

September 17, 2008

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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Polyethylene Terephthalate
Film, Sheet, and Strip from Thailand

Summary:

We have analyzed the case and rebuttal brief submitted by interested parties. As a result of our analysis, we have made changes in the margin calculation for the final determination. We recommend that you approve the positions described in the Discussion of Interested Party Comments section of this memorandum. Below is the complete list of the issues in this investigation for which we have received comments from the parties:

I. List of Comments

- Comment 1: Whether Polyplex Understated the Cost of Polymer Chips for PET Film Production
- Comment 2: Whether Polyplex Understated Labor Costs associated with PET Film Production
- Comment 3: Whether Polyplex Correctly Reported the Cost of Sales Denominator for the General and Administrative Expense Ratio
- Comment 4: Whether Polyplex Understated Warehousing Expenses and Misclassified Warehousing Expenses as Indirect Selling Expenses
- Comment 5: Whether Polyplex Understated the Indirect Selling Expenses Incurred by Polyplex America, Inc.
- Comment 6: Whether the Department Should Apply the Dumping Margin Calculated on Sales of Identical Merchandise to the Further Manufactured Sales
- Comment 7: Whether to Accept Petitioners' Targeted Dumping Allegation
- Comment 8: Clerical Error

II. Background

On May 5, 2008, the Department of Commerce (the Department) published the preliminary determination in the above-referenced antidumping duty investigation on polyethylene terephthalate film, sheet, and strip (PET Film) from Thailand. See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand, 73 FR 24565 (May 5, 2008) (Preliminary Determination). The merchandise covered by this investigation is described in the Federal Register notice issued the same date as this memorandum. The investigation covers Polyplex Thailand Public Company Limited and Polyplex, Americas, Inc. (collectively, Polyplex), a manufacturer and exporter of subject merchandise, who was selected as a mandatory respondent. The period of investigation (POI) is July 1, 2006, through June 30, 2007. We gave interested parties an opportunity to comment on our Preliminary Determination. On August 11, 2008, we received a case brief from petitioners.¹ On August 15, 2008, we received a rebuttal brief from Polyplex.² On August 26, 2008, we rejected one argument entirely and a part of a second argument from Polyplex's rebuttal case brief because they constituted new arguments and were not a rebuttal of petitioners' case brief. See the Department's August 26, 2008, letter to Polyplex. On August 28, 2008, we received Polyplex's revised rebuttal brief per our August 26, 2008, letter. No party requested a hearing.

III. Discussion of Interested Party Comments

Comment 1: Whether Polyplex Understated the Cost of Polymer Chips for PET Film Production

Petitioners assert that Polyplex understated its direct material costs for the merchandise under consideration as noted in the cost verification report. See Memorandum to the File from Angela Strom through Taija A. Slaughter and Neal M. Halper titled "Verification of the Cost Response in the Investigation of Polyethylene Terephthalate (PET) Film, Sheet and Strip from Thailand," dated July 15, 2008 (Cost Verification Report). First, petitioners attest that the minor corrections presented by Polyplex, the inventory adjustments referenced by the Department, and the revisions related to the overstatement of costs for polymer chips (i.e., the raw material input for the merchandise under consideration) sold to outside parties should be incorporated in the direct material cost calculation for the merchandise under consideration. Second, petitioners concur with the Department's approach to calculate a single per-unit direct material cost for all polymer chips produced and use the resulting per-unit cost to allocate cost to polymer chips sold and consumed based on volume. See Cost Verification Report at page 20.

Polyplex attests that it did not understate the production costs associated with the sales of polymer chips, and instead opines that the Department's approach would, in fact, overstate the cost of polymer chips sold. The Department's revised direct material cost calculation included at

¹ The petitioners in this investigation are DuPont Teijin Films, Mitsubishi Polyester Film of America, SKC, Inc., and Toray Plastics (America), Inc. (collectively, petitioners).

² Polyplex submitted a letter to the Department on August 11, 2008, in which it agreed with the Department's Preliminary Determination.

page 20 of the Cost Verification Report, as alleged by Polyplex, distorts the material cost for two reasons. First, Polyplex contends, the majority of the sales of polymer chips occurred during the first four months of the POI, and the prices of raw materials at that time were much higher than during the last half of the POI. Second, Polyplex alleges that the exchange rates were higher during the first half of the year than in the later months of the POI. Thus, Polyplex argues that because the polymer chips sales occurred in the beginning months of the POI, the cost of production should be correspondingly higher. Hence, Polyplex urges the Department to consider the monthly cost of production for polymer chips sold in the direct material cost calculation for the merchandise under consideration.

Polyplex also argues that the Department incorrectly increased the direct material costs in the calculation provided in the Cost Verification Report by the work-in-process (WIP) charge in inventory adjustment for polymer chips. Polyplex contends that the difference between the opening and closing stock of work-in-process for polymer chips was negative (i.e., represents an increase in work-in-process inventory at the end of the POI compared to the beginning of the POI), and should have been a reduction to the raw material consumption costs for PET Film.

Department's Position:

The Department adjusted the cost of polymer chips for PET Film production for the final determination in order to correct for the underreporting of this cost by Polyplex.

Polyplex reduced the direct material costs incurred in the production of PET Film (i.e., the merchandise under consideration) by the costs associated with polymer chips sold to outside parties during the POI. At the cost verification, the Department found that the costs assigned to polymer chips sold included several errors. See Cost Verification Report at page 20. For example, the cost assigned to polymer chips included not only direct material costs, but also the related conversion costs and administrative expenses. This resulted in double-counting of conversion costs because Polyplex later deducts these same costs when calculating the conversion costs for PET Film. Moreover, the cost of polymer chips sold was higher than the cost of polymer chips consumed, although both polymer chips were produced using identical inputs and production processes. See id. Therefore, because Polyplex inappropriately reduced the direct material costs for PET Film by overstating the cost allocated to chips sold, the Department provided a recalculation of the direct material cost calculation. This recalculation computes a single direct material cost for the polymer chips produced, regardless of whether the polymer chips were sold or consumed. See id.

With respect to Polyplex's request for the Department to use monthly cost data, section 773(b)(3) of the Tariff Act of 1930, as amended (the Act), states that the cost of production (COP) is calculated using a "period which would ordinarily permit the production" of the foreign like product and no guidance is given with regard to whether or not the Department should use only a single, weighted-average period of time, or multiple time periods within that "production period" for purposes of making comparisons and calculating a dumping margin. The Department has established a practice of using a single weighted-average COP that applies to the entire POI or period of review (POR), which it has applied in the vast majority of its

investigations and reviews. Factors such as erratic production levels, the extent to which and how accurately monthly accruals are made, periodic maintenance, inventory valuation methods, and so on, all impact the timing and accuracy of per-unit costing over short periods of time. Relying on an annual average cost tends to smooth out these short-term per-unit cost fluctuations resulting in a normalized average production cost to be compared to sales prices over the same extended period of time. See Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (where the Department stated that the use of quarterly data would cause aberrations due to short-term cost fluctuations) and Grey Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (September 8, 1993) (where the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle).

The Department has only deviated from its normal annual costing approach in cases when external factors, such as direct material costs, inflationary pressures, or technological advances have led to significant changes in the total cost of manufacturing for the merchandise under consideration or inappropriate comparisons based on the pricing behaviors present during a given POI or POR. See e.g., Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from Netherlands, 65 FR 742 (January 6, 2000) and Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8926 (February 23, 1998). These cases are the rare exception, not the general rule, applicable primarily in those instances where the underlying cost deviations are significant in relation to the total cost of manufacturing.

In reviewing Polyplex's monthly cost of production information for polymer chips sold, the Department recognizes that raw material prices declined slightly during the POI. See Attachment 1 of Polyplex's Rebuttal Brief. However, we note that these cost changes for the raw materials used in the production of polymer chips (i.e., the raw material input for the merchandise under consideration) are not substantial and do not significantly impact the total cost of manufacturing for the merchandise under consideration. Further, we see no other reason to conduct such an analysis on a monthly basis. Thus, in accordance with the Department's established practice, we have continued to calculate an annual average cost for polymer chips regardless of whether the polymer chips are sold or consumed in the production of PET Film.

With respect to the work-in-process inventory adjustment associated with the production of polymer chips, we agree with Polyplex. We note that while the change in work-in-process inventories for PET Film (i.e., the merchandise under consideration) is positive (i.e., a decrease in the work-in-process inventory at the end of the POI compared to the beginning of the POI), the change in work-in-process inventories for polymer chips is negative (i.e., an increase in work-in-process inventory at year end). As a result, for the final determination, we have reduced the direct material cost for the change in work-in-process inventory for polymer chips. See Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Polyplex (Thailand) Public Company Ltd. (Polyplex) dated September 17, 2008 (Cost Calculation Memorandum).

Comment 2: Whether Polyplex Understated Labor Costs associated with PET Film Production

Petitioners attest that the labor costs associated with production of the merchandise under consideration is understated. Referencing the minor corrections provided by Polyplex and the cost verification findings, petitioners agree to all minor corrections and the Department's assessment that certain labor costs classified as common plant labor costs (*i.e.*, allocated between PET Film, metallized film and polymer chips) should be considered direct labor costs for the merchandise under consideration. See Cost Verification Report at pages 2-4, 24-26. However, petitioners urge the Department to further adjust the direct labor calculation to include a portion of labor costs related to chip production that was accumulated within the same common cost center as the common plant labor costs noted above. Petitioners assert that all "common" labor costs directly related to polymer chip production as a whole should be allocated, by volume, between polymer chips sold and consumed, as opposed to making the assumption that these costs only relate to polymer chips sold as implied in the Cost Verification Report.

In addition, the petitioners argue that the overall common labor cost allocation is incorrect. Petitioners point out that Polyplex employed a sales value allocation to assign common labor costs between the merchandise under consideration (*i.e.*, PET Film) and non-subject merchandise (*i.e.*, metallized film and polymer chips), and contend that this allocation basis is both unjustified and contrary to the Department's normal practice. Petitioners allege that the record evidence confirms that the use of a sales value allocation significantly overstates the amount of common costs diverted from the merchandise under consideration to non-subject merchandise. Hence, petitioners urge the Department to allocate common labor costs between the merchandise under consideration and non-subject merchandise using a more appropriate allocation basis such as direct factory overhead costs assigned to each type of product produced. According to petitioners, these labor activities are directly connected to factory overhead costs (*e.g.*, machinery). Petitioners also propose that common labor costs considered as general and administrative expenses be allocated on the basis of cost of sales.

Polyplex disagrees with the petitioners. Polyplex states it has done its best to provide its cost of production data in the format required by the Department, and presented all known reporting errors at the outset of the cost verification. One of these errors included the allocation of direct labor costs between captive consumption and polymer chips sold. Polyplex argues that a further adjustment to the labor costs directly related to polymer chip production accumulated within the common cost center referenced by petitioners is unjustified. Polyplex contends that the petitioners have not provided any reasoning as to why their approach is better than the allocation methodology employed by Polyplex and verified by the Department.

Polyplex also challenges petitioners' allegation that a sales value allocation for common labor costs would result in inaccuracies and distortions. Polyplex highlights the fact that the Department closely reviewed, tested and documented the allocation methodology for labor costs at the cost verification and noted no discrepancies on the sales value allocation itself. In addressing the alternative direct cost allocation methodology proposed by petitioners, Polyplex argues that using the product-specific costs as allocation criteria for labor costs, as suggested by

petitioners, would clearly distort the reported cost data. To illustrate, Polyplex explains that the cost of production for metallized film (*i.e.*, non-subject merchandise) contains only the cost of converting PET Film to metallized film. As a result, the overhead costs incurred in producing PET Film (*i.e.*, the raw material input for metallized film) are completely excluded from the cost of production for metallized film. Polyplex argues that the overhead cost allocation would assign an unreasonably low portion of common costs to metallized film and skew the allocation more towards the merchandise under consideration. To avoid such distortions, Polyplex urges the Department to retain the sales value allocation methodology in the labor cost calculation. Should the Department opt to make any adjustments to the labor costs for the final determination, Polyplex requests that the Department not rely upon petitioners' figures and attachments, but rather use the source data provided by Polyplex.

Department's Position:

The Department adjusted the labor expense calculation for the final determination in order to correct for the underreporting of this cost.

The Department discovered at the cost verification that a common cost center, allocated based on sales value, contained not only common labor costs, but also direct labor costs that should be charged directly to the merchandise under consideration. Thus, in the Cost Verification Report the Department described the cost revisions required for the direct labor calculation based on the information requested and obtained at the verification. Petitioners concur with these revisions with one exception with which we agree. We agree with petitioners that a portion of the common labor costs related to polymer chip production as a whole (*i.e.*, the raw material input for PET Film) should be allocated to both polymer chips sold and consumed, using a volume allocation basis, versus considering that the labor costs in question relate only to polymer chips sold. Thus, for the final determination, we adjusted Polyplex's reported costs to reflect both the labor cost adjustment proffered in the Cost Verification Report and the adjustment to further allocate labor cost for polymer chips to both sold and consumed chips. See Cost Calculation Memorandum.

Regarding the comments pertaining to the sales value allocation, the Department agrees with petitioners' proposal from a methodological standpoint. In considering an appropriate allocation basis³ for common costs, as stated by petitioners, the Department normally does not consider sales value to be an appropriate allocation criterion for manufacturing costs, except in limited cases involving joint production processes and where there are no other reasonable alternatives. To determine whether an allocation method is reasonable, cost accounting typically looks to the relationship between the cost pool being allocated and the allocation factor or base. The stronger the association between the expenses in the cost pool and the allocation factor, the more reasonable the method. For example, factory overhead costs are often allocated based on machine hours because it is assumed that this measure of time is a good indicator of production activity and that overhead expenses would be incurred, more or less, in relation to the machine

³ An allocation basis is the measure of an activity (*e.g.*, production quantity, overhead costs or machine-hours) that is used to distribute costs among various products or divisions within a company.

hours. In the instant case, considering the type of expense (i.e., common labor costs) that is being allocated to the specific products produced, we agree with the petitioners that based on record evidence the most appropriate available measure of the common labor costs attributable to each product produced by Polyplex is direct factory overhead costs.

However, petitioners' calculation of the overhead allocation methodology provided in Attachment 1 of its August 11, 2008, case brief is skewed. As Polyplex described in its August 28, 2008, rebuttal brief, the costs for metallized film include only the further manufacturing overhead costs incurred in converting PET Film to metallized film. As a result, the metallized film overhead cost is understated because it does not include the overhead costs associated with producing the raw material input (i.e., PET Film, which is also the merchandise under consideration) used to produce metallized film. To avoid this distortion, we adjusted the metallized film overhead cost to include the relevant portion of overhead costs associated with PET Film production used to produce metallized film. Further, we reduced the PET Film overhead costs allocated to the merchandise under consideration by the same amount. For the final determination, we used the results of these revised overhead costs to allocate all common labor costs to PET Film, metallized film and polymer chips, with the exception of those staff costs associated with selling and marketing activities. See Cost Calculation Memorandum.

Comment 3: Whether Polyplex Correctly Reported the Cost of Sales Denominator for the General and Administrative Expense Ratio

Petitioners argue that the cost of sales denominator used in the general and administrative expense rate calculation⁴ should exclude warehousing expenses. Petitioners explain that the cost of sales line item on Polyplex's financial statements includes a portion of warehousing expenses that Polyplex had claimed as selling expenses. Consequently, petitioners suggest that amounts for warehousing expenses be deducted from the cost of sales figure and that the general and administrative expense rate be recalculated accordingly.

Polyplex disagrees with the petitioners. Polyplex contends that the warehousing expenses added by Polyplex to the cost of sales denominator have been appropriately disregarded by the Department because the warehousing expenses were considered as selling expenses in the sales databases.

Department's Position:

The Department adjusted the cost of sales denominator of the general and administrative ratio for the final determination. Warehousing expenses, as reported in Polyplex's sales databases, are comprised of five general ledger accounts. Four of the five accounts are considered in the cost of sales line item in Polyplex's financial statements and the remaining account is included in the general and administrative expense line item. In computing the cost of sales figure used as the

⁴ To compute the general and administrative expense (G&A) ratio for a given company, the Department normally uses the general and administrative expenses incurred by a company as the numerator of the calculation and the corresponding cost of sales figure for the same fiscal year as the denominator.

denominator of the general and administrative expense rate calculation, any items reclassified and included elsewhere in the reported cost or sales databases should not be included in the cost of sales to maintain symmetry with the reported cost of manufacturing (COM) of which the general and administrative expense rate is applied. In this instance, certain warehousing expenses were reclassified as selling expenses; therefore, we reduced the cost of sales denominator by these reclassified expenses for the final determination. See Cost Calculation Memorandum at Attachment 7.

Comment 4: Whether Polyplex Understated Warehousing Expenses by Misclassifying Warehousing Expenses as Indirect Selling Expenses

Petitioners claim that Polyplex allocated a portion of its warehousing costs to PET chips sold during the POI, without supporting its allocation. Petitioners contend that there is no evidence that the PET chips (non-subject merchandise) were warehoused, and contend further that Polyplex did not explain certain inconsistencies between the PET chips produced and sold. Particularly, petitioners argue that Polyplex did not provide an explanation for the percentage used to allocate PET chips to warehousing costs, either during the sales verification or in its April 11, 2008, supplemental sales questionnaire response (April 11, 2008, response), where Polyplex admitted that it was unsure of the source of the allocation percentage. See Polyplex's April 11, 2008, response at page 17. Petitioners contend that in Polyplex's March 12, 2008, supplemental questionnaire response (March 12, 2008, response), Polyplex provided invoices related to storage for a sample month. Petitioners maintain that these invoices indicate only the service performed and were not an explanation of the allocation. Petitioners assert that without an expense-specific justification for the allocation of warehousing between PET Film and PET chips, the Department should use Polyplex's books and records to calculate warehousing expenses, i.e., total warehousing costs divided by total quantity of film sold during the POI.

Petitioners argue that because Polyplex claimed it could not tie certain warehousing expenses to specific sales, Polyplex misallocated certain warehousing expenses (e.g., dispatch, packaging and other miscellaneous services, etc.) as indirect selling expenses, instead of properly considering them as movement expenses. Petitioners assert that Polyplex is treating indirect selling expenses as a basket category in which to put all non-classifiable expenses. By doing this, petitioners claim that Polyplex is influencing the dumping margin calculation by understating U.S. costs and overstating indirect expenses included in the CEP offset. Petitioners argue that Polyplex included certain expenses in the indirect selling expense incurred in the country of manufacture (DINDIRSU) that should be deducted from U.S. price. Petitioners state that the Department noted in its CEP Verification Report that Polyplex or Polyplex Americas, Inc. (PA) may have included certain movement expenses in indirect selling expenses in the country of manufacture. See Memorandum to the File titled "Verification of the U.S. Sales Responses of Polyplex Thailand Public Company Limited and its U.S. Affiliate, Polyplex (Americas), Inc., in the Antidumping Investigation of Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Thailand," from Stephen Bailey, Case Analyst, dated July 23, 2008, (CEP Verification Report) at page 34. Because Polyplex did not report these expenses correctly and because it is impossible to know exactly which expenses are relevant to the sale to the unaffiliated customer, petitioners contend that the Department should deduct the entire amount

reported in DINDIRSU from the U.S. price. Alternatively, petitioners aver that the Department should separate warehousing costs from indirect selling expenses by applying the ratio calculated above (i.e., total warehousing costs divided by total quantity of film sold during the POI).

In its rebuttal brief, Polyplex asserts that petitioners' argument for what it calls a partial facts available determination is without legal basis. Polyplex avers that it has answered all of the Department's questions and the Department has verified all of the information.

Polyplex argues that petitioners misrepresent the statement it made on page 17 of its April 11, 2008, response. Polyplex contends that its statement on page 34 of the April 11, 2008, response did not convey its uncertainty as to the source of its warehousing PET chip allocation. Rather, Polyplex argues that it was uncertain of the source of the Department's PET chip warehousing allocation expressed in question 30 of the April 1, 2008, supplemental questionnaire. Polyplex asserts that petitioners misinterpret Polyplex's statement, as the question did not address the issue of the source of warehousing expenses.

Polyplex argues that it supplied a breakdown of its warehousing expenses at page 43 of its March 12, 2008, response. Polyplex asserts that in its March 12, 2008, response it also provided sub-ledgers detailing its warehousing expenses and the products to which the expenses were incurred on a yearly, as well as a sample month, basis.

Polyplex states that it also provided in its March 12, 2008, response an explanation for its PET chip expenses and the reason why the PET chip expenses are higher than the expenses for PET Film. Referring to the warehouse expense table on page 43 of its March 12, 2008, response, Polyplex contends that it provided the different types of costs booked under subject merchandise. Polyplex argues that it accounted for its PET Film warehousing expenses, including warehouse management and forklift operation which is not directly tied to PET Film expenses. Polyplex asserts that because it uses outside warehouses for nearly all of the PET chips sold, a substantial portion of the total warehousing costs are booked under PET chips sold.

With regard to the classification of certain storage expenses as indirect selling expenses, Polyplex argues in its rebuttal brief that in its March 12, 2008, response it explained that it stores goods in its external warehouse when it does not have enough storage space for merchandise in its factory warehouse. Polyplex states that on page 41 of its March 12, 2008, response, it explained that it shifts merchandise to the external warehouse for storage purposes and that it shifts the merchandise back to its factory warehouse when room becomes available. Polyplex explains that because it cannot link the storage of merchandise in the external warehouse to a specific sale, it has classified these expenses as indirect selling expenses.

Polyplex argues that pursuant to 19 CFR 351.401(e)(2), the Secretary will consider warehousing expenses that are incurred after the subject merchandise of the foreign like product leaves the original place of shipment as movement expenses. Polyplex maintains that the merchandise which is sent to the external warehouse is moved back to the factory warehouse once space is available and prior to shipment to the customer. Polyplex asserts, therefore, that these expenses are incurred prior to the goods leaving the factory for shipment to the customer and are properly

classified as indirect selling expenses.

Department's Position:

The Department finds that Polyplex properly classified expenses associated with storing merchandise at an external warehouse prior to shipment to the customer as indirect selling expenses. However, we determine that the percentage of storage expenses allocated by Polyplex to PET chips in its calculation is unsupported by record evidence. Accordingly, we have re-allocated the warehousing expenses on the basis of sales value for the merchandise produced, and have included storage expenses in the indirect selling expense ratio.

As explained in 19 CFR 351.401(e)(2), the Secretary will consider warehousing expenses that are incurred after the foreign like product leaves the original place of shipment as movement expenses. Polyplex explained that the merchandise at issue did not leave the factory for shipment to the customer, but was stored off-site because it did not have enough storage space at the factory. Polyplex further explained that the merchandise was returned to the factory at the expense of the storage company prior to it being shipped to the customer. See page 30 of Polyplex's January 18, 2008, Sections B&C questionnaire response (BCQR). Polyplex provided invoices from the storage company which cover all expenses incurred for the storage. See March 12, 2008, response at Exhibit 13. The invoices provided list Polyplex's factory address, with no other address or name listed. The information on the transportation invoices do not suggest the material is being shipped to anyone other than Polyplex. Polyplex also stated on page 42 of its March 12, 2008, response, that while it can track a specific roll of film to the external storage warehouse, it cannot track this roll when it is shipped back to Polyplex. Therefore, PET Film rolls that may have been stored temporarily at the external warehouse cannot be tied to a specific sale. Accordingly, absent evidence demonstrating that the expenses incurred involve the shipment of merchandise as part of a sale, the Department considers the charges incurred for this type of storage to be indirect expenses.

With regard to the offset made to indirect selling expenses to account for PET chips, we disagree with the percentage allocated to PET chips by Polyplex. On page 43 of its March 12, 2008, response, Polyplex provided POI expenses tied to the storage charge and the invoices associated with these expenses for March 2007 in Exhibit 13, of the same response. The invoices provided demonstrate the nature of the expenses (i.e., forklift expenses, company expenses, transportation charges, and handling charges). The invoices, however, do not explain whether these expenses relate to the storage of PET Film and/or PET chips. While Polyplex provided the total storage expenses incurred by Polyplex during the POI on page 1807 of Exhibit 18 of the Sales Verification Report, and provided an expense value for the PET chips, there is no evidence to support this percentage. See Memorandum to the File titled "Verification of the Sales Responses of Polyplex Thailand Public Company Limited in the Antidumping Investigation of Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Thailand," from Stephen Bailey, Case Analyst, dated July 23, 2008, (Sales Verification Report).

Additionally, the value of PET chips sold by Polyplex during the POI is much lower than the percentage allocated to storage expenses for PET chips. See page 2581 of Exhibit 2 of the Cost

Verification Report. Absent evidence of the actual percentage of PET chips held in storage, the Department has determined to base this percentage on the amount of PET chips sold during the POI because the sales value of PET chips is the only verified figure relating to PET chips on the record. Accordingly, the Department has allocated PET chip storage expenses based on their sales value during the POI. See Id. Due to the proprietary nature of these expenses, see Memorandum to the File from Stephen Bailey, Case Analyst, through Angelica L. Mendoza, Program Manager, Office 7, titled “Analysis Memorandum for the Final Determination of Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Thailand: Polyplex Thailand Public Company Limited and Polyplex Americas, Inc.,” dated September 17, 2008 (Sales Analysis Memorandum) for the percentage used to allocate PET chip expenses.

Comment 5: Whether Polyplex Understated the Indirect Selling Expenses Incurred by Polyplex America, Inc.

Petitioners argue that Polyplex understated its indirect selling expenses by deducting an amount for income received for non-subject merchandise and making an adjustment for a bad debt expense. Petitioners assert that there is no evidence that Polyplex generated income from its Saracote division and no evidence that bad debt relates to non-U.S. sales of subject merchandise.

With regard to Polyplex’s deduction to the indirect selling expense (ISE) ratio for income received from non-subject merchandise, petitioners contend that Polyplex has not demonstrated that income was generated for the Saracote division. Petitioners argue that while indirect expenses are usually calculated by dividing total expenses (not otherwise classified) by the total sales revenue of the company, Polyplex did not follow this methodology in this proceeding. Petitioners contend that indirect selling expenses for PA were calculated by allocating expenses between the two divisions of PA responsible for these sales of either Sarafil (plain and metalized PET Film) or Saracote (silicone coated film) for production. Petitioners argue that the division responsible for producing subject merchandise is allocated a majority of the indirect expenses, which are calculated correctly, i.e., expenses divided by sales value. However, petitioners state that the indirect expense ratio for the Saracote division, which does not produce subject merchandise, is not calculated correctly because there was no sales revenue to use as the denominator. Petitioners assert that the denominator for the indirect selling expense calculation of the Sarafil division, which produces subject merchandise, includes the total sales revenue of PA. Petitioners contend that a company’s selling expenses must be absorbed by period sales. Petitioners maintain that a comparison of prior year financial statements demonstrates that Polyplex performed a similar allocation of its indirect selling expenses because the ratio of indirect expenses to total sales is lower by a similar amount to the calculation performed for the POI.

With regard to the bad debt expense deduction to the ISE ratio, petitioners assert that Polyplex has not demonstrated that this debt is related to sales to Canada or Mexico. Petitioners assert that Polyplex’s exclusion of an amount for bad debt from its indirect selling expense is without justification. Petitioners assert that bad debt expenses are classified as selling expenses and should be deducted from the sales price.

Polyplex argues in its rebuttal brief that contrary to petitioners' argument, it considered all general expenses of PA to be selling expenses, but allocated those expenses to the products to which they relate. Polyplex asserts that section 772(d)(1) of the Act calls for the deduction of those expenses relating to the sale of subject merchandise from the CEP. Polyplex contends, therefore, that to include the expenses associated with non-subject merchandise in its calculation of CEP would be contrary to the statute.

Polyplex maintains that while indirect selling expenses that were related to a particular product were assigned to that product, only common expenses were allocated, i.e., salaries based on an allocation of the time spent on each product.

Polyplex contends that petitioners' argument that an allocation cannot be made to a division that has no corresponding revenue is inaccurate as a matter of law and accounting because to do so would preclude revenue from being allocated to new products. Polyplex argues that in Pineapple from Thailand, the Department explained that it may allocate indirect selling expenses between subject and non-subject merchandise but there must be anticipated revenue related to those expenses. See Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 67 FR 76718 (December 13, 2002) and accompanying Issues and Decision Memorandum at Comment 5 (Pineapple from Thailand).

Polyplex argues that while the Department did not require actual revenue in Pineapple from Thailand, Polyplex did realize a small actual revenue from sales of its Saracote division. Polyplex asserts that the Saracote division produces silicone coated film, a new business for which Polyplex is in the process of establishing a customer base. Polyplex contends that it began commercial production of silicone coated film in India on March 1, 2007, and that it employed marketing staff for this product prior to that time. Polyplex maintains that the Department verified both the expenses and revenue of the Saracote division, and that Saracote's revenue was deducted from total sales to generate the denominator used for the indirect selling expense ratio. See pages 3 and 11 of Exhibit 22 of Polyplex's July 25, 2008, Sales Verification Report. Polyplex contends that petitioners' argument that indirect selling expenses contain the total sales revenue of the company is, therefore, incorrect.

Polyplex contends that petitioners' argument that its ISE ratio for the POI should be in the same range as the ISE ratio calculated for 2007 is misleading. Polyplex asserts that the ISE petitioners calculate for 2007 includes both the expenses and revenue associated with non-subject merchandise. Polyplex further contends that the Saracote business is new, with higher costs and lower revenue, which leads to an inaccurate ISE ratio.

Polyplex argues that four of the five expenses that petitioners consider bad debt are related to sales to Canada and Mexico. Polyplex contends, therefore, that the bad debt was properly excluded from the build-up of ISE.

Department's Position:

We have not deducted certain expenses that Polyplex allocated to the Saracote division from the build-up of the ISE ratio. Additionally, we have not ignored the bad debt expense in the ISE ratio. Accordingly, the Department included all expenses associated with Saracote, and included the value associated with bad debt, in the build-up of PA's expenses in the ISE ratio.

Polyplex provided a worksheet showing the income and expenses for the POI on page 3 of Exhibit 13 of the CEP verification report. In this worksheet the income for the Sarafil and Saracote divisions are represented. Income from sales of Sarafil product (i.e., PET Film and non-subject merchandise) is listed under the line item "sales" and the line items "sales returns, prompt payment discounts, miscellaneous sales allowances, and rebates." See page 2 of Exhibit 13 of the CEP verification report. Income listed under "On Saracote sales" is listed under the line items "other income – Saracote" and "service income." While the income amounts for Sarafil are clearly income from sales, the Saracote income is listed under headings that do not traditionally reference income from sales. Companies normally include non-operating income, including gains and losses, and revenues and expenses related to peripheral or incidental activities of the company in other income expense accounts. See Intermediate Accounting, Spiceland Sepe, and Tomassini, Third Edition, McGraw Hill & Irwin (2004) at 173. For example, income from investments, gains and losses from the sale of operating assets and from investments, interest and dividend revenue and interest expense are included in non-operating income. See at 173. Further, the Department notes that the Saracote expenses listed in the chart provided on pages 2-3 of Exhibit 13 of the CEP Verification Report are based on a subjective allocation measure, which divides all selling expenses between divisions based on the estimated time spent by each employee of the particular division. See page 48 of Exhibit 13 of the CEP Verification Report. Polyplex's estimation of the time spent for each division is not verifiable because Polyplex and PA do not normally separate expenses between subject and non-subject merchandise in their normal books and records.

Therefore, because all of PA's sales income is captured in the numerator of PA's ISE ratio, the expenses that Polyplex allocated to the Sarcote division are more properly considered selling expenses of PA as a whole. Further, there is no record evidence to support Polyplex's allocation of these expenses to PA's Saracote division. Accordingly, we included the expenses listed under the column "On Saracote Sales" on pages 2-3 of Exhibit 13 of the CEP Verification Report in the overall ISE ratio.

With regard to the bad debt expense deduction to the ISE, Polplyex has not demonstrated that this debt is related to sales to Canada or Mexico. Page 2 of Exhibit 13 of the CEP Verification Report lists the amount of bad debt, but does not indicate that these expenses relate to Canada or Mexico. Although Polyplex contends that this bad debt relates to non-subject merchandise, there is no record evidence to support its position. Accordingly, the Department considers bad debt expenses as selling expenses and included them in the build-up of Polyplex's ISE ratio calculation. See Sales Analysis Memorandum at page 6.

Comment 6: Whether the Department Should Apply the Dumping Margin Calculated on Sales of Identical Merchandise to the Further Manufactured Sales

Petitioners argue that the Department should apply the calculated dumping margin on sales of non-prime merchandise to unaffiliated U.S. customers to the excluded further manufactured sales of an affiliated U.S. customer (customer A). Petitioners contend that the Department's decision to instead apply the dumping margin calculated on all other sales during the POI to unaffiliated customers to customer A fails to account for the pricing difference between prime and non-prime merchandise. Petitioner states that sales to customer A comprise a large percentage of sales in the U.S. during the POI and are comprised solely of Transparent Film Other Grade (TFOG) merchandise. Petitioners assert that Polyplex designates TFOG merchandise as non-prime due to quality defects in the material, resulting in the product being sold at a lower price. See Polyplex's March 12, 2008, supplemental questionnaire response at page 30 and the Department's U.S. CEP Verification Report at page 11.

Petitioners note that in the Preliminary Determination, the Department did not use sales to customer A for margin purposes and instead used only sales to unaffiliated U.S. customers for margin purposes, which is comprised mostly of prime merchandise (non-matching) sold at higher prices. See Memorandum to the File from Stephen Bailey, Case Analyst, through Angelica Mendoza, Program Manager, "Analysis of Data Submitted by Polyplex Americas, Inc. and Polyplex (Thailand) Public Company Ltd. ("Polyplex"), in the Preliminary Determination of the Antidumping Investigation of PET Film from Thailand," dated April 25, 2008. Because the lower priced sales of TFOG merchandise to customer A will not be considered in the margin analysis, petitioners contend that the Department should use the prices of non-prime TFOG merchandise sold to unaffiliated U.S. customers as the basis for sales to customer A. Petitioners assert that under section 772(e) of the Act, when subject merchandise is imported by an affiliated person who adds value that is likely to exceed substantially the value of the subject merchandise, the Department can choose an alternative price. Petitioners propose that the Department use the price of non-prime merchandise sold by the exporter/producer to unaffiliated customers, pursuant to section 772(e)(1) of the Act.

Additionally, petitioners contend that the Department has a practice of not matching prime and non-prime merchandise, supporting its position that the Department should use the sales price of non-prime subject merchandise sold by the producer to unaffiliated customers in the United States. Petitioners note that the Department treats prime and non-prime products separately in the cost test, in the affiliated party test, and in calculating weighted-average models for comparison to U.S. sales. Petitioners assert that in the U.S. margin program, prime and non-prime merchandise continue to be separated for weight averaging in an investigation. Petitioners further assert that the concordance process in the all macros program allows only prime merchandise to be matched to prime merchandise and secondary or non-prime merchandise to be matched to secondary grade merchandise. Petitioners argue that if customer A were unaffiliated with Polyplex, its sales would match to sales in the Thai market of the same non-prime, TFOG merchandise. Further, petitioners maintain that the high price difference between prime and non-prime merchandise supports the use of sales prices of the non-prime TFOG merchandise in order to avoid using sales that do not represent the actual selling practices of Polyplex.

Petitioners contend that non-prime merchandise sold to customer A was also sold to certain unaffiliated customers during the POI. Therefore, petitioners argue that the prices of this non-

prime, TFOG merchandise should be used as a surrogate price for the TFOG sales to customer A which were excluded by the Department in the Preliminary Determination. Petitioners argue that the non-prime TFOG merchandise sold in the U.S. to unaffiliated customers is sold in substantial quantities and provides the best surrogate to apply to customer A's TFOG merchandise.⁵

Petitioners argue that the margin for customer A should not be based on the margin of sales of all merchandise because to do so would mean the margin is not calculated on a reasonable basis as dictated by statute. Petitioners contend that to calculate Polyplex's margin based on all sales of subject merchandise ensures that Polyplex benefits from having the sales to customer A excluded from the analysis, which is not the purpose of the statute.

Polyplex argues in its rebuttal brief that the Department's use in the Preliminary Determination of sales on all subject merchandise for calculating the margin under the special rule is consistent with the statute, Department's practice, and should be affirmed for the final determination. Polyplex cites to multiple cases to support its contention that the Department use as a proxy all other sales of subject merchandise made to unaffiliated companies. See Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico, 66 FR 47632 (September 13, 2001); Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 66 FR 40980 (August 6, 2001); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews, 65 FR 66711 November 7, 2000; see also Polyplex's Rebuttal Brief at page 19 for a complete list of the cases cited in support of its position. Polyplex also cites to PET Film from India, where the Department determined that using all sales to unaffiliated U.S. customers was an appropriate substitute for sales to its U.S. affiliate that were excluded pursuant to the "special rule." See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India, 67 FR 34899 (May 16, 2002) (PET Film from India) and accompanying Issues and Decision Memorandum at Comment 13.

Polyplex further cites to Silicon Metal from Brazil in arguing that the Department applies the special rule in order to reduce its administrative burden when it appears the value added after importation is likely to exceed substantially the value of the imported product. See Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review, 67 FR 6488 (February 12, 2002) (Silicon Metal from Brazil) and accompanying Issues and Decision Memorandum at Comment 16. Polyplex asserts that in Silicon Metal from Brazil the Department also determined that the statute does not specify a hierarchy between the alternative methods of using identical or other subject merchandise to establish the export price. Polyplex asserts further that in Silicon Metal from Brazil the Department determined that it has the discretion to select the appropriate method to determine dumping margins for merchandise the Department has determined not to examine under the special rule.

⁵ Petitioners contend that for non-prime TFOG merchandise sold to customer A that does not have an identical match to non-prime TFOG merchandise sold to unaffiliated customers in the U.S., the Department should use the average of the TFOG products sold to the unaffiliated customers who purchased TFOG merchandise.

Polyplex also cites to Industrial Nitrocellulose from France in which the Department refused to use only identical merchandise for proxy sales because the use of only identical merchandise would ignore the majority of U.S. sales. See Industrial Nitrocellulose from France: Final Results of Antidumping Duty Administrative Review, 63 FR 49085 (September 14, 1998) (Industrial Nitrocellulose from France). Polyplex asserts that the Department determined that there is a sufficient quantity of U.S. sales to provide a reasonable basis for comparison to home market sales, and the Preliminary Determination should be affirmed for these final results. See Preliminary Determination at page 7.

Department's Position:

The Department has assigned the weighted-average margin calculated on sales to those unaffiliated U.S. customers who purchased non-prime TFOG merchandise as the margin for sales to customer A, pursuant to section 772(e)(2) of the Act.

While the Department has historically used the margin generated on all sales to unaffiliated customers when invoking the special rule, the facts of this case are distinguishable. First, the product sold to customer A consists entirely of non-prime merchandise (TFOG). See page 11 of Polyplex's March 12, 2008, response. Consistently, the Department views the differences between prime and non-prime merchandise as so significant, that price comparisons between the two are never used in calculating dumping margins. See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review, 68 FR 2566 (January 16, 2004), and accompanying Issues and Decision memorandum at Comment 8, where the Department determined that it was "its consistent practice to include comparison market sales of non-prime merchandise in its analysis, matching prime merchandise sold in the United States with prime merchandise sold in the home market, and matching non-prime merchandise sold in the United States with non-prime sold in the home market." See also Granular Polytetrafluoroethylene Resin from Italy: Final Results of Antidumping Duty Administrative Review, 68 FR 2007 (January 15, 2003) and the accompanying Issues and decision memorandum at Comment 4, where the Department determined that it is "the Department's normal practice to include all sales of off-spec or non-prime merchandise in its calculation and restrict matches of non-prime sales in the United States to non-prime sales in the home market." The Department believes that the differences between the manner in which prime and non-prime merchandise is priced and marketed, differences that warrant a clear dividing line between prime and non-prime merchandise for price comparison purposes, also warrant a similar dividing line in applying the special rule for further manufactured sales.

Second, Polyplex sold TFOG merchandise to unaffiliated customers in sufficient quantities. Because of the proprietary nature of this information, see the Sale Analysis Memorandum for the specific percentage of TFOG merchandise sold to unaffiliated customers in the United States. At the same time, the merchandise sold to customer A consists entirely of non-prime TFOG merchandise. Therefore, this methodology provides enhanced accuracy without requiring an unduly complicated analysis.

For the reasons stated above, the Department is basing customer A's margin on non-prime TFOG merchandise sold to unaffiliated customers in the United States.

Comment 7: Whether to Accept Petitioners' Targeted Dumping Allegation

Petitioners argue that it identified six Polyplex customers as targeted and that these six customers accounted for a significant portion of U.S. sales. Petitioners further argue that there were identical sales to non-targeted customers that comprise a large portion of the U.S. database. Petitioners contend that a comparison of the sales prices for identical merchandise sold to non-targeted customers and targeted customers establishes a pattern of targeted dumping. Petitioners maintain that the Department found no targeted dumping because its analysis included the targeted sales in the weighted average price against which targeting is measured. Petitioners assert that the Department's methodology also failed to take into account differences in sensitivity of different industries to differences in price. Petitioners maintain that imports of PET Film are commodity grades of film that compete with U.S. production on the basis of price and that a difference in a few pennies can be decisive. Petitioners assert that the Department's decision to ignore the well-established characteristics of the PET Film market in applying its targeting test is inconsistent with the targeting dumping provision of the statute which should be corrected for the final determination.

Polyplex argues in its rebuttal brief that despite numerous opportunities to do so, petitioners have failed to meet the statutory burden necessary for the Department to initiate a targeted dumping investigation. Polyplex maintains that the Department determined in its June 30, 2008, memorandum to the file that petitioners had failed to provide evidence of the significance of the type of price differences at issue in the context of the PET Film industry. See Memorandum to Richard O. Weible, Director, Office 7, from Angelica L. Mendoza, Program Manager, Office 7, titled "Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Thailand: Analysis on Targeting Dumping," dated June 30, 2008 (Targeted Dumping Memorandum). Polyplex argues further that in its Targeted Dumping Memorandum, the Department rejected petitioners' allegation because apart from merely stating that PET Film is a commodity driven product, the allegation does not allow the Department to determine whether observed price differences between allegedly targeted and non-targeted customers are significant. Polyplex contends that the Department should continue to reject the targeted dumping claim raised by petitioners.

Department's Position:

We have continued to apply the average-to-average methodology to all sales in our final determination.

Petitioners contend that the Department's targeted dumping analysis was inaccurate because the Department included targeted sales in the weighted-average price against which targeting is measured. The Department disagrees with petitioners' argument. In its Targeted Dumping Memorandum, the Department determined that petitioners' allegation failed to allow the Department to determine whether observed price differences between allegedly targeted and

non-targeted customers were significant. Specifically, petitioners did not provide evidence of the significance of the price differences at issue in the context of the PET Film industry. As stated in the Targeted Dumping Memorandum, while the Department acknowledges that the ITC characterized certain PET Film as commodity-grade in the ITC Preliminary Determination, in order to make a finding of targeted dumping, the Department requires evidence of the significance of the price differences at issue in the context of the PET Film industry. See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Investigation Nos. 731-TA-1131-1134 (Preliminary) at 18, 21, (November 2007) (ITC Preliminary Determination). Because petitioners' allegation did not meet the initial evidentiary threshold of establishing significant price differences in the context of the PET Film industry, the Department did not find it necessary to conduct a test of comparing targeted sales against a weighted average price. Therefore, the Department will continue to apply the average-to-average methodology to all sales in our final determination.

Comment 8: Clerical Error

In calculating Polyplex's preliminary weighted-average dumping margin, petitioners argue that the Department incorrectly considered inventory carrying costs (INVCARU) as an expense reported in Thai Baht and applied the U.S. exchange rate to this field. Petitioners contend that INVCARU was reported in U.S. dollars. See Polyplex's March 12, 2008, response at page 72. Petitioners state that the Department should correct this error by removing INVCARU from Part 1-D of the margin program where variables reported in Thai Baht are converted to U.S. dollars.

Polyplex did not comment on this issue.

Department's Position:

In the Preliminary Determination, we inadvertently converted inventory carrying costs into U.S. dollars. However, inventory carrying costs were reported by Polyplex in U.S. dollars and a conversion was, therefore, unnecessary. Therefore, for purposes of this final determination, we have not converted inventory carrying costs. For a complete discussion of these changes and identification of the Department's programming revisions to the home market and U.S. margin programs, see Sales Analysis Memorandum at pages 7-8.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final determination of this investigation and the final margin for the investigated firm (i.e., Polyplex) and all others in the Federal Register.

Agree _____ Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date