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July 31, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Polyethylene
Terephthalate Film, Sheet, and Strip from India

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet, and strip (PET Film) from India.¹ This review covers three respondents, Jindal Poly Films Limited (Jindal), Polyplex Corporation Ltd. (Polyplex), and SRF Limited (SRF), producers and exporters of PET Film from India. As noted in the accompanying Federal Register notice, Jindal and SRF were selected as the mandatory respondents while Polyplex is the non-selected respondent. The period of review (POR) is July 1, 2011, through June 30, 2012. We preliminarily determine that Jindal did not make sales below normal value (NV), and that SRF did make sales below NV during this POR.

BACKGROUND

On July 2, 2012, the Department published in the Federal Register a notice of opportunity to request an administrative review of the order.² The Department received a timely request from Petitioners³ for an AD administrative review of five companies: Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Polyplex, SRF, and Jindal.⁴ In addition, the Department

¹ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 77 FR 52688 (August 30, 2012) (Initiation Notice).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 77 FR 39216, 39217 (July 2, 2012).

³ Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.

⁴ See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request for Antidumping Duty Administrative Review: Petitioners' Request for an Administrative Review (July 31, 2012).



received timely requests for an AD review from SRF and Jindal.⁵ On August 30, 2012, the Department published a notice of initiation of administrative review with respect to Ester, Garware, Jindal, Polyplex, and SRF.⁶

On September 26, 2012, one of the petitioners (DuPont Teijin Films) withdrew its request for an AD administrative review of all the companies for which reviews were initiated.⁷ Subsequently, on November 30, 2012, the remaining petitioners (Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.) submitted a withdrawal request for Ester and Garware.⁸ Based on the timely withdrawal requests, the Department rescinded the administrative review with respect to Ester and Garware.⁹ As the requests from Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. for an administrative review of Jindal, Polyplex, and SRF were not withdrawn, the Department proceeded with individual examination of the two selected mandatory respondents, Jindal and SRF, as well as the non-selected respondent Polyplex.

On November 30, 2012, we issued the AD questionnaire to Jindal and SRF. In December 2012 and January 2013, Jindal and SRF each timely submitted responses to our questionnaire. We issued supplemental questionnaires to Jindal and SRF in April 2013 and May 2013; both companies submitted timely responses to our supplemental questionnaires in May 2013 and June 2013. On March 22, 2013, we extended the deadline for the preliminary results by 120 days, to August 2, 2013.¹⁰ On May 28, 2013, and June 20, 2013, the Department issued supplemental section D questionnaires to Jindal. Jindal filed its responses to these supplemental questionnaires on June 6, 2013, and July 12, 2013, respectively. On February 11, 2013, Petitioners filed an allegation stating that SRF made sales of merchandise under review below cost of production (COP) during the POR, and on April 10, 2013, in accordance with section 773(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department initiated a COP investigation.¹¹ Accordingly, on April 12, 2013, the Department requested that SRF provide a section D questionnaire response, which it filed on May 8, 2013. On June 11, 2013, the Department issued SRF a supplemental section D questionnaire; SRF filed its response on July 5, 2013. Then, on July 16, 2013, the Department requested that SRF re-submit certain exhibits referenced in the

⁵ See Polyethylene Terephthalate (PET) Film from India/Request for Antidumping Admin Review/Jindal Poly Films Limited (July 30, 2012) and Polyethylene Terephthalate (PET) Film from India/Request for Antidumping Admin Review/SRF Limited (July 30, 2012).

⁶ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 77 FR 52688 (August 30, 2012).

⁷ See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Withdrawal of DuPont Teijin Films' Request for Antidumping Duty Administrative Review (September 26, 2012).

⁸ See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Partial Withdrawal of Request for Antidumping Duty Administrative Review (November 30, 2012).

⁹ See Polyethylene Terephthalate Film, Sheet and Strip From India: Partial Rescission of Antidumping Duty Administrative Review; 2011–2012, 78 FR 2365 (January 11, 2013).

¹⁰ See Memorandum from Elfi Blum, International Trade Compliance Analyst, AD/CVD Operations to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations: Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review (March 22, 2013).

¹¹ See Memorandum from Heidi Schrieffer, Accountant, Office of Accounting, to Barbara Tillman, Director, AD/CVD Operations, Office 6: Antidumping Duty Administrative Review Polyethylene Terephthalate Film, Sheet, and Strip from India; Petitioner's Allegation of Home Market Sales at Prices Below the Cost of Production for SRF Limited (February 11, 2013) (SRF Cost Initiation Memo).

narrative of the July 5, 2013 response that did not match the narrative;¹² SRF filed its response to this request on July 19, 2013.

SCOPE OF THE ORDER

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed PET Film, whether extruded or coextruded. Excluded are metallized 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 of more than 0.00001 inches thick. Imports of PET Film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

DATE OF SALE

The Department's regulations state that, normally, the Department will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale.¹³ The regulation provides further that the Department "may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."¹⁴

Jindal

In the instant review, Jindal has requested that the Department use the purchase order date as the date of sale. In prior PET Film reviews, we have used commercial invoice date as the date of sale.¹⁵ According to Jindal, the purchase order represents the first document in which the finally-agreed upon price and quantity for the sale are memorialized in writing with the customer.¹⁶ Jindal then issues a pro forma invoice within a week after the issuance of the purchase order.¹⁷ Jindal states that the terms of sale never change after the purchase order date; however, there can be variations between the quantity as ordered within a plus or minus five to ten percent range.¹⁸ Jindal goes on to state that there is no change in the price between the purchase order and commercial invoice.¹⁹ In addition, Jindal notes that the allowable changes within the tolerance limit are pre-agreed upon terms between Jindal and the customer.²⁰

¹² See Memorandum To the File From Theresa C. Deeley: Polyethylene Terephthalate Film, Sheet, and Strip from India; Phone Conversation with SRF Limited's Counsel (July 17, 2013).

¹³ See 19 CFR 351.401(i).

¹⁴ Id.

¹⁵ See Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Administrative Review of the Antidumping Duty Order; 2010–2011, 78 FR 9670 (February 11, 2013) (2010/2011 PET Film Final), and accompanying Issues and Decision Memorandum at Comment 3: Jindal's Date of Sale.

¹⁶ See Jindal's Original Section A Questionnaire Response (January 3, 2013) (Jindal's SAQR) at 24; Jindal's Original Section C Questionnaire Response (January 22, 2013) at C-14.

¹⁷ See Jindal's First Supplemental Response to Sections A to C (May 13, 2013) (Jindal's SQR1) at 6.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

At the Department's request, Jindal provided the purchase order, pro forma invoice, and final commercial invoice for several POR sales.²¹ We reviewed the sales terms as stated on the purchase orders, pro forma invoices, and commercial invoices for the selected sales by line item, and noted that there were changes to both the prices and the quantities from the issuance of the pro forma invoice until the issuance of the commercial invoice.²² Although the changes appear to be within the tolerances agreed upon, the fact that the terms keep changing until the issuance of the final invoice indicates that the commercial invoice is the most reliable document for determining the actual terms of sale. In addition, the sales documents placed on the record by Jindal contradict its statement that there is no change in the price between the purchase order and commercial invoice.²³ Finally, Jindal reported and the Department established, the commercial invoice date as date of sale in prior administrative reviews.²⁴ Based on our analysis of the information on the record, we preliminarily determine that the material terms are set when the commercial invoice is issued, and that Jindal has failed to demonstrate that the facts in this administrative review warrant a departure from our practice of using invoice date. In accordance with 19 CFR 351.401(i), the Department finds it appropriate to continue to rely on the invoice date as the date of sale for these preliminary results.

SRF

For its U.S. sales, SRF used the commercial invoice date as the date of sale. In its initial response, SRF reported the invoice date as the date of sale for its home market sales and the commercial invoice date for its U.S. sales. Moreover, SRF reported that, for both markets, it issued the invoice on the same date as it shipped the merchandise.²⁵ SRF also reported that for both markets, with the exception of two customers in the home market, it did not enter into short- or long-term contracts.

For the first customer, SRF entered into a long-term contract to supply an agreed upon quantity of subject and non-subject merchandise at an agreed upon price.²⁶ With respect to the second home market customer, SRF entered into periodic contracts to supply a certain quantity of subject and non-subject merchandise within a plus/minus ten percent variance of the market price in effect at the time of the sale. According to SRF, the difference between the invoiced price and the agreed upon price is settled with the customer through debit and/or credit notes.²⁷ Accordingly, for both of these customers, the final terms of sale with respect to merchandise,

²¹ See Jindal's Second Supplemental Response to sections A to C (June 18, 2013) at Exhibit S2-1.

²² Id.

²³ Id.

²⁴ See 2010/2011 PET Film Final, and accompanying Issues and Decision Memorandum at Comment 3: Jindal's Date of Sale.

²⁵ Consistent with our long-standing practice, where invoice date is the date of sale, but shipment date precedes invoice date, we have used shipment date as date of sale. See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value, 73 FR 55036 (September 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1; and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30664 (June 8, 1999), and accompanying Issues and Decision Memorandum at Comment 5.

²⁶ See SRF's Initial Section A Questionnaire Response (December 28, 2012) at 24 (SRF's SAQR).

²⁷ See SRF's Sections B to C Questionnaire Response (January 22, 2013) (SRF's SBCQR), at B-15, and SRF's First Supplemental Questionnaire Response (May 20, 2013) at 22-25.

quantity and price are finalized at the time the merchandise is shipped and invoiced to the customers.

We have analyzed the information on the record and preliminarily determine that the reported invoice dates are the appropriate dates of sale for SRF's U.S. and home market sales under review.

DISCUSSION OF THE METHODOLOGY

Fair Value Comparisons

Pursuant to section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Jindal's and SRF's sales of PET Film were made in the United States at less than NV, we compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this notice. In these preliminary results, the Department applied the average-to-average comparison methodology for Jindal and the alternative average-to-transaction methodology for SRF, as noted in the "Differential Pricing" section below. In particular, the Department compared monthly, weight-averaged EPs with monthly, weight-averaged NVs for Jindal, and transaction based EP sales with monthly, weight-averaged NVs for SRF.

When making this comparison in accordance with section 771(16) of the Act, we considered all products sold in the home market, as described above in the "Scope of the Order" section of this notice, in the ordinary course of trade for purposes of determining an appropriate product comparison to the U.S. sale. If contemporaneous sales of identical home-market merchandise, as described above, were reported, then we made comparisons to the monthly weight-averaged home-market prices that were based on all such sales. If there were no contemporaneous home market sales of identical merchandise, then we identified home market sales of the most similar merchandise that were contemporaneous with the U.S. sales in accordance with 19 CFR 351.414(e).

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weight-averaged NVs to weight-averaged EPs (or constructed EPs (CEPs)) (the average-to-average method) "unless the Secretary determines that another method is appropriate in a particular case." In antidumping investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.²⁸ In recent proceedings, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant

²⁸ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews: 2010–2011, 77 FR 73415 (December 10, 2012).

to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.²⁹ The Department finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weight-averaged dumping margins.

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

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

²⁹ See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Determination of the Comparison Method; see also Polyvinyl Alcohol From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2010–2012, 78 FR 20890 (April 8, 2013) unchanged in Polyvinyl Alcohol from Taiwan: Final Results of Antidumping Duty Administrative Review; 2010–2012, 78 FR 37794 (June 24, 2013).

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

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

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

B. Results of the Differential Pricing Analysis

Jindal

For Jindal, based on the results of the differential pricing analysis, the Department finds that more than 33 percent but less than 66 percent of Jindal’s export sales indicated the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Because more than 33 percent but less than 66 percent of the value of total U.S. sales pass the differential pricing test, the results of the test support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. When analyzing the weight-averaged dumping margins calculated using the average-to-average method for all of Jindal’s U.S. sales compared to the alternative method, there is not a meaningful difference in the results.

Accordingly, the Department has determined to use the average-to-average method because it accounts for the observed price differences in Jindal's sales.³⁰

SRF

For SRF, based on the results of the differential pricing analysis, the Department finds that more than 66 percent of SRF's export sales indicated the existence of a pattern of EPs for comparable merchandise that differ pervasively among purchasers, regions, or time periods. Because more than 66 percent of the value of total U.S. sales passes the differential pricing test, the results of the test support consideration of the application of an average-to-transaction method to all of SRF's U.S. sales as an alternative to the average-to-average method. When analyzing the weight-averaged dumping margins calculated using the average-to-average method for all U.S. sales compared to the alternative method, we found a meaningful difference in the results for SRF.³¹ Therefore, the average-to-transaction method will appropriately account for the observed price differences for SRF.

Product Comparisons

Pursuant to section 771(16)(A) of the Act, for purposes of determining appropriate product comparisons to the U.S. sales, the Department considers all products, as described above in the "Scope of the Order" section of this notice, that were sold in the comparison market in the ordinary course of trade. In accordance with sections 771(16)(B) and (C) of the Act, where there are no sales of identical merchandise in the comparison market made in the ordinary course of trade, we compare U.S. sales to sales of the most similar foreign like product based on the characteristics listed in sections B and C of our antidumping questionnaire: grade, specification, dimension, thickness, and surface treatment.

Export Price and Constructed Export Price

Jindal

We used the EP methodology for Jindal's U.S. sales, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation; there was no evidence on the record which justified the application of the CEP methodology. In accordance with sections 772(a) and (c) of the Act, we calculated EP based on packed prices, adding excess and/or separately recovered freight Jindal charged its unaffiliated customer and, in accordance with 19 CFR 351.401(c), deductions were made from the starting price for discounts. We also made deductions from the starting price, where applicable, for movement expenses, including domestic inland freight and insurance, domestic brokerage and handling, international freight and marine insurance, and U.S. inland freight, in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e).

³⁰ See Memorandum to Nicholas Czajkowski: Analysis Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Jindal Poly Films Limited, dated concurrently with this memorandum (Jindal Preliminary Calculation Memorandum).

³¹ See Memorandum to Nicholas Czajkowski, Acting Program Manager "Analysis Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited, dated concurrently with this memorandum (SRF Preliminary Calculation Memorandum).

SRF

We used the EP methodology for SRF's U.S. sales, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted based on the evidence on the record. In accordance with sections 772(a) and (c) of the Act, we calculated EP based on packed prices, adding excess and/or separately recovered freight SRF charged its unaffiliated customer and, in accordance with 19 CFR 351.401(c), deductions were made from the starting price for discounts. We also made deductions from the starting price, where applicable, for movement expenses, including domestic inland freight and insurance, domestic brokerage and handling, international freight and marine insurance, and U.S. inland freight, in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e).

Normal Value

A. Home Market Viability and Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), both Jindal and SRF had a viable home market during the POR. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales of the foreign like product at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³² Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³³ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison-market sales (*i.e.*, where NV is based on either home market or third country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³⁴ When the Department is unable to match U.S. sales of the foreign like product in the comparison

³² See 19 CFR 351.412(c)(2).

³³ *Id.*; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

³⁴ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³⁵

In this administrative review, we obtained information from both respondents regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

Jindal

Jindal reported that it made EP sales in the U.S. market to both unaffiliated end users and to unaffiliated trading companies.³⁶ We examined the selling activities performed for U.S. sales for both channels of distribution and found that Jindal performed selling functions, which we have grouped into the following four activities: (1) sales and marketing (sales forecasting, strategic/economic planning, order input/processing, etc.); (2) freight and delivery (including packing); (3) technical services/warranties (engineering services and technical assistance); and (4) inventory management.³⁷ Accordingly, based on our examination of the individual selling functions performed within those categories, we find that Jindal performed the same selling functions in all four categories to the same degree in both channels of distribution.³⁸ Because the selling activities to Jindal's customers did not vary for sales in the United States through its two channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the comparison market, Jindal reported that it made sales to both unaffiliated end users and to unaffiliated trading companies, and that most selling functions were performed at the same or similar levels of intensity in both channels of distribution.³⁹ We examined the following three activities performed in the comparison market: (1) sales and marketing (sales forecasting, strategic/economic planning, order input/processing, etc.); (2) freight and delivery (including packing); and (3) inventory management. We find that Jindal performed the same selling functions in all three categories to the same or similar degree in both channels of distribution.⁴⁰ Accordingly, based on these selling functions noted above, we find that Jindal performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for all comparison market sales. Although the comparison market sales are made through two channels of distribution, because the selling activities to Jindal's customers did not vary between these channels, we preliminarily determine that there is one LOT in the comparison market for Jindal.

³⁵ See Plate from South Africa, 62 FR at 61732-33.

³⁶ See Jindal's SAQR at 14, and Jindal's Sections B to C Questionnaire Response at C-11.

³⁷ See Jindal's SAQR at 18-22 and Exhibit A-5 and 14-22, and Jindal's SQR1 at 4-5.

³⁸ Id.

³⁹ Id. at Exhibit A-5.

⁴⁰ Id.

Finally, we compared the EP LOT to the comparison market LOT and found that the selling functions performed for U.S. and comparison market customers do not differ significantly, as Jindal performed the same selling functions at the same or similar level of intensity in both markets. With regard to the differences in the reported level of intensity, while Jindal did not provide certain selling and marketing services in the comparison market as it did in the U.S. market, Jindal performs these selling functions at a low intensity level (rarely or seldom) in the U.S. market. Therefore, we determine that sales to the U.S. and comparison markets during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted.⁴¹

SRF

SRF reported that it made EP sales in the U.S. market to both unaffiliated end users and to unaffiliated traders.⁴² We examined the selling activities performed for U.S. sales for both channels of distribution and found that SRF performed selling functions, which we have grouped into the following three activities: (1) sales and marketing (sales forecasting, order input/processing, direct sales personnel, *etc.*); (2) freight and delivery (including packing); (3) inventory maintenance. SRF did not provide technical services in the U.S. market.⁴³ Accordingly, based on our examination of the individual selling functions performed within those categories, we find that SRF performed the same selling functions in all three categories to the same degree in both channels of distribution.⁴⁴ Because the selling activities to SRF's customers did not vary for sales in the United States through its two channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the comparison market, SRF reported that it made sales to unaffiliated end users, to unaffiliated dealers, and to dealer attached customers, and that most selling functions were performed at the same or similar levels of intensity in all three channels of distribution.⁴⁵ We examined the following four activities performed in the comparison market: (1) sales and marketing (sales forecasting, strategic/economic planning, order input/processing, direct sales personnel, distributor/dealer training, procurement/sourcing services, *etc.*); (2) freight and delivery (including packing); (3) technical assistance; and (4) inventory management. We find that, with the exception of "direct sales personnel," SRF performed the same selling functions in all three categories to the same or similar degree in all three channels of distribution.⁴⁶ Accordingly, based on these selling functions noted above, we find that SRF performed sales and marketing, freight and delivery services, technical assistance, and inventory maintenance for all comparison market sales. Although the comparison market sales are made through three channels of distribution, because the selling activities to SRF's customers did not vary between these channels, we preliminarily determine that there is one LOT in the comparison market for SRF.

⁴¹ See Jindal Preliminary Calculation Memorandum.

⁴² See SRF's SAQR, at 19-22, and Exhibit A-5, and SRF's SBCQR, at B-12, B-14 and C-11-12.

⁴³ See SRF's SAQR at Exhibit A-5, and SRF's SBCQR, at C-35.

⁴⁴ *Id.*

⁴⁵ See SRF's SAQR at Exhibit A-5.

⁴⁶ *Id.*

Finally, we compared the EP LOT to the comparison market LOT and found that the selling functions performed for U.S. and comparison market customers do not differ significantly, as SRF performed the same selling functions at the same or similar level of intensity in both markets. With regard to the differences in the reported level of intensity, while SRF provided a certain selling activity in the comparison market, (3) technical assistance, but not in the United States market, SRF performs this selling function at a low intensity level (seldom) in the comparison market. Therefore, we determine that sales to the U.S. and comparison market during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted.⁴⁷

C. Calculation of Normal Value Based on Comparison-Market Prices

We based NV on the starting prices of Jindal's and SRF's sales to unaffiliated home market customers, pursuant to sections 773(a)(1)(A) and 773(a)(1)(B)(i) of the Act and, where appropriate, made deductions from NV for movement expenses (i.e., inland freight and inland insurance) in accordance with section 773(a)(6)(B)(ii) of the Act. Also, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made, where indicated, circumstance-of-sale adjustments for home market direct selling expenses, including imputed credit expenses, and for discounts and rebates. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, because commissions were paid only in the home market, we made an upward adjustment to NV for the lesser of: (1) the amount of commission paid in the home market; or (2) the amount of the indirect selling expenses incurred in the home market on U.S. sales.⁴⁸ In accordance with sections 773(a)(6)(A), (B) and 773(a)(6)(C)(ii) of the Act, we also deducted home market packing costs, added U.S. packing costs and made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise.⁴⁹

Cost of Production Analysis

For Jindal, the Department disregarded sales below COP in the most recently completed AD review.⁵⁰ We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. In the current administrative review, the Department initiated a sales-below-cost investigation for SRF in accordance with section 773(b)(1) of the Act.⁵¹ Based on the prior cost allegation against Jindal and the newly initiated one against SRF, we examined whether home market sales made by both Jindal and SRF were made at prices below the COP during the POR pursuant to section 773(b)(1) of the Act.

⁴⁷ See SRF Preliminary Calculation Memorandum.

⁴⁸ See 19 CFR 351.410(e).

⁴⁹ See Jindal Preliminary Calculation Memorandum; see also SRF Preliminary Calculation Memorandum.

⁵⁰ See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 45699, 45701 (August 6, 2008), at "B. Cost of Production Analysis," unchanged in Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review, 73 FR 71601 (November 25, 2008).

⁵¹ See SRF Cost Initiation Memo.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated Jindal's and SRF's COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and home market packing costs.⁵² We examined the cost data and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annual costs based on the reported data as adjusted below.

Based on our analysis of Jindal's questionnaire responses, we determined that no adjustments to Jindal's reported COP were necessary.⁵³ Based on our analysis of SRF's questionnaire responses, we determined that no adjustments to SRF's reported COP were necessary.⁵⁴

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weight-averaged COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, and actual direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POR are made at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POR are made at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

⁵² See "Test of Home Market Sales Prices" section below for treatment of home market selling expenses.

⁵³ See Memorandum from James Balog, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strips from India, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Jindal Poly Films Limited, dated concurrently with this memorandum.

⁵⁴ See Memorandum from Angie Sepulveda, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strips from India, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – SRF Limited, dated concurrently with this memorandum.

section 773(b)(1)(B) of the Act. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

We found that, for certain specific products, more than 20 percent of Jindal's and SRF's home market sales during the POR were made at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.


CONCLUSION

We recommend applying the above methodology for these preliminary results.




Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration



(Date)