



A-570-924

Public Document

AR: 11/01/2010 –10/31/2011

ITA/LA/Office 4: JDH

DATE: December 3, 2012

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

FROM: Gary Taverman 
Senior Advisor
for Antidumping and Countervailing Duty Operations

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

SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting the third administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip ("PET film") from the People's Republic of China ("PRC"). The period of review ("POR") is November 1, 2010, through October 31, 2011. The Department has preliminarily determined that sales have been made below normal value ("NV") by certain companies subject to this review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR. Furthermore, we determine that three companies for which a review was requested have demonstrated entitlement to a separate rate.

BACKGROUND

On November 10, 2008, the Department published in the Federal Register an antidumping duty order on PET film from the PRC.¹ On November 1, 2011, the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order on PET film from the PRC for the period November 1, 2010, through October 31, 2011.² The Department received timely requests from Petitioners³, certain PRC companies,⁴ and

¹ See Notice of Antidumping Duty Orders: Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates, 73 FR 66595 (November 10, 2008).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review, 76 FR 67413 (November 1, 2011).

³ Collectively, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.



other domestic interested parties⁵ in accordance with 19 CFR 351.213(b), during the anniversary month of November, to conduct a review of PET film exporters from the PRC. On December 30, 2011, the Department published a notice of initiation of an antidumping duty administrative review on PET film from the PRC, in which the Department initiated a review of DuPont Teijin China Limited (“DuPont Teijin”), DuPont Hongji Films Foshan Co., Ltd. (“DuPont Foshan”), DuPont Teijin Hongji Films Ningbo Co., Ltd. (“DuPont Ningbo”), Fuwei Films, Green Packing, Wanhua, and Dongfang.⁶

On January 5, 2012, the Department released CBP import data for the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 3920.62.0090 and invited comments regarding the CBP data and respondent selection. On January 13 and January 17, 2012, the Department received comments from interested parties regarding CBP data and respondent selection. On February 8, 2012, the Department exercised its authority to limit the number of respondents selected for individual examination pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the “Act”) and selected the two largest exporters by volume as our mandatory respondents for this review,⁷ DuPont⁸ and Green Packing.⁹

On February 13, 2012, the Department issued the antidumping questionnaire to the mandatory respondents. On February 28, 2011, the Department received separate rate certifications from Fuwei Films, Green Packing, Wanhua, and Dongfang.¹⁰ Between March 13, 2012 and November 16, 2012, the mandatory respondents responded to the Department’s questionnaire and supplemental questionnaires.

On July 19, 2012, the Department extended the deadline for issuing the preliminary results of this review until October 1, 2012.¹¹ Furthermore, on September 19, 2012, the Department

⁴ Fuwei Films (Shandong) Co., Ltd. (“Fuwei Films”), Shaoxing Xiangyu Green Packing Co., Ltd. (“Green Packing”), Tianjin Wanhua Co., Ltd. (“Wanhua”), and Sichuan Dongfang Insulating Material Co., Ltd (“Dongfang”).

⁵ Bemis Company, Inc., Curwood, Inc., and Terphane Inc. (“Terphane”).

⁶ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 76 FR 82268 (December 30, 2011) (“Initiation Notice”).

⁷ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office 4, “Respondent Selection in the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China,” dated February 8, 2012.

⁸ We subsequently found DuPont Teijin, DuPont Foshan, and DuPont Ningbo (collectively “DuPont”) to be affiliated as explained in the Affiliation section below.

⁹ DuPont and Green Packing are collectively referred to as the “mandatory respondents.”

¹⁰ Fuwei Films, Dongfang, and Wanhua are collectively referred to as “separate rate applicants.”

¹¹ See Letter from Jonathan Hill, International Trade Compliance Analyst, through Abdelali Elouaradia, Office Director, Office 4, Antidumping and Countervailing Duty Operations to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated July 19, 2012.

extended the deadline for issuing preliminary results of this review until November 29, 2012.¹² Additionally, as explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29 through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now December 1, 2012.¹³ However, because December 1, 2012, falls on a weekend, the preliminary results are due no later than December 3, 2012.¹⁴

SCOPE OF THE ORDER

The products covered by the order are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the 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 METHODOLOGY

Affiliation

The Department has preliminarily determined that DuPont Foshan, DuPont Teijin and DuPont Ningbo are affiliated with one another, and has also preliminarily determined to treat these companies as a single entity in this administrative review, pursuant to 19 CFR 351.401(f)(1).¹⁵

Separate Rates

In proceedings involving nonmarket economy (“NME”) countries, the Department has a rebuttable presumption that all companies within the country are subject to government control

¹² See Letter from Jonathan Hill, International Trade Compliance Analyst, through Abdelali Elouaradia, Office Director, Office 4, Antidumping and Countervailing Duty Operations to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated September 19, 2012.

¹³ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy,” dated October 31, 2012.

¹⁴ See Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

¹⁵ See Memorandum from Thomas Martin, International Trade Analyst, to Abdelali Elouaradia, Director, “Affiliation and Single Entity Status of DuPont Hongji Films Foshan Co., Ltd., DuPont Teijin Films China Limited, and DuPont Teijin Hongji Films Ningbo Co., Ltd.,” dated concurrently with this memorandum.

and, thus, should be assessed a single antidumping duty rate.¹⁶ In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.¹⁷ It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.¹⁸ Exporters can demonstrate this independence through the absence of both de jure and de facto governmental control over export activities.¹⁹ The Department analyzes each entity's export independence under a test first articulated in Sparklers and as further developed in Silicon Carbide.²⁰ However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.²¹

Excluding the companies selected for individual review, the Department received separate rate certifications from Dongfang, Fuwei Films, and Wanhua.

Separate Rate Recipients

1. Wholly Foreign-Owned

Fuwei Films demonstrated in its separate-rate certification that it is 100 percent ME foreign owned.²² Therefore, there is no PRC ownership of Fuwei Films and, because the Department has no evidence indicating that Fuwei Films is under the control of the PRC, a separate rate analysis is not necessary to determine whether it is independent from government control.²³ Accordingly, the Department has preliminarily granted separate rate status to Fuwei Films.

¹⁶ See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

¹⁷ See Initiation Notice, 76 FR at 82269.

¹⁸ See id.

¹⁹ See id.

²⁰ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"); see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

²¹ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

²² See Fuwei Film's February 28, 2012 Separate Rate Certification at 2.

²³ See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

2. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

DuPont, Green Packing, Dongfang, and Wanhua reported that they are either wholly Chinese-owned companies, or joint ventures between Chinese and foreign companies.²⁴ Therefore, the Department must analyze whether these respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses, (2) any legislative enactments decentralizing control of companies, and (3) other formal measures by the government decentralizing control of companies.²⁵

The evidence provided by Dongfang, DuPont, Green Packing, and Wanhua supports a preliminary finding of de jure absence of government control based on the following: (1) an absence of restrictive stipulations associated with its business and export licenses, (2) applicable legislative enactments decentralizing control of companies, and (3) formal measures by the government decentralizing control of companies.²⁶

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency, (2) whether the respondent has authority to negotiate and sign contracts and other agreements, (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management, and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.²⁷ The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates.

²⁴ See Dongfang's February 28, 2012 Separate Rate Certification response at 2; see also DuPont Section A Response at question 2(a)(i); see also Letter from Green Packing to the Secretary of Commerce "Polyethylene Terephthalate (PET) film from China," dated March 13, 2012 ("Green packing Section A Response") at question 2(a)(i); see also Wanhua's February 28, 2012 Separate Rate Certification at 2.

²⁵ See Sparklers, 56 FR at 20589.

²⁶ See Dongfang's February 28, 2012, Separate Rate Certification response at questions 10 through 14; see also DuPont Section A Response at question 2(d) through 2(f); see also Green Packing Section A Response at question 2(d) through 2(f); see also Wanhua's February 28, 2012, Separate Rate Certification response at questions 10 through 14.

²⁷ See Silicon Carbide, 59 FR at 22587; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

The evidence provided by Dongfang, DuPont, Green Packing, and Wanhua supports a preliminary finding of de facto absence of government control based on the following: (1) the absence of evidence that the export prices are set by or are subject to the approval of a government agency, (2) the respondents have authority to negotiate and sign contracts and other agreements, (3) the respondents have autonomy from the government in making decisions regarding the selection of management, and (4) the respondents retain the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.²⁸ Therefore, the Department preliminarily finds that Dongfang, DuPont, Green Packing, and Wanhua have established that they qualify for a separate rate under the criteria established by Silicon Carbide and Sparklers.

Non-Market Economy Country Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority.²⁹ As such, the Department continues to treat the PRC as an NME in this proceeding. Accordingly, we calculated NV using the factors of production (“FOP”) methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Rate for Non-Selected Companies

The statute and the Department’s regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are zero, de minimis or based entirely on facts available. Accordingly, the Department’s usual practice has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, de minimis, or based entirely on facts available.³⁰ Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, de minimis, or based entirely on facts available, we may use “any reasonable method” for assigning the all-others rate, including “averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.”

In this instance, consistent with our practice, we have preliminarily established a margin for the separate rate applicants based on the rate we calculated for the mandatory respondents whose

²⁸ See Fuwei Films’ February 28, 2012 Separate Rate Certification response at questions 15 through 20; see also DuPont Section A Response at questions 2(a)(iii)-(v); 2(b)-(c); 2(g)-(q); see also Green Packing Section A Response at questions 2(a)(iii)-(v); 2(b)-(c); 2(g)-(q); see also Wanhua’s February 28, 2012 Separate Rate Certification response at questions 15 through 20.

²⁹ See section 771(18)(C)(i) of the Act.

³⁰ See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

rates were not zero, de minimis, or based entirely on facts available. Therefore, we have excluded Green Packing's rate, and assigned DuPont's rate as the separate rate, i.e., 2.95 percent.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOP. The Act further instructs that valuation of the FOP shall be based on the best available information from a surrogate ME country or countries considered to be appropriate by the Department.³¹ When valuing the FOP, the Department shall utilize, to the extent possible, the prices or costs of FOP in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.³² Once the Department has identified the countries that are economically comparable to the PRC and identifies those countries which are significant producers, the Department will select a primary surrogate country based upon whether the data for valuing FOP are both available and reliable. Further, the Department normally values all FOP in a single surrogate country.³³

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.³⁴ On April 23, 2012, the Department sent a letter inviting parties to comment on surrogate country selection and information regarding valuing FOP.³⁵ On May 7, 2012, Petitioners and Terphane filed surrogate country comments, stating that the Department should choose Thailand as the surrogate country because: (1) Thailand is economically comparable to the PRC; (2) Thailand is a significant producer of merchandise identical to subject merchandise; and (3) Thai data for valuing FOP is high-quality and publicly available.³⁶ Also on May 7, 2012, the mandatory respondents and Wanhua filed comments on surrogate country selection. DuPont states that Indonesia and Thailand are economically comparable and significant producers of PET film.³⁷ Green Packing and Wanhua state that the Department should choose India as the surrogate country, claiming that India is a significant producer of subject PET film and provides quality

³¹ See section 773(c)(1) of the Act.

³² See section 773(c)(4) of the Act.

³³ See 19 CFR 351.408(c)(2).

³⁴ See Memorandum from Carole Showers, Director, Office of Policy, to Robert Bolling, Program Manager, Office 4, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China" (April 23, 2012) ("Policy Memorandum").

³⁵ See the Department's Letter to All Interested Parties; Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China, dated April 23, 2012.

³⁶ See Letter from Petitioners to Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Comments on Surrogate Country Selection" (May 7, 2012); see also letter from Terphane to 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: Terphane's Comments On Surrogate Country Selection" (May 7, 2012).

³⁷ See Letter from DuPont to the Secretary of Commerce, "Polyethylene Terephthalate Film, Sheet, And Strip ("PET Film") from the People's Republic of China; Comments on Surrogate Country Selection" (May 7, 2012).

surrogate value (“SV”) data.³⁸ On May 17, 2012, Wanhua filed rebuttal surrogate country selection comments arguing that Thailand is not an appropriate surrogate country for valuing FOP.³⁹ On May 21, 2012, the Department received information to value FOP from Petitioners, Terphane, DuPont, and Wanhua.⁴⁰ On May 31, 2011, Petitioners, the mandatory respondents, and Wanhua submitted rebuttal SV comments.⁴¹ On June 6 and June 11, 2012, Petitioners filed additional rebuttal SV comments.⁴² On July 6, 2012, DuPont submitted additional rebuttal comments regarding publicly-available data considerations.⁴³ On August 30, 2012, the Department received pre-preliminary results comments from Petitioners, Terphane, and Green Packing.⁴⁴ Wanhua and Green Packing submitted rebuttal comments addressing Petitioners Pre-Preliminary Comments and Terphane Pre-Preliminary Comments on September 4, 2012 and September 6, 2012, respectively.⁴⁵

³⁸ See Letter from Green Packing to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film from China” (May 7, 2012); see also letter from Wanhua to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China; A-570-924; Comments on Surrogate Country Selection” (May 7, 2012).

³⁹ See Letter from Wanhua to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China; A-570-924; Rebuttal Factual Information to Comments on Surrogate Country Selection by Certain Parties” (May 17, 2012).

⁴⁰ See Letter from Petitioners to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Submission of Publicly Available Information to Value Factors of Production” (May 21, 2012); see also letter from Terphane to 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: Submission of Publicly Available Information to Value Factors of Production,” (May 21, 2012); see also letter from DuPont to the Secretary of Commerce, “Polyethylene Terephthalate Film, Sheet, And Strip (“PET Film”) from the People’s Republic of China; Surrogate Value Information” (May 21, 2012) (DuPont SV Comments).; see also letter from Wanhua to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China; A-570-924; Surrogate Value Information” (May 21, 2012)

⁴¹ See Letter from Petitioners to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Surrogate Values Rebuttal” (May 31, 2012); see also see letter from DuPont to the Secretary of Commerce, “Polyethylene Terephthalate Film, Sheet, And Strip (“PET Film”) from the People’s Republic of China; Comments on Surrogate Value Submissions” (May 31, 2012); see also letter from Green Packing to Secretary of Commerce, “PET Film from China” (May 31, 2012); see also letter from Wanhua to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China; A-570-924; Rebuttal Surrogate Value Information and Argument” (May 31, 2012).

⁴² See Letter from Petitioners to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Evidence of Receipt of Countervailable Subsidies By Indonesian Companies” (June 6, 2012); see also Letter from Petitioners to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Deficiencies in Respondents’ Surrogate Value Rebuttal Comments,” (June 11, 2012).

⁴³ See Letter from DuPont to Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Surrogate Values Reply” (July 6, 2012).

⁴⁴ See Letter from Petitioners to the Secretary of Commerce, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Petitioners’ Pre-Preliminary Comments” (August 30, 2012) (“Petitioners Pre-Preliminary Comments”); 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/Terphane’s Pre-Preliminary Comments” (August 30, 2012) (“Terphane Pre-Preliminary Comments”); see also letter from Green Packing to the Secretary of Commerce, “Polyethylene Terephthalate (PET) Film from China” (August 30, 2012).

⁴⁵ See Letter from Wanhua to the Secretary of Commerce, “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Response to Domestic Industry Group 2’s Submission of August 30, 2012” dated September 4, 2012; see also letter from Green Packing to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film from China” dated September 6, 2012.

Economic Comparability

As explained in our Policy Memorandum, the Department considers Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine all comparable to the PRC in terms of economic development.⁴⁶ Therefore, we consider all seven countries as having satisfied this prong of the surrogate country selection criteria.⁴⁷

Furthermore, we note that in Steel Wheels⁴⁸ the Department stated:

{U}nless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, we will rely on data from one of these countries.

Because the Department finds that one of these countries from the Policy Memorandum meets the selection criteria, as explained below, the Department need not consider additional countries not on the list, such as India, as the primary surrogate country.

Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOP in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin 04.1 for guidance on defining comparable merchandise.⁴⁹ The Policy Bulletin 04.1 states that "{t}he terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute." The Policy Bulletin 04.1 further states that "{i}n all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."⁵⁰ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁵¹ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the

⁴⁶ See Memorandum from Carole Showers, Director, Office of Policy, to Robert Bolling, Program Manager, Office 4, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China" (April 5, 2012) ("Policy Memorandum").

⁴⁷ See section 773(c)(4)(A) of the Act.

⁴⁸ See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703 (November 2, 2011) ("Steel Wheels").

⁴⁹ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin 04.1"), available at <http://ia.ita.doc.gov/policy/index.html>.

⁵⁰ See id.

⁵¹ Policy Bulletin 04.1 also states that "{i}f considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." See id., at n. 6.

industry.⁵² “In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this, depends on the subject merchandise.”⁵³ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis. However, 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.⁵⁴

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.⁵⁵ In this case, because production data of identical or comparable merchandise from the PRC was not available, we analyzed which of the seven countries are exporters of identical or comparable merchandise as a proxy for PRC production data. We obtained export data using the Global Trade Atlas (“GTA”) for Harmonized Tariff Schedule (“HTS”) 3920.62: “Plates, Sheets, Film, Foil And Strip Of Plastics, Not Self-Adhesive, Non-Cellular, Not Reinforced Etc., Of Polyethylene Terephthalate”, which is comparable to the merchandise under consideration. The GTA data demonstrates that all the countries in the Policy Memorandum are exporters of identical merchandise.⁵⁶

Significant Producers of Comparable Merchandise

As noted above, Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine were exporters of PET film under HTS 3920.62 in 2011. After reviewing GTA export data, we find that the GTA data demonstrates that Thailand and Indonesia were among the top exporters of the potential surrogate countries of this merchandise. However, as discussed below, of the economically comparable countries listed in the Policy Memorandum the record only contains data to value factors from Thailand and Indonesia. Therefore, because the Department finds that both Thailand and Indonesia are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise,⁵⁷ the Department bases its selection of a surrogate country on the availability of contemporaneous Thai and Indonesian data for valuing FOP.

⁵² See Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65674 (December 15, 1997), and accompanying Issues and Decision Memorandum at Comment 1 (“to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute”).

⁵³ See Policy Bulletin 04.1.

⁵⁴ See *id.*

⁵⁵ See section 773(c)(1) of the Act; Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999).

⁵⁶ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Jonathan Hill, International Trade Compliance Analyst, “Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Selection of a Surrogate Country,” dated December 3, 2012 (“Surrogate Country Memo”) at Attachment II.

⁵⁷ See Policy Bulletin 04.1.

Data Availability

With respect to data considerations, in selecting a surrogate country, Policy Bulletin 04.1 describes the Department's practice. Specifically, ". . . if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country."⁵⁸ Furthermore, when evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.⁵⁹ There is no hierarchy among these criteria.⁶⁰ It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.⁶¹

After reviewing the data available from both countries, we found them to contain equally usable data for valuing the mandatory respondents' FOP with the exception of PET chips and financial statements. Currently, the record contains Thai PET chip SV data, which includes GTA import data for HTS 3907.60.90 "Polyethylene Terephthalate, In Primary Forms-Other" and domestic market prices from the TPIU, TPIA, Bank of Bangkok, and Indorama.⁶² The record of this proceeding contains three Thai companies' financial statements: Polyplex Public Company Ltd., A.J Plast Public Company Limited, and Thai Film Industries Public Company Limited. Regarding Indonesia, the record of this proceeding currently contains GTA import data for HTS 3907.60.90, and three sets of financial statements from Indonesian companies: PT Indopoly Swakarsa Industry Tbk ("Indopoly"), PT Argha Karya Prima Industry Tbk ("Argha Karya"), and PT Trias Sentosa Tbk ("Trias").

We recognize the importance of the PET chip SV as the principle input for PET film production, and, based on our practice, will use this SV to drive our selection.⁶³ The PET chip SV derived from Thai and Indonesian GTA import data is \$3/kilogram ("kg") and \$1.88/kg, respectively.⁶⁴ Both sets of data are publicly available, contemporaneous with the POR, represent a broad-market average, are tax and duty-exclusive, and are specific to the input. The TPIU, TPIA, and Bank of Bangkok domestic PET chip prices fall in a range of \$1.67/kg-\$1.78/kg.⁶⁵ Although these prices satisfied most of our SV criteria, we were unable to determine whether they were tax and duty-exclusive. However, we compared the three Thai domestic market prices to the price derived from Thai GTA import data and recognized that the price derived from the Thai GTA data (\$3.00/kg) is higher.⁶⁶ To further analyze this price differential, we calculated an average PET chip SV using the GTA import data from each of the remaining potential surrogate

⁵⁸ See Policy Bulletin 04.1 at 4 (endnote omitted).

⁵⁹ See *id.*

⁶⁰ See *id.*

⁶¹ See *id.*

⁶² Thai Plastic Intelligence Unit ("TPIU"), Thai Plastic Industries Association ("TPIA"), and Indorama Polyester Industries Public Company Limited ("Indorama") (a Thai PET chip producer).

⁶³ See, e.g., High Pressure Steel Cylinders from the People's Republic of China: Issues and Decision Memorandum for the Final Determination, 77 FR 26739 (May 7, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁴ See Surrogate Country Memo at Attachment III.

⁶⁵ See *id.* at 23.

⁶⁶ We note that any taxes or duties included in the Thai domestic market prices would inflate those prices, leaving our analysis unchanged.

countries, which is \$1.78/kg.⁶⁷ After reviewing all the data available regarding the PET chip SV, we find that the PET chip price derived from Indonesian GTA import data better represents PET chip industry prices on the record when compared to the average PET chip price derived from the GTA import data of the remaining potential surrogate countries and the Thai domestic market prices on the record.⁶⁸

Therefore, based on record evidence, the Department has preliminarily determined to select Indonesia as the surrogate country on the basis that: (1) it is at a comparable level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Indonesia that we can use to value the FOP.⁶⁹ Accordingly, we have calculated NV using Indonesian prices, when available and appropriate, to value the FOP of the mandatory respondents.⁷⁰ In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly-available information to value FOP until 20 days after the date of publication of the preliminary results.⁷¹

Date of Sale

The mandatory respondents reported the invoice date as the date of sale because they claim that for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. In accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale,⁷² the Department preliminarily determines that the invoice date is the most appropriate date to use as the mandatory respondents' date of sale.

Fair Value Comparisons

To determine whether sales of PET film to the United States by the mandatory respondents were made at NV, we compared constructed export price ("CEP") and export price ("EP") to NV, as described in the "Export Price", "Constructed Export Price", and "Normal Value" sections below.⁷³

⁶⁷ See *id.* at Attachment III.

⁶⁸ See *id.* at 24.

⁶⁹ See *id.*

⁷⁰ See Letter from Jonathan Hill, International Trade Compliance Analyst, through Robert Bolling, Program Manager "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China – Preliminary Results Surrogate Country Memorandum," dated December 3, 2012 ("Surrogate Value Memo").

⁷¹ In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

⁷² See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

⁷³ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate

U.S. Price

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we have used EP for the U.S. sales of the Green Packing because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because CEP was not otherwise warranted.

We have based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we have made deductions from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, and marine insurance. Green Packing did not report or claim any other adjustments to EP.

Constructed Export Price

For all of the DuPont's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act because sales of Chinese-origin merchandise were made on behalf of the companies located in the PRC by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, inventory carrying costs, credit expenses, warranty expenses, and indirect selling expenses. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see the company specific analysis memoranda, dated concurrently with this memorandum.

DuPont also requested that the Department apply the "special rule" for merchandise with value added after importation and excuse DuPont from reporting U.S. re-sales of subject merchandise further processed by DuPont Teijin Films Limited Partnership ("DuPont U.S."), DuPont's U.S.

in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews"). In particular, the Department compared monthly weighted-average EPs (or CEPs) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

affiliate, in the United States and the U.S. further-processing cost information associated with those re-sales. DuPont made this request with respect to all U.S. sales with further manufacturing and provided further-processing cost data.⁷⁴

The Department preliminarily determines to apply the “special rule” under section 772(e) of the Act for merchandise with value added after importation to the sales made by DuPont U.S. in the United States. Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the Department shall determine the CEP for such merchandise using the price to an unaffiliated party of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison, and the Department determines that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if the Department determines that using the price to an unaffiliated party of identical or other subject merchandise is not appropriate, the Department may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, the Department estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser,⁷⁵ DuPont U.S. Based on the information provided by DuPont and the Department’s analysis of this information, the Department determined that the estimated value added in the United States by DuPont U.S. accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States.⁷⁶ Therefore, the Department preliminarily determines that the value added is likely to exceed substantially the value of the subject merchandise. We will continue to examine this issue and may request supplemental information from DuPont.

For DuPont, the Department preliminarily determines that the remaining quantity of sales of identical or other subject merchandise to unaffiliated persons are sufficient to provide a reasonable basis for comparison and that the use of these sales is appropriate as a basis for calculating margins of dumping on the further processed merchandise.⁷⁷ Accordingly, the Department has determined to apply the “special rule” to DuPont’s sales of subject merchandise that were further processed by DuPont U.S. in the United States. Furthermore, the Department

⁷⁴ See DuPont Section A Response at A-26; see also Letter from DuPont to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film, Sheet, and Strip From the People’s Republic of China: Section A Supplemental Response,” dated April 23, 2012 at Exhibits 2SA-1 – 2SA-5.

⁷⁵ See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico, 70 FR 54013, 54014 (September 13, 2005), unchanged in Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 2909 (January 18, 2006).

⁷⁶ See 19 CFR 351.402(c); see also Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551, 36555 (July 12, 2001), and accompanying Issues and Decision Memorandum at Comment 28 (“AFBs”).

⁷⁷ See section 772(e) of the Act; see also AFBs; see also Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Jonathan Hill, International Trade Compliance Analyst, Office 4 “Special Rule for Merchandise with Value Added after Importation,” dated December 3, 2012 (“Special Rule Memo”).

has excused DuPont from reporting these U.S. sales and the U.S. further-processing cost information associated with the re-sales. Therefore, the per-unit assessment rate calculated based upon DuPont's U.S. sales to the first unaffiliated customer will be applied as the surrogate assessment rate to the transactions to which the "special rule" applies.⁷⁸

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. This methodology ensures that the Department's calculations are as accurate as possible.⁷⁹

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOP, but when a producer sources an input from an ME and pays for it in an ME currency, the Department may value the FOP using the actual price paid for the input.⁸⁰ DuPont and Green Packing reported raw material purchases sourced from and produced by ME suppliers and paid for in an ME currency during the POR.⁸¹ In accordance with our practice outlined in Antidumping Methodologies: Market Economy Inputs,⁸² when at least 33 percent of an input is sourced from ME suppliers and purchased in an ME currency, the Department will use actual ME purchase prices to value these inputs.⁸³ Therefore, the Department has valued certain inputs using the ME purchase prices reported by DuPont and Green Packing, where appropriate.

⁷⁸ See Special Rule Memo at 4.

⁷⁹ See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products From the People's Republic of China, 71 FR 19695, 19703 (April 17, 2006), unchanged in Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).

⁸⁰ See 19 CFR 351.408(c)(1); see also Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc. v. United States, 268 F.3d 1376, 1382-1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

⁸¹ See Letter from DuPont to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film, Sheet, and Strip From the People's Republic of China: Section C & D Questionnaire Response," ("DuPont Sections C & D Response") dated April 6, 2012 at Exhibit D-3; see also letter from Green Packing "Polyethylene Terephthalate (PET) Film from China," ("Green Packing Sections C & D Response") dated April 6, 2012 at Exhibit D-5; see also Letter from DuPont to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Sections C & D 3rd Supplemental Questionnaire Response," dated August 17, 2012 at Exhibit SD-31.

⁸² See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717-19 (October 19, 2006) ("Antidumping Methodologies: Market Economy Inputs").

⁸³ For a detailed description of all actual values used for ME inputs, see DuPont's and Green Packing's Analysis Memorandums dated concurrently with this memorandum.

Section 773(c) of the Act provides that the Department will value the FOP in NME cases using the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing the FOP, the Department utilize, to the extent possible, the prices or costs of FOP in one or more ME countries that are: (1) at a comparable level of economic development, and (2) significant producers of comparable merchandise.⁸⁴ As stated above, the Department has preliminarily determined to select Indonesia as the surrogate country.

We calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOP include but are not limited to: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. The Department used FOP reported by the mandatory respondents for materials, energy, labor, by-products, and packing.

DuPont stated that it generated two by-products during the production process: reintroduced PET chip used for manufacturing PET film, and PET film scrap.⁸⁵ Green Packing stated that it generated three by-products during the production process: waste PET chip that cannot be used for manufacturing PET film, waste PET film, and waste bags.⁸⁶ The Department recently explained its practice as follows: “the by-product offset is limited to the total production quantity of the byproduct ... produced during the POR, so long as it is shown that the byproduct has commercial value.”⁸⁷ Thus, a respondent needs to provide and substantiate the quantity of by-products it generated from the production of subject merchandise during the POR as well as demonstrate that the by-product has commercial value. Providing the production quantity is important because in considering a by-product offset, the Department examines whether the by-product was produced from the quantity of FOP reported and whether the respondent’s production process for the merchandise under consideration actually generated the amount of the by-product claimed as an offset.⁸⁸ In this case, both companies requested by-product offsets to NV for these by-products and provided record evidence establishing that these by-products generated during the course of production have commercial value. However both companies were unable substantiate the production quantity of each requested by-product as required by Department practice.⁸⁹ Therefore, for these preliminary results, we have denied the mandatory respondents’ requested by-product offsets to NV.

⁸⁴ See section 773(c)(4) of the Act.

⁸⁵ See DuPont Sections C & D Response at D-18 through D-19 and Exhibit D-7.

⁸⁶ See Green Packing Sections C & D Response at D-14 through D-15 and Exhibits D-11a through D-11d.

⁸⁷ See Frontseating Service Valves From the People’s Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 70706 (November 15, 2011), and accompanying Issues and Decision Memorandum at Comment 18.

⁸⁸ See Mid Continent Nail Corporation v. United States, Ct. No. 08-224, Slip Op. 2010-47 (CIT May 4, 2010).

⁸⁹ See Silicon Metal from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 54563 (September 5, 2012), and accompanying Issues and Decision Memorandum at Comment 3; see also Memorandum from Jonathan Hill, International Trade Compliance Analyst, through Robert Bolling, Program Manager, Office 4 “Analysis Memorandum for the Preliminary Results of the Third Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip for the People’s Republic of China: DuPont Teijin China Limited, DuPont Hongji Films Foshan Co., Ltd., and DuPont Teijin Hongji Films Ningbo Co., Ltd.” dated December 3, 2012 (“DuPont Analysis Memo”) at 3.; see also Memorandum from Thomas Martin, International Trade Compliance Analyst, through Robert Bolling, Program Manager, Office 4 “Analysis Memorandum for the Preliminary Results of the Third Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip for the

Targeted Dumping

On June 18, 2012, Petitioners alleged that during the POR, DuPont and Green Packing engaged in targeted dumping of the subject merchandise.⁹⁰ Petitioners stated that in the Final Modification for Reviews, the Department stated that it may apply an alternative comparison methodology in administrative reviews when determined appropriate to address case-specific circumstances.⁹¹ Furthermore, Petitioners stated that the Department also added that this alternative comparison methodology would parallel the methodology it currently applies to investigations where there is evidence of targeted dumping.⁹² Therefore, Petitioners contend that the Department, in this review, should calculate dumping margins for DuPont and Green Packing by comparing weighted-average NVs to individual U.S. transaction prices without providing offsets.⁹³ On July 11, 2012, Green Packing submitted rebuttal comments regarding Petitioners' claim that Green Packing engaged in targeted dumping.⁹⁴ Green Packing argues that price variations among time periods were not due to targeted dumping in the alleged months but instead were due to price differences in the non-alleged periods due to changes in sales terms, rising raw material costs, and changes in supply and demand.

In antidumping duty investigations, the Department examines whether to use the average-to-transaction method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an administrative review, the Department, nevertheless, finds that the issue arising under 19 CFR 351.414(c)(1) (2012) in an administrative review is, in fact, analogous to the issue in antidumping duty investigations. Accordingly, the Department finds the analysis that has been used in antidumping duty investigations may be instructive for purposes of examining whether to apply the average-to-transaction method in this administrative review.

In recent antidumping duty investigations and administrative reviews where the Department has addressed targeted dumping allegations, the Department has employed the Nails test⁹⁵ for each

People's Republic of China: Shaoxing Xiangyu Green Packing Co., Ltd." dated December 3, 2012 ("Green Packing Analysis Memo") at 3.

⁹⁰ See Letter from Petitioners to the Secretary of Commerce, "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Allegations of Targeted Dumping" (June 18, 2012) ("Targeted Dumping Allegation").

⁹¹ See Targeted Dumping Allegation at 2.

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See Letter from Green Packing to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from China" (July 11, 2012).

⁹⁵ See Certain Steel Nails 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 33977 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comments 3, 5, and 9 and Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) (collectively, "Nails"), as modified in more recent investigations, e.g., Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 4; see also Mid Continent Nail Corp. v. United States, Slip. Op. 2010-47 (Ct. Int'l Trade May 4, 2010) and Mid Continent Nail Corp. v. United States, Slip. Op. 2010-48 (Ct. Int'l Trade May 4, 2010).

respondent subject to an allegation.⁹⁶ The Department has applied the Nails test, a two-step process as described below, in this administrative review in order to consider whether to use the average-to-transaction method.

In the first stage of the test, the “standard deviation test,” the Department determined the share of alleged targeted group’s sales of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. The Department calculated the standard deviation on a product-specific basis (i.e., by control number (CONNUM)) using the weighted-average prices for the alleged targeted groups and the groups not alleged to have been targeted. If that share did not exceed 33 percent, then the Department did not conduct the second stage of the Nails test. If that share exceeded 33 percent, on the other hand, then we proceeded to the second stage of the Nails test.

In the second stage, the “gap test,” the Department examined all sales of identical merchandise (i.e., by CONNUM) sold to the alleged targeted group which passed the standard deviation test. From those sales, the Department determined the total volume of sales for which the difference between the weighted-average price of sales to the alleged targeted group and the next higher weighted-average price of sales to a non-targeted group exceeds the average price gap (weighted by sales volume) between the non-targeted groups. The Department weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. If the share of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the alleged targeted group, then the Department considered these sales to have been targeted.

If the Department's two-step analysis confirmed the allegation of targeting and sufficient sales were found to have been targeted (i.e., to have passed the two-step Nails test), then the Department considered whether the average-to-average method could take into account the observed price differences. To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using the average-to-transaction method. Where there was a meaningful difference between the results of the average-to-average method and the average-to-transaction method, then the Department would find that the average-to-average method could not take into account the observed price differences, and the average-to-transaction method would be used to calculate the weighted-average margin of dumping for the respondent in question.

The Department preliminarily finds, for DuPont, that a pattern of CEPs for comparable merchandise that differ significantly among regions and time periods exists, and, therefore, has considered whether the average-to-average method can account for the observed price differences. Further, the Department preliminarily finds that the average-to-average method

⁹⁶ See, e.g., Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value, 75 FR 14569 (March 26, 2010); Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010); Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010).

cannot take into account the observed price differences because the average-to-average method masks dumping. More specifically, we found that there is a meaningful difference between the weighted-average dumping margins calculated using the average-to-average method and the average-to-transaction method.⁹⁷ Accordingly, the Department preliminarily determines, pursuant to 19 CFR 351.414(c)(1) (2012), to base the weighted-average dumping margin for DuPont on the average-to-transaction method for these preliminary results.

For Green Packing, the Department preliminarily find that a pattern of EPs for comparable merchandise that differ significantly among time periods exists, and, therefore, has considered whether the average-to-average method can account for the observed price differences. Further, the Department preliminarily finds that the average-to-average method can account for the observed price differences because the average-to-average method does not mask dumping. Specifically, we preliminarily find that there is no meaningful difference between the weighted-average dumping margins calculated using the average-to-average method and the average-to-transaction method.⁹⁸ Accordingly, the Department preliminarily determines, pursuant to 19 CFR 351.414(c)(1) (2012), to base the weighted-average dumping margin for Green Packing on the average-to-average method for these preliminary results.

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOP reported by the mandatory respondents for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (“CAFC”) in Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). A detailed description of all SVs used to value the mandatory respondents’ reported FOP may be found in the Surrogate Value Memo.

The Department calculated SVs for the majority of reported FOP purchased from NME sources using the contemporaneous, weighted-average unit import value as published by Statistics Indonesia in the GTA.⁹⁹ GTA Indonesian Import Statistics were reported in United States Dollars (“USD”) and are contemporaneous with the POR. As Indonesia is the primary surrogate country, we used Indonesian data and applied South African data where there were no usable Indonesian data. In selecting the best available information for valuing FOP in accordance with section 773(c)(1) of the Act, the Department’s practice is to select, to the extent practicable, SVs

⁹⁷ See DuPont Analysis Memo at Attachment 3.

⁹⁸ See Green Packing Analysis Memo at Attachment 3.

⁹⁹ See *id.* at Exhibit 1.

which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.¹⁰⁰

In those instances where the Department could not obtain publicly available information contemporaneous with the POR with which to value FOP, the Department adjusted the publicly available SVs using the Indonesian Wholesale Price Index, as published by the Organization for Economic Cooperation and Development, the Indonesian Consumer Price Index as published in the International Monetary Fund's ("IMF") International Financial Statistics, and the South African Producer Price Index as published in the IMF's International Financial Statistics.¹⁰¹

Furthermore, with regard to Indonesian import-based SVs, in accordance with the Omnibus Trade and Competitiveness Act of 1988 and longstanding agency practice, the Department has disregarded prices that it has reason to believe or suspect may be subsidized.¹⁰² The Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific, export subsidies.¹⁰³ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it has reason to believe or suspect that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies and that we should therefore disregard any data from these countries contained in the Indonesian import statistics used to calculate SVs. The Department similarly disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, since the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.¹⁰⁴ We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.¹⁰⁵ Rather, this legislative history states that the Department should base its decision on information that is available to it at

¹⁰⁰ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

¹⁰¹ See Surrogate Value Memo at Exhibit 2.

¹⁰² See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("Omnibus Trade and Competitiveness Act of 1988") at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24.

¹⁰³ 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 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; see also Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

¹⁰⁴ See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008).

¹⁰⁵ See Omnibus Trade and Competitiveness Act of 1988, at 590

the time it is making its determination. In accordance with the foregoing, we have not used prices from these countries in calculating the Indian import-based SVs.

The Department used GTA Indonesian Import Statistics to calculate SVs for raw materials (*i.e.*, PET chips), packing materials (*i.e.*, pallets, wooden pieces, sideboard, polyethylene (“PE”) foam, PE film, PE bag, PE strap, paper core, packing tape, plastic stoppers, hardware, nails, and labels).

We were unable to segregate and, therefore, were unable to exclude energy costs from the calculation of the surrogate financial ratios. Accordingly, for the preliminary results, we have disregarded the mandatory respondents’ energy inputs (electricity and steam) in the calculation of NV, in order to avoid double-counting energy costs that have necessarily been captured in the surrogate financial ratios.¹⁰⁶

As with energy, we were also unable to segregate and, therefore, were unable to exclude water costs for production from the calculation of the surrogate financial ratios. Accordingly, for the preliminary results, we have disregarded the mandatory respondents’ water costs in the calculation of NV, in order to avoid double-counting water costs that have necessarily been captured in the surrogate financial ratios.¹⁰⁷

To calculate the labor input, we based our calculation on the methodology expressed by the Department in Labor Methodologies, which recommends using single-country labor cost and compensation data from Chapter 6A of the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).¹⁰⁸ However, in this case, the Department notes that Chapter 6A does not contain recent Indonesian labor data from the ILO Yearbook. Therefore, for the preliminary results of this administrative review, the Department is valuing labor using an Indonesian industry-specific wage rate based on labor cost and compensation data from Chapter 5B of the ILO Yearbook. The ILO data reported under Chapter 5B of the Yearbook reflects all costs related to labor, including wages, benefits, housing, training, *etc.* The Department calculated an Indonesian industry-specific wage rate of 6823.9192 Rupiah per hour for the preliminary results. Specifically, the Department has calculated the wage rate using data provided to the ILO under Sub-Classification 25 of the ISIC-Revision 3-D standard, and inflated this wage rate using the Indonesian Consumer Price Index as published in the IMF’s International Financial Statistics. The Department finds the description under Sub-Classification 25 of the ISIC-Revision 3-D (“Manufacture of Rubber and Plastics Products”) to be the best available wage rate SV source on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Value Memo, at 5-7.

¹⁰⁶ See Surrogate Value Memo at 4-5; see also Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009), and accompanying Issues and Decision Memorandum, at Comment 2.

¹⁰⁷ See Surrogate Value Memo at 4.

¹⁰⁸ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

We valued truck freight expenses using an Indonesian per-unit average rate calculated from data contained in *The Cost of Moving Goods: Road Transportation, Regulations and Charges in Indonesia* as published by The Asia Foundation.¹⁰⁹ We adjusted this rate for inflation using the Indonesian wholesale price index.

No party submitted SV data for inland water freight during this review, and we were unable to identify an SV explicitly for inland water freight in Indonesia. Therefore, we valued inland water freight using South African data in an article published by the Human Sciences Research Council, a South African research agency, dated December of 2005.¹¹⁰ The Department adjusted this rate for inflation using the South African producer price index as published in the IMF's International Financial Statistics.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Indonesia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Indonesia that is published in *Doing Business 2011: Indonesia*, published by the World Bank.¹¹¹

We valued marine insurance using a price quote retrieved from RJG Consultants, an ME provider of marine insurance.¹¹² We did not inflate this rate since it is contemporaneous with the POR.

The Department valued international ocean freight from the PRC to the United States using data obtained from the Descartes Carrier Rate Retrieval Database, available at www.descartes.com.

According to 19 CFR 351.408(c)(4), the Department is directed to value overhead, general and administrative expenses ("SG&A"), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. As stated above in the Surrogate Country section of this notice, we have determined to use Indonesia as the primary surrogate country. Therefore, to value factory overhead, SG&A and profit, the record contained the audited financial statements for the year ending December 2011 of Argha Karya, Indopoly, and Trias, all producers of comparable merchandise from Indonesia.¹¹³ After reviewing the financial statements of Indopoly and Trias, each contain the consolidated results of PET film manufacturing companies located in the PRC.¹¹⁴ Because these financial statements represent the manufacturing and sales experience of companies located in the PRC, an NME, we preliminarily find that the possibility for distortion in the calculation of the factory overhead, SG&A and profit surrogate financial ratios exists. Accordingly, and consistent with prior practice when other useable financial statements are available on the record, we have not

¹⁰⁹ See DuPont SV Comments at Exhibit 16.

¹¹⁰ See Surrogate Value Memo at 9.

¹¹¹ See *id.* at 9-10.

¹¹² See *id.* at 10.

¹¹³ See Surrogate Country Memo at 22.

¹¹⁴ See *id.*

considered the financial statements of Indopoly and Trias.¹¹⁵ After reviewing the financial statements of Argha Karya, the Department notes that Argha Karya has two foreign subsidiaries, i.e., International Resources (H.K.) Ltd. ("IR") (Hong Kong) and STENTA Films ("STENTA") (Malaysia).¹¹⁶ However, as of April 12, 2010, Argha Karya is no longer the controlling shareowner of STENTA; therefore, its financial results are not incorporated into Argha Karya's financial statements.¹¹⁷ As for IR, it is located in Hong Kong and its principle activity is marketing and trading of films.¹¹⁸ Therefore, in contrast to Indopoly's and Trias' financial statements, the Department preliminarily finds that the possibility for distortion in the calculation of the surrogate financial ratios does not exist. Thus, the Department has valued factory overhead, SG&A and profit using Argha Karya's financial statements.¹¹⁹ The Department may consider other publicly available financial statements for the final results, as appropriate.

For a complete listing of all the inputs and a detailed discussion about our SV selections, see the Surrogate Value Memo.

Currency Conversion

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

Recommendation

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

December 3, 2012

(Date)

¹¹⁵ See, e.g., Sodium Hexametaphosphate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 59375 (September 27, 2012), and accompanying Issues and Decision Memorandum at Comment 1 and n. 24.

¹¹⁶ See Surrogate Country Memo at 22.

¹¹⁷ See *id.*

¹¹⁸ See *id.*

¹¹⁹ See Surrogate Value Memo at 10.