



A-570-924  
Administrative Review  
11/01/2012 - 10/31/2013  
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DATE: June 3, 2015

MEMORANDUM TO: Ronald K. Lorentzen  
Acting 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  
2012 - 2013 Administrative Review

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## SUMMARY

On December 5, 2014, the Department of Commerce (the "Department") published its *Preliminary Results*<sup>1</sup> for the fifth antidumping duty ("AD") administrative review of polyethylene terephthalate ("PET") film, sheet, and strip from the People's Republic of China ("PRC") covering the November 1, 2012 through October 31, 2013 period of review ("POR"). On April 1, 2015, the Department extended the time period for issuing the final results by 60 days,<sup>2</sup> in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.213(h)(2). The period of review ("POR") is November 1, 2012, through October 31, 2013.

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<sup>1</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Antidumping Administrative Review; Preliminary Determination of No Shipments and Partial Rescission of Review; 2012–2013*, 79 FR 72166 (December 5, 2014) ("*Preliminary Results*") and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary, Enforcement and Compliance, "Decision Memorandum for Preliminary Results of 2012-2013 Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated November 28, 2015 ("*Preliminary Decision Memorandum*").

<sup>2</sup> See Letter from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations through Howard Smith, Acting Office Director, Office IV, AD/CVD Operations to Gary Taverman, Associate Deputy Assistant Secretary, AD/CVD Operations "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Extension of Deadline for the Final Results of the Fifth Antidumping Duty Administrative Review," dated April 1, 2015.



We received case briefs from Tianjin Wanhua Co., Ltd. (“Wanhua”), Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively “Petitioners”), Terphane, Inc. (“Terphane”), and Shaoxing Xiangyu Green Packing Co., Ltd. (“Green Packing”) on January 14, 2015.<sup>3</sup> On January 26, 2015, Petitioners, Terphane, and Wanhua submitted rebuttal briefs.<sup>4</sup> On March 23, 2015 Green Packing and Wanhua resubmitted case briefs and Petitioners resubmitted its rebuttal brief<sup>5</sup> to redact certain untimely new factual information.<sup>6</sup> We have analyzed these briefs and rebuttal briefs 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

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<sup>3</sup> See Letter from Petitioners to the Secretary of Commerce “Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Petitioners’ Case Brief,” dated January 14, 2015 (“Petitioners’ Case Brief”); see also letter from Terphane, Inc. to the Secretary of Commerce “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 January 14, 2014 (“Terphane’s Case Brief”) in which Terphane, Inc. states that it supports all arguments made by Petitioners in Petitioners’ case brief. See Wanhua’s and Green Packing’s resubmitted case briefs dated March 23, 2015.

<sup>4</sup> See Letter from Wanhua to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Rebuttal Brief,” dated January 26, 2015 (“Wanhua’s Rebuttal Brief”); see also letter from Terphane to the Secretary of Commerce “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 Rebuttal Brief,” dated January 26, 2015 in which Terphane, Inc. states that it supports all arguments made by Petitioners in Petitioners’ case brief. In Petitioners’ Case Brief, Petitioners (with exception of one ministerial error) stated that they support the Department’s *Preliminary Results* in general. Since Terphane stated that it supports Petitioners’ arguments, it also indirectly supports the Department’s *Preliminary Results* in general. In Wanhua’s Rebuttal Brief, it claims that Petitioners’ and Terphane’s general support for the preliminary results constitutes an express waiver of other arguments. However, Petitioners, as with other interested parties, had the right to timely file their case and rebuttal briefs under 19 CFR 351.309 and raise issues that they have with the preliminary results or with arguments raised by other parties. Petitioners have done so. See Petitioners resubmitted rebuttal brief dated March 23, 2015.

<sup>5</sup> See Letter from Green Packing to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from China,” dated March 23, 2015; see also letter from Wanhua to the Secretary of Commerce, “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Resubmission of Case Brief” dated March 23, 2015 (“Wanhua Brief”); see also letter from Petitioners to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Resubmission of Petitioners’ Rebuttal Brief,” dated March 23, 2015. It was necessary for certain parties to resubmit their briefs and rebuttal briefs because on March 12, 2015, the Department rejected Wanhua’s July 7, 2014, submission of surrogate value information because it contained untimely filed information. See Letter from Howard Smith, Program Manager, Office IV, Enforcement and Compliance to Wanhua dated March 12, 2015 (“Wanhua Rejection Letter”). Subsequently, on March 16, 2015, Wanhua (under protest) submitted a redacted version of its July 7, 2015 submission. For further information regarding this matter see the memorandum to The File from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office IV through Robert Bolling, Acting Office Director, AD/CVD Operations, Office IV, regarding “5<sup>th</sup> Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Tianjin Wanhua Co., Ltd.’s Objection to the Department’s Rejection of Untimely Filed Information,” dated concurrently with this memorandum.

<sup>6</sup> See Wanhua Rejection Letter.

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.

## DISCUSSION OF THE ISSUES

### I. General Issues

#### Comment 1: Respondent Selection

##### Wanhua

- The Department failed to follow its own regulations by not issuing a respondent selection memorandum or formally stating who was selected as a mandatory respondent.
- The Department provided an *ex post facto* justification in the *Preliminary Results* for not identifying mandatory respondents based on a determination that Sichuan Dongfang Insulating Material Co., Ltd. (“Dongfang”) and Fuwei Films (Shandong) Co., Ltd. (“Fuwei Films”) had not exported subject merchandise to the United States during the POR (the Department initiated this review with respect to Green Packing, Wanhua, Dongfang, Fuwei Films, and Huangshi Yucheng Trade Co. Ltd. (“Yucheng”) and sent its questionnaire to Green Packing, Wanhua, and Yucheng). However, both companies reported that they had U.S. sales during the POR. The Department did not address Dongfang’s and Fuwei Films’ claims of U.S. sales, but determined that these companies lacked reviewable entries.

##### Petitioners’ Rebuttal

- The Department issues a respondent selection memorandum when it must limit the number of respondents pursuant to section 1677f-1(c)(2) of the Tariff Act of 1930, as amended (the “Act”). The Department did not limit the number of respondents in this instance, as the U.S. Customs and Border Protection (“CBP”) data demonstrated that only three exporters had reviewable entries, and the Department sent questionnaires to all three exporters.

**Department’s Position:** The Department initiated the instant review with respect to five companies, *i.e.*, Green Packing, Wanhua, Dongfang, Fuwei Films, and Yucheng.<sup>7</sup> On January 15, 2014, the Department obtained CBP data for entries of subject merchandise during the POR and placed the CBP data on the record of this administrative review.<sup>8</sup> Based on record information showing no POR shipments or entries of subject merchandise from Fuwei Films or Dongfang, the Department issued its AD questionnaire to all of the remaining respondents, *i.e.*, Green Packing, Wanhua, and Yucheng.<sup>9</sup> Subsequently, both Fuwei Films and Dongfang

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<sup>7</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR at 79392-79393 (December 30, 2013) (“*Initiation Notice*”).

<sup>8</sup> See Letter from Howard Smith, Program Manager, AD/CVD Operations, Office IV to all interested parties dated January 15, 2014 (“*CBP Data*”).

<sup>9</sup> The Department subsequently rescinded the administrative review with respect to Yucheng. See *Preliminary*

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, the Department issued supplemental questionnaires to Fuwei Films and Dongfang in which it 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 for the Department to reconsider its determination of no shipments.<sup>10</sup>

The Department disagrees with Wanhua's contention that the Department failed to follow its own regulations by not issuing a respondent selection memorandum or formally stating who was selected as a mandatory respondent. Regarding respondent selection, section 777A(c)(1) of the Act specifically directs the Department to calculate individual dumping margins for each known exporter and/or producer of the subject merchandise. However, where it is not practicable to examine all known exporters/producers of subject merchandise because of the large number of exporters/producers involved, section 777A(c)(2) of the Act permits the Department to determine dumping margins for a reasonable number of exporters or producers by limiting its examination. 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."<sup>11</sup>

In this case, as stated in the *Preliminary Results*, the Department did not limit its examination, but instead in accordance with section 777A(c)(1) of the Act, the Department sent the AD questionnaire to all respondents known to have exported subject merchandise during the POR, based upon CBP data. It is the Department's longstanding practice to not conduct reviews of companies that do not have any suspended entries because there are no entries for which the Department can issue assessment instructions.<sup>12</sup> One of the Department's primary functions in the course of an administrative review is to determine the appropriate dumping margin to apply to subject merchandise, for the purpose of directing CBP to liquidate suspended entries of subject merchandise at that rate.<sup>13</sup> Since the Department was examining each known exporter and/or producer of the subject merchandise, there was no selection to be made from among the universe of known exporters during the POR and thus it was not necessary to issue a respondent selection memorandum in connection with section 777A(c)(2) of the Act.<sup>14</sup>

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*Results*, 79 FR at 72167.

<sup>10</sup> See Dongfang's and Fuwei Films' supplemental separate rate certification questionnaire responses dated July 8, 2014, October 24, 2014, and November 14, 2014. Neither Dongfang nor Fuwei Films provided 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.

<sup>11</sup> *See Initiation Notice*.

<sup>12</sup> *See, e.g., Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497 (April 4, 2008), unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008) (rescinding the review of Guilin Qifeng after finding that its reported sales were liquidated as not subject to antidumping duties and notifying CBP of potentially misclassified entries).

<sup>13</sup> *See* section 751(a)(2)(C) of the Act (stating that one of the purposes of an administrative review is to assess the current amount of antidumping duties on entries of subject merchandise).

<sup>14</sup> *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Preliminary Results of*

Wanhua's claim that the Department provided an *ex post facto* justification for not identifying mandatory respondents is contrary to record evidence. As stated above, the CBP data obtained on January 15, 2014 (prior to the *Preliminary Results*), indicated that Dongfang and Fuwei Films did not have any reviewable entries. Therefore, the Department sent the AD questionnaire to all respondents known to have exported subject merchandise during the POR. Additionally, the Department provided Dongfang and Fuwei Films with an opportunity to substantiate the claim that they had sales during the POR with documentation to demonstrate that their subject merchandise entered the United States during the POR. However, as previously stated, neither company provided evidence for the Department to reconsider its determination of no shipments. Further, Dongfang and Fuwei Films did not challenge the Department's preliminary determination of no shipments. Although the determination of no shipments was not made public until the publication of the *Preliminary Results*, the Department used official U.S. CBP data along with Dongfang's and Fuwei Films' own data to arrive at its determination prior to the publication date. The Department's determination was not *ex post facto*.

## **Comment 2: Surrogate Country Selection**

In the *Preliminary Results*, the Department selected Indonesia as the primary surrogate country.<sup>15</sup> 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.<sup>16</sup> However, the Department found that Indonesia was the only country for which complete and reliable data for valuing factors of production ("FOPs") were on the record. Subsequently, Wanhua placed on the record all of the necessary surrogate value ("SV") data from South Africa for the Department to use in the final results.

Interested parties continue to disagree over whether Indonesia or South Africa is the appropriate surrogate country. Wanhua and Green Packing argue that the quality of the Indonesian data is not better than that of South Africa and that, as a result, the Department should select South Africa as the primary surrogate country for the final results. 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 finds 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. In addition, the Department finds that data from both countries are available to value the factors of production. However, the Department determines that the Indonesian financial statements are the best available information for calculating surrogate financial ratios because the Indonesian financial statements are for a producer of identical merchandise, while the South African financial statements are for a producer of only comparable merchandise. The Department additionally finds the Indonesian GTA import data to be reliable and useable, and respondents have not sufficiently demonstrated

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*Antidumping Administrative Review; 2012-2013*, 79 FR 69425 (November 21, 2015), and accompanying Preliminary Decision Memorandum. The Department notes that Wanhua also argued that the fact that Dongfang and Fuwei Films did not challenge the Department's determination of no shipments does not mean that the Department's decision not to issue a respondent selection memorandum was justified at the time it was made. However, given that the Department has explained that it found it unnecessary to issue a memorandum regarding this matter, the argument of Wanhua is inapplicable here.

<sup>15</sup> *Id* at 13-14.

<sup>16</sup> *See* Preliminary Decision Memorandum 11-13;

that the data are aberrational. 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.

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

##### Wanhua's Argument

- The Department correctly found that South Africa was a significant producer of comparable merchandise.

##### Petitioners' Rebuttal

- South Africa is not a significant producer of comparable merchandise in terms of relative export levels, *vis-a-vis* other countries. South Africa's level of production, as measured by exports in 2012 and 2013, is miniscule. Several countries, including Indonesia, are much larger exporters of comparable merchandise. Thus, it would be unlawful for the Department to select South Africa as the primary surrogate country given that Indonesia is an available surrogate country.
- Should the Department find that South Africa is a significant producer of comparable merchandise, it is notable that Argha Karya, an Indonesian company, is a producer of identical merchandise, while Astrapak, a South African company, is merely a producer of comparable merchandise. This supports continuing to select Indonesia as the primary surrogate country.

**Department's Position:** In the *Preliminary Results*, the Department sought evidence of the production of comparable merchandise in the form of export data. Following our longstanding practice, we presume that countries exporting comparable merchandise are also significant producers of such merchandise. With respect to the 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."<sup>17</sup> This category includes exports of merchandise identical to subject merchandise, as well as exports of merchandise with physical characteristics similar to that of subject merchandise such that it could be considered comparable merchandise.

In order to determine whether a country is a "significant producer," we examined whether the country exported comparable merchandise during calendar years 2012 and 2013.<sup>18</sup> In 2012 and 2013, South Africa exported 103,229 kgs. and 77,225 kgs., respectively, of PET film under the HTS classification 3920.62. These export data show that South Africa was an exporter of products under the relevant HTS number, and thus the Department preliminarily determined that the country was a significant producer of comparable merchandise.

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

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<sup>17</sup> See Memorandum from Jonathan Hill to the File, "World Export Data for Polyethylene Terephthalate Film, 2012-2013" dated concurrently with this memorandum.

<sup>18</sup> See Preliminary Decision Memorandum at 12-13; World Export Data at Attachment.

compared to other countries that make up total world production. Specifically, Petitioners contend that South Africa is not a significant producer because it is one of the smallest producers based on world export data.<sup>19</sup> However, Policy Bulletin 04.1 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.” The antidumping statute grants the Department discretion to look at various data sources for determining the best available information.<sup>20</sup> Moreover, although the legislative history provides that the “term ‘significant producer’ includes any country that is a significant net exporter,”<sup>21</sup> it does not preclude reliance on additional or alternative metrics based on record evidence to determine which countries might be included as significant producers.

The record contains the 2013 financial statements of the South African company AstraPak Limited (“AstraPak”).<sup>22</sup> 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”).<sup>23</sup> All of the films manufactured by the Flexibles Division are produced by melting and extruding plastics that are used primarily for food packaging,<sup>24</sup> 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.<sup>25</sup> 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,<sup>26</sup> which manufactures multilayer barrier films, (2) Saflite,<sup>27</sup> which manufactures pouches for food use, (3) East Rand

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<sup>19</sup> 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.”).

<sup>20</sup> 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).

<sup>21</sup> 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).

<sup>22</sup> 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 Selection of Surrogate Country, Submission of Initial Surrogate Value Information and Request for Clarification of Deadline,” dated May 7, 2014 (“Wanhua May SV Comments”) at Exhibit SC-2 (“AstraPak 2013 AR”).

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 22.

<sup>25</sup> See Policy Bulletin 04.1 which 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*”).

<sup>26</sup> See AstraPak 2013 AR at 7.

<sup>27</sup> *Id.*

Plastics,<sup>28</sup> which manufactures high and low-density polyethylene films, (4) Packaging Consultants,<sup>29</sup> which produces high-quality plain and printed film, (5) Geotex,<sup>30</sup> which manufactures agricultural netting and rope; (6) Peninsula Packaging,<sup>31</sup> which manufactures plain and printed polyethylene films, (7) Alex White,<sup>32</sup> which manufactures wrap-around labels, and (8) Knilam Packaging, which manufactures modified atmosphere packaging.<sup>33</sup> These products represent 38 percent of AstraPak's revenue<sup>34</sup> 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.<sup>35</sup> While there is no information in AstraPak's financial statements regarding the quantity of these products that the subsidiaries produced, AstraPak's total sales value<sup>36</sup> for film products, and the fact that there are numerous producers of the products, when combined with the South African export data on the record, 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.<sup>37</sup> 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 Value Data**

### Wanhua's Argument

- The South African import value for PET chips is far lower than the selected Indonesian SV for PET chips, which shows that the Indonesian SV is unreasonable.
- The Indonesian SV for PET chips is aberrational and high, in comparison with PRC PET chip import prices from various countries, PET chip prices listed in the Weekly Price Reports for the Yarn and Fibers Exchange, and a PRC market report for various types of plastics, and import prices from various countries into India.
- The 2012 financial statements of Polyplex (Thailand) Public Company Limited ("Polyplex") show that the average selling price for PET film and the average purchase price of PET chips are significantly less than the selected Indonesian SV for PET chips.
- The Thai SV for PET chips used by the Department in *Certain Polyester Staple Fiber from the People's Republic of China* is significantly less than the selected Indonesian SV for PET chips.
- 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. The Indonesian import data on the

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 89.

<sup>35</sup> *Id.* at 90.

<sup>36</sup> ZAR 999,498,000, (USD 108,170,779) in 2013 (ZAR 9.23 = USD 1), *see* <http://enforcement.trade.gov/exchange/safrica.txt>

<sup>37</sup> *See Dupont Films*, 997 F. Supp. 2d 1338 (CIT 2014).

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.

- If the Department continues to select Indonesia as the primary surrogate country, the Department should: (1) remove from the SV calculation the value of imports to Indonesia from Japan that are too high and thus must be a very different product from PET chips; (2) use data more specific to PET film submitted by Wanhua to value PET chips, instead of import data; and (3) use South African data to substitute for specific Indonesian data that are unusable.

#### Green Packing’s Argument

- The Department has acknowledged in past segments of this proceeding that the PET chip SV is the primary driver in selecting a surrogate country. The Indonesian SV is high compared to the South African SV, and compared to Green Packing’s reported market economy purchase price (“MEP”) which the Department partially used to value Green Packing’s PET chips. The Department should select South Africa as the primary surrogate country based on these facts, consistent with its methodology in the third administrative review in this proceeding.

#### Petitioners’ Rebuttal

- The PET chip price benchmarks proposed by Wanhua are irrelevant. Wanhua fails to explain why these data imply that Indonesian GTA data are aberrational. The Department has a longstanding preference for GTA data because the data are country-wide information and are tax-exclusive. The other data placed on the record by Wanhua (market reports and other publications of private entities) lack clarity either with respect to the source, the country where the price is from, the translation, or the specificity with respect to PET chips. The prices in Polyplex’s financial statements should be disregarded because the financial statements contain evidence of the receipt of countervailable subsidies. If Green Packing’s own ME PET chip price constitutes one data point, it represents a single piece of support for its contention that Indonesian GTA data are aberrational.

**Department’s Position:** When more than one potential surrogate country is at the same level of economic development as the nonmarket economy (“NME”) country and a significant producer of comparable or identical merchandise, the Department will select a primary surrogate country based upon whether the data for valuing FOPs are available and reliable. Section 773(c)(1)(B) of the Act directs the Department to use “the best information available” from the appropriate market economy country to value FOPs. As noted above, the record now contains all of the necessary SV data from both Indonesia and South Africa for the Department to use in the final results. Thus, availability of record SV data from these countries is not an issue. Therefore, we turn to the issue of data reliability.

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 Indonesian GTA import data is Statistics Indonesia. The Department typically

finds that official government publications are reliable and credible sources of information.<sup>38</sup> Therefore, the Department continues to find that the Indonesian GTA import data are a primary source and that based on the source of the data, they are equally as reliable as the South African import data on the record.

However, Wanhua and Green Packing also question the reliability of the Indonesian data based on what they consider to be aberrational Indonesian PET chip values. When determining whether data are aberrational, the Department has found that the existence of a higher price alone does not necessarily indicate that the price data are distorted or misrepresentative, and thus it is not a sufficient basis upon which to exclude particular values.<sup>39</sup> Nevertheless, in certain instances, the Department has disregarded import data where record evidence demonstrates that per-unit values are aberrational with respect to the product at issue or the time period in question. The Department determines whether data are aberrational on a case-by-case basis after considering the totality of the circumstances.<sup>40</sup>

First, we disagree with Wanhua's contention that the Department should find the Indonesian SV for PET chips to be aberrational based on PRC PET chip import prices from various countries,<sup>41</sup> PRC market reports reflecting domestic PRC prices for various types of plastics,<sup>42</sup> and regional PET chip prices listed in the Weekly Price Reports for the Yarn and Fibers Exchange and a ICIS price report.<sup>43</sup> Because the PRC is an NME, the Department does not rely on PRC import prices or PRC domestic prices as surrogate values or benchmarks, and thus we do not believe that these are appropriate price comparisons. Further, the ICIS report and Yarn and Fiber Exchange price reports do not identify the country where the prices are from (and thus the prices could include NME prices) and the Department has no knowledge of the reliability of the Yarn and Fiber Exchange report.<sup>44</sup> Additionally, the Department notes that the above mentioned data either lack supporting documentation showing the source of the data, information on where and how the data was obtained, or information showing what, if any, adjustments were made to the figures. Therefore, we have not relied on these data to evaluate the Indonesian GTA import data which, as already noted, are from an official source and otherwise meet our selection criteria.<sup>45</sup>

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<sup>38</sup> 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 34245 (June 12, 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) (“*Fresh Garlic/PRC 2007*”), and accompanying Issues and Decision Memorandum at Comment 2B.

<sup>39</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) and accompanying Issues and Decisions Memorandum at 12.

<sup>40</sup> See, e.g., *Lightweight Thermal Paper from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*; 73 FR 57329 (October 2, 2008) and accompanying Issues and Decisions Memorandum at Comment 10.

<sup>41</sup> See Wanhua's March SV Comments at FSV-5.

<sup>42</sup> *Id.* Wanhua placed domestic prices for various types of plastics on the record from <http://www.texindex.com>, <http://www.texnet.com>, <http://plasticke.de>, China Chemical Fiber Network, and Alibaba Energy.

<sup>43</sup> *Id.*

<sup>44</sup> See Petitioners' SV Comments, at Exhibit 6.

<sup>45</sup> See, e.g., *Fresh Garlic/PRC 2007*, and accompanying Issues and Decision Memorandum at Comment 2B (where the Department notes that it typically finds official government publications to be reliable and credible sources of information).

Second, the Indian POR import data placed on the record by Wanhua under the relevant HTS number for PET chips are inappropriate comparisons for determining whether the Indonesian SV for PET chips is aberrational because import values from countries at levels of economic development different from that of the PRC are not suitable benchmarks to test the validity of selected SVs.<sup>46</sup> Also, the Indian import data should not be used as a SV, because India has not been identified as a country at the same level of economic development as the PRC.<sup>47</sup> Wanhua also argued that the Indonesian PET chip SV used by the Department in the preliminary results is less specific than the India import data on the record. However, as noted above, there is no information on the record demonstrating that India is economically comparable to the PRC. Moreover, 19 CFR 351.408(c)(2), states that the Department will normally value all factors in a single surrogate country. The Department's determination to use PET chip import data from Indonesia is consistent with the Department's preference for valuing all FOPs in a single country.

Third, we disagree with Wanhua's claim that Polyplex's 2012 financial statements<sup>48</sup> demonstrate that the selected Indonesian SV for PET chips is aberrational. Wanhua failed to demonstrate how it derived Polyplex's PET chip and/or finished goods prices which it compared to the Indonesian SV for PET chips. Therefore, the Department finds this claim unsupported by the record.

Fourth, we do not find that Green Packing's MEP demonstrates that the Indonesian SV for PET chips is aberrational. Green Packing's MEP is based on a single company's experience.<sup>49</sup> A company's individual experience could reflect unique situations, negotiations, or arrangements with particular suppliers and is not necessarily representative of the general experience in the market place.<sup>50</sup> Thus, the Department finds that Green Packing's MEP is not suitable for use as a benchmark.

Fifth, we find Wanhua's comparison of the Thai PET chip SV (*i.e.*, 1.82/KG (using the average POR Thai exchange rate))<sup>51</sup> used by the Department in the sixth administrative review of certain polyester staple fiber from the PRC (POR 06/01/2012 through 05/31/2013) to the Indonesian

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<sup>46</sup> See *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 1; see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 2010), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>47</sup> See the Department's letter entitled "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.

<sup>48</sup> See generally Wanhua November SV Comments.

<sup>49</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 2394 (January 16, 2015) ("*Frozen Fish/PRC 2015*") and accompanying Issues and Decision Memorandum at Comment at XVII.

<sup>50</sup> *Id.*

<sup>51</sup> See Memorandum from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operation, Office IV to The File "Fifth Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China: Surrogate Value Calculation," dated concurrently with this memorandum ("Surrogate Value Calculation") at Attachment II.

PET chip SV (*i.e.*, \$2.07/KG) unrevealing.<sup>52</sup> When an interested party alleges that surrogate data are aberrational, the Department's current practice is to examine import data from potential surrogate countries for a given case, to the extent such import data are available, and/or examine data from the same HTS category from the selected surrogate country over multiple years to determine whether the current data appear aberrational compared to historical values.<sup>53</sup> The record does not contain historical data for PET chips from Indonesia which demonstrate that the Indonesian SV for PET chips is in any way distorted over time. In addition to the Indonesian PET chip import value (\$2.07/kg), the record contains PET chip import prices from two other potential surrogate countries, Thailand (\$1.82/kg), and South Africa (\$1.71/kg).<sup>54</sup> In *Steel Wire Rope*,<sup>55</sup> the Department stated that it would determine that unit values are aberrational if they are many times higher than the import values from other countries. In this case, the Indonesian PET chip import value is not many times higher than the Thai or the South African PET chip import value.<sup>56</sup> Furthermore, the range in these import values is not so wide such that one value appears clearly atypical. Accordingly, the Department finds that Green Packing and Wanhua have not met the burden of evidentiary support<sup>57</sup> for their arguments that the Indonesian PET chip SV is aberrational or distortive such that it is unreliable and thus Indonesia should not be selected as the primary surrogate country.<sup>58</sup>

Finally, excluding Indonesian imports from Japan from our valuation of PET chips would contradict the Department's clear and well-established practice of using the full GTA dataset,<sup>59</sup> and would invite distortive cherry-picking of data. The Department has "found WTA 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."<sup>60</sup> Additionally, the Department has determined that one of the countries in the Policy Memorandum meets the

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<sup>52</sup> *Frozen Fish/PRC 2015* at Comment XVII.

<sup>53</sup> See *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) and accompanying Issues and Decisions Memorandum at Comments 5 and 6.

<sup>54</sup> Surrogate Value Calculation at Attachment I.

<sup>55</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determinations of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia*, 66 FR 12759 (February 28, 2001), and accompanying Issues and Decision Memorandum for the People's Republic of China at Comments 1 and 6 ("*Steel Wire Rope*").

<sup>56</sup> See *Certain Activated Carbon From the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012) and accompanying Issues and Decision Memorandum at Comment 1 citing Final Results of Redetermination Pursuant to *Catfish Farmers of America v. United States*, Consol. Court No. 08-00111, Slip Op. 09-96, (September 14, 2009), dated December 10, 2009, at 4-7 where the Department "found the SVs for labels to be aberrational where the AUVs varied between 30 and 79 times greater than the average of the rest of the import data."

<sup>57</sup> See *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854 (July 11, 2012) and accompanying Issues and Decision Memorandum at Comment 5; *Trust Chem Co. Ltd. v. United States*, 791 F. Supp. 2d 1257, 1264-65 (CIT 2011).

<sup>58</sup> Green Packing also argued that the Department did not adequately consider the quality of direct and packing material SVs when selecting a surrogate country. However, the Department found that the Indonesian paper core SV used in the preliminary results is reliable. See Comment 3 below.

<sup>59</sup> 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 7.

<sup>60</sup> *Id.*

selection criteria for serving as a surrogate country. Moreover, it is our practice to value FOPs, to the extent possible, using a single country.<sup>61</sup> In this instance, we have useable data from our primary surrogate country and need not consider data from countries not on the list.

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**

#### Wanhua's Argument

- The Indonesian financial statements of Argha Karya, which the Department used to calculate financial ratios in the *Preliminary Results*, are not complete, according to Indonesian law.
- The annual report for Argha Karya provided by Petitioners only includes the audited financial statements, and thus it is not a complete annual report.<sup>62</sup> If Petitioners wished to use the annual report, they bore the burden of putting the full report on the record. Thus, Petitioners knowingly submitted a false and inaccurate certification by certifying that their submission was complete.
- The directors' report and management's discussion and analysis are relevant to the Department's consideration of the financial statements. As this missing information is not on the record, the Department cannot speculate as to what is contained in the missing information. The Department must assume that such information is adverse to the submitter, for if it were not adverse, it is presumed that the submitter would have provided such information.
- Since the Department finds that Indonesian exports are broadly subsidized and that subsidies are generally available, SV data tainted by such subsidies should not be used, or should be considered to be of lower quality than data from countries without such a presumption. Argha Karya's financial statements show that it is a significant Indonesian exporter (and could be presumed to have received export subsidies).

#### Petitioners' Rebuttal

- Wanhua confuses financial statements (which the Department requested) with annual reports (which it did not).
- The Department explicitly stated in the previous administrative review that Argha Karya's financial statements are useable without the entire annual report. The financial statements contain data to calculate financial ratios, while the annual report contains other qualitative data that are not necessary for this purpose.
- If Wanhua believed that Argha Karya's full annual report contained relevant information, it could have submitted it. Wanhua fails to cite any prior case where the Department

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<sup>61</sup> See *Fish Fillets/Vietnam 2009*.

<sup>62</sup> 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)*"); see also *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 94 (January 2, 2014) and accompanying Issues and Decision Memorandum at Issue 4 ("*Pure Magnesium/PRC (2014)*").

declined to use financial statements because a full annual report was not included with them.

- Although the Department has found that Indonesia maintains broadly available, non-industry specific export subsidies, this does not mean that GTA import data are somehow tainted by subsidies. The Department routinely uses Thailand and Indonesia as surrogate countries although they have broadly available, non-industry specific export subsidies, as does India, a surrogate country requested by Wanhua.

**Department's Position:** We disagree with Wanhua. As an initial matter, we note that the Department addressed this same issue regarding requiring a complete annual report in the prior administrative review.<sup>63</sup> As in that review, we also find here based on similar facts that Argha Karya's financial statements are usable and, thus, Wanhua's argument regarding incomplete financial statements for Argha Karya does not provide a basis for selecting South Africa, rather than Indonesia, as the primary surrogate country. Wanhua cites two antidumping duty administrative reviews in support of its argument. However, we find that these cases do not support Wanhua's claim. In *Wire Decking/PRC (2010)*, the Department was faced with partial financial statements (not a partial annual report) from an Indian producer which 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.<sup>64</sup> In this case, Argha Karya's financial statements include the schedules necessary to calculate surrogate financial ratios.<sup>65</sup> In *Pure Magnesium/PRC (2014)*, based on an allegation of failure to cooperate by an interested party, the Department evaluated the record with respect to the purported mistranslation and omission of translation for salient material but found that the information at issue was not necessary due to the selection of a different surrogate country. Thus, a determination was not made on this issue due to the fact the Department chose a different surrogate country. Therefore, Wanhua has not cited a precedent applicable to the decision that must be made in the instant review. Moreover, 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.<sup>66</sup> 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 has reason to believe or suspect that prices of inputs from Indonesia may have been subsidized

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<sup>63</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 37714 (July 2, 2014) and accompanying Issues and Decision Memorandum at Comment 1C.

<sup>64</sup> See *Wire Decking/PRC (2010)* at Comment 2.

<sup>65</sup> See Letter from Jonathan Hill and Thomas Martin to The File "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 November 28, 2014 at Exhibit 6, in which the Department properly calculated surrogate financial ratios.

<sup>66</sup> See Memorandum 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 at Exhibit 10.

because we have found in other proceedings that Indonesia maintain broadly available, non-industry-specific export subsidies.<sup>67</sup> 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.<sup>68</sup> However, the Department notes that this decision typically pertains to import-based SVs, not the calculation of surrogate financial ratios.<sup>69</sup> 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 the surrogate country. 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."<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup> Here, Wanhua does not cite or identify any specific subsidy program related to the financial statements 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.

For the foregoing reasons, we do not find Argha Karya's surrogate financial data to be of a lower quality compared to the surrogate financial data from AstraPak in South Africa; rather, as explained below, we find Argha Karya's surrogate financial data to be better data of the two

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<sup>67</sup> 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; see also *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; see also *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.

<sup>68</sup> 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.

<sup>69</sup> *Id.* (referring to "market-economy purchases from Indonesia, Korea, and Thailand").

<sup>70</sup> See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988).

<sup>71</sup> 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.

<sup>72</sup> 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; see also *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; see also *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.

sources. The Department has a preference for selecting the financial statements of a producer of identical merchandise over a producer of comparable merchandise for calculating surrogate financial ratios when such information is available.<sup>73</sup> 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.<sup>74</sup> Therefore, the merchandise produced by Argha Karya is more specific to the merchandise subject to this order, and therefore its financial statements constitute the best available information on the record for calculating surrogate financial ratios. For this reason, the Department is continuing to use Argha Karya's financial statements to calculate surrogate financial ratios for the final results. By using the financial statements of Argha Karya, all FOPs employed by the respondents can be valued using contemporaneous, specific SV data from Indonesia.

### **Comment 3: SV for Paper Core**

#### Green Packing

- The paper core unit price of imports into Indonesia from the Netherlands is aberrational and high compared to the unit value from all other countries, particularly in April 2013, compared to the other months in the POR.
- If the Department continues to use the Indonesian SV for paper core, it should exclude imports from the Netherlands.

#### Petitioners' Rebuttal

- The Department does not determine a single data point within a GTA data set to be aberrational without supporting evidence. It would be inappropriate to do so here.
- Green Packing admits that the value of imports into Indonesia from the Netherlands are similar in all months other than April 2013, so any exclusion of aberrational data should be limited to that month, should the Department elect to exclude any data from the calculation of the paper core SV.

**Department's Position:** We disagree with Green Packing's argument that the Indonesian HTS value used to value paper core is aberrational. As previously stated (*See Comment 2B*), when determining whether data are aberrational, the Department's current practice is to examine import data from potential surrogate countries for a given case, to the extent such import data are available, and/or examine data from the same HTS category from the selected surrogate country over multiple years to determine whether the current data appear aberrational compared to

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<sup>73</sup> 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).

<sup>74</sup> See Preliminary Decision Memorandum at 14.

historical values.<sup>75</sup> When determining whether data are aberrational, the Department has found that the existence of higher prices alone does not necessarily indicate that the price data are distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular value.<sup>76</sup> The record does not contain historical data for paper core from Indonesia, which might support a conclusion that the Indonesian SV for paper core is in any way distorted over time. Nor does the record contain paper core import values from any of the other potential surrogate countries. Interested parties must provide specific evidence showing that a value is aberrational. If a party presents sufficient evidence to demonstrate a particular value is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. Green Packing 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.<sup>77</sup> Here, Green Packing merely relies on a comparison of Indonesian POR import data, not historical Indonesian data or data from other potential surrogate countries to demonstrate that the price of paper core imports from the Netherlands is high relative to other countries. Accordingly, the Department finds that Green Packing has not met the burden of evidentiary support for its argument that the Indonesian paper core value is aberrational or distortive such that it should be rejected as unreliable.<sup>78</sup> Thus, the Department continues to find that the Indonesian GTA import data for paper core are reliable.

Furthermore, and as previously stated with respect to Japan, excluding Indonesian imports from the Netherlands from our valuation of paper core would contradict the Department's well-established practice of using the full GTA dataset,<sup>79</sup> and would invite endless and distortive cherry picking of data. The Department has "found WTA import data to represent the best information available for valuation purposes because when taken as a whole -- after

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<sup>75</sup> See *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) and accompanying Issues and Decisions Memorandum at Comment 6.

<sup>76</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) and accompanying IDM at Comment 2.

<sup>77</sup> 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; see also *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, see also *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, see also *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.

<sup>78</sup> See *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854 (July 11, 2012) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>79</sup> 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 7.

excluding non-market, unspecified, and subsidized data points -- they represent an average of multiple price points within a specific period and are tax-exclusive.”<sup>80</sup>

## II. Company-Specific Issues

### Green Packing

#### Comment 4: Treatment of Green Packing’s Reintroduced PET By-Product

##### Green Packing

- In the *Preliminary Results*, the Department did not accept Green Packing’s by-product offset methodology because Green Packing utilized estimated quantities of PET material generated during production to calculate the offset; however, the Department accepted these estimates to value that same generated PET material when the material was reintroduced into production as a direct input. Such inconsistency is contrary to law.
- The Department’s recalculation of the by-product offset for PET material fails to capture all of the by-product generated because it only takes into account by-product generated at the final cutting stage, and not by-product generated prior to that stage.

##### Petitioners’ Rebuttal

- The Department justifiably recalculated the by-product offset for PET material, limiting it to a quantifiable amount of generated by-product, because Green Packing admits that it has no record of the actual quantity of the by-product material generated. Although Green Packing demonstrated that it reuses the generated by-product material in production, there is no way of knowing whether its reported quantity of the by-product material generated is correctly calculated because it is based on an estimate of the by-product material reintroduced into production.
- Green Packing calculated (estimated) the quantity of by-product material reintroduced into production based on actual and verifiable figures using its records, but calculated (estimated) the quantity of by-product material generated based on a total consumption figure that is not in its records. The revised by-product methodology used by the Department was based on two known figures - the total weight of “big rolls” of PET film produced and the total weight of “small rolls” of PET film cut from the “big rolls” (“big rolls” are cut into commercial widths (“small rolls”) and this process generates PET material by-product). Green Packing has not shown that the Department’s methodology does not capture all by-product generated from production, because it does not maintain the records needed to justify its assertions.

**Department’s Position:** We agree with Petitioners and we will continue to apply the PET by-product offset as we did in the *Preliminary Results* in calculating Green Packing’s normal value (“NV”). Green Packing reported that it does not record, in its books, the quantity of PET by-product material generated while producing subject merchandise or the quantity of PET by-product material reused in producing subject merchandise. However, section 773(c)(3)(B) of the Act requires the Department to value the “quantities of raw materials employed” in producing

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<sup>80</sup> *Id.*

subject merchandise. In order to value the PET by-product material reused in producing subject merchandise, the Department extensively questioned Green Packing regarding the quantities of PET by-product material reintroduced into production.<sup>81</sup> Through several supplemental questionnaires, Green Packing developed a reasonable methodology for estimating the quantities of PET by-product material reintroduced into the production of subject merchandise during the POR. Green Packing's methodology was based on production standards (recipes) calling for certain percentages of virgin PET chips and reclaimed PET material to be used in producing certain products and actual total quantities of certain virgin PET chips consumed in production. Using that information, Green Packing estimated the quantity of reclaimed PET material (*i.e.* PET by-product material) reintroduced into production.<sup>82</sup> The Department found this methodology reasonable and thus accepted Green Packing's estimated quantities of reintroduced PET by-product material and used those quantities in calculating Green Packing's preliminary dumping margin.

However, the Department did not accept Green Packing's estimated quantities of PET by-product material generated while producing subject merchandise. Green Packing used these quantities to calculate a by-product offset. To be eligible for an offset for a reintroduced by-product, a respondent needs to provide and substantiate the quantity of by-products it generated from the production of subject merchandise during the POR. The Department's practice, as reflected in the Department's antidumping questionnaire issued to Green Packing, is to grant by-product offsets "for merchandise that is either sold or reintroduced into production during the POI/POR, up to the amount of that by-product/co-product actually produced during the POI/POR."<sup>83</sup> The Department followed up its antidumping questionnaire with specific requests to Green Packing, which reflected exactly what the Department requires for by-product offsets: data regarding the production of PET by-product.<sup>84</sup> Green Packing reported a by-product offset based upon the difference between the weight of the direct PET inputs introduced at the beginning of the production process (bright PET chips, master batch PET chips and estimated reclaimed PET by-product material) and the weight of the finished products (the weight of the "small rolls" of PET film – PET chips and reclaimed PET material were used to produce "big rolls" of PET film which were then cut into commercial widths ("small rolls")). The Department recalculated the by-product offset, per-unit of production for each PET film product, by subtracting the *actual* weight of POR small roll production (finished products) recorded in Green Packing's records from the *actual* weight of POR "big roll" production recorded in Green Packing's records, and dividing the difference by the weight of POR small roll production. We did not use the by-product offset calculated by Green Packing for the reasons explained below.

In contrast to reporting factors of production, the law with respect to by-product offsets.<sup>85</sup> Where a respondent requests a favorable adjustment, as is the case here with respect to the by-

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<sup>81</sup> See the Department's March 14, 2014, Supplemental Questionnaire to Green Packing, at 8-10; the Department's May 7, 2014, Supplemental Questionnaire to Green Packing, at 2-3; the Department's October 14, 2014, Supplemental Questionnaire to Green Packing, at 1-2.

<sup>82</sup> See Green Packing's October 10, 2014 Section D Questionnaire Response at 1-2.

<sup>83</sup> See the Department's original antidumping questionnaire issued to Green Packing on January 15, 2014, page D-9.

<sup>84</sup> See the Department's March 14, 2014, Supplemental Questionnaire to Green Packing, at 10.

<sup>85</sup> See *Am. Tubular Prods., LLC v. United States*, SLIP OP. 14-116, 32-35 (CIT 2014) citing *Arch Chems.*, 33 CIT at 956; see also *Guangdong Chems. Imp. & Exp. Corp. v. United States*, 30 CIT 1412, 1422, 460 F. Supp. 2d 1365, 1373 (2006).

product offset, it is incumbent upon the respondent to demonstrate that it is entitled to the adjustment.<sup>86</sup> Green Packing requests an additional by-product offset, above that calculated by the Department, because it claims that the Department’s methodology fails to capture all of the by-product generated. Yet Green Packing admits that it has no records of the actual quantity of the by-product generated.<sup>87</sup> Further, Green Packing provided no evidence to show that it generated reusable PET by-product material equal to the entire weight difference between the direct material PET inputs (which included estimated quantities), and its finished products. Green Packing’s methodology for calculating a generated by-product quantity essentially equates a by-product offset with a production yield, which can be calculated whether or not any by-product is recovered for reintroduction or sale. Under these circumstances, we determined that it was better to base the quantities of PET by-product material generated during production on *actual* figures recorded in Green Packing’s records. Although Green Packing does not record the actual quantity of PET by-product material generated during production, it does record the weight of the “big rolls” of PET film produced (*i.e.* the weight of PET film produced prior to cutting the product to commercial widths) and the weight of the “small rolls” of PET film (finished product) cut from the “big rolls” of PET film. Thus, in lieu of records demonstrating the actual quantity of PET by-product material generated during the production of subject merchandise during the POR, the Department used reasonable alternative information in Green Packing’s records for calculating the by-product offset. Thus, the Department continues to apply its recalculated by-product offset in the final results of this review.<sup>88</sup>

### Wanhua

#### **Comment 5: Value-Added Tax (“VAT”) Adjustment to Wanhua’s U.S. Sales Price**

##### Wanhua

- Chinese law states that exports are not subject to VAT.
- A 13 percent refund rate is applied to the sales price of exports as opposed to applying the 17 percent VAT rate paid on inputs in order to prevent Wanhua from receiving an excessive credit for VAT paid.
- To the extent that any adjustment for VAT is to be made, this adjustment should not be made to the sales price. VAT relates to the purchase of inputs. In an NME situation, the Department does not use actual input values. Therefore, no adjustment should be made.

##### Petitioners’ Rebuttal

- The Department’s adjustment of Wanhua’s U.S. prices for VAT was in keeping with the procedures announced in *Methodological Change for Implementation of Section*

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<sup>86</sup> See 19 CFR 351.401(b)(1) and *Mid Continent Nail Corp. v. United States*, 32 Int’l Trade Rep. (BNA) 1461 (CIT 2010) (upholding the specific application of the regulation regarding by-product offsets); see also 19 CFR 351.401(b)(1) and *Timken Co. v. United States*, 673 F. Supp. 495, 513 (CIT 1987) (holding that a respondent bears the burden of demonstrating entitlement to favorable adjustment).

<sup>87</sup> See Letter from Green Packing to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from China,” dated March 4, 2014 at D-27.

<sup>88</sup> See Letter from Thomas Martin International Trade Analyst, AD/CVD Operations, Office IV through Howard Smith Program Manager AD/CVD Operations, Office IV to The File “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 Shaoxing Xiangyu Green Packing Co., Ltd.,” dated November 28, 2014.

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). The Department adjusts U.S. net prices to account for unreimbursed VAT.

**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.<sup>89</sup> In this announcement, the Department stated that when a NME 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 accordingly by the amount of the tax, duty or charge paid, but not rebated upon export.<sup>90</sup> 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.<sup>91</sup> 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 reported U.S. price by the amount determined from steps one and two.

The Department disagrees with Wanhua’s contention that no irrecoverable VAT adjustment to its U.S. prices is necessary considering PRC law states that exports are not subject to VAT. 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.<sup>92</sup> Accordingly, Wanhua’s irrecoverable VAT rate for PET film, as determined by the Chinese government and as reported by the respondent, is four percent.<sup>93</sup> 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.”<sup>94</sup> 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.”<sup>95</sup> Thus, by Wanhua’s own admission, its VAT burden on exports is four percent.<sup>96</sup> Therefore, the record evidence provided by Wanhua does not support its assertions that PRC law states that exports are not subject to irrecoverable VAT.

Wanhua also argues that VAT relates to the purchase of inputs, but the Department does not use actual NME input values in its calculations, and thus no adjustment should be made to the U.S.

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<sup>89</sup> 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*”).

<sup>90</sup> 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).

<sup>91</sup> See *Methodological Change*, 77 FR at 36483.

<sup>92</sup> See Supplemental Section C & D Response by Tianjin Wanhua Co., Ltd.,” dated May 29, 2014 (“Wanhua May 2014 Response”) at 9-11.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

sale prices. However, the Department's methodology is precisely tied to the prices in respondents' U.S. sales database. The Department's deduction of product-specific VAT from subject merchandise prices is a more reasonable and accurate methodology since the export tax, duty, or other charge is a product-specific expense that is directly linked with exportation of subject merchandise.

The Department finds that the most straightforward, consistent, and verifiable method to make this adjustment under section 772(c)(2)(B) of the Act is by relying on the standard formula provided for under Chinese tax law and regulation. In that respect, the Department notes that the irrecoverable VAT formula for taxation purposes is solely a function of the rates under Chinese regulation and the respondent-specific export value of subject merchandise. The input VAT that the PRC does not refund on export sales stands in contrast to domestic sales where there is no VAT expense. Thus, the irrecoverable VAT expense on export sales amounts to a tax, duty or other charge imposed on exports. The irrecoverable VAT only arises through the fact that there were export sales.<sup>97</sup> In this regard, in its supplemental questionnaires to Wanhua, the Department specifically requested that it report information involving VAT<sup>98</sup> and it acknowledged that it paid VAT on the inputs used to produce subject merchandise.<sup>99</sup> For all these reasons, we reject Wanhua's argument because subject merchandise was subject to a VAT obligation imposed on exports.

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.<sup>100</sup> These are, by definition, product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise. Also, the Department's methodology relies on the prices of subject merchandise in Wanhua's U.S. sales database. Finally, the Department's deduction of product-specific VAT from subject merchandise prices 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 claim that the reduced reimbursement rate (13 percent as opposed to the 17 percent VAT rate paid) is to prevent it from receiving an excessive credit for VAT effectively ignores the irrecoverable VAT (the difference between the 17 percent VAT paid on raw materials and the 13 percent reimbursement rate on exports) 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.<sup>101</sup> Therefore, based on the above analysis, the Department will continue to reduce Wanhua's U.S. sales prices by four percent for the final results.

## **Comment 6: Deduction of Marine Insurance from Wanhua's U.S. Sales Prices**

### Petitioners

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<sup>97</sup> *Methodological Change* at 36483.

<sup>98</sup> See Wanhua May 2014 Response at 9-15.

<sup>99</sup> *Id* at 9-11.

<sup>100</sup> *Id* at Exhibit S3C-2 and S3C-4.

<sup>101</sup> 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).

- In the dumping margin program, the Department attempted to deduct marine insurance expense from Wanhua’s U.S. prices, but erroneously programed the expense to be deducted from sales with a reported “Yes” rather than “YES” in all capital letters, causing no marine insurance expense to be deducted.

No other parties commented on this issue.

**Department Position:** We agree with the Petitioners. For the final results, the Department has corrected this error.<sup>102</sup>

**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

*Ronald K Lorentzen*

Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

*June 3, 2015*  
Date

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<sup>102</sup> See Memorandum from Jonathan Hill, International Trade Compliance Analyst to Howard Smith, Program Manager, AD/CVD Operation, Office IV “Analysis for the Final Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet and Strip from the People’s Republic of China: Tianjin Wanhua Co., Ltd.,” dated concurrently with this memorandum.