A-570-924
Administrative Review
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DATE: June 5, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

CASE: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2010 - 2011 Administrative Review

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SUMMARY

On December 3, 2012, the Department of Commerce (the "Department") published its Preliminary Results[1] for the third antidumping duty ("AD") administrative review of polyethylene terephthalate ("PET") film, sheet, and strip from the People's Republic of China ("PRC").

On January 7, 2013, Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively "Petitioners"); DuPont Teijin Films China Limited, DuPont Hongji Films Foshan Co., Ltd., and DuPont Teijin Hongji Films Ningbo Co., Ltd. (collectively the "DuPont Group"); and Tianjin Wanhua Co., Ltd. ("Wanhua"), Fuwei Films (Shandong) Co., Ltd. ("Fuwei Films"), and Sichuan Dongfang Insulating Material Co., Ltd. ("Dongfang") (collectively "Wanhua et al.") submitted publicly

[1] See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Administrative Review; 2010–2011, 77 FR 73428 (December 10, 2012) ("Preliminary Results") and accompanying Memorandum from Gary Taverman, Senior Advisor, Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary, Import Administration, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative review: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated December 3, 2012 ("Preliminary Decision Memo").

available surrogate value ("SV") data.[2] On January 17, 2013, Wanhua submitted rebuttal comments regarding the January 7, 2013, SV submissions.[3] We received case briefs from Petitioners, the DuPont Group, Shaoxing Xiangyu Green Packing Co., Ltd. ("Green Packing"), Wanhua et al., and Terphane Inc. ("Terphane") on January 28, 2013 and January 29, 2013,[4] and rebuttal briefs on February 4, 2013.[5] Additionally, on January 28, 2013, the Department received comments on the draft liquidation instructions from Bemis Company, Inc. and its affiliate, Curwood Inc. (collectively "Bemis").[6] We have analyzed these briefs and recommend that you approve the positions provided below in the "Discussion of the Issues" section of this Issues and Decision Memorandum.

SCOPE OF THE ORDER

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

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[2] See Letter from Petitioners to the Secretary of Commerce "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Surrogate Value Submission," dated January 7, 2013 ("Petitioners SV Comments"); see also Letter from the DuPont Group to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Additional Surrogate Values Information," dated January 7, 2013; see also Letter from Wanhua to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Surrogate Value Information for Final Results," dated January 7, 2013.

[3] See Letter from Wanhua to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A- 570-924; Rebuttal Surrogate Value Information for Final Results," dated January 17, 2013.

[4] See Letter from Petitioners to the Secretary of Commerce, "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Petitioners' Case Brief," dated January 28, 2013; see also Letter from the DuPont Group to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: A-570-924: Case Brief of DuPont Hongji Films Foshan Co., Ltd., DuPont Teijin Films China Limited and DuPont Teijin Hongji Films Ningbo Co., Ltd.," dated January 29, 2013; see also Letter from Green Packing to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from China," dated January 28, 2013; see also Letter from Wanhua et al. to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Case Brief," dated January 28, 2013; see also Letter from Terphane to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, And Strip from the People's Republic of China: Case Brief of Terphane, Inc.," dated January 28, 2013.

[5] See Letter from Petitioners to the Secretary of Commerce, "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Petitioners' Rebuttal Case Brief," dated February 4, 2013; see also Letter from the DuPont Group to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: A-570-924: Rebuttal Brief of DuPont Hongji Films Foshan Co., Ltd., DuPont Teijin Films China Limited and DuPont Teijin Hongji Films Ningbo Co., Ltd.," dated February 4, 2013; see also Letter from Green Packing to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from China," dated February 4, 2013; see also Letter from Wanhua et al. to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Rebuttal Brief," dated February 4, 2013; 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," dated February 4, 2013.

[6] See Letter from Bemis to the Secretary of Commerce, "Comments on Draft Liquidation Instructions," dated February 4, 2013.

While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

DISCUSSION OF THE ISSUES

I. General Issues

Issue 1: Respondent Selection

A. Authority to Limit the Number of Respondents Selected for Individual Review

Wanhua et al. Argument

- The Department limited the number of respondents in this review, and in so doing, deprived Wanhua et al. of their right to receive a rate based on their own data.
- The Department should have reviewed all companies for which a review was requested. The Department does not have unlimited discretion to select respondents. A statutory precondition to invoking the respondent selection provision in Section 777A of the Tariff Act, as amended ("the Act"), is for the Department to first find that the number of respondents is "large." The Department incorrectly limited the number of mandatory respondents because five[7] is not a large number in light of Court of International Trade ("CIT") rulings.[8]

Petitioners' Rebuttal

- The Department should not individually review Wanhua et al.
- The Department first concluded that seven exporters for which reviews were requested "are too large a number," and given its resource constraints, found that it was not practicable to review them individually.
- The Department specifically considered the size of the potential respondent pool.[9] Unlike in the cases cited by Wanhua, the potential number of respondents was greater than four.[10]
- The Department's respondent selection determination was not made because a review of all possible respondents was "inconvenient," but because, consistent with the statutory authority, "it would not be practicable to review all firms for which a review was requested."[11]

[7] Although this administrative review began with the seven companies, the Department notes that, in the Preliminary Results, it collapsed three exporters listed in the initiation notice, i.e., the DuPont Group. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 76 FR 82268 (December 30, 2011) ("Initiation Notice"). Wanhua et al. contends that the number of exporters in the respondent selection was actually five due to this collapsing; however, at the time the Department selected respondents, there was no information on the record of the proceeding to perform a collapsing analysis. Due to the collapsing, the Department effectively selected four respondents of the seven companies to individually review, which constitutes the majority of the companies listed in the Initiation Notice.

[8] See Zhejiang Native Products v. United States, 637 F. Supp. 2d 1260 (CIT 2009) ("Zhejiang"); see also Carpenter Tech. Corp. v. United States, 662 F. Supp. 2d 1337 (CIT 2009) ("Carpenter Tech").

[9] See Carpenter Tech., 662 F. Supp. 2d at 1342.

[10] See Zhejiang, 637 F. Supp. 2d at 1263-65.

[11] See section 777A(c)(2) of the Act.

Department's Position: The Department disagrees with Wanhua et al. and has assigned Wanhua, Fuwei Films and Dongfang the separate AD rate calculated for the companies that were not individually examined. In the instant review, the Department carefully considered the selection of respondents and concluded that it was not practicable to determine individual weighted-average dumping margins for each known exporter of PET film subject to this review.[12] The Department began its respondent selection with the seven companies listed in its Initiation Notice.[13] The Department expressly identified seven respondents as a large number of companies in the Respondent Selection Memo.[14] Pursuant to section 777A(c)(2) of the Act, the Department exercised its discretion to limit its selection of respondents to two exporters.[15] Specifically, the Department found that the seven exporters in the Initiation Notice were too large a number for the Department to examine individually. The Department stated that reviewing all exporters and/or producers would require significant resources that the Department did not have.[16] The Department selected two mandatory respondents accounting for the largest volume of subject merchandise from the PRC that could reasonably be examined.[17] Both of the selected mandatory respondents participated fully in the proceeding.

The CIT has upheld the Department's decision to limit the number of respondents selected for examination as mandatory respondents. In Longkou Haimeng Mach. Co. v. United States, the CIT explicitly rejected the argument that section 782(a) of the Act requires the Department to individually examine additional respondents when two mandatory respondents have participated in the proceeding.[18] In rejecting this argument, the CIT made the following finding:

> It is clear from the language of the {Statement of Administrative Action} and the {Act} itself that, Congress has spoken on the matter. The authority to limit the number of respondents for examination rests "exclusively" with Commerce.[19]

Thus, it is clear that the Department's decision not to examine Wanhua, Fuwei Films and Dongfang in the instant review is in accordance with Department practice, legislative intent and judicial precedent.

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[12] See Memorandum from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, through Robert Bolling, Program Manager, Office 4 AD/CVD Operations, to Abdelali Elouaradia, Office Director, Office 4 AD/CVD Operations, "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 ("Respondent Selection Memo").

[13] See Initiation Notice.

[14] See Respondent Selection Memo, at 4. The Department notes that seven is a larger number than the four exporters identified in Zhejiang, and, unlike the respondents in Zhejiang, no respondents have withdrawn from this administrative review.

[15] See section 777A(c)(2) of the Act, which states, in pertinent part: {i}f it is not practicable to make individual weighted-average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted-average dumping margin for a reasonable number of exporters by limiting its examination to…exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

[16] See Respondent Selection Memo, at 4.

[17] Id., at 5.

[18] See Longkou Haimeng Mach. Co. v. United States, 581 F. Supp. 2d 1344, 1351-52 (CIT 2008) ("Longkou").

[19] Longkou, 581 F. Supp. 2d at 1351.

The Department has the discretion to determine whether or not its resources allow it to individually review additional respondents, such as Wanhua, Fuwei Films and Dongfang.[20] The Department disagrees with the argument that it is required to individually examine each respondent because the Act specifically states that "the administering authority shall establish an individual countervailable subsidy rate or an individual weighted-average dumping margin ... if the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation."[21] The Department did not select Wanhua, Fuwei Films, and Dongfang as mandatory respondents because the Department did not find it practicable to individually examine more than two respondents and, pursuant to section 777A(c)(2)(B) of the Act, selected Dongfang and Wanhua as the largest exporters by volume. For further details on the Department's respondent selection, see Respondent Selection Memo.[22]

B. Use of CBP Data and Voluntary Quantity and Value ("Q&V") Data for Respondent Selection

Wanhua et al. Argument

- The Department did not use consistent data from all exporters in selecting respondents for individual review. For selection of mandatory respondents, the Department used both Customs and Border Protection ("CBP") data and voluntary Q&V data submitted by certain prospective respondents. The Department should have used either CBP data without adjustment or requested Q&V data from all prospective respondents. Further, the Department's evaluation did not take into account additional concerns such as the basis on which the sales were made.

No interested party rebutted this argument by Wanhua et al.

Department's Position: The Department disagrees with Wanhua et al. Selecting respondents on the basis of CBP data, generally, is an accurate and reliable method, because the data are compiled from actual entries of merchandise subject to the order, and are based on information required by and provided to the U.S. government authority responsible for permitting goods to enter into the United States, i.e., CBP. The entries compiled in this database are the same entries upon which the antidumping duties determined by this review would be assessed. Further, because the CBP data is readily available to the Department at the outset of each segment of the proceeding, using CBP data for respondent selection is administratively practicable. Interested parties were invited to comment on the respondent selection methodology and the CBP data, and all timely comments were addressed in the Respondent Selection Memo and the Preliminary Results. Based on these timely comments, the Department adapted its respondent selection methodology by using the Q&V data submitted by certain exporters in their comments.

[20] See Longkou, 581 F. Supp. 2d at 1353 ("{a}ny assessment of Commerce's operational capabilities or deadline rendering must be made by the agency itself. As the Court of Appeals for the Federal Circuit … has already explained, 'agencies with statutory enforcement responsibilities enjoy broad discretion in allocating investigative and enforcement resources' (Torrington v. United States, 68 F. 3d 1347, 1351 (Fed. Cir. 1995))").
[21] See Section 782(a)(2) of the Act.
[22] See Respondent Selection Memo (discussing numerous concurrent antidumping proceedings limiting the number of analysts that can be assigned to any given administrative proceeding).

The Department's reliance on both CBP data and Q&V data to select respondents is consistent with the statute. Section 777A(c)(2)(B) of the Act requires the Department to examine "exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined." The Act is silent concerning the data source used by the Department to determine which exporters and producers account for the "largest volume of subject merchandise." Accordingly, the Department has discretion to choose the specific method employed for determining which companies are the largest, so long as that method is reasonable.[23] Although the Department's general practice is to select respondents using CBP data,[24] in this instance, certain respondents have rebutted the accuracy of the CBP data with respect to their own export Q&V. The Department ranked and selected the mandatory respondents in this review based on total export volume in a list compiled from CBP data, and on the submissions of the respondents themselves in rebuttal to the CBP data.[25]

Because certain respondents timely rebutted the CBP data with information uniquely in their possession, we found that in this review it would be inappropriate to rely on the CBP data as the sole basis for ranking these respondents' export Q&V. While the Department considers CBP data reliable because the data are based on information required by and provided to the U.S. government authority responsible for permitting goods to enter into the United States, the respondent itself possesses the most reliable information on whether it made shipments of subject merchandise during the period of review ("POR").[26] We did rely on CBP data to rank respondents that did not directly rebut the export Q&V shown in CBP data with their own information. No interested party refuted the reliability of the CBP data for respondents that did not submit voluntary Q&V data.

Regarding Wanhua's argument that the Department's evaluation did not take into account additional concerns such as the basis on which the sales were made, the Department notes that it performed its respondent selection on the basis of quantity and not value.[27] Thus, the Department's analysis would not be affected by terms of sale.

C. Calculation of a Margin for Wanhua

Wanhua et al. Argument

- The Department can correct its error of not selecting Wanhua as a mandatory respondent by calculating a margin for Wanhua using the data contained in its sections A, C, and D responses.[28]

[23] See AK Steel Corp. v. United States, 192 F.3d 1367, 1371 (Fed. Cir. 1999) ("Our analysis is not whether we agree with Commerce's conclusions, nor whether we would have come to the same conclusions reviewing the evidence in the first instance, but only whether Commerce's determinations were reasonable.").

[24] See, e.g., Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 78 FR 6291 (January 30, 2013).

[25] See Respondent Selection Memo, at Attachment 1.

[26] See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 14th Antidumping Duty Administrative Review, 75 FR 34976 (June 21, 2010), and accompanying Issues and Decision Memorandum at Comment 3 ("Therefore, the respondent, not the Petitioners or any other parties, possesses the most reliable information on whether it made shipments of subject merchandise during the POR.")

[27] See Respondent Selection Memo, at Attachment 1.

[28] See Letter from Wanhua to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Comments on the Section A Response of the DuPont Group by Tianjin

- Should the Department not calculate a margin for Wanhua based on its responses, it should assign to Wanhua the rate from the prior administrative review without adjustment as it was calculated using the zeroing methodology.

No interested parties rebutted this issue by Wanhua et al.

Department's Position: Wanhua submitted responses to Sections A, C, and D of the Department's AD questionnaire (sales and factors of production ("FOP") data) to the Department attached to its comments on the DuPont Group's section A and sections C, and D responses on April 6, 2012 and April 13, 2012, respectively.[29] Wanhua failed to request treatment as a voluntary respondent pursuant to 19 CFR 351.204(d)(4), which states that an interested party seeking treatment as a voluntary respondent must so indicate by including as a title on the first page of the first submission, "Request for Voluntary Respondent Treatment." Wanhua not only failed to request voluntary treatment in accordance with 19 CFR 351.204(d)(4), but it also failed to submit its sales and FOP responses to the Department's AD questionnaire in a timely manner.[30] Section 782(a) of the Act states:

> (a) Treatment of Voluntary Responses in Countervailing or Antidumping Duty Investigations and Reviews. In any investigation under subtitle A or B or a review under section 751(a) in which the administering authority has, under section 777A(c)(2) or section 777A(e)(2)(A) (whichever is applicable), limited the number of exporters or producers examined, or determined a single country-wide rate, the administering authority shall establish an individual countervailable subsidy rate or an individual weighted average dumping margin for any exporter or producer (selected as a voluntary respondent) not initially selected for individual examination under such sections who submits to the administering authority the information requested from exporters or producers selected for examination, if
>
> (1) such information is so submitted by the date specified;
>
> (A) for exporters and producers that were initially selected for examination.

Wanhua Co., Ltd.," dated April 6, 2012; see also Letter from Wanhua to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Comments on the Sections C and D Response of the DuPont Group by Tianjin Wanhua Co., Ltd.," dated April 13, 2012.

[29] Id.

[30] The mandatory respondents (DuPont Group and Green Packing) were required to submit responses to section A and sections C and D of the Department's AD questionnaire on March 19, 2012 (extended) and April 6, 2012 (extended), respectively. See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4 to the DuPont Group, "Request for Extension of Time to Submit the Response to Section A of the Antidumping Questionnaire in the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated March 2, 2012; see also Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4 to Green Packing, "Request for Extension of Time to Submit the Responses to Sections C, D, and Supplemental Section A of the Antidumping Duty Questionnaire in the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated April 4, 2012.

Because Wanhua failed to request voluntary respondent treatment and its responses were untimely, the Department has not considered Wanhua's requests that the Department use the U.S. sales and FOP information to calculate an individual margin.

Finally, The Department has calculated a margin in the instant review which is not zero or de minimis (i.e., 12.80 percent for DuPont Teijin Film China Limited), as such, following our standard methodology the separate rate for the final results, including the rate assigned to Wanhua, will be based on this margin. Thus, the Department finds no reason to base Wanhua's separate rate in the instant review on the rate assigned to it in the previous administrative review.

Issue 2: Surrogate Country Selection

I. Selection of a Surrogate Country Based on Data Quality

In the Preliminary Results, the Department selected Indonesia as the primary surrogate country because it is comparable to the PRC in terms of economic development, a significant producer of comparable merchandise, and had the best data quality.[31] Given the importance of the PET chip input, the Department noted that the PET chip SV drove its surrogate country selection. As described below, Petitioners argue that the quality of the data in Indonesia is not better than that of Thailand for valuing PET chips, labor and financial ratios and, as a result, the Department should have selected Thailand as the primary surrogate country. For the reasons detailed below, the Department disagrees with Petitioners' data quality arguments and continues to find that Indonesia is the appropriate surrogate country.

A. Whether the Quality of Indonesian SV Data for PET Chips is Better Than the Quality of Thai SV Data

Petitioners' Argument

- Indonesia is not the better surrogate country because Indonesian import data from Global Trade Atlas ("GTA") for PET chips are flawed and inaccurate. Specifically, GTA data for Indonesian imports from Singapore during the POR are different than Indonesian import statistics obtained from an independent trade consultancy and do not correspond to Singapore export statistics (to Indonesia) from GTA, Statlink, and UN Comtrade.
- The Department found the Indonesian GTA value for PET chips to be more in line with import values from other potential surrogate countries than was the Thai GTA value for PET chips. However, this analysis is at odds with Dorbest, because the Department used PET chip SVs from the other potential surrogate countries as bookends, i.e., set a price range in which the PET chip SV would have to fall in to be acceptable for use.[32]
- Thailand is an acceptable surrogate country based on Thai GTA data for PET chips. The PET chip data for Singapore derived from UN Comtrade and Statlink worldwide import statistics support using the Thai GTA value for PET chips because the PET chip values derived from these sources are close to the Thai PET chip value. Although the Department found that the Thai PET chip value diverges from other benchmark prices,

[31] See Preliminary Decision Memo, at 12 and 21.
[32] See Dorbest Ltd. v. United States, 755 F. Supp. 2d 1291, 1297-99 (CIT 2011) ("Dorbest").

the Department also found that the Thai PET chip value derived from GTA import data is not aberrational, which contradicts its finding regarding divergence.
- If Indonesia is selected as the surrogate country, the Department must disregard Indonesian imports from Singapore to minimize the degree to which it would have to adjust Indonesian import data to arrive at a PET chip SV.

Respondents'[33] Rebuttal
- The Singaporean export data Petitioners used to call into question the suitability of Indonesian GTA import data are not convincing because the data are for exports and (1) the Department has a well-established practice of rejecting export data as an SV source and for validating import data; (2) the Singapore export datasets diverge widely among one another; (3) there is no information on how the UN Comtrade export data are derived or whether the source of the export data are subject to any discipline in data collection; (4) Petitioners provided no evidence that the timing differences between import and export data is not the reason for the disparity between the Indonesian GTA import data and the Singaporean export data for PET chips; and (5) Petitioners never questioned the accuracy of the PET chip AUV calculated using Singapore imports into Indonesia.
- Likewise, the Indonesian import data which Petitioners used to call into question the suitability of Indonesian GTA data are unreliable because the data are from an unnamed trade consultancy, are not clearly enumerated, and are contradicted by the "export" statistics cited.
- Dorbest is inapposite because it addressed unique issues of determining the labor SV, which are fundamentally different from how SVs for material inputs are determined.
- Petitioners' use of Singapore import data to support the Thai PET chip import value is misplaced because Singapore is not economically comparable to the PRC. It would be arbitrary to select values of imports into Singapore as a benchmark for determining the appropriate SV for PET chips.
- The Thai PET chip data are both flawed and aberrational. First, data have been placed on the record which establishes that 97 percent of imports in the proposed HTS category are not PET chips of the type used to make PET film, but are highly specialized PET chips not used in the production of PET film. Second, numerous data points within the Polyplex financial statements show that the proposed Thai SV is so excessive as to be aberrational and, thus, unusable.
- Excluding Indonesian imports from Singapore would contradict the Department's precedent of using a full dataset,[34] invite distortive data selection, and produce an SV that is aberrational when compared to all other data points on the record.

Department's Position: The Department disagrees with Petitioners' position that, Thailand, rather than Indonesia, is the appropriate surrogate country. Petitioners' argument hinges on the quality of GTA import data for Thailand compared with that for Indonesia. Because the PET chip input is the principal input for PET film production, the Department has determined that data quality issues for this input should be the primary driver in our selection of a surrogate

[33] DuPont Group, Green Packing and Wanhua et al. (collectively "Respondents").
[34] See Tapered Roller Bearings and Parts Thereof Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) ("TRBs/PRC (January 2009)"), and accompanying Issues and Decision Memorandum at Comment 7.

country. We continue to find that the GTA Indonesian import data under HTS subheading 3907.60.90 are official,[35] publicly available, broad market averages, contemporaneous with the POR, tax-exclusive and representative of significant quantities of imports, thus, satisfying critical elements of the Department's criteria for selecting SVs.[36] Moreover, the Department has determined that Indonesian GTA import data are better than Thai GTA import data for valuing PET chips because the Indonesian import value is supported by both the average PET chip value derived from the GTA import data of the remaining potential surrogate countries and the Thai domestic market prices on the record.[37] Given that they are objecting to the SV used in the Preliminary Results, Petitioners bear the burden to prove the inadequacy of the SV, or alternatively, to show that the use of another SV is more appropriate.[38] We find Petitioners' arguments for selecting Thailand as the surrogate country based on the PET chip SV unpersuasive for the following reasons.

First, we do not find the data Petitioners used to question Indonesian GTA import data for PET chips convincing. The Department has no knowledge of the reliability of the Indonesian import data from an independent trade consultancy that were placed on the record by Petitioners.[39] Further, it is unclear whether the data are broadly available public data derived from an official source.[40] Therefore, we have not relied on these data to evaluate the Indonesian GTA import

[35] The source of the GTA import data from Indonesia is Statistics Indonesia, a government institute of Indonesia that is responsible for official Indonesian import statistics.

[36] See Clearon Corporation and Occidental Chemical Corp. v. United States, Slip Op. 13-22 (CIT 2013) ("Clearon") at 12; see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 159 (January 2, 2008), Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2007), Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009), and accompanying Issues and Decisions Memorandum at Comment 2.

[37] See Memorandum from Thomas Martin, International Trade Compliance Analyst, AD/CVD Operations, and Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, through Robert Bolling, Program Manager, AD/CVD Operations, to The File "Third Antidumping Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Surrogate Country Selection," dated December 3, 2012 at 23.

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

[39] See Petitioners SV Comments, at Exhibit 6. The Department notes that the submission lacks supporting documentation showing where and how the information was obtained, and what, if any, adjustments were made to the figures.

[40] See, e.g., Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Final Rescission, in Part,77 FR 14495 (March 12, 2012), and accompanying Issues and Decision Memorandum at Comment 4; Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part, 76 FR 5673 (September 14, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

data which, as already noted, are from an official source.[41] Furthermore, the Singapore export data placed on the record by Petitioners (i.e., GTA, Statlink, and UN Comtrade) are inappropriate for benchmarking purposes because the Department finds country-specific export data[42] are not suitable benchmarks to test the validity of selected SV data. Given different reporting and inspection requirements and timing considerations, it would be unrealistic to expect export statistics to correspond with import statistics for any given shipment of merchandise. The Department does not expect one country's export quantities to be a one-to-one ratio to another country's import data.[43] As such, we find that the Singaporean export data are not reliable for purposes of evaluating the legitimacy of the corresponding import volumes into Indonesia.[44]

Second, the Department's use of benchmarks to evaluate potential PET chip SVs is not at odds with the CIT's finding in Dorbest because Dorbest dealt with wage rates, not material input SVs and the benchmarking of these SVs. In Dorbest, the CIT took issue with the Department's use of countries with GNIs lower than the PRC as bookends for its wage rate calculation given the close relationship between GNI and labor rates.[45] Here, the Department has not established bookends within which it can select SVs but rather examined the accuracy and reliability of an HTS classification by comparing it to import statistics from other countries on the list of potential surrogate countries because these are the countries the Department considers as more economically comparable and suitable for use in selecting SVs.[46]

Third, use of the Singapore import data to support the use of Thai import data for PET chips is not appropriate because import values from countries at levels of economic development different from that of the PRC are not suitable benchmarks to test the validity of selected SVs.[47] Singapore has not been identified as an economy comparable to the PRC,[48] and no party has

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[41] See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007), and accompanying Issues and Decision Memorandum at Comment 2b (where the Department notes we typically find that official government publications to be reliable and credible sources of information).

[42] See First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009), and accompanying Issues and Decision Memorandum at Comment 3f ("The Department does not expect one country's export quantities to be a one to one ratio to another country's import data.")

[43] Id.

[44] See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) ("Thermal Paper/PRC (2008)"), and accompanying Issues and Decision Memorandum at Comment 9 ("We do not normally consider export statistics from the relevant exporting country reliable for purposes of evaluating the legitimacy of the corresponding import values into the importing country").

[45] See Dorbest, 755 F. Supp. 2d at 1291, 1298.

[46] See Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 4386 (January 22, 2013), and accompanying Issues and Decision Memorandum at Comment 7; see also Thermal Paper/PRC (2008), and accompanying Issues and Decision Memorandum at Comment 9.

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

[48] See Memorandum from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Carole Showers Director, Office of Policy, "3rd Antidumping Administrative Review of Polyethylene Terephthalate Film, Sheet, and

placed any evidence on the record that would suggest that Singapore is an economy comparable to the PRC.

Fourth, although the Department stated that there was insufficient evidence to support the conclusion that the Thai GTA value for PET chips was aberrational, this does not mean that the Department cannot, at the same time, conclude that the Thai data are not the best available information for valuing PET chips. The Department has wide discretion in determining what constitutes the best available information in the context of SVs.[49] Therefore, we have determined that the weight of the evidence demonstrates that the best available information to value PET chips is Indonesian import data. This supports selecting Indonesia as the surrogate country, rather than Thailand, given that it has a better quality of data for the primary input, PET chips.

Lastly, for the reasons explained above, we have not found that the Indonesian import data and Singapore export data that were submitted by Petitioners demonstrate that the Indonesian GTA import data must be adjusted before it can be used to value PET chips. Furthermore, excluding Indonesian imports from Singapore from our valuation of PET chips would contradict the Department's clear and well-established practice of using the full GTA dataset,[50] and would invite endless and distortive cherry picking of data. The Department has "found WTA import data to represent the best information available for valuation purposes because when taken as a whole -- after excluding non-market, unspecified, and subsidized data points -- they represent an average of multiple price points within a specific period and are tax-exclusive."[51]

B. Whether the Quality of Indonesian Labor Data is Better Than the Quality of Thai Labor Data

Petitioners' Argument

- According to Labor Methodologies, Indonesian International Labor Organization ("ILO") Chapter 5B labor data is not superior to Thai ILO Chapter 6A labor.[52]

Respondents' Rebuttal

- Selection of the surrogate country was not based on the availability of ILO Chapter 6A data, but was based on evaluating PET chip values. Indonesian data for PET chips are substantially more reliable than the Thai data for PET chips.
- Indonesia is an acceptable surrogate country based on its labor data because the Department has not found ILO Chapter 5B wage data unusable. Thai ILO Chapter 6A labor data appears invalid on its face because the data are not current and are inconsistent with earlier years of data.

Department's Position:

Strip from the People's Republic of China: Request for Surrogate Countries List," dated April 5, 2012.

[49] See Zhejiang Dunan Hetian Metal Co. v. United States, 652 F.3d 1333, 1341 (2011) (citing Taian Ziyang Food Co. v. United States, 637 F. Supp. 2d 1093, 1125 (CIT 2009) (citing Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343, 1351 (CIT 2001))).

[50] See TRBs/PRC (January 2009), and accompanying Issues and Decision Memorandum at Comment 7.

[51] Id.

[52] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

While our general preference in non-market economy ("NME") cases is to value labor using ILO Chapter 6A, in this case, we agree with respondents. As noted above, PET chips are the principal input in PET film and our evaluation of PET chip SVs has driven our selection of a surrogate country. Petitioners have not explained why the availability of ILO Chapter 6A labor data for Thailand, but not Indonesia, is more important than the availability of better quality PET chip SVs in Indonesia. Although ILO Chapter 6A is typically the Department's primary source of labor data, as explained below, ILO Chapter 5B labor data satisfy a number of the criteria used in selecting labor data and have been used by the Department in other proceedings. Thus, we do not find that the lack of ILO Chapter 6A data from Indonesia outweighs the better quality data for valuing PET chips when selecting a surrogate country.

In Labor Methodologies, the Department stated that when calculating the labor rate, it has a preference for using industry specific wages from the primary surrogate country. Furthermore, 19 CFR 351.408(c)(2), states that the Department will normally value all factors in a single surrogate country. The ILO Chapter 5 data for Indonesia are industry-specific national data. Additionally, given that the quality of SV data for PET chips has led us to conclude that Indonesia is the appropriate surrogate country, selecting labor data from Indonesia is consistent with the Department's preference for valuing all FOPs in a single country. In Clearon, the CIT found this preference reasonable because deriving surrogate data from one surrogate country limits the amount of distortion introduced into calculations because a domestic producer would be more likely to purchase a product available in the domestic market.[53]

Moreover, the Department has never found ILO Chapter 5B labor data to be unusable, and, indeed, the Department has used ILO Chapter 5B labor data in other AD administrative reviews.[54] Further, the record does not contain any evidence suggesting that the ILO Chapter 5B labor data are unreliable, aberrational or distortive. Accordingly, given the better quality PET chip data and usable ILO Chapter 5B labor data in Indonesia, we continue to find that Indonesia is the appropriate surrogate country.

C. Whether the Quality of Indonesian Financial Statements are Better Than the Quality of Thai Financial Statements

Petitioners' Argument

- With respect to available financial statements ("FS"), Thailand is superior to Indonesia. The Department's use of the Indonesian company PT Argha Karya Prima Industry Tbk's ("Argha Karya") FS to calculate surrogate financial ratios prevented it from separately valuing electricity, steam and water, in accordance with section 773(c) of the Act. In contrast, the use of the Thai FS to calculate surrogate financial ratios would enable the

[53] See Clearon, at 13.

[54] See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350 (March 21, 2013), and accompanying Issues and Decision Memorandum at Comment III; see also Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012), and accompanying Issues and Decision Memorandum at Comment 6.

Department to separately value electricity, water and steam. Therefore, the Department should select Thailand as the surrogate country for the final results.

- Both cases cited by the Department as support for not including energy and water costs in normal value ("NV") involved FS which did not separately identify energy costs and which were the only viable statements for calculating surrogate financial ratios, this is not the case in this review.
- Should the Department continue to use the Argha Karya FS to calculate surrogate financial ratios, it should separately value electricity, steam and water costs even if such costs may have been included in the financial ratios.[55]

Respondents' Rebuttal

- Petitioners acknowledged that the Department has a precedent of using FS that do not separately identify electricity and water costs if other data considerations are more significant to the Department's NV calculations. To avoid double counting, the Department properly did not separately value energy and water as FOPs.[56]
- The Thai FS for Polyplex (Thailand) Public Co., Ltd. ("Polyplex") are inferior to the Indonesian FS because they lack details regarding selling expenses (e.g., internal freight) compared to the Indonesian statements.

Department's Position: In the Preliminary Results, the Department found that there was insufficient information in the Argha Karya FS to segregate energy and water costs from production expenses. Accordingly, we disregarded the Respondents' electricity, steam and water in the calculation of NV, in order to avoid double-counting energy and water costs that have been captured in the surrogate financial ratios. However, Petitioners' claim that both cases[57] cited by the Department as support for not including energy and water in the calculation of NV were instances where the Department would have been left with no alternative FS. We agree with Petitioners that in these cases the Department used FS that did not include a separate break-out of energy costs because they were the only FS available.[58] The Department, however, cited to these cases in the Preliminary Results to demonstrate that it avoids double-counting when such FS are used. Contrary to Petitioners' argument, these cases do not support the Department choosing an alternate surrogate country merely because FS from one country do not include a separate break out of energy costs.

Further, in the Preliminary Results, the Department recognized the importance of the PET chip SV as the primary material input for PET film, sheet, and strip, and, therefore, used the PET chip SV to direct the surrogate country selection. Petitioners have not stated any argument or placed

[55] See Freshwater Crawfish Tail from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Administrative Review, 66 FR 20634 (April 24, 2001), and accompanying Issues and Decision Memorandum at Comment 7.
[56] See Steel Wheels/PRC (March 2012), and accompanying Issues and Decision Memorandum at Comment 3.
[57] See Citric Acid/PRC (April 2009), and accompanying Issues and Decision Memorandum at Comment 2; see also Steel Wheels/PRC (March 2012).
[58] In particular, in Citric Acid/PRC (April 2009), the Department selected an FS that did not have an energy breakout because "there are no other usable FS from market economy countries with which the Department could calculate financial ratios." In Steel Wheels/PRC (March 2012), the company whose FS lacked an energy breakout was the only producer of identical or comparable merchandise from the primary surrogate country whose FS were on the record.

any evidence on the record that would suggest that the Department's decision to use the PET chip SV as its primary guidance is flawed, nor have Petitioners stated why the ability of the Department to separately value electricity, steam and water is of more importance than the PET chip SV as the focal point for the selection of a surrogate country. The availability of FS from Thailand, which Petitioners claim break out energy costs for manufacturing,[59] does not outweigh the Department's determination regarding the importance and ultimate decision of the PET chip SV as being the most reasonable and appropriate basis for surrogate country selection.

Even though, in using the Indonesian FS, the Department disregarded the Respondents' electricity, steam and water inputs to avoid double-counting energy and water costs that were captured in the surrogate financial ratios, this does not mean the Department did not fulfill its obligation under section 773(c) of the Act. Section 773(c)(3) of the Act states that the FOPs utilized in producing merchandise include, but are not limited to (A) hours of labor required, (B) quantities of raw materials employed, (C) amounts of energy and other utilities consumed, and (D) representative capital cost, including depreciation. Although the Act requires the Department to value the amounts of energy and other utilities consumed, the Act does not explicitly require the Department to value these factors separately. The FS for the Indonesian company Argha Karya specifically identify "rent, electricity and water" costs as part of selling, general and administrative ("SG&A") expenses, while electricity and water expenses are not specifically itemized in production expenses (i.e., overhead).[60] Thus, the Department fulfilled its statutory obligation because electricity and water costs have been captured as part of the surrogate overhead ratio. Moreover, the record does not contain any evidence or argument which suggests that the inability to separately value energy and water using Indonesian FS distorted NV.

Finally, we do not find that Crawfish/PRC (April 2001) requires the Department to separately value electricity, steam and water costs of production rather than capturing these costs in the financial ratios.[61] In Crawfish/PRC (April 2001), the Department stated that "for those situations in which it does not know whether the cost of water is included in the SV for factory overhead the Department must determine on a case-by-case basis whether it will value water separately in accordance with section 773(c)(1)."[62] In Crawfish/PRC (April 2001), the Department specifically addressed whether water should be treated as a material input, not whether it should separately value electricity and steam as a direct cost of production. Therefore, Crawfish/PRC (April 2001), does not support Petitioners claim that the Department should separately value electricity and steam FOPs rather than capturing these costs in the financial ratios. As stated above with regard to water, in the instant review the Department knows that the cost of water is included in the surrogate financial ratios. Moreover, in Crawfish/PRC (April 2001), the Department determined that water was a material input, and, therefore, decided to value it as

[59] Although Petitioners claim that the Polyplex FS breaks out manufacturing energy costs, it is not apparent to the Department how Polyplex has segregated such costs.
[60] See Preliminary Decision Memo, at 21.
[61] Id. at 17-18, see also Freshwater Crawfish Tail from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) ("Crawfish/PRC (April 2001)"), and accompanying Issues and Decision Memorandum at Comment 7.
[62] Id. (citing Sebasic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 49537 (August 14, 2000), and accompanying Issues and Decision Memorandum at Issue 3).

such.[63] The record here does not contain any evidence that water is a material input in the manufacturing of PET film, sheet, and strip.

Summary

Based on the above analysis, for the final results, we have continued to use Indonesia as the surrogate country[64] and will, therefore, continue to value FOPs based on Indonesian SVs, including using GTA Indonesian import data for HTS 3907.60.90 to value PET chips, ILO Chapter 5B labor data to value labor, and Argha Karya's FS to calculate[65] surrogate financial ratios.

Issue 3: Calculation of the Surrogate Financial Ratios

DuPont Group

- The Department should correct a ministerial error in the calculation of the surrogate financial ratios by adding manufacturing overhead to, and removing SG&A and interest expenses from, the cost of manufacturing.

No interested parties rebutted the DuPont Group with respect to this comment.

Department's Position: We agree with the DuPont Group. For the final results, the Department has corrected this error.[66]

Issue 4: Calculation of a Separate Rate

Wanhua et al.'s Argument

[63] See Crawfish/PRC (April 2001), and accompanying Issues and Decision Memorandum at Comment 7.

[64] The Department notes that Petitioners also argued that, should the Department choose Thailand as the surrogate country, it should not make any adjustments to the Thai GTA PET chip import data as both the DuPont Group and Wanhua et al. suggest. The DuPont Group and Wanhua et al. claim that 97 percent of all Thai imports during the POR consist of specialty grade PET resin not used in the manufacturing of PET film. However, given that the Department continues to use Indonesia as the surrogate country, the Department need not address this issue. Further, because the Department has continued to use Indonesia as the surrogate country, the argument of Wanhua et al. that India should be selected if Thailand or Indonesia cannot be used, is moot.

[65] The Department notes that the DuPont Group claims that the Polyplex FS are inferior to the Argha Karya FS because the Polyplex FS lack specificity behind the selling expenses. The DuPont group and Wanhua et al. also claim that the Polyplex FS contain evidence of receipt of countervailable subsidies. However, given that the Department continues to use the Argha Karya FS to calculate surrogate financial ratios, the Department need not address these issues.

[66] See Memorandum to the File from Jonathan Hill to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, "Analysis for the Final Results of the Third Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: DuPont Teijin Films China Limited, DuPont Hongji Films Foshan Co., Ltd., and DuPont Teijin Hongji Films Ningbo Co., Ltd." dated concurrently with this notice ("DuPont Final Analysis Memo") at Attachment 1; see also Memorandum to The File from Thomas Martin, Case Analyst, AD/CVD Operation Office 4, through Robert Bolling, Program Manager, AD/CVD Operations Office 4 "Analysis for the Final Results of the Third Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China: Shaoxing Xiangyu Green Packing Co., Ltd.," dated concurrently with this notice, at Attachment 1.

- DuPont Teijin Films U.S. Limited Partnership ("DuPont U.S."), one of the Petitioners, is affiliated with DuPont Teijin Films China Limited, and, therefore, Petitioners had direct control over the U.S. price. Thus, the margin calculated for DuPont Group cannot be included in the calculation of the separate rate, as doing so would allow petitioners to manipulate dumping margins through the setting of affiliated producers' import prices. Should the Department continue to use the DuPont Group's margin to calculate a separate rate, it must use a reasonable method and provide an opportunity for all interested parties to comment prior to the final results.

Petitioners' Rebuttal

- There is no factual information to support the allegation that DuPont U.S. is manipulating U.S. prices.
- DuPont U.S. is no longer a Petitioner and is no longer represented by the same counsel as Petitioners.
- DuPont U.S., as an importer of the DuPont Group's merchandise, logically would want the lowest dumping margins possible. For DuPont Teijin's U.S. affiliate to manipulate its U.S. price to the detriment of Wanhua would also be detrimental to itself.

Department's Position: The Department disagrees with the premise of Wanhua et al.'s assertion that due to the affiliation between DuPont Teijin and DuPont U.S. and the possible manipulation of the U.S. sales price, it cannot use the margin calculated for the DuPont Group in its calculation of a separate rate. As the Department explained in the Preliminary Results, we have a practice which we followed in this review of relying on section 735(c)(5) of the Act (which provides instructions for calculating the all-others rate in investigations) as guidance for calculating the rate for respondents which we did not examine in an administrative review.[67] The CIT has affirmed this practice.[68] Neither this statutory provision, nor the Department's practice provides for the Department to consider affiliation between domestic producers and foreign exporters in calculating a rate for unexamined respondents. Thus, there is no legal support for Wanhua et al.'s argument. Furthermore, there is no factual information on the record to support the allegation of actual or potential U.S. price manipulation by DuPont U.S., and the Department does not find affiliation alone to be evidence of such action.[69]

Furthermore, as stated in the Respondent Selection Memo, "…if the Department were to recognize the claimed affiliation, the Department finds Wanhua's claim of possible manipulation

[67] See Preliminary Decision Memo, at 6; see, e.g., Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Antidumping Administrative Review; 2010-2011, 78 FR 10130, 10131 (February 13, 2013); Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Administrative Review, 76 FR 70957 (November 16, 2011), and accompanying Issues and Decision Memorandum at Comment 4; Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Administrative Review, 76 FR 67134 (October 31, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

[68] See, e.g., Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368, 1379 (CIT 2009) ("To determine the dumping margin for non-mandatory respondents in NME cases (that is, to determine the 'separate rates' margin), Commerce normally relies on the 'all others rate' provision of 19 U.S.C. 1673d(c)(5)").

[69] See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) ("Fish Fillets/Vietnam 2007"), and accompanying Issues and Decision Memorandum at Comment 1.

to be speculative in nature." The Department notes that any information submitted by a respondent and put on the record is certified and subject to verification or corroboration (as appropriate) by the Department, and U.S. law imposes criminal sanctions on individuals knowingly and willfully make material false statements to the U.S. Government.[70] Although the Department has subsequently found affiliation between the DuPont Group and DuPont U.S.,[71] the Department's determination on this matter has not changed. The fact remains that Wanhua et al.'s assertion is speculative in nature. As noted by Petitioners, there is no factual information on the record to support the allegation of U.S. price manipulation by DuPont U.S., and the Department does not find affiliation alone to be evidence of price manipulation under these circumstances.[72] Therefore, for the final results, the Department has determined that there is no basis to refrain from using the margin calculated for DuPont Teijin Films China Limited in its calculation of a separate rate.

II. Company-Specific Issues

The DuPont Group

Issue 5: Treatment of the DuPont Group's Reintroduced PET Chip

Terphane

- The Department made a ministerial error when it omitted from the calculation of NV a DuPont Group input in the Preliminary Results. Reintroduced PET chip should be valued and included as a direct material for the DuPont Group. While the Department correctly declined to grant a by-product offset, the Department must account for all of the FOPs used in producing the subject merchandise.
- Should the Department include the reintroduced PET chip as a direct material, it should not offset its value to zero because: 1) this would fail to take into account cost differences between products with different physical characteristics; 2) this would cause the omission of overhead costs associated with collecting and reintroducing scrap in the production process; and 3) DuPont Group's own books and records show that the quantity of recycled PET chip allocated to each specific product type does not fully capture the total PET waste generated. This was the reason that DuPont Group deviated from their own books and records in reporting these factors, and the reason the Department denied DuPont Group a by-product offset.

DuPont Group Rebuttal

- The Department's treatment of the DuPont Group's recycled PET chip is consistent with its precedent. The CIT has validated the Department's treatment of reintroduced PET chip.[73]
- Terphane failed to propose a method for valuing recycled PET chip.
- Terphane's proposed method would introduce substantial distortions into the calculation of NV. First, all PET film producers' raw material costs consist of the purchased or self-produced virgin chip. Thus, the overhead costs incurred by the surrogate producers that are

[70] See Respondent Selection Memo, at 6-7; see also 19 CFR 351.303(g)(1) and (2).
[71] See Preliminary Decision Memo, at 7.
[72] See, e.g., Fish Fillets/Vietnam 2007, and accompanying Issues and Decision Memorandum at Comment 1.
[73] See E.I. DuPont de Nemours & Co. v. United States, 4 F. Supp. 2d 1248, 1253 (CIT 1998) ("E.I. DuPont v. U.S.").

used for the calculation of the surrogate overhead ratios will have only the cost of virgin chip in the denominator. Second, the CIT recognized that more than 90 percent of the virgin chip input is transformed into finished PET film. The addition of recycled chip input without subtracting recycled chip output would raise the average total polymer consumption per unit of finished film. Terphane's methodology is inconsistent with Department precedent and CIT case law.

Department's Position: We agree with Terphane. We note that section 773(c) of the Act requires the Department to value all inputs utilized in producing the subject merchandise. Particularly, section 773(c)(3)(B) requires the Department to value the "quantities of raw materials employed." The calculation of NV in an NME proceeding is thus based upon the aggregation of quantities of raw materials consumed in the production of one unit of finished goods. In the instant review, the DuPont Group reported specific quantities of both new "virgin" PET chips, and recycled PET chips, required to manufacture one metric ton of subject merchandise. To exclude any of these quantities would omit a component of the NV calculation that is not captured by the quantity of other direct materials that are also required to manufacture one metric ton of subject merchandise.

The Department agrees that, theoretically, the DuPont Group's recycled PET chip by-product reintroduced into production should be offset with the quantities of recycled PET chip by-product produced during the POR. The facts on the record, however, do not support this offset. In its FOP database, the DuPont Group elected to use theoretical quantities for by-product generated from production (i.e., the weight of its direct material inputs minus the weight of subject merchandise produced) instead of the quantities recorded in its accounting record.[74] It did so claiming that the theoretical amounts were more accurate.[75] In response to the Department's supplemental questionnaires, the DuPont Group provided worksheets in support of the reported theoretical quantities of by-product, for products covering the majority of merchandise that the DuPont Group produced and sold in the United States.[76] However, the DuPont Group did not link the worksheets with its accounting records, as requested by the Department.[77] The Department requested that the DuPont Group's accounting records be submitted to support the figures in the worksheets.[78] In response, the DuPont Group provided a sample record which did not specifically support by-product production for even one CONNUM.[79] The applicable regulation, 19 CFR 351.401(b)(1), states that "(t)he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." Because the DuPont Group did not support the reported quantities of by-product generated and did not establish their commercial value as requested by the Department, the DuPont Group has failed to

[74] See The DuPont Group's Section D response, dated April 6, 2012, at D-18 and D-19.
[75] Id.
[76] See The DuPont Group's supplemental Section D response dated May 25, 2012 ("DuPont Group May 25, 2012 Supplemental D Response") at Exhibits SD-4 and SD-5.
[77] Id.
[78] See DuPont Group May 25, 2012 Supplemental D Response, at SD-7 ("Please provide the supporting records that DuPont Teijin used to calculate this calculation, for CONNUM [ ]. If this CONNUM was produced by both DuPont Hongji Films Foshan Co., Ltd. and DuPont Teijin Hongji Films Ningbo Co., Ltd., provide the supporting records from both companies.").
[79] See DuPont Group May 25, 2012, Supplemental D Response, at Exhibit SD-3.

substantiate its claim for a by-product offset. Thus, the Department will not grant the DuPont Group's reported by-product offset.

DuPont Group cites E.I. DuPont v. U.S, in which the CIT ruled that the Department properly accepted a Korean respondent's methodology assigning a zero value to recycled PET chips in the calculation of cost of production/constructed value, because adding the processing cost involved in recovering and recycling the scrap material into chips, and treating the recycled material as having a zero materials cost, reasonably captures the value of recycled PET chips re-introduced into the production process.[80] The Department finds that in the instant review, to either assign zero value to its recycled PET chip by-product reintroduced into production, or simply exclude it from the calculation, is methodologically inaccurate for two reasons.

First, in this instance, DuPont Group's FOP database supports a finding that each control number ("CONNUM") has different input requirements.[81] While one product may contain a large percentage quantity of recycled by-product on a per-unit basis, another product may have no by-product content at all. Further, there is no evidence on the record to support the proposition that the quantity of by-product reintroduced into production for any given CONNUM will have any bearing on the quantity of by-product generated from production of the CONNUM. Thus, DuPont's contention that the by-product generated from production will match, or even roughly correspond to, the by-product used as an input is not accurate. For this reason, it would be inaccurate for the Department to exclude the by-product input on the basis that it is ultimately balanced out by the by-product generated.

Second, the CIT in E.I. DuPont v. U.S. ruled that two methodologies for isolating the respondents' actual cost of production for recycled PET chip by-product were accurate: (1) the difference between the market values of virgin PET chips and recycled PET chips; and (2) applying the processing cost to turn scrap PET into recycled PET chips, rather than the value of either virgin PET chip or recycled PET chip itself.[82] It is this second methodology that the DuPont Group highlights in its arguments. Generally, the Department does seek to apply a similar methodology to that proposed by the CIT. However, DuPont Group's contention that assigning zero value to its recycled PET chip input achieves this result is not accurate. In its margin calculation, the Department applies its surrogate overhead ratio to the respondent's total cost of manufacturing (i.e., raw materials, labor and energy).[83] Unless the recycled by-product content is inserted into the DuPont Group's raw materials consumed, the total processing costs for the by-product would not be included in DuPont Group's overhead expenses, even if the labor and energy expenses associated with such processing are included in the labor and energy factors. Regarding the DuPont Group's argument that the overhead costs incurred by the Indonesian producer from which the Department obtained the overhead ratio will have only the cost of virgin PET chip in its cost of manufacturing, the Department does not find information in the Indonesian producer (i.e., Argha Karya) to support the DuPont Group's contention.[84] Thus,

[80] See E.I. DuPont v. U.S., 4 F. Supp. 2d at 1253.
[81] See DuPont Final Analysis Memo at Attachment 3.
[82] See E.I. DuPont v. U.S., 4 F. Supp. 2d at 1251-1252.
[83] See DuPont Final Analysis Memo at Attachment 3.
[84] Argha Karya reports in its cost of goods sold the cost of "raw materials used." See Submission of the DuPont Group dated May 21, 2012 (Surrogate Value Information) at Exhibit 9, 70. If the company uses recycled PET chip by-product in its production, the cost of this raw material should be accounted for in this figure. There is no

for the final results, the Department will value the recycled PET chips reported along with the DuPont Group's other direct materials, as required by the statute.

In E.I. DuPont v. U.S, the Court also ruled that recycled PET material is not entirely substitutable with virgin material, and that it was thus inappropriate to require respondents to base their materials costs of recycled PET material on the market value of equivalent volumes of virgin PET material.[85] The Department agrees that assigning a value to recycled PET chips that is equivalent to that assigned to new PET chips is not ideal. However, for SVs in an NME proceeding, the Department relies on import value data from the surrogate country. No interested parties have argued that the HTS subheading for new PET chips is not also the applicable subheading for recycled PET chips. Moreover, as there is no SV on the administrative record that applies specifically to recycled PET chips, the Department can only assign the same SV applied to DuPont Group's new PET chips to the recycled PET chips, as the best information available.[86]

Thus, for the final results, the Department has included the recycled PET chip by-product as a direct material input for the DuPont Group.[87] While the Department normally affords a by-product offset for such direct material, the Department has not done so in this case because the DuPont Group has not reported a by-product offset quantity that is supported by its accounting records.

Issue 6: Calculation of the DuPont Group's U.S. Indirect Selling Expenses Ratio

The DuPont Group

- The DuPont Group properly omitted certain selling, customer service, administration, and information technology costs from its allocated indirect selling expenses because they pertain to production activities or non-subject selling support activities that do not belong in the allocated indirect selling expenses.
- Because most of the DuPont Group's personnel costs are charged to manufacturing cost centers, those that provide some support for selling activities also support manufacturing activities.
- Subject PET film that the DuPont Group imports from China tend to be non-specialty products, and selling activity for non-specialty products is more limited than activities required for the specialty films manufactured in the United States and sold by the DuPont Group, which involve more interaction with customers. Thus, the DuPont Group's

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additional description in the surrogate FS on raw materials used with regard to recycled PET chips. Section 773(c)(1) of the Act directs the Department to base the valuation of FOPs on "the best available information," and the information in the Argha Karya FS remains the best information available for calculating the surrogate overhead ratio.

[85] See E.I. DuPont v. U.S., 4 F. Supp. 2d at 1252-1253.

[86] See 773(c)(1) of the Act; see also Olympia Indus., Inc. v. United States, 22 CIT 387, 390, 7 F. Supp. 2d 997, 1000-01 (CIT 1998) ("From the statute, it is clear that Commerce must identify and use the best information available when it values the factors of production. . . . {Therefore,} Commerce has an obligation to review all data and then determine what constitutes the best information available or, alternatively, to explain why a particular data set is not methodologically reliable.")

[87] See DuPont Final Analysis Memo, at 2.

methodology still overstates the amount of selling expense that has been allocated to the subject PET film.
- Because the DuPont Group has specifically identified selling activity cost centers and personnel that specifically pertain to subject merchandise, the Department should accept the DuPont Group's reporting methodology as reasonable.

Petitioners
- The DuPont Group's proposed methodology excludes costs that it claims are not related to subject merchandise, using four different allocation methodologies that are inconsistent with the Department's practice and unsupported by facts.
- To consider the DuPont Group's proposed methodology to be more accurate than the Department's methodology in the Preliminary Results requires the following unsubstantiated assumptions: (1) that contract costs and miscellaneous costs under selling expenses, and rental income and miscellaneous costs under customer service, do not pertain to subject merchandise; (2) that all sales personnel do not sell all products, and the DuPont Group's average salary calculation does not include the salaries of direct sales personnel; (3) that travel and entertainment expenses did not involve subject merchandise; and (4) that information technology employee and contract expenses are more accurately allocated on the basis of subject and non-subject merchandise rather than on a company-wide basis.
- The Department should continue to allocate total indirect selling expenses over total sales, pursuant to its practice.

Department's Position: We agree with the DuPont Group in part, but continue to find its proposed indirect selling expenses allocation to be distortive. We agree with the DuPont Group that 19 CFR 351.401(g)(2) requires a respondent to calculate its allocated expenses "on as specific a basis as is feasible." The DuPont Group was able to identify certain indirect selling expenses and segregate them according to business divisions as arising from either subject or non-subject merchandise.[88] The DuPont Group's proposed allocation methodology excluded expenses for non-subject merchandise from the numerator of the indirect selling expense calculation, while sales revenue from non-subject merchandise was also excluded from the denominator. Regarding the numerator, the DuPont Group identified specific selling expenses incurred during the POR that it could show were only pertinent to sales of non-subject merchandise, but it did not specifically identify all selling expenses in a similar manner, including those pertinent to subject merchandise.[89] Thus, because the DuPont Group was not able to completely segregate its indirect selling expenses incurred on selling subject merchandise, from expenses incurred selling non-subject merchandise, the Department finds that the DuPont Group's allocation is potentially distortive, because there is insufficient information on the record regarding the selling expenses that remain in the numerator after the DuPont Group's exclusions. As such, the DuPont Group's reported U.S. indirect selling expense calculation does not reliably result in a reasonable allocation of selling expenses over the relative sales value to which the expenses correspond.

[88] See The DuPont Group's supplemental section C questionnaire response, dated May 25, 2012, at SC-8 and Exhibit SC-25; see also The DuPont Group's supplemental section C questionnaire response, dated July 9, 2012, at Exhibits SC-4 and SC-31.
[89] See The DuPont Group's supplemental section C questionnaire response, dated August 20, 2012, at SC-1 and Exhibit SC-32.

We note the Act does not outline a particular methodology for calculating indirect selling expenses.[90] Likewise, the Statement of Administrative Action ("SAA") explains that the Department is not required to use a specific calculation methodology, merely stating that indirect selling expenses "would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales."[91] The Department has explained that its standard methodology is to calculate indirect selling expenses based on expenses incurred and sales revenue recognized (or cost of goods sold) during the same period of time.[92] Meanwhile, respondents must also properly identify indirect selling expenses because the classification of individual expenses substantially affects the outcome of the Department's comparisons of export price ("EP") and constructed export price ("CEP") to NV.[93]

As we have noted, the DuPont Group was able to identify certain indirect selling expenses arising from either subject merchandise or non-subject merchandise, in order to exclude expenses incurred for non-subject merchandise. However, the DuPont Group cannot point to any factual information on the record to indicate whether the remaining pool of indirect selling expenses might apply to only subject merchandise, to only non-subject merchandise, or to both subject and non-subject merchandise proportionately. The DuPont Group can only assert in its case brief that its methodology is conservative because selling activity for sales of subject merchandise is more limited than that required for the specialty films manufactured in the United States and sold by the DuPont Group. While there is evidence on the record regarding the DuPont Group's further manufacturing of subject merchandise, and the corresponding value added, the DuPont Group's assertion that indirect selling expenses should pertain mainly to sales of such merchandise is both vague and unsupported by factual information. Thus, the DuPont Group's initial exclusion of indirect selling expenses for certain non-subject merchandise leaves open the possibility that using the remaining expenses as the starting point for the allocation numerator is grossly distortive. On this basis, the Department finds that an allocation of the indirect selling expenses without the exclusions identified by the DuPont Group which employs the U.S. sales value ratio[94] of subject merchandise to total merchandise sales value is the most accurate allocation methodology feasible for the DuPont Group.[95] Therefore, for the final

[90] See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314 (CAFC 2001); see also Heveafil SDH. BHD. v. United States, 25 CIT 147, 159 (CIT 2001) ("The statute does not define indirect selling expenses.").
[91] See SAA accompanying the Uruguay Round Agreements Act, H.R. Doc. 103- 316, Vol. 1 (1994), at 824.
[92] 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) ("Frontseating Valves/PRC (November 2011)"), and accompanying Issues and Decisions Memorandum at Comment 15; Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753 (February 22, 2011), and accompanying Issues and Decisions Memorandum at Comment 9.
[93] See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (February 9, 2009) and accompanying Issues and Decision Memorandum at Comment 3.
[94] The Department notes that the DuPont Group employs two different methods for calculating the U.S. sales value ratio: (1) the subject merchandise sales value divided by total sales value, which it applies to the allocation of customer service, administration and IT expenses; and (2) the subject merchandise sales revenue of its sales personnel divided by the total territory revenue of these personnel, which it applies to its other selling expenses, including sales personnel salary. The Department has accepted both of these methods, as there is no logical reason to consider either method to be distortive bases for isolating subject merchandise selling expenses.
[95] See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 75 FR 70901 (November 19, 2010), and accompanying Issues and

results, the Department has not changed its methodology in the Preliminary Results, which does not include the DuPont Group's initial exclusion of its specifically-identified non-subject merchandise indirect selling expenses.

Issue 7: Calculation of the DuPont Group's Foreign Brokerage and Handling Expenses

The DuPont Group

- The Department should use the most current brokerage and handling ("B&H") SV for Indonesia published by the World Bank Doing Business study group, which is more contemporaneous with the POR.
- The Department should then adjust the B&H SV for Indonesia so that it is calculated on a per-shipment basis rather than a per-container basis since the DuPont Group ships multiple containers at a time. It should also do so to account for the fact that the DuPont Group generates its commercial invoices and packing lists internally, and does not incur letter of credit preparation costs.

Petitioners

- The B&H SV used by the Department is publically available, of good quality, specific to the surrogate country, and is contemporaneous to the POR.
- There is no evidence in the World Bank Doing Business study that the B&H SV was not already allocated from a per-shipment to a per-container basis. The World Bank Doing Business study does not state how much of the document preparation fee is related to the activities DuPont suggests are done in-house, and states conclusively that the costs relate to a container rather than a shipment. The cases cited by the DuPont Group stating a different practice do not involve the Indonesian SV at issue.

Department's Position: For the final results, we find that the World Bank/International Finance Corporation ("IFC")'s publication "Doing Business 2011: Economy Profile Indonesia," ("Doing Business 2011 Indonesia") offers the best available information for valuing B&H in this administrative review because the data are based on broad market averages, are publicly available, are tax and duty exclusive, and are contemporaneous. The Department has consistently relied on this source to value B&H.[96]

Regarding the use of the B&H SV placed on the administrative record by the DuPont Group, the Department disagrees with the DuPont Group that that SV is more contemporaneous than the SV applied by the Department in the Preliminary Results. The Department has reviewed the information, which is a summary of "Doing Business 2013: Economy Profile Indonesia." The

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Decision Memorandum at Comment 5 (where the Department accepted the respondent's methodology segregating the indirect selling expenses incurred and sales revenue recognized on selling subject merchandise, from non-subject merchandise expenses and revenue).

[96] See Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012), and accompanying Issues and Decision Memorandum at Comment 3; see also Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 77 FR 55800 (September 11, 2012), and accompanying Issues and Decision Memorandum at 2.D, Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the New Shipper Review, 77 FR 27435 (May 10, 2012), and accompanying Issues and Decision Memorandum at Comment II.G.

SV for B&H contained in this summary is not specifically dated. However, because the information is dated for publication in 2013, the Department can reasonably conclude that the data it contains post-date the POR. In the Preliminary Results, the Department used information from Doing Business 2011 Indonesia, which is based upon 2010 data that is contemporaneous with the beginning of the POR. The fact that the data contained in Doing Business 2011 Indonesia are dated 2010 supports the Department's conclusion that the data contained in Doing Business 2013 for Indonesia post-date the POR (i.e., the data are from 2012).

Regarding the DuPont Group's proposed adjustments to the B&H SV, the Department finds that there is not enough information contained in the supporting documentation either to determine the correct adjustment with any accuracy, or to ascertain whether such an adjustment would make the SV more accurate. We have evaluated the DuPont Group's requests that the Department adjust the Doing Business 2011 Indonesia calculation by reducing the document preparation expenses by half based upon the assumption that such expenses would be reduced by half if the company prepares its own commercial invoice and packing list. The document preparation data in this source was based on the results of a survey of Indonesian "freight forwarders, shipping lines, customs brokers, port officials, and banks."[97] Examination of the survey methodology shows that commercial invoice and packing list costs are one potential cost among many that could be reported by the responding companies, e.g., customs clearance documents costs, port and terminal handling documents costs, and transport documents costs.[98] We also found that the "Trading Across Borders" survey information is an aggregate of data points that are not broken down below the survey summary description, i.e., "documents preparation."[99] Because we are unable to go behind the "Trading Across Borders" summary data to determine how many companies reported commercial invoice and packing list costs, how high in relation to other costs these costs were, or the total amount of commercial invoice and packing list costs, we cannot determine the appropriateness of excluding commercial invoice and packing list costs from the B&H calculation.

The Department normally makes adjustments to data when we can determine whether an item's amount is clearly identified. For example, in the B&H calculation used in this administrative review, we removed from the calculation an "inland transportation and handling" cost because it was clearly identified and we have already accounted for this expense elsewhere.[100] The commercial invoice and packing list costs are not clearly identified in the source data in the same manner.[101] We cannot go behind the data, and draw any definitive conclusion as to how much of the "documents preparation" cost consists of commercial invoice and packing list costs, or whether it is at all similar to the costs included in the surrogate financial ratios. Therefore, we have determined not to adjust the SV for B&H for a commercial invoice and packing list cost.

[97] See Memorandum from Jonathan Hill, International Trade Compliance Analyst, through Robert Bolling, Program Manager "Third Antidumping Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Surrogate Values for the Preliminary Results," dated December 3, 2012, at Exhibit 7, "Trading Across Borders Methodology."

[98] Id.

[99] Id.

[100] Id. (where inland transportation and handling expense reported in the "Trading Across Borders" survey information is not included in the B&H SV calculation).

[101] Id.

Similarly, regarding the DuPont Group's unsupported assumption that the World Bank Doing Business study group has mixed per-shipment expenses with per-container expenses into one total expense calculation, Petitioners may also be correct that the World Bank Doing Business study group calculated the B&H cost elements and converted them to standardized 20-foot container equivalent units. Regardless, because the Doing Business 2011 Indonesia B&H calculation is based upon aggregated costs specific to a 20-foot container obtained via a survey of companies,[102] making adjustments to specific cost elements within the aggregate figure would distort the underlying data, because we are unable to go behind the survey data to determine how many companies reported specific cost elements, how high in relation to other costs these costs were, or the total amount of specific cost elements.[103] Therefore, we cannot determine the appropriateness of excluding specific cost elements from the B&H calculation as argued by the DuPont Group.

Finally, regarding the DuPont Group's request for the Department to use its actual B&H expenses to adjust the World Bank Doing Business study group's calculation, the Department determined in the Preliminary Results that these expenses would distort the U.S. net price.[104] The DuPont Group has not made any specific argument challenging the basis of the Department's preliminary decision to not use the DuPont Group's actual B&H expenses.

Because the World Bank Doing Business study group calculation is based on survey data that encompasses the experience of many exporters, the Department does not consider that the DuPont Group's proposed adjustments necessarily would make the calculation more accurate. The World Bank Doing Business study group calculation is meant to be an approximation of the actual expenses of a surrogate shipper in Indonesia, and manipulating the result using the actual experience of one shipper, the DuPont Group, would not make the SV more accurate. Thus, the Department will make no change from the Preliminary Results with respect to the B&H SV.

Issue 8: Calculation of the DuPont Group's Margin Using the Average-to-Transaction Method

The DuPont Group

- The use of the average-to-transaction ("A-T") method to calculate the weighted-average dumping margin is legally impermissible because Congress limited the discretion conferred on the Department to consider patterns of targeted dumping to investigations. For the Department to extend this practice to administrative reviews by rule contravenes the statute.
- For the Department to calculate the DuPont Group's margin using the A-T method for all U.S. sales even though it has identified the targeted U.S. sales is inconsistent with the U.S.'s World Trade Organization obligations, including Article 2.4.2 of the AD Agreement.

[102] Id. ("Local freight forwarders, shipping lines, customs brokers, port officials and banks provide information on required documents and cost as well as the time to complete each procedure.")
[103] See, e.g., Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 5.
[104] See Memorandum from Jonathan Hill to the File, "Analysis Memorandum for the Preliminary Results of the Third Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip from 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 at 7 ("Freight, even if provided by a ME trading company, is subject to the distortions inherent in an economy not controlled by market forces.").

Applying the methodology to all U.S. sales (rather than the targeted sales only) distorts and inflates the margin.

Petitioners

- Congress has expressly limited the Department's discretion regarding the use of the A-T method in investigations, but the Department's discretion to select a comparison method is greater in administrative reviews, which is confirmed by the SAA.[105] The Department has correctly concluded in other cases that the statute does not restrict the choice of NV-EP comparison methods to be used in administrative reviews, and that the statute is silent regarding the use of an alternative comparison method in an administrative review.[106]
- The Department's approach of first choosing the appropriate comparison methodology and then applying it uniformly for all comparisons of NV with EP (or CEP) conforms exactly to the requirement of the statute. The hybrid approach proposed by DuPont Group, in which the Department would apply the A-T method for some sales and average-to-average ("A-A") method for others, would be inconsistent with the Department's statutory requirements.
- Although the Department's methodology has been challenged by the WTO Appellate Body, the decisions of the WTO Appellate Body are not binding on the Department.[107] The Department must look to the governing statute, which neither requires an application of methodology to only a subset of transactions, nor forecloses the Department from applying the methodology uniformly.
- Limiting the alternative comparison to a subset of sales is illogical because, were there no identified pattern of targeted dumping, the Department would apply the A-A method to all sales.

Department's Position: In this review, Petitioners submitted a timely allegation of targeted dumping by the DuPont Group.[108] Petitioners asserted that there is a pattern of U.S. sales prices for comparable merchandise that differ significantly among time periods and regions. We conducted time-period and regional targeted dumping analyses using the methodology adopted in Certain Steel Nails/United Arab Emirates 2008 also articulated in Multilayered Wood Flooring/PRC 2011[109]. Our methodology is discussed in detail in the Preliminary Results.[110] In

[105] See SAA, at 842-43.

[106] See Circular Welded Carbon Steel Pipes and Tubes From Turkey; Final Results of Antidumping Duty Administrative Review; 2010 to 2011, 77 FR 72818 (December 6, 2012), and accompanying Issues and Decision Memorandum; Stainless Steel Plate in Coils From Belgium: Antidumping Duty Administrative Review, 2010-2011, 77 FR 73013 (December 7, 2012), and accompanying Issues and Decision Memorandum.

[107] See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1348 (CAFC 2005) ("Corus"), cert. denied 546 U.S. 1089 (2006) (citing Timken Company v. United States, 354 F.3d 1334, 1344 (CAFC 2004)).

[108] See Letter from Petitioners to the Secretary of Commerce, "Polyethylene Terephthalate Film, Sheet, and Strip form the People's Republic of China: Allegations of Targeted Dumping" (June 18, 2012) ("Targeted Dumping Allegation"). The Department notes that Petitioners also alleged targeted dumping by Green Packing. The Department found a pattern of EPs for comparable merchandise that differed significantly among time periods, but found no meaningful difference between the weighted-average dumping margins calculated using the A-to-A method and the A-to-T method for Green Packing.

[109] See 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) ("Certain Steel Nails/United Arab Emirates 2008"), and accompanying Issues and Decision Memorandum at Comments 1-9; see also Multilayered Wood Flooring From China the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) ("Multilayered Wood Flooring/PRC 2011"), and accompanying Issues and Decision Memorandum at Comment 4.

the Preliminary Results, we found for the DuPont Group that there was a pattern of prices that differed significantly among certain time periods and regions, and that these differences could not be taken into account using the A-A method. Accordingly, we applied the A-T method to all of the DuPont Group's reported U.S. sales. As discussed below, the Department has determined to continue to apply the A-T method to all of the DuPont Group's reported U.S. sales for the final results.

Authority to Apply the Average-to-Transaction Method in Administrative Reviews

The DuPont Group claims that the Department does not have the statutory authority to employ an alternative comparison method based on a targeted dumping allegation in administrative reviews. We disagree. Section 771(35)(A) of the Act defines a "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The definition of a "dumping margin" calls for a comparison of NV and EP or CEP. Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act describes three methods by which the Department may compare NV and EP (or CEP) and places certain restrictions on the Department's selection of a comparison method in AD investigations. Contrary to the DuPont Group's argument, the statute places no such restrictions on the Department's selection of a comparison method in an administrative review. 19 CFR 351.414(b) describes the methods by which NV may be compared to EP or CEP in administrative reviews: A-A, transaction-to-transaction ("T-T"), and A-T. These comparison methods are distinct from each other. When using average-to-transaction ("T-T") or A-T methods, a comparison is made for each export transaction to the United States. When using A-A methods, a comparison is made for each group of comparable export transactions for which the EPs or CEPs have been averaged together (i.e., for an averaging group). 19 CFR 351.414(c)(1) addresses the silence in the statute concerning the choice of a comparison method in the context of administrative reviews. In particular, the Department has determined that in both AD investigations and administrative reviews, the A-A method will be used "unless the Secretary determines another method is appropriate in a particular case."[111]

The Act, the SAA, and the Department's regulations do not address directly whether the Department should use an alternative comparison method in an administrative review based upon a targeted dumping analysis conducted pursuant to section 777A(d)(1)(B) of the Act.[112] In light of the statute's silence on this issue, the Department recently indicated that it would consider whether to use an alternative comparison method in administrative reviews on a case-by-case basis, but declined to "speculate as to either the case-specific circumstances that would warrant the use of an alternative methodology in future reviews, or what type of alternative methodology might be employed."[113] At that time, the Department also indicated that it would look to practices employed by the agency in AD investigations for guidance on this issue.[114]

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[110] See Preliminary Results and accompanying Preliminary Decision Memorandum at Topic 9.
[111] See 19 CFR 351.414(c)(1).
[112] See section 777A(d)(1)(B) of the Act; see also SAA at 842-43, 19 CFR 351.414.
[113] See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in

In AD investigations, the Department examines whether to use an A-T method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act:

> The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if
>
> > (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
> >
> > (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

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) in an administrative review is, in fact, analogous to the issue in AD investigations. Accordingly, the Department finds the analysis that has been used in AD investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

The SAA does not direct the Department to conduct targeted dumping analyses in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that the Department may use in investigations. That provision, however, is silent on the question of choosing a comparison method in administrative reviews. Section 777A(d)(1)(A) of the Act does not require, or prohibit, the Department from adopting a similar or a different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states that "section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods."[115] Like the statute, the SAA does not limit the proceedings in which the Department may undertake such an examination.[116]

We disagree with the DuPont Group that the silence of the statute with regard to application of an alternative comparison methodology in administrative reviews precludes the Department from applying such a practice. Indeed, the Court of Appeals for the Federal Circuit ("CAFC") has stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority,

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Certain Antidumping Proceedings; Final Modification, 77 FR 8101, 8107 (February 14, 2012).
[114] Id., at 77 FR at 8102.
[115] See SAA, H.R. Rep. No. 103-316 at 843.
[116] Id.

as evidenced by the agency's generally conferred authority and other statutory circumstances."[117] Further, the CAFC has stated that this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions '{s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious.'"[118] We find that the above discussion of the extension of the statute with respect to investigations is a logical, reasonable, and deliberative method to fill the silence with regard to administrative reviews.

Furthermore, the Department's decision to revise its practice with regard to administrative reviews, and to follow its WTO-consistent practice for investigations, was a deliberate decision on the part of the Executive Branch pursuant to the authority provided in section 123 of the Uruguay Round Agreements Act ("URAA"). Specifically, the Executive Branch solicited public comments, consulted with the appropriate congressional committees, and issued a proposed and final announcement of the modification. This decision was made in order to implement several adverse WTO reports in which it was found that the United States was not meeting its WTO obligations. As such, the wisdom of the Department's legitimate policy choices in this situation is not subject to judicial review.[119]

Authority to Apply the A-T Method to Targeted and Non-Targeted Sales

To the extent that DuPont Group has argued that the application of the A-T method to all U.S. sales is impermissible, we disagree. Section 777A(d)(1)(B) of the Act expressly provides that the A-T method is an "{e}xception" to using the A-A or A-T method. Section 777A(d)(1)(B) of the Act further states that the Department may invoke this exception where two conditions are met: (1) a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (2) the administering authority explains why such differences cannot be taken into account using the A-A or T-T method. Beyond these two conditions, nothing in the Act restricts the Department's application of the A-T method. No language in the Act suggests that this exception is partial, or that its use is limited to certain sales.

Moreover, the Department has previously rejected arguments similar to those of the DuPont Group, and has found that, where targeting is discovered, the A-T comparison method will be applied to all sales.[120] For example, in Multilayered Wood Flooring/PRC 2011,[121] the Department found that the statute does not limit the A-T comparison method to targeted sales alone:

> The Department disagrees with the … suggestions to modify the Department's current targeted dumping test and only apply the A-T method to the percent of sales affected by

[117] See United States Steel Corp. v. United States, 621 F.3d 1351, 1357 (CAFC 2010) (citations omitted).
[118] See Mid Continent Nail Corp. v. United States, 712 F. Supp. 2d 1370,1376 (CIT 2010) citing U.S. Steel Group v. United States, 96 F.3d 1352, 1362 (CAFC 1996).
[119] See Suramerica de Aleaciones Laminadas, C.A. v. United States, 966 F.2d 660, 665 (CAFC 1992).
[120] See Certain Steel Nails/United Arab Emirates 2008.
[121] See Multilayered Wood Flooring/PRC 2011, and accompanying Issues and Decision Memorandum at Comment 4; see also Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less than Fair Value, 75 FR 14569 (March 26, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

> targeted dumping and not the entire U.S. sales database.... The only limitations that Section 777A(d)(l)(B) of the Act places on the application of the alternative A-T comparison methodology are the satisfaction of the two criteria set forth in the provision. When the criteria for application of the alternative A-T comparison methodology are satisfied, section 777A(d)(1)(B) of the Act does not limit application of the alternative A-T comparison methodology to certain transactions. Rather, the provision expressly permits the Department to determine dumping margins by comparing weighted-average NVs to the EP or CEP of individual transactions.[122]

In addition, applying the A-T method to all of the DuPont Group's sales is the most effective way to unmask targeted dumping, and to implement the statute's goal. The Department has explained that the averaging of U.S. prices conceals dumping if there is a significant difference between the margins computed under the A-A and A-T methods.[123] The DuPont Group's argument is based on a flawed assumption that profitable sales are not involved in masked dumping. The CAFC has explained that "masked" dumping occurs when "profitable sales serve to 'mask' sales at less than fair value."[124] An exporter from the PRC, who competes with U.S. producers, could gain U.S. customers either by dumping to all customers at once or by dumping to a specific customer (or customers). In the latter scenario, the PRC exporter uses its profitable sales to mask its dumped sales to a particular customer by "offsetting" its dumped sales to one customer with its profitable sales to other customers. In other words, the masked or targeted dumping involves both profitable and dumped sales. The Department reasonably addresses such dumping by applying the A-T method to all sales involved in masked dumping, i.e., both the masked sales and the sales that are used for masking. When the Department applies the A-T method to all of the exporter's sales (including the profitable sales that the exporter used to mask its dumping through offsetting), it eliminates the offsetting that masks dumping. Accordingly, the Department's current methodology of making A-T comparisons for all transactions where targeted dumping occurs reasonably addresses the problem of masked dumping by eliminating the offsetting.

Furthermore, if Congress had intended for the Department to apply the A-T method only to a subset of transactions and use a different method for the remaining sales of the same respondent, Congress could have explicitly said so, but it did not. Instead, Congress expressed its intent with the language of section 777A(d)(1)(B) of the Act, which imposes a general preclusion from using A-T comparisons and withdraws that preclusion entirely if the two criteria are satisfied. The Department is permitted to apply the A-T comparison method to all of a respondent's sales where targeting is identified in order to ensure that respondents cannot "conceal" their masked dumping on sales to a particular group by making higher-priced sales to the non-targeted group that offset the dumping margins attributable to the targeted sales.[125] In the absence of any preclusion, the Department is free to apply the A-T method to all transactions. The Department

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[122] See Multilayered Wood Flooring/PRC 2011, and accompanying Issues and Decision Memorandum at Comment 4.
[123] See e.g., Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 78 FR 9884 (February 12, 2013) and accompanying Issues and Decision Memorandum at Issue 1.
[124] See United States Steel Corp. v. United States, 621 F.3d 1351, 1361 (CAFC 2010).
[125] See SAA, at 842.

may choose any method or methods that are appropriate. In this case, the Department determined that the two criteria are satisfied.

In addition, applying the A-T method to all sales, rather than to only the targeted sales and using a different methodology for the remainder, is consistent with the Department's general calculation methodology. For example, outside of targeted dumping, section 777A(d)(1)(A) of the Act requires the Department to use either (1) A-A or (2) T-T comparisons. The Department does not combine the two methodologies in any one case: it does not apply T-T comparisons for certain sales and A-A comparisons for the remainder. Rather, it selects which of these methodologies is more appropriate, and applies the selected methodology uniformly to all of a respondent's transactions.

To the extent that the DuPont Group relies on a WTO Appellate Body decision to develop an interpretation of the targeted dumping provision of the Act that application of the A-T method should be limited to targeted sales, we note that "WTO decisions 'are not binding on the United States.'"[126] As the Petitioners rightfully point out, we must look instead to the governing statute to determine how to apply the A-T method.[127] As discussed above, nothing in the Act restricts application of the A-T method to only sales found to be targeted.

Thus, in these final results, we have not changed our calculation methodology of the weighted-average dumping margin from that used in the Preliminary Results. Because the criteria of section 777A(d)(1)(B) of the Act are satisfied in this administrative review, the Department will continue to apply the alternative A-T method to all of the DuPont Group's U.S. sales in calculating the weighted-average dumping margin.

Issue 9: The DuPont Group's Billing Adjustments

Terphane Argument

- The Department should have added the DuPont Group's billing adjustments to the gross unit price, because the DuPont Group reported these adjustments as negative amounts.

No interested parties rebutted this argument by Terphane.

Department Position: The Department disagrees with Terphane. After further review of the record, the Department has determined to change its treatment of the DuPont Group's reported billing adjustments for the final results. In the Preliminary Results, the Department subtracted the negative billing adjustments reported by the DuPont Group. After comparing the DuPont Group's total U.S. sales Q&V as reported in its sales reconciliation[128] to the total U.S. sales

[126] See Corus, 395 F.3d at 1348 (quoting Timken Co. v. United States, 354 F.3d 1334, 1344; see also Koyo Seiko v. United States, 30 C.I.T. 1111, 1113 (CIT 2006) ("It is a long standing principle that while WTO adjudicatory decisions may be persuasive, they are not binding on Commerce or this court") (quoting NSK Ltd. v. United States, 358 F. Supp. 2d 1276, 1288 (CIT 2005).

[127] See Corus, 395 F.3d at 1348-49 ("Neither the GATT nor any enabling international agreement outlining compliance therewith (e.g., the ADA) trumps domestic legislation; if U.S. statutory provisions are inconsistent with the GATT or an enabling agreement, it is strictly a matter for Congress").

[128] See Submission from the DuPont Group to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film, Sheet, and Strip From the People's Republic of China: Supplemental Response," dated May 25, 2012, at Exhibit SC-

Q&V calculated using the DuPont Group's U.S. sales database, the Department finds them to be nearly identical. The Department notes that the DuPont Group's U.S. sales value in its sales reconciliation has included in it a specific line-item for the DuPont Group's total billing adjustments. The Department compared this figure to the total billing adjustments calculated using the DuPont Group's U.S. sales database and found that the two figures are identical. Thus, the DuPont Group's U.S. sales reconciliation supports the conclusion that the reported billing adjustments have already been included in the DuPont Group's reported gross unit price. For the Department to either add or subtract the DuPont Group's reported billing adjustments would be a distortion of its gross unit price as reported in its U.S. sales database. Therefore, for the final results, the Department will neither add nor subtract the DuPont Group's gross unit price by its reported billing adjustments in the calculation of its U.S. sales price.[129]

Green Packing

Issue 10: Green Packing's By-Product Offsets

Green Packing Argument

- Green Packing reported sales of by-product from production and provided evidence of commercial value. Therefore, the by-product offsets should be granted. Further, Green Packing reported its by-product offsets in the most accurate way its records permit, and should therefore be used as the best information available to meet the statutory objective to most accurately calculate the dumping margin.
- The evidence is undisputed from Green Packing's questionnaire responses that it is reporting by-products from production, and the Green Packing Preliminary Analysis Memo fails to indicate otherwise.

No interested parties rebutted this argument by Green Packing.

Department Position:
The Department disagrees with Green Packing's claim that the Department should grant offsets for the by-products (i.e., waste film, waste chip and waste bag) which Green Packing claims were produced and sold during the POR.[130] For the Preliminary Results the Department denied Green Packing's requested by-product offsets because Green Packing could not correlate the quantity of its by-products produced during the POR with the sales quantity of its by-products.[131] The Department recently explained its practice as follows: "the by-product offset is limited to the total production quantity of the by-product ... produced during the POR, so long as it is shown that the by-product has commercial value."[132] Thus, a respondent needs to provide and

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[129] See DuPont Final Analysis Memo, at 3.
[130] See Submission from Green Packing to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film from China," dated April 9, 2012, ("Green Packing C and D Response") at D-14.
[131] See Memorandum to The File from Thomas Martin, Case Analyst, AD/CVD Operation Office 4, through Robert Bolling, Program Manager, AD/CVD Operations Office 4 "Analysis Memorandum for the Preliminary Results of the Third Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China: Shaoxing Xiangyu Green Packing Co., Ltd.," dated December 3, 2012, at 3.
[132] See Frontseating Valves/PRC (November 2011), and accompanying Issues and Decision Memorandum at Comment 18.

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.[133] Although Green Packing supported its claim that its by-products have commercial value, it failed to substantiate the production quantities of waste film, waste chip, and waste bag during the POR. Therefore, the Department cannot determine whether the by-products were produced from the quantity of FOP reported and whether the respondent's production process for the subject merchandise actually generated the amount of the by-products claimed as an offset.

In the Department's Original AD Questionnaire, the Department requested the following information from Green Packing:

> iii. Complete the Excel chart at Appendix VI, identifying, by month, the quantity produced, sold, reintroduced into production, or otherwise disposed of (e.g., sold, returned to production of the merchandise under consideration, discarded). You should complete a separate chart for each by-product or co-product.
>
> iv. Provide production records demonstrating production of each by-product/co-product during one month of the POR. (Where possible, provide records for the same month for each by-product/co-product for which an offset is claimed);[134]

With regard to the first request, Green Packing stated "…{Green Packing} does not record the amount of waste chip and waste film reentered into production during the normal course of business. All waste bags were sold. {Green Packing} reports only the sold amount of waste film, waste chip and waste bag as byproduct in this response."[135] With regard to the second request, Green Packing stated "{Green Packing} does not record the byproducts until they are sold during the normal course of business. {Green Packing} records the sold amounts of waste film, waste chip and waste bag as the produced amounts."[136] Although Green Packing stated that it does not "record by-products until sold," the Department in a supplemental questionnaire requested Green Packing to "…calculate {its} waste PET film, waste PET chip, and waste bag allocation using the amount *generated* for each by-product."[137] (emphasis included) to further emphasize the necessity of the information itself. However, Green Packing, once more stated "…{Green Packing} does not record the by-products until they are sold. {Green Packing}

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[133] See Mid Continent Nail Corporation v. United States, Ct. No. 08-224, Slip Op. 2010-47 (CIT May 4, 2010).
[134] See Letter from Robert Bolling, Program Manager, AD/CVD Operations Office 4, to Green Packing, "Third Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated February 13, 2012 ("Original AD Questionnaire"), at D-9.
[135] See Green Packing C and D Response, at D-15.
[136] Id.
[137] See Letter from Robert Bolling, Program Manager, AD/CVD Operations Office 4, to Green Packing, "Third Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated May 14, 2012, at 7.

records the sold amounts of waste film, waste chip and waste bag as the generated amounts in the normal course of business. Thus, Green Packing calculated the by-product based on the sold, i.e., generated amount, in the response."[138]

Here, not only does Green Packing reiterate that their records lack the specificity required, Green Packing also implies that calculating a by-product offset using the quantity generated and quantity sold are one in the same. However, this is not the case. To assume that these two methodologies for calculating by-product offsets are the same, as Green Packing has done, improperly represents the Department's practice regarding by-product offsets. As stated above, the Department requires a by-product offset to be substantiated by the quantity generated from the production of subject merchandise during the POR as well as demonstrate that the by-product has commercial value. Green Packing failed to provide the requested information. In a third attempt to attain the necessary information to confirm Green Packing's requested offsets, the Department requested that Green Packing "…provide sales invoices and warehouse-in/out slips for every month in which Green Packing produced waste PET film, waste PET chip, and waste bags during the POR. Please tie all documentation to the monthly totals reported in Exhibit D-11a of Green Packing's sections C and D response, dated April 10, 2012, and to production records."[139] In response, Green Packing again stated that "{i}n the normal course of business, Green Packing records the by-product at the time they were sold, but not the time they were produced -- i.e., the produced amount and sold amount are identical in the records. Either warehouse in slip or warehouse out slip is used for the byproduct produced and sold…"[140]

The Department provided Green Packing multiple opportunities to substantiate the production quantities and, as Green Packing indicated, its records do not permit Green Packing to do so. Green Packing attempts to bypass the Department's requirement to substantiate its by-product production by stating that it reported its by-product offsets in the most accurate way its records permit and, therefore, the Department should use these reported by-product offsets as the best information available to meet the statutory objective to calculate the most accurate dumping margin. However, Green Packing does not cite past case precedent and/or statutory, regulatory, or court authority to support its claim. The Department understands the phrase "best available" in terms of SV selection,[141] not in terms of the accuracy in which respondents' records permit when responding to the Department. Furthermore, the Department notes that accepting such deficient records would not lead to the most accurate dumping margin. In fact, if the Department were to accept a company's claim that it reported information in the most accurate way its records permit as the "best available" information to calculate the most accurate dumping

[138] See Letter from Green Packing to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film from China," dated June 6, 2012, at Section D, Question 11 ("June 6 Response").
[139] See Letter from Robert Bolling, Program Manager, AD/CVD Operations Office 4, to Green Packing, "Third Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated July 20, 2012 at 5.
[140] See Letter from Green Packing to the Secretary of Commerce, re: "Polyethylene Terephthalate (PET) Film from China," dated July 30, 2012, at 8.
[141] See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States, Slip Op. 04-88 (July 19, 2004) where the CIT stated "{b}ecause the phrase "best available" is not defined in the statute, the CIT has recognized that the Department has broad latitude in valuing factors as long as its discretion is exercised "in a manner consistent with {the} underlying objective of {the statute}—to obtain the most accurate dumping margins possible."

margin, this would leave the record open to manipulation. Therefore, for the final results, we have continued to deny Green Packing's requested by-product offsets.

Curwood

Issue 11: Assessment Rate to Curwood

Bemis

- Green Packing reported to the Department that it was not aware of the U.S. importer of record for its U.S. sales. In the Preliminary Results, the Department assigned assessment rates to Green Packing's customers.
- The Department's liquidation instructions should assign an assessment rate to merchandise produced by Green Packing and imported or sold to Curwood Inc. ("Curwood").

No interested parties rebutted Bemis with respect to this comment.

Department's Position: For all U.S. sales, Green Packing reported that it did not know the U.S. importer of record.[142] As a result, consistent with our standard practice, for purposes of calculating importer-specific assessment rates in the Preliminary Results, we used Green Packing's reported U.S. customer to assign importer-specific assessments pursuant to 19 CFR 351.212(b), and we calculated entered value as U.S. price net of international movement expenses.[143]

We note that Bemis did not raise this issue until its case brief, after the record of this review had closed. There is no information on the record to indicate that Curwood is an importer of record for Green Packing's merchandise[144], and the Department did not make such a determination in this review. For the purposes of these final results, the Department will continue to assign importer-specific assessment rates to Green Packing's U.S. customers for the final results, consistent with our standard practice.

[142] See June 6 Response, at Exhibit 290.
[143] See Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review, 76 FR 76941, 76942 (December 9, 2011); see also Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008), and accompanying Issues and Decision Memorandum at Comment 17.
[144] Bemis stated in its notice of appearance that Bemis Company, Inc. was an importer of subject merchandise, and did not state that Curwood was an importer. See Letter from Bemis to the Honorable John Bryson, "Request for Administrative Review," dated November 30, 2011.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review in the Federal Register.

Agree ✓ Disagree _____

Paul Piquado
Assistant Secretary
for Import Administration

5 JUNE 2013
Date