on the data from Wanhua.¹²

Wanhua contends that the Department's decision to send its AD questionnaire to Green Packing, Wanhua, and Yucheng deviated from the respondent selection process set forth in the initiation notice and was inappropriately based on flawed CBP data. Specifically, Wanhua argues that the Department should have considered comments regarding the CBP data first and then should have used accurate CBP data to select respondents. Wanhua maintains that the CBP data are flawed based on a substantial number of missing observations in the data, information reflected in other data that it provided, certain information regarding a manufacturer, and one other reason which is business proprietary in nature.¹³

We disagree with Wanhua that the Department improperly deviated from the respondent selection process set forth in the initiation notice. In the initiation notice, the Department stated that "in the event the Department limits the number of respondents for individual examination... {it} intends to select respondents based on U.S. CBP data for U.S. shipments during the POR."¹⁴ In this case, we did not limit the number of respondents selected based on CBP data but sent the AD questionnaire to all respondents known to have exported subject merchandise that was entered during the POR.

Further, while Wanhua claims that the CBP data are flawed, nothing that it provided in its comments on that data provides a basis for the Department to reconsider Wanhua's status as a mandatory respondent and no other interested parties commented on the CBP data. Therefore,

¹¹ See NME Reseller Policy.

¹² See Letter from Wanhua to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Comments on CBP Data and Respondent Selection" dated January 23, 2014.

¹³ Id., at 3.

¹⁴ See Initiation Notice, 78 FR at 79392-79393.

we do not believe we inappropriately sent the AD questionnaire to Green Packing, Wanhua, and Yucheng.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country

The Department considers the PRC to be an NME country.¹⁵ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, the Department will continue to treat the PRC as an NME country for purposes of these preliminary results of review. The Department calculated NV using the factors of production (“FOP”) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate

In all proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single weighted-average dumping margin.¹⁶ In the Initiation Notice, the Department notified parties of the application process by which exporters or exporter/producers may obtain separate rate status in NME proceedings.¹⁷ It is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,¹⁸ as amplified by Silicon Carbide.¹⁹ However, if the Department determines that a company is wholly foreign-owned or located in a market economy (“ME”), then analysis of the de jure and de facto criteria are not necessary to determine whether the company is independent from government control and eligible for a separate rate.²⁰

¹⁵ See Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) (“Hardwood Plywood”), and accompanying Issues and Decision Memorandum at the Background section.

¹⁶ See Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039, 55040 (September 24, 2008); Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079, 53082 (September 8, 2006) (“Certain Lined Paper”); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People’s Republic of China, 71 FR 29303, 29307 (May 22, 2006).

¹⁷ See Initiation Notice, 78 FR at 79393.

¹⁸ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China, 56 FR 20588 (May 6, 1991) (“Sparklers”).

¹⁹ See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People’s Republic of China, 59 FR 22585 (May 2, 1994) (“Silicon Carbide”).

²⁰ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People’s Republic of China, 72 FR 52355, 52356 (September 13, 2007).

In this administrative review, the Department received responses to section A of the NME AD questionnaire from Green Packing and Wanhua, which contained information pertaining to each company's eligibility for a separate rate. The Department also received separate-rate certifications from Fuwei Films and Dongfang. As noted above under the section "Preliminary Determination of No Shipments", there is no record evidence of entries declared as subject merchandise from Fuwei Films or Dongfang during the POR. Due to the absence of such entries, we are not conducting an administrative review of Fuwei Films or Dongfang. Because Fuwei Films and Dongfang are not under review, their separate-rates status from a prior segment of the proceeding remains unchanged.

Separate Rate Recipients

Green Packing,²¹ and Wanhua²² reported that they are either wholly Chinese-owned companies, or joint ventures between Chinese and foreign companies. Therefore, the Department must analyze whether these respondents can demonstrate the absence of both de jure and de facto governmental control over their export activities.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, (2) any legislative enactments decentralizing control of companies, and (3) other formal measures by the government decentralizing control of companies.²³ The evidence provided by Green Packing,²⁴ and Wanhua²⁵ with respect to these criteria supports a preliminary finding of a de jure absence of government control based on the following.

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices ("EPs") are set by, or are subject to the approval of, a government agency, (2) whether the respondent has authority to negotiate and sign contracts and other agreements, (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or the financing of losses. The Department has determined that an analysis of de facto control is critical in determining whether

²¹ See Green Packing's Antidumping Questionnaire Response, Section A, dated February 14, 2014 at 2-13; see also Green Packing's Supplemental Section A Questionnaire Response, dated April 4, 2014 at 1-3.

²² See Wanhua's Antidumping Questionnaire Response, Section A, dated February 13, 2014 at 2-11; see also Wanhua's Supplemental Section A Questionnaire Response, dated May 13, 2014 at 1-8.

²³ See Sparklers, 56 FR at 20589.

²⁴ See Green Packing's Antidumping Questionnaire Response, Section A, dated February 12, 2014 at 2-13; see also Green Packing's Supplemental Section A Questionnaire Response, dated April 4, 2014 at 1-3.

²⁵ See Wanhua's Antidumping Questionnaire Response, Section A, dated February 13, 2014 at 2-11; see also Wanhua's Supplemental Section A Questionnaire Response, dated May 13, 2014 at 1-8.

respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.²⁶

We find that the record supports a preliminary finding of de facto absence of government control with respect to Green Packing,²⁷ and Wanhua²⁸ based on the following: (1) the absence of evidence that the EPs are set by, or are subject to the approval of, a government agency, (2) the respondents have authority to negotiate and sign contracts and other agreements, (3) the respondents have autonomy from the government in making decisions regarding the selection of management, and (4) the respondents retain the proceeds of their export sales and make independent decisions regarding the disposition of profits or the financing of losses. Therefore, the Department preliminarily finds that Green Packing and Wanhua have established that they qualify for a separate rate under the criteria established by Silicon Carbide and Sparklers.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOP, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOP, the Department shall utilize, to the extent possible, the prices or costs of FOP in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.²⁹ Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country. On March 28, 2014, the Department issued a memorandum identifying six countries as being at the same level of economic development as the PRC.³⁰ The countries identified in that memorandum are Bulgaria, Colombia, Ecuador, Indonesia, South Africa, and Thailand.³¹

In comments dated April 23, 2014, Wanhua placed information on the record regarding the Department's list of potential surrogate countries and proposed finding that other countries, specifically India, are at a level of economic development comparable to the PRC.³² Wanhua claims that the Department's sole reliance on Gross National Income ("GNI") statistics from the World Bank for determining which countries are "economically comparable" to the PRC is

²⁶ See Silicon Carbide, 59 FR at 22587; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

²⁷ See Green Packing's Antidumping Questionnaire Response, Section A, dated February 12, 2014 at 2-13; see also Green Packing's Supplemental Section A Questionnaire Response, dated April 4, 2014 at 1-3.

²⁸ See Wanhua's Antidumping Questionnaire Response, Section A, dated February 13, 2014 at 2-11; see also Wanhua's Supplemental Section A Questionnaire Response, dated May 13, 2014 at 1-8.

²⁹ See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin").

³⁰ See Letter from Howard Smith, Program Manager, AD/CVD Operations, Office IV, to All Interested parties "Fifth Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information" dated April 16, 2014 ("Surrogate Country List") at Attachment 1.

³¹ Id.

³² See Letter from Wanhua to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China; A-570-924; Comments on Economic Comparability and Request for Clarification of Date" dated April 23, 2014 at 9-10.

flawed.³³ Specifically, Wanhua claims that GNI statistics do not account for important economic factors such as unemployment rates, the cost of energy, the availability of raw materials and land, and the level of education.³⁴ Wanhua further contends that the Department should consider the size of the economy and the total population in its analysis. Using these metrics, Wanhua argues that India is at a level of economic comparability to the PRC.

Despite its initial comments regarding India, on May 7, 2014, Wanhua, along with Green Packing, argued that South Africa is the appropriate surrogate country³⁵ while Petitioners argued that Indonesia is the appropriate surrogate.³⁶ All parties argued that the surrogate country that they proposed fulfills all of the requirements in section 773(c)(4) of the Act, and they placed information on the record supporting the use of their proposed surrogate country. On May 17 and May 19, 2014, Wanhua and Petitioners filed rebuttal surrogate country comments.³⁷

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value (“SV”) data, or (c) are not suitable for use based on other reasons.³⁸ Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.³⁹

³³ *Id.*, at 11.

³⁴ *Id.*, at 6-7; Wanhua supports its argument against the use of GNI data by criticizing the dramatically lower GNI rating given to the United States (\$52,340) compared with Bermuda (\$104,590).

³⁵ See Letter from Wanhua to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China; A-570-924; Comments on Selection of Surrogate Country, Submission of Initial Surrogate Value Information and Request for Clarification of Deadline” dated May 7, 2014 (“Wanhua’s SV Submission”) at 8 and Exhibits SC1-SC2; see also letter from Green Packing to the Secretary of Commerce, “Re: Polyethylene Terephthalate (PET) Film from China,” (“Green Packing SV Submission”) dated May 7, 2014 at 1 and Exhibits SV1-SV5.

³⁶ While Petitioners also noted that Thailand could be a potential surrogate country, Petitioners only placed supporting data for Indonesia on the record. See Letter from Petitioners to the Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Surrogate Value Submission” dated May 7, 2014 (“Petitioners’ SV Submission”) at 2 and Exhibits 1-12.

³⁷ See Letter from Petitioners to the Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Rebuttal of Respondent Surrogate Country Comments and Surrogate Value Submission” dated May 19, 2014 (“Petitioners’ Rebuttal Comments”); see also letter from Wanhua to the Secretary of Commerce, “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Response to Petitioners’ Surrogate Country and Surrogate Value Comments” dated May 19, 2014 (“Wanhua Rebuttal Comments”).

³⁸ See, e.g., Silica Bricks and Shapes From the People’s Republic of China: Preliminary Determination of Antidumping Duty Investigation and Postponement of Final Determination, 78 FR 37204 (June, 20, 2013) (where the Department selected Ukraine as the surrogate country because all of the countries that the Department found to be at the same level of economic development as the PRC did not provide sufficient reliable sources of publicly available SV data), unchanged in final.

³⁹ See Surrogate Country List at Attachment 1.

Economic Comparability

Consistent with Departmental practice, the Department identified a number of countries that are at the same level of economic development as the PRC. The Department determined economic comparability based on per capita GNI, as reported in the most current annual issue of the World Development Report (The World Bank).⁴⁰ The countries identified, namely Bulgaria, Columbia, Ecuador, Indonesia, South Africa, and Thailand,⁴¹ are not ranked and are considered equivalent in terms of economic comparability.

Significant Producers of Identical or Comparable Merchandise

While the statute does not define “significant” or “comparable” the Department’s practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics) and to determine whether merchandise is comparable on a case-by-case basis. Where there is no production information, the Department relies upon export data from potential surrogate countries. With respect to comparability of merchandise, in all cases, if identical merchandise is produced in a country, the country qualifies as a producer of comparable merchandise. Where there is no evidence of production of identical merchandise in a potential surrogate country, the Department determines whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities. Since these characteristics are specific to the merchandise in question, the standard for ‘significant producer’ will vary from case to case.⁴²

Because the record does not contain production quantities of comparable merchandise from each potential surrogate country or world production data, we first sought evidence of production of comparable merchandise in the form of export data. In taking this approach, we assumed that exporters of comparable merchandise are also significant producers. With respect to comparability of merchandise, we examined exports under the six-digit Harmonized Tariff Schedule (“HTS”) sub-heading listed in the scope of the AD order for this proceeding, 3920.62 - “Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polyethylene terephthalate.”⁴³ We believe this category would include exports of merchandise identical to subject merchandise, as

⁴⁰ See Policy Bulletin at 2 (endnotes omitted); see, e.g., Utility Scale Wind Towers From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 75992 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 1. Although 19 CFR 351.408(b) instructs the Department to rely on gross domestic product (“GDP”) data in such comparisons, it is Departmental practice to use “per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department finds that the per capita GNI represents the single best measure of a country’s level of total income and thus level of economic development.” See Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates, 72 FR 13246 (March 21, 2007).

⁴¹ See Surrogate Country List at Attachment 1.

⁴² See Policy Bulletin 04.1. See, e.g., Hardwood Plywood, and accompanying Issues and Decision Memorandum at Comment 7.

⁴³ See Memorandum from Jonathan Hill to the File, “World Export Data for Polyethylene Terephthalate Film, 2012-2013” dated concurrently with this memorandum.

well as merchandise with similar physical characteristics such that it would qualify as comparable merchandise.

While the Department identified six countries as potential surrogate countries, the record of this review contains data to value FOP from only Indonesia and South Africa. Therefore, we examined whether Indonesia and South Africa meet the requirements in section 773(c)(4) of the Act and whether there are available and useable SV data on the record from these two countries. After examining record information for Indonesia and South Africa, we determine that both countries are significant producers of comparable merchandise. The export data for HTS number 3920.62 that we obtained from the Global Trade Atlas (“GTA”) for Indonesia show exports of 47 million kilograms of products under this HTS number. While exports from South Africa are significantly less than this,⁴⁴ the legislative history, which provides that the “term ‘significant producer’ includes any country that is a significant net exporter,”⁴⁵ does not preclude reliance on additional or alternative metrics based on record evidence to determine which countries might be included as significant producers. Thus, South Africa’s ranking among other exporters of comparable merchandise does not preclude the Department from determining that South Africa is a significant producer of comparable merchandise based other evidence.

The record contains the 2013 financial statements of the South African company AstraPak Limited (“AstraPak”).⁴⁶ According to AstraPak’s financial statements, its Flexibles Division manufactures plain and printed blown and cast mono- and multilayer polyolefin films for bags, sheet, tubing, shrink, stretch, and barrier applications. The division’s products also include stand-up pouches and modified atmospheric packaging (“MAP”).⁴⁷ All of the films manufactured by the Flexibles Division are produced by melting and extruding plastics that are used primarily for food packaging,⁴⁸ and are thus comparable to PET film. Moreover, where major inputs are used in producing subject merchandise, which is true in this case because the only direct material input in PET film is PET polymer, the Department identified comparable merchandise based on a comparison of the products’ major inputs.⁴⁹ Therefore, we consider any of AstraPak’s products with polymers as the major, or the only input, such as the flexible films described above or rigid container products that specifically require PET polymer, to be comparable to PET Film.

The various AstraPak Flexibles Division subsidiaries which manufacture merchandise comparable to PET film in South Africa are: (1) Barrier Film Converters,⁵⁰ which manufactures

⁴⁴ Petitioners argued that South Africa is not a significant producer of comparable merchandise because it has a relatively small quantity of exports under HTS subheading 3920.62 when compared to total worldwide exports under this subheading. See Petitioners’ Rebuttal Comments at 3.

⁴⁵ 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).

⁴⁶ See Wanhua’s SV Comments at Exhibit SC-2 (“AstraPak 2013 AR”)

⁴⁷ Id., at 3.

⁴⁸ Id., at 22.

⁴⁹ Policy Bulletin 04.1 notes that in cases “where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate;” see also Final Results of Redetermination Pursuant to Court Remand, Dupont Teijin Films v. United States, Court No 12-00088, Slip Op. 13-111 (August 21, 2013) (“DuPont Films”).

⁵⁰ See AstraPak 2013 AR, at 7.

multilayer barrier films, (2) Saflite,⁵¹ which manufactures pouches for food use, (3) East Rand Plastics,⁵² which manufactures high and low-density polyethylene films, (4) Packaging Consultants,⁵³ which produces high-quality plain and printed film, (5) Geotex,⁵⁴ which manufactures agricultural netting and rope; (6) Peninsula Packaging,⁵⁵ which manufactures plain and printed polyethylene films, (7) Alex White,⁵⁶ which manufactures wrap-around labels, and (8) Knilam Packaging, which manufactures modified atmosphere packaging.⁵⁷ These products represent 38 percent of AstraPak's revenue⁵⁸ in 2013. Sales of these products are largely not reflected in export data given that, in 2013, 97 percent of AstraPak's Flexibles Division's sales were to South African customers.⁵⁹ While there is no information in AstraPak's financial statements regarding the quantity of these products that the subsidiaries produced, AstraPak's total sales value⁶⁰ for film products, and the fact that there are numerous producers of the products, support our determination that production of comparable merchandise occurs in South Africa and it is significant. This position is consistent with the position taken in a remand redetermination covering the 2009-2010 AD administrative review in this proceeding which the Court of International Trade upheld.⁶¹

Given our preliminary finding that both Indonesia and South Africa are at the level of economic development of the PRC and significant producers of merchandise comparable to subject merchandise, we next examined whether there are available and useable SV data on the record from these two countries.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SVs are publicly available, contemporaneous with the POR, a broad-market average, from an appropriate surrogate country, tax and duty-exclusive, and specific to the input.⁶² The Department's preference is to satisfy the breadth of these aforementioned selection factors.⁶³

The Indonesian and South Africa SV data on the record are complete, with respect to the data used to value direct materials and packing materials.⁶⁴ Further, we find these data are of

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Id., at 11.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id., at 89.

⁵⁹ Id., at 90.

⁶⁰ ZAR 999,498,000, (USD 108,170,779) in 2013 (ZAR 9.23 = USD 1), see <http://enforcement.trade.gov/exchange/safrica.txt>

⁶¹ See Dupont Films, 997 F. Supp. 2d 1338 (CIT 2014).

⁶² See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment I(C).

⁶³ Id.

⁶⁴ See, generally, Petitioners' SV Submission; see also, generally, Green Packing SV Submission; see also, generally, Wanhua's SV Submission.

comparable quality. Both sets of data are from the same source, GTA, are publicly available, contemporaneous with the POR, broad-market averages, tax and duty-exclusive, for imports from HTS categories specific to the inputs being valued. Wanhua disagrees with the conclusion that both sets of data are of comparable quality. Wanhua claims the Indonesian data have significant flaws. We address Wanhua's claims below.

Wanhua argues that the import data placed on the record by Petitioners for PET chips under Indonesian HTS sub-heading 3907.60.90 are not reliable.⁶⁵ Specifically, Wanhua claims that the PET chip SV calculated using the Indonesian import data is inflated due to imports from Japan that are aberrational and that amount to more than 54 percent of the quantity of PET chips imported into Indonesia.⁶⁶ Wanhua concludes that the per-unit value of Indonesian imports of Japanese PET chips, \$3.04 per kilogram, is aberrational because it is well over the average import value, \$1.57 per kilogram, for all other Indonesian imports under the HTS sub-heading, and well over U.S. prices and other world prices of various synthetic polymers.⁶⁷

In determining whether a SV is atypical, it is the Department's practice to compare it to the average unit values calculated using data for the input at issue from the other countries found by the Department to be economically comparable to the NME country.⁶⁸ Wanhua bears the burden to prove the inadequacy of the SV data which it argues against, or alternatively, to show that the use of other SV data is more appropriate.⁶⁹ Wanhua has not made such a demonstration here. Wanhua submitted U.S. PET chip prices,⁷⁰ but the Department notes that it no longer considers U.S. data to be suitable comparative price benchmarks to test the validity of SVs.⁷¹ The other information submitted by Wanhua, specifically pricing data from spot resin markets, are not specific to any country.⁷² As noted above, the Department's practice in evaluating SVs from a potential surrogate country is to compare them to data for the input at issue from the other

⁶⁵ See Wanhua Rebuttal Comments at 4.

⁶⁶ *Id.*

⁶⁷ *Id.*, at 4-5.

⁶⁸ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review 2012-2013, 79 FR 57047 (September 24, 2014) and accompanying Issues and Decision Memorandum at Comment 7B.

⁶⁹ See Tapered Roller Bearings and Parts Thereof Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009), and accompanying Issues and Decision Memorandum at Comment 6; see also Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 35646 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 2, Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008), and accompanying Issues and Decision Memorandum at Comment 6, Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008), and accompanying Issues and Decision Memorandum at Comment 4, Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("Tires from PRC"), and accompanying Issues and Decision Memorandum at Comment 10.

⁷⁰ See Wanhua Rebuttal Comments at Exhibit RSV-2.

⁷¹ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review, 76 FR 3086 (January 19, 2011), and accompanying Issues and Decision Memorandum at Comments 14B and 15.

⁷² See Wanhua Rebuttal Comments at Exhibit RSV-3.

countries found by the Department to be economically comparable to the NME country. We find that the facts provided by Wanhua regarding PET chips do not provide a sufficient factual basis for the Department to reject Indonesia as a potential surrogate country.

Further, Wanhua states that Indonesia has a large PET chip production industry that is heavily subsidized by the government. Wanhua claims that Indonesia subsidizes petroleum and also claims that the price of PET chips (a primary material input in the production of PET film) is closely tied to petroleum prices. According to Wanhua, this means domestic industries consuming PET chips (e.g., the PET film manufacturing industry) are indirectly subsidized by the lowered cost of inputs; thus any financial ratios calculated using the financial results of PET film manufacturers in Indonesia will be distorted.⁷³

The Department disagrees with Wanhua's contention that domestic Indonesian fuel subsidies provide sufficient reason to dismiss Indonesia as a potential surrogate country. In support of its argument, Wanhua placed on the record an excerpt from the International Trade Commission's preliminary investigation of PET film, sheet, and strip from Brazil, China, Thailand, and the United Arab Emirates which states that "The basic raw materials for making PET film are dimethyl terephthalate (DMT) or purified terephthalic acid (PTA) and ethylene glycol, which come from xylene and ethylene, respectively. These chemicals are petroleum-based and are subject to fluctuations in global prices for oil and natural gas."⁷⁴ Wanhua uses this statement, and an internet article which it claims discusses petroleum subsidies, to tie the PET chip manufacturing industry to domestic Indonesian fuel subsidies.⁷⁵ However, the Department finds that the article expresses the opinion of the author with respect to the future of domestic Indonesian fuel subsidies, and the impact of domestic fuel subsidies on the overall Indonesian economy (e.g., reduced airplane fare) and environment (e.g., smog), not the impact such subsidies have on the cost of DMT, PTA, or ethylene glycol (the basic raw materials for making PET film).⁷⁶ Using this article, Wanhua incorrectly tied domestic Indonesian fuel subsidies to domestic Indonesian industries which consume PET chips. Wanhua has not demonstrated with record evidence that domestic Indonesian fuel subsidies have any impact on domestic Indonesian industries which consume PET chips.

Regarding the availability and quality of data for calculating financial ratios, we note that there are financial statements on the record from one South African company, *i.e.*, AstraPak, provided by Green Packing and Wanhua,⁷⁷ and financial statements on the record from one Indonesian company, *i.e.*, Argha Karya, provided by Petitioners.⁷⁸ Both financial statements cover a period that is contemporaneous with the POR, are complete, are not from sick or bankrupt companies, and do not contain evidence of subsidies which the Department has found to be countervailable. It is the Department's practice to reject the financial statements of a company that it has reason to believe or suspect may have benefited from countervailable subsidies, particularly when other

⁷³ *Id.*, at 6-7.

⁷⁴ *Id.*, at 6 and Exhibit RSV-4.

⁷⁵ *Id.*, at 6-7.

⁷⁶ *Id.*, at Exhibit RSV-5; see also Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 37715 (July 2, 2014), and accompanying Issues and Decision Memorandum at Issue 1B.

⁷⁷ See Wanhua SV Submission at Exhibit SC-2 (d); see also Green Packing SV Submission at SV-5.

⁷⁸ See Petitioners' SV Submission at Exhibit 10.

sufficient, reliable, and representative data are available for calculating surrogate financial ratios.⁷⁹ While Petitioners alleged that there is evidence of subsidization in AstraPak's 2013 financial statements (the statements note receipt of "Government cash grants and subsidies"),⁸⁰ we disagree. This allegation is not based upon a subsidy program which the Department has determined to be countervailable in a previous countervailable duty proceeding for South Africa. One difference between the companies, however, is that AstraPak produces comparable merchandise such as polyethylene film and PET containers,⁸¹ while Argha Karya produces identical merchandise. 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.⁸²

Given the above analysis, and the fact that there are financial statements on the record for an Indonesian producer of identical merchandise, the Department is selecting Indonesia as the primary surrogate country for this administrative review. Indonesia is at the level of economic development of the PRC, is a significant producer of comparable merchandise, and has reliable and usable SV data. A detailed description of the Indonesian SVs selected by the Department is provided below in the "Normal Value" section of this notice.

We have not considered India as a potential surrogate country at this time because, as discussed above, the Surrogate Country List includes at least one country that is a significant producer of comparable merchandise with available, and usable, data for SVs and there is no record evidence to suggest that data considerations involving India outweigh the difference in levels of economic development.

Date of Sale

In identifying the date of sale of the merchandise under consideration, the Department will normally, in accordance with 19 CFR 351.401(i), "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." Green Packing and Wanhua both reported the invoice date as the date of sale, and there is no other information on the record indicating that there is a better date on which the material terms of sales are

⁷⁹ See Tires from PRC, and accompanying Issues and Decision Memorandum at Comment 17A; see also Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative Review and New Shipper Reviews, 72 FR 52049 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2, citing Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1; see also H.R. Conf. Rep. No. 576, 2d Sess., Vol. 4, 590 (1988) ("Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices").

⁸⁰ See Petitioners, Rebuttal Comments at 5; see also Green Packing SV Submission at Exhibit SV-5 at 96 and 135.

⁸¹ See Wanhua Rebuttal Comment (AstraPak financial statements at 8-11).

⁸² 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).

established.⁸³ Thus, consistent with its regulatory preference, the Department preliminarily determines to use the invoice date as the date of sale.

Fair Value Comparisons

To determine whether Green Packing and Wanhua's sales of subject merchandise were made at less than NV, the Department compared EP to NV, as described in the "Export Price" and "Normal Value" sections below.⁸⁴ In particular, the Department compared monthly weighted-average EPs with weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average AD margin.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates AD margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices ("CEPs")) (the average-to-average method) unless the Department determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.⁸⁵ In recent investigations, the Department applied a "differential pricing" analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁸⁶ The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this

⁸³ See Letter from Green Packing to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from China," dated March 4, 2014 at C-15; see also letter from Wanhua to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Response by Tianjin Wanhua Co., Ltd. to Sections C and D and Appendix V of the Department's Questionnaire" dated March 7, 2014 at C10-C11.

⁸⁴ In these preliminary results, the Department applied the assessment rate calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews"). In particular, the Department compared monthly weighted-average EPs with weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average AD margin; see also section 773(a)(1)(B)(ii) of the Act; 19 CFR 351.414(c)(1) and (d).

⁸⁵ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

⁸⁶ See Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation, 78 FR 25946 (May 3, 2013), unchanged in Hardwood Plywood; see also Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 21101 (April 9, 2013), unchanged in Certain Steel Threaded Rod From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012, 78 FR 66330 (November 5, 2013); see also Certain Lined Paper Products From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011-2012, 78 FR 34640 (June 10, 2013) unchanged in Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012, 78 FR 65274 (October 31, 2013).

administrative review.⁸⁷ The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

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

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

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the

⁸⁷ See, e.g., Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 26748 (May 8, 2013), unchanged in Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 70533 (November 26, 2013), and accompanying Issues and Decision Memorandum at Comment 4.

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

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

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

Results of the Differential Pricing Analysis

The results of the differential pricing analysis for both mandatory respondents demonstrate that the value of U.S. sales passing the Cohen's *d* test (i.e., above 66 percent) is such that we should consider as an alternative comparison method applying the average-to-transaction method to all U.S. sales. However, the Department determines that the average-to-average method can appropriately account for such differences because the relative margin change for both mandatory respondents does not produce a meaningful difference in the weighted-average dumping margins. Accordingly, the Department determined to use the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for both mandatory respondents.⁸⁸

⁸⁸ See Final Modification for Reviews.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, EP is “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. The Department used the EP methodology, in accordance with section 772(a) of the Act, for subject merchandise that was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States and for sales for which CEP was not otherwise indicated. The Department finds that all of Green Packing’s and Wanhua’s sales in this review are EP sales.

The Department based EP on the price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, where appropriate, the Department made deductions from the starting price (gross unit price) for the following expenses: foreign inland freight, marine insurance, domestic and ME brokerage and handling, and ocean freight.

As explained in the “Normal Value” section below, we used an FOP methodology in this review. Thus, we valued services supplied by NME providers using SVs. We valued inland truck freight using a per-unit average rate calculated from data contained in the publication “The Cost of Moving Goods: Road Transportation, Regulations and Charges in Indonesia” published by The Asia Foundation.⁸⁹ We adjusted this rate for inflation using the Indonesian wholesale price index.⁹⁰ We valued marine insurance using a price quote from RJG Consultants, an ME provider of marine insurance.⁹¹ We valued domestic brokerage and handling using a list of prices for procedures necessary to export a standardized cargo of goods from Indonesia. The price list was compiled based on the results of a survey and is in the publication “Doing Business 2012: Indonesia” which is published by the World Bank.⁹² We valued ocean freight for shipping the subject merchandise from the PRC to the United States using data obtained from the Descartes Carrier Rate Retrieval Database, available at www.descartes.com.⁹³

Value Added Tax (“VAT”)

The Department adjusts any un-refunded (herein “irrecoverable”) value-added taxes (“VAT”) when calculating EP and CEP in certain NMEs in accordance with section 772(c)(2)(B) of the

⁸⁹ See Memorandum to the File from Jonathan Hill to Howard Smith “Preliminary Results of the Fifth 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 concurrently with this memorandum (“Surrogate Value Memorandum”).

⁹⁰ Id.

⁹¹ Id.

⁹² Id.

⁹³ Id.

Act.⁹⁴ The Department explained that when an NME government imposes 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.⁹⁵ Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.⁹⁶

Thus, as explained above, the Department's methodology incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Therefore, the Department requested that Green Packing and Wanhua report the net VAT on subject merchandise; that is the irrecoverable VAT. Wanhua reported that the official VAT rate for PET film inputs is 17 percent and that the refund rate for exports is 13 percent.⁹⁷ Thus, the irrecoverable VAT on subject merchandise is four percent. Green Packing reported that it imported direct material inputs used to produce subject merchandise sold in the United States (i.e., PET chips), under bond and did not pay VAT on the imported inputs.⁹⁸ Green Packing paid VAT for packing materials, at a 17 percent rate.⁹⁹ Because Wanhua reported that it pays VAT associated with subject merchandise that is not refunded, and the irrecoverable VAT rate is four percent, the Department reduced Wanhua's reported U.S. sales prices by four percent in calculating a price net of VAT.¹⁰⁰ This approach is consistent with the Department's practice, and the intent of the statute, that dumping comparisons be tax-neutral.¹⁰¹

Green Packing reported that it imported, under bond, the direct materials that make up the vast majority of the cost of producing subject merchandise and tracked these inputs in its accounting

⁹⁴ 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").

⁹⁵ Id.; 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.

⁹⁶ See Methodological Change.

⁹⁷ See Letter from Wanhua to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Sections C and D Supplemental Questionnaire Response by Tianjin Wanhua Co., Ltd.," dated May 29, 2014 at 9-15.

⁹⁸ See Letter from Green Packing to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film from China," dated April 4, 2014 ("Green Packing April 4th Response") at 14-17; see also letter from Green Packing to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film from China," dated May 22, 2014 ("Green Packing May 22nd Response") at 3-6.

⁹⁹ Id.

¹⁰⁰ Memorandum to the File from Jonathan Hill Howard Smith, regarding "Fifth Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Tianjin Wanhua Co., Ltd.," dated concurrently with this memorandum.

¹⁰¹ See Methodological Change, (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).

system under its “processing trade” accounts.¹⁰² Green Packing provided documentation to support its claim that it produced the subject merchandise sold in the United States using only the imported direct materials from its “processing trade” production.¹⁰³ Green Packing’s chart of accounts reflected that the company had separate accounts for the bonded “processing trade,” and the non-bonded “normal trade” direct materials.¹⁰⁴ Green Packing identified raw material withdrawals during the POR for “processing trade” and “normal trade” in its raw material subledger.¹⁰⁵ Green Packing identified finished products produced during the POR for “processing trade” and “normal trade” in its finished goods subledger.¹⁰⁶ Green Packing identified export goods sold during the POR for “processing trade” and “normal trade” in its export sales subledger.¹⁰⁷ The documentation supported Green Packing’s claim it paid no VAT on the direct materials comprising the vast majority of the cost of producing the subject merchandise sold in the United States, and so we made no adjustment to Green Packing’s U.S. price for VAT for the preliminary results.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV in an NME context on FOP because the presence of government controls on various aspects of NME countries renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.¹⁰⁸ Under section 773(c)(3) of the Act, FOP include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; and (3) representative capital costs. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated NV by multiplying the reported per-unit FOP consumption rates by publicly available SVs.¹⁰⁹

Factor Valuations

As noted above, when selecting from among the available information for valuing FOP, the Department’s practice is to select, to the extent practicable, SVs which are non-export average values, contemporaneous with the POR or closest in time to the POR, product-specific, and tax-

¹⁰² See April 4th Response at SC-6a-c (PET chip sub ledger supporting Green Packing’s claim that bonded imported PET chips are tracked in its accounting system).

¹⁰³ See Green Packing May 22nd Response at 3-4 and Exhibits S2A-1, S2C-3a, and S2C-3b (vouchers for a purchase under processing trade).

¹⁰⁴ See April 4th Response at Exhibit SA-6.

¹⁰⁵ See Letter from Green Packing to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from China,” dated April 14, 2014 at Exhibit SD-15a.

¹⁰⁶ *Id.*, at Exhibit SD-15b.

¹⁰⁷ *Id.*, at Exhibit SA-8b.

¹⁰⁸ See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People’s Republic of China, 71 FR 19695, 19703 (April 17, 2006), unchanged in Certain Lined Paper.

¹⁰⁹ See Surrogate Value Memorandum.

exclusive.¹¹⁰ The record shows that import statistics from the primary surrogate country, Indonesia, which we obtained through GTA are generally contemporaneous with the POR, product-specific, and tax-exclusive.¹¹¹ Thus we based SVs for Green Packing's and Wanhua's FOP (*i.e.*, direct materials and packing materials), and certain movement expenses, on these import values, and, where appropriate, other publicly available Indonesian data on the record.¹¹²

We disregarded certain import values when calculating SVs. In accordance with legislative history, we continue to apply the Department's long-standing practice of disregarding import prices that we have reason to believe or suspect are subsidized or dumped.¹¹³ In this regard, the Department previously found that it is appropriate to disregard prices of imports from India, Indonesia, South Korea, and Thailand because it determined that these countries maintain broadly available, non-industry specific export subsidies.¹¹⁴ Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.¹¹⁵ Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Based on the existence of these subsidy programs, that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters in India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, we have not used prices of Indonesian imports from India, South Korea and Thailand in calculating the import-based SVs. Additionally, in selecting import data for SVs, we disregarded prices from NME countries.¹¹⁶ Finally, we excluded from our calculation of the average import value imports that were labeled as originating from an "unspecified" country, because we could not be

¹¹⁰ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

¹¹¹ See Surrogate Value Memorandum.

¹¹² Id.

¹¹³ See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

¹¹⁴ 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; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

¹¹⁵ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758, 30763 (June 4, 2007), unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007).

¹¹⁶ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final determination, 74 FR 9591, 9600 (March 5, 2009), unchanged in Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) and Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order, 74 FR 46971 (September 14, 2009).

certain that they were not from either an NME country or a country with generally available export subsidies.¹¹⁷

As appropriate, we added freight costs to SVs. Specifically, we added surrogate inland freight costs to import values used as SVs using the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest port to the factory that produced the subject merchandise, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit’s decision in Sigma Corp.¹¹⁸

In those instances where we could not value FOP using publicly available information contemporaneous with the POR, we adjusted the SVs using inflation indices. Specifically, we adjusted truck freight using the Indonesian producer price index, and adjusted the labor rate using the consumer price index, as published by the International Monetary Fund (available at <http://elibrary-data.imf.org/>).

As discussed above, the Department normally will use publicly available information to value FOP. However, in accordance with 19 CFR 351.408(c)(1), where an FOP is produced in one or more ME countries, purchased from one or more ME suppliers, and paid for in an ME currency, the Department normally will use the price(s) paid to the ME supplier(s) to value the FOP if substantially all of the total volume of the FOP is purchased from the ME supplier(s). The Department defines the term “substantially all” to be 85 percent or more of the total volume purchased of the FOP used in the production of subject merchandise.¹¹⁹ In those instances where less than substantially all of the total volume of the FOP is produced in one or more ME countries and purchased from one or more ME suppliers, the Department normally will weight-average the actual price(s) paid for the ME portion and the SV for the NME portion by their respective quantities. Green Packing provided evidence of ME purchases of some inputs during the POR. We applied Green Packing’s ME purchases in valuing certain FOP.¹²⁰

Labor

In keeping with the methodology outlined in Labor Methodologies, we attempted to value labor using single-country labor cost and compensation data from Chapter 6A of the International Labor Organization (“ILO”).¹²¹ However, in this case, Chapter 6A does not contain recent Indonesian labor data from the ILO Yearbook; the data are from 2008. Therefore, we are valuing labor using an Indonesian industry-specific wage rate based on labor cost and compensation data from Chapter 5B of the ILO. Specifically, we calculated the wage rate using data provided to the ILO under Sub-Classification 24 of the ISIC-Revision 3-D standard, and inflated this wage rate using the Indonesian Consumer Price Index as published in the International Monetary Fund’s International Financial Statistics. We find the description under Sub-Classification 24 of the ISIC-Revision 3-D (“Manufacture of Chemicals and Chemical

¹¹⁷ Id.

¹¹⁸ See Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) (“Sigma Corp.”).

¹¹⁹ See Use of Market Economy Input Prices in Nonmarket Economy Proceedings, 78 FR 46799 (August 2, 2013).

¹²⁰ See Green Packing Analysis Memorandum.

¹²¹ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

Products”) to be the best available wage rate SV source on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Value Memorandum.¹²²

Surrogate Financial Ratios

The Department’s regulations (19 CFR 351.408(c)(4)) direct it to value overhead, selling, general and administrative (“SG&A”) expenses, and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. The record contains the audited financial statements for the year ending December 2013 of Argha Karya, an Indonesian producer of merchandise identical to subject merchandise, and AstraPak, a South African producer of merchandise comparable to subject merchandise. When selecting surrogate financial statements, the Department prefers financial statements from companies that produce identical merchandise over companies that produce comparable merchandise, because it is the Department’s preference to match the surrogate companies’ production experience with respondents’ production experience, provided that the SV data are not distorted or otherwise unreliable.¹²³ In addition, as stated above in the Surrogate Country and Surrogate Value Data section of this notice, the Department determines to use Indonesia as the primary surrogate country. Thus, the Department will not use the financial statements of AstraPak because there are other financial statements on the record for producers of identical merchandise from the primary surrogate country.¹²⁴

Since we could not segregate and exclude energy costs from the calculation of the surrogate financial ratios, we disregarded the energy inputs (electricity and steam) and water used by both Green Packing and Wanhua in calculating NV, in order to avoid double-counting these costs that have necessarily been captured in the surrogate financial ratios.¹²⁵

Currency Conversion

Where appropriate, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

¹²² See Surrogate Value Memorandum.

¹²³ See Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 28801 (May 16, 2013), and accompanying Issues and Decision Memorandum at Comment 2; Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: 2010-2011; Final Results of Antidumping Duty Administrative Review, 78 FR 5414 (January 25, 2013), and accompanying Issues and Decision Memorandum at Comment 1.

¹²⁴ See 19 CFR 351.408(c)(2) (expressing the Department’s preference of normally valuing all factors in a single surrogate country, except for labor); see also Clearon Corp. v. United States, 35 Int’l Trade Rep. (BNA) 1013 (CIT February 20, 2013) (where the court found that the Department selected proper surrogate data in an AD review to value urea as a FOP of chlorinated isocyanurates imported from an NME country since the use of a single surrogate country was appropriate, and there was no evidence that import prices of urea were not market-driven or distorted by any government involvement).

¹²⁵ See Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2010–2011 78 FR 35245 (June 12, 2013), and accompanying Issues and Decision Memorandum at Issue 2.

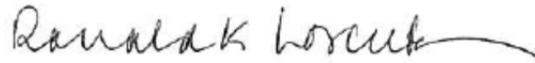
The Department intends to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

CONCLUSION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

November 28, 2014

Date