

Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from the United Arab Emirates (UAE) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination. Pursuant to a request from an interested party, we are postponing our final determination to not later than 135 days after publication of the preliminary determination.

**EFFECTIVE DATE:** May 5, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Douglas Kirby or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3782 or (202) 482-2371, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

This investigation was initiated on October 18, 2007. See *Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates: Initiation of Antidumping Duty Investigations (Notice of Initiation)*, 72 FR 60801 (October 26, 2007). On November 13, 2007, the United States International Trade Commission (ITC) preliminarily determined that, pursuant to section 733(a) of the Act, there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PET Film from Brazil, China, Thailand, and the United Arab Emirates. See *Investigation Nos. 731-TA-1131-1134 (Preliminary): Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates*, 72 FR 67756 (November 13, 2007) (*ITC Preliminary Determination*). The domestic interested parties are DuPont Teijin Films, Mitsubishi Polyester Film of America, Inc., SKC, Inc. and Toray Plastics (America), Inc. (collectively, the petitioners). The respondent for this investigation is Flex Middle East FZE (Flex FZE).

On November 27, 2007, the Department issued its sections A through E questionnaires to Flex FZE. On December 19, 2007, Flex FZE submitted its section A response. On January 18, 2008, Flex FZE submitted its sections B and C responses. On January

23, 2008, the petitioners made a timely request pursuant to section 733(c)(1) of the Act and 19 CFR 351.205(e) for a postponement of the preliminary determinations with respect to Brazil, the People's Republic of China, Thailand, and the United Arab Emirates. See *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 7710 (February 11, 2008).

On February 6, 2008, the petitioners submitted a timely allegation that home market sales were being made at prices below the cost of production and requested that the Department initiate a sales-below-cost investigation of Flex FZE pursuant to 19 CFR 351.301(d)(2)(B). On February 8, 2008, the Department issued its first supplemental questionnaire to Flex FZE. On February 27, 2008, Flex FZE submitted its response to the first supplemental questionnaire. On February 29, 2008, the Department issued a second supplemental questionnaire to Flex FZE. On February 29, 2008, the Department initiated a sales-below-cost investigation of Flex FZE and requested that Flex FZE respond to the section D questionnaire. See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, from the Team, *Petitioners' Allegation of Sales Below the Cost of Production for Flex Middle East FZE (Flex FZE) (Cost Allegation Memorandum)* (February 29, 2008), on file in the Central Record Unit, room 1117 of the main Department of Commerce building (CRU). On March 12, 2008, Flex FZE submitted its response to the second supplemental questionnaire. On March 14, 2008, Flex FZE submitted its response to the section D questionnaire.

On March 21, 2008, the petitioners submitted an allegation pursuant to 19 CFR 351.301(d)(5) that certain U.S. sales by Flex FZE were targeted for dumping. On March 27, 2008, the Department issued a supplemental questionnaire for sections A through D to Flex FZE. On March 31, 2008, Flex FZE submitted comments regarding the petitioners' targeted dumping allegation. On April 1, 2008, the Department issued a letter to Flex FZE to clarify the March 27, 2008, supplemental questionnaire. On April 8, 2008, Flex FZE submitted its response to the sections A through D supplemental questionnaire. On April 11, 2008, the Department issued questions to the petitioners regarding its targeted dumping allegation. On April

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

(A-520-803)

**Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that

21, 2008, the petitioners submitted a response to the Department's questions regarding the targeted dumping allegation.

#### Respondent Identification

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of producers/exporters, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (B) producers/exporters accounting for the largest volume of the merchandise under investigation that can reasonably be examined. In the petition, the petitioners identified one potential producer and exporter of PET Film in the UAE: Flex FZE.

Based on our analysis of import data obtained from U.S. Customs and Border Protection (CBP), we selected one producer/exporter, Flex FZE, as the mandatory respondent in this investigation because this company is the only producer of UAE subject merchandise exported to the United States during the POI. Therefore, the Department determined that Flex FZE is the sole producer and exporter of PET Film in the UAE. For a complete analysis of our respondent selection, see *Memorandum to Barbara E. Tillman, Director, Office 6, "Antidumping Duty Investigation on PET Film from the UAE - Respondent Selection,"* November 27, 2007 (*Respondent Selection Memorandum*). Therefore, pursuant to section 777A(c)(2)(B) of the Act, the Department has calculated an individual dumping margin for the selected producer/exporter.

#### Postponement of Final Determination

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that

exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period to not more than six months. We received a request to postpone the final determination and extend the provisional measures from Flex FZE on April 18, 2008. Because this preliminary determination is affirmative, the request for postponement was made by an exporter who accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and we will extend the provisional measures to not more than six months.

#### Period of Investigation

The period of investigation (POI) is July 1, 2006 through June 30, 2007.

#### Scope of the Investigation

The products covered by this investigation are all gauges of raw, pre-treated, or primed PET Film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of its 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). While HTSUS subheadings are provided for convenience and purposes of Customs and Border Protection (CBP), our written description of the scope of this investigation is dispositive.

#### Party Comments on Scope and Model Matching

On October 30, 2007, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of PET Film from Brazil, the People's Republic of China (PRC), and Thailand, for comments on the appropriate product characteristics for defining individual products. In addition, the Department requested all parties in this investigation and in the concurrent antidumping duty investigations of PET Film from Brazil, the PRC, and Thailand, to submit

comments on the appropriate model matching methodology. See Letter from Robert James, Program Manager, AD/CVD Enforcement 7, dated October 7, 2007. We received comments from petitioners on November 6, 2007, requesting that the Department include the grade of PET Film in the model match criteria. Additionally, petitioners requested that the Department include a field identifying whether or not the PET Film has been coextruded. In its November 29, 2007 questionnaire, the Department requested that respondent report the grade of the PET Film, but did not request a field identifying whether the PET Film is coextruded. For purposes of this preliminary determination, the Department has determined that it is unnecessary to change the proposed product characteristics and model matching methodology with regard to coextrusion. For purposes of distinguishing subject merchandise, the Department will take into account the grade of the PET Film, as advocated by petitioners in their submission.

On November 15, 2007, Avery Dennison requested that the Department find that "release liner," a PET film product treated on one or both sides with a specially-cured silicon coating, is outside the scope of these investigations. Petitioners filed a submission objecting to Avery Dennison's request on November 29, 2007; petitioners re-submitted their objections with amended bracketing on December 14, 2007, and the document was accepted for the record on that date. Petitioners argue that release liner is "PET film that clearly falls within the scope of these investigations." See Petitioners' December 14, 2007 submission at 1 and 2. Avery Dennison responded to the petitioners comments on February 1, 2008.

In accordance with section 731(i) of the Act, we have determined that the descriptions of the merchandise contained in the petition and in our *Notice of Initiation* support the conclusion that release film is of the same class or kind of merchandise covered by the scope of the proposed antidumping duty order. See also generally 19 CFR 351.225(k)(1). The product descriptions in the petition and in the Department's *Notice of Initiation* specifically exclude finished films with a "performance enhancing resinous or inorganic layer of more than 0.00001 inches thick." There is nothing in the proposed scope language of either the petition or our *Notice of Initiation* that excludes products bearing a performance enhancing resinous or inorganic layer of less than 0.00001

inches from the scope of the order. Moreover, there is no language in either the proposed scope language of the petition or our *Notice of Initiation* that limits the scope of the investigation to "PET base film," (*i.e.*, PET film prior to the application of in-line coatings), as Avery Dennison suggests. In addition, release liner shares the chemical composition of PET film described in the proposed scope of the petition and *Notice of Initiation*.

One of the purposes of a less than fair value investigation is to decide the merchandise specifically covered by the scope of the ultimate antidumping duty order. Based upon the foregoing, we have preliminarily determined that release film is of the same class or kind of merchandise as that described in the petition and in the Department's *Notice of Initiation*. Thus, we have determined that release film is covered by the scope of the antidumping investigation of PET film from Thailand. For a full discussion of this issue, see the memorandum titled "Antidumping Duty Investigations on Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates," from Micheal J. Heaney, Senior Case Analyst, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated April 25, 2008, issued concurrently with this notice.

We have relied on four criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: grade, specification, thickness, and surface treatment. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

### Targeted Dumping

On March 21, 2008, the petitioners submitted a timely allegation that Flex FZE engaged in targeted dumping during the POI in accordance with 19 CFR 351.301(d)(5). On March 31, 2008, Flex FZE submitted comments in response to the petitioners' targeted dumping allegation. On April 11, 2008, the Department requested additional information from the petitioners regarding their targeted dumping allegation. The additional information requested was filed on April 21, 2008. Therefore, there was not sufficient time to analyze the information and fully consider the petitioners' allegation for this preliminary determination. The

Department will issue a decision regarding targeted dumping for this investigation following the issuance of the preliminary determination, and will allow parties to comment on it prior to the final determination.

### Date of Sale

It is the Department's practice to use invoice date as the date of sale. The regulations further provide that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (*i.e.*, price and quantity). See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001). Flex FZE reported invoice date as its date of sale for both its home market and U.S. market sales during the POI.

Based on Flex FZE's questionnaire responses, we preliminarily determine that invoice date is the appropriate date of sale in both markets. Flex FZE stated in its February 26, 2008 supplemental questionnaire response that the company reported invoice date as the date of sale because that is the date when the price and quantity are finally set. In addition, Flex FZE stated that changes between the order date and the invoice date can occur, but records of these types of changes are not maintained electronically. In its February 26, 2008 supplemental response, Flex FZE provided two examples for home market sales where changes occurred between order date and invoice date. We issued a supplemental questionnaire on March 31, 2008 requesting Flex FZE to provide information indicating changes between order date and invoice date for U.S. sales during the POI. Flex FZE responded that no such changes had occurred in the U.S. market during the POI.

On April 25, 2008, the Department issued an additional supplemental questionnaire for further information regarding date of sale in the U.S. market. We intend to continue evaluating whether invoice date appropriately represents the date on which the material terms of sale are set in the U.S. market.

### Fair Value Comparisons

To determine whether sales of PET Film from the UAE were made in the United States at less than normal value (NV), we compared the constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections

below. In accordance with section 777A(d)(1) of the Act, we calculated the weighted-average prices for NV and compared these to the weighted-average of CEP.

### Constructed Export Price

For the price to the United States, pursuant to section 772(b) of the Act, we used CEP because all sales to the United States were made by Flex America Inc., Flex FZE's U.S. subsidiary, and Flex America Inc. made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. See Flex FZE's December 19, 2007 section A questionnaire response.

The Department calculated Flex FZE's starting price as its gross unit price to its unaffiliated U.S. customers, making adjustments where necessary for billing adjustments and early payment discounts, pursuant to section 772(c)(1) of the Act. Where applicable, the Department made deductions for movement expenses (foreign inland freight, international freight, U.S. movement, U.S. customs duty and brokerage, and post-sale warehousing) in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e). In accordance with sections 772(d)(1) and (2) of the Act, we also deducted, where applicable, U.S. direct selling expenses, including warranty, credit expenses, U.S. commissions, and U.S. indirect selling expenses and U.S. inventory carrying costs incurred in the United States and in the UAE associated with economic activities in the United States. We also deducted CEP profit in accordance with section 772(d)(3) of the Act.

### Normal Value

#### *Home Market Viability and Comparison Market Selection*

To determine whether there was a sufficient volume of sales in the home market (*i.e.*, the UAE) to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(II) of the Act, because the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by Flex FZE in its home market is five percent or more of the aggregate quantity of the subject merchandise sold in the United States or for export to the United States, we determined that Flex FZE's sales of PET Film in the UAE were sufficient to find

the home market viable for comparison purposes. Accordingly, we calculated NV for Flex FZE based on sales prices to UAE customers.

#### *Cost of Production Analysis*

Based on our analysis of the petitioners' allegation, we found that there were reasonable grounds to believe or suspect that Flex FZE's sales of PET Film in the home market were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Tariff Act, we initiated a sales-below-cost investigation to determine whether Flex FZE had sales that were made at prices below its respective COPs. See *Cost Allegation Memorandum*.

#### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Flex FZE's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A"), and interest expenses. We relied on the COP information provided by Flex FZE in its questionnaire response except in the following instances.

Pursuant to section 773(f)(3) of the Act, we adjusted Flex FZE's reported cost of manufacturing to reflect the higher of the transfer price, the market price, and the affiliate's cost of production for PET chips purchased by Flex FZE from affiliated suppliers. In addition, pursuant to section 773(f)(2) of the Act, we adjusted Flex FZE's reported cost of manufacturing to reflect the higher of the transfer price and the market price for chemicals purchased by Flex FZE from affiliated suppliers.

We adjusted UFlex Limited's (UFlex Limited is Flex FZE's parent company) cost of goods sold used as the denominator in the calculation of the reported financial expense ratio to include depreciation expense and to exclude inter-unit purchases of raw materials which are eliminated on UFlex Limited's consolidated financial statements. For further details regarding these adjustments, see Memorandum from Ernest Gziryan to Neal M. Halper, Director, Office of Accounting, "*Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Flex Middle East FZE*" (April 25, 2008).

#### 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act,

in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

#### 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were not made at prices which permitted the recovery of all costs within a reasonable period of time. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. During the POI, none of Flex UAE's home market sales were disregarded. For further information on the results of Flex UAE's cost test, see Memorandum to the File, from Douglas Kirby through Dana Mermelstein, *Analysis of Flex Middle East FZE*, dated April 25, 2008 (*Flex FZE Preliminary Analysis Memorandum*), on file in CRU.

#### *Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on prices to unaffiliated customers in the UAE and matched U.S. sales to NV. We made deductions, where appropriate, for billing adjustments, discounts, rebates, movement expenses, and packing pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

#### *Level of Trade/Constructed Export Price Offset*

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. For CEP sales, the LOT is that of the constructed sale from the exporter to the affiliated importer. See 19 CFR 351.412(c)(ii). See also *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. See section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying *Issues and Decision Memorandum* at Comment 6.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. See *Micron Technology Inc. v. United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by Flex FZE on CEP sales for three channels of distribution relating to the CEP LOT, as described by Flex FZE in its questionnaire responses, after these deductions. We have determined that the selling functions performed by Flex FZE on its U.S. sales (all of which are CEP sales) are similar because for all U.S. sales, Flex FZE provides almost no selling functions to its U.S. affiliate, Flex America, in support of the three channels of distribution. See *Flex UAE Preliminary Analysis Memorandum* for additional information regarding Flex FZE's selling functions for CEP sales. Accordingly, because the selling functions provided by Flex FZE for CEP sales are minimal, and the selling functions provided by Flex America to unaffiliated customers in the United States in all three channels of distribution are substantially similar and are provided at the same degree of service, we preliminarily determine that there is one CEP LOT in the U.S. market.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market is at a more advanced stage than the LOT of the CEP sales and there are no data available to determine the existence of a pattern of price difference. Flex UAE reported that it provided minimal selling functions and services for the one (CEP) LOT in the United States and that, therefore, the comparison market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by Flex FZE for sales in the comparison market and CEP

sales in the U.S. market, we preliminarily find that the comparison market LOT is at a more advanced stage of distribution when compared to CEP sales because Flex FZE provides many more selling functions in the comparison market at a higher level of service as compared to the selling function it performs for its CEP sales. For a discussion of the proprietary information regarding Flex FZE's comparison market selling functions, see *Flex FZE Preliminary Analysis Memorandum*. Thus, we find that Flex FZE's comparison market sales are at a more advanced LOT than its CEP sales. In addition, we preliminarily determine there is only one LOT in the comparison market. Therefore, there are no data available to determine the existence of a pattern of price differences; nor do we have any other information that provides an appropriate basis for determining a LOT adjustment. Therefore, consistent with section 773(a)(7)(B) of the Act, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted from NV the comparison market indirect selling expenses for comparison market sales that were compared to U.S. CEP sales. We limited the comparison market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating CEP as required under section 772(d)(1)(D) of the Act.

#### Currency Conversions

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. See *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 47049, 47055 (August 7, 2003), remaining unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 69379 (December 12, 2003). However, the Federal Reserve Bank does not track or publish exchange rates for the UAE dirham. Therefore, we made currency conversions from UAE dirhams to U.S. dollars based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday and Sunday, where necessary. See e.g., *Certain Steel Nails From the United Arab Emirates: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 3945 (January 23, 2008).

#### Verification

As provided in section 782(i) of the Act, we intend to verify the information upon which we will rely in making our final determination.

#### All-Others Rate

Pursuant to section 735(c)(5)(A) of the Act, the all others rate is equal to the weighted average of the dumping margins of each respondent investigated, excluding zero or *de minimis* margins and any margins determined exclusively under section 776 of the Act. Flex UAE is the only respondent in this investigation for which the Department has calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the rate calculated for Flex UAE as the all-others rate, as referenced in the "Preliminary Determination" section below.

#### Preliminary Determination

The weighted-average dumping margins are as follows:

| Producer/Exporter          | Weighted-Average Margin |
|----------------------------|-------------------------|
| Flex Middle East FZE ..... | 2.45%                   |
| All Others .....           | 2.45%                   |

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of PET Film from the UAE that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin, as indicated in the chart above, as follows: (1) the rate for the firm listed above will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be the all others rate listed above. These suspension of liquidation instructions will remain in effect until further notice.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC

will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of PET Film from the UAE materially injure, or threaten material injury to, the U.S. industry.

### Public Comment

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. See 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. See 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. See 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(I)(1) of the Act.

Dated: April 25, 2008.

**David M. Spooner,**  
Assistant Secretary for Import  
Administration.

[FR Doc. E8-9844 Filed 5-2-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-924)

#### **Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 5, 2008.

**SUMMARY:** We preliminarily determine that polyethylene terephthalate film, sheet, and strip ("PET Film") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination. We will make our final determination 75 days after the date of publication of this preliminary determination, pursuant to section 735(a) of the Act.

**FOR FURTHER INFORMATION CONTACT:** Erin Begnal or Toni Dach, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-1442 or 482-1655, respectively.

#### **SUPPLEMENTAL INFORMATION:**

##### **Initiation**

On September 28, 2007, the Department of Commerce ("Department") received petitions on imports of PET Film from Brazil, the PRC, Thailand, and the United Arab Emirates ("UAE") ("petitions") filed in proper form by Dupont Teijin Films, Mitsubishi Polyester Film Inc., SKC Inc., and Toray Plastics (America) Inc., (collectively, "Petitioners"). See *Antidumping Duty Petition: Polyethylene Terephthalate Film, Sheet,*

*and Strip (PET Film) from Brazil, Republic of China, Thailand, and the United Arab Emirates* (September 28, 2007). These investigations were initiated on October 18, 2007. See *Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates: Initiation of Antidumping Duty Investigations*, 72 FR 60801 (October 26, 2007) ("*Initiation Notice*").

On November 13, 2007, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Brazil, the PRC, Thailand, and UAE of PET Film. The ITC's determination was published in the **Federal Register** on November 30, 2007. See *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates*, 72 FR 67756 (November 30, 2007); see also *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates: Investigation Nos. 731-TA-1131-1134 (Preliminary)*, Publication 3962 (November 2007).

##### **Scope Comments**

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

On November 15, 2007, Avery Dennison requested that the Department find that "release liner," a PET Film product treated on one or both sides with a specially-cured silicon coating of less than 0.00001 inches, is outside the scope of these investigations. Petitioners filed a submission objecting to Avery Dennison's request on November 29, 2007; Petitioners re-submitted their objections with amended bracketing on December 14, 2007, and the document was accepted for the record on that date. Petitioners argue that release liner is "PET Film that clearly falls within the scope of these investigations." See Petitioners' December 14, 2007, submission at 1 and 2. Avery Dennison responded to Petitioners' comments on February 1, 2008.

In accordance with section 731(i) of the Act, we have determined that the descriptions of the merchandise

contained in the petition and in our *Initiation Notice* support the conclusion that release film is of the same class or kind of merchandise covered by the scope of the proposed antidumping duty order. See also generally 19 CFR 351.225(k)(1). The product descriptions in the petition and in the Department's *Initiation Notice* specifically exclude finished films with a "performance enhancing resinous or inorganic layer of more than 0.00001 inches thick." There is nothing in the proposed scope language of either the petition or our *Initiation Notice* that excludes products bearing a performance enhancing resinous or inorganic layer of less than 0.00001 inches from the scope of the order. Moreover, there is no language in either the proposed scope language of the petition or our *Initiation Notice* that limits the scope of the investigation to "PET base film," (i.e., PET Film prior to the application of in-line coatings), as Avery Dennison suggests. In addition, release liner shares the chemical composition of PET Film described in the proposed scope of the petition and *Initiation Notice*.

One of the purposes of a less than fair value investigation is to decide the merchandise specifically covered by the scope of the ultimate antidumping duty order. Based upon the foregoing, we have preliminarily determined that release film is of the same class or kind of merchandise as that described in the petition and in the Department's *Initiation Notice*. Thus, we have determined that release film is covered by the scope of the AD investigation of PET Film from the PRC. For a full discussion of this issue, see the memorandum titled "Antidumping Duty Investigations on Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates," from Michael J. Heaney, Senior Case Analyst, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated April 25, 2008, issued concurrently with this notice.

#### Respondent Selection

In the *Initiation Notice*, the Department stated that it expected to select respondents based on U.S. Customs and Border Protection ("CBP") data of U.S. imports under Harmonized Tariff Schedule of the United States ("HTSUS") number 3920.62.00.90. See *Initiation Notice*, 72 FR at 60806. On November 16, 2007, the Department placed the CBP information on the record of the investigation, and set aside a period for interested parties to submit comments on the CBP information. On

November 30, 2007, the Department received comments on respondent selection from Petitioners and DuPont-Hongji Films Foshan Co., Ltd. ("DPHJ"), a manufacturer of subject merchandise. On December 3, 2007, and December 11, 2007, the Department received additional comments on respondent selection from Petitioners and DPHJ, respectively. On December 26, 2007, the Department selected Jiangyin Jinzhongda New Material Co., Ltd. ("JJ New Material") and Dupont Teijin Films China Limited ("DTFC") as mandatory respondents. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration through James C. Doyle, Director, AD/CVD Operations, Office 9 and Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9 from Erin Begal, Senior International Trade Analyst, regarding, "Selection of Respondents for the Antidumping Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated December 26, 2007 ("Respondent Selection Memo").

#### Separate Rates Applications

Between December 14, 2007, and December 19, 2007, the Department received separate rate applications from eight companies, including one mandatory respondent, DTFC, and its affiliated producers DPHJ and DuPont Teijin Hongji Films Ningbo Co., Ltd. ("DTHFN"). We issued deficiency questionnaires to Fuwei Films (Shandong) Co., Ltd. ("Fuwei Films"), Shaoxing Xiangyu Green Packing Co., Ltd. ("Green Packing"), Tianjin Wanhua Co., Ltd. ("Tianjin Wanhua"), Sichuan Dongfang Insulating Material Co., Ltd. ("Sichuan Dongfang"), and Shanghai Uchem Co., Ltd. ("Shanghai Uchem") (collectively, "SR Applicants") on March 14, 2008. We issued an additional deficiency questionnaire to Tianjin Wanhua on March 21, 2008. We received a response from Tianjin Wanhua on March 21, 2008, March 28, 2008, and April 3, 2008. We also received responses from Fuwei Films, Green Packing, Sichuan Dongfang, and Shanghai Uchem on March 28, 2008.

#### Product Characteristics & Questionnaires

On October 30, 2007, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of PET Film from Brazil, Thailand, and the UAE, for comments on the appropriate product characteristics for defining individual products. In addition, the Department requested all parties in this

investigation and in the concurrent antidumping duty investigations of PET Film from Brazil, Thailand, and the UAE to submit comments on the appropriate model matching methodology. See Letter from Robert James, Program Manager, AD/CVD Enforcement 7, dated October 30, 2007. We received comments from Petitioners on November 6, 2007, requesting that the Department include the grade of PET Film in the model match criteria. Additionally, Petitioners requested that the Department include a field identifying whether the PET Film has been coextruded. In its December 27, 2007, questionnaire, the Department requested that the respondent report the grade of the PET Film, but did not request a field identifying whether the PET Film is coextruded. For purposes of this preliminary determination, the Department has determined that it is unnecessary to change the proposed product characteristics with regard to coextrusion. For purposes of distinguishing subject merchandise, the Department will take into account the grade of the PET Film, as advocated by Petitioners in their submission. The Department also received untimely filed comments from the BOPET Association of China Plastics Processing Industry Association on November 30, 2007.<sup>1</sup>

On December 27, 2007, the Department issued to DTFC and JJ New Material its sections A, C, D, and E questionnaire,<sup>2</sup> which included product characteristics used in the designation of CONNUMs and assigned to the merchandise under consideration. On January 22, 2008, the Department placed on the record of the investigation an email response from JJ New Material, indicating that it would not respond to the Department's questionnaire and would not participate in the investigation. Between January 11, 2008, and February 8, 2008, the Department received section A, C, and D questionnaire responses from the DuPont Group.<sup>3</sup> The DuPont Group was

<sup>1</sup> Because the BOPET Association of China Plastics Processing Industry Association's comments were submitted after the Department's deadline for submission, the Department was unable to consider these comments for defining product characteristics.

<sup>2</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on factors of production, and Section E requests information on further manufacturing.

<sup>3</sup> Although the original questionnaire was issued to DTFC, which was selected as a mandatory respondent, we received questionnaire responses on

not required by the Department to submit a Section E response. The Department also issued supplemental questionnaires to the DuPont Group and received responses between February 25, 2008, and March 14, 2008. Petitioners submitted deficiency comments on the section C and D questionnaire responses of the DuPont Group on February 19, 2008.

#### Surrogate Country

On January 18, 2008, the Department determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development. See Letter to All Interested Parties, from Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, regarding "Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated January 18, 2008, attaching Memorandum to Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Carole Showers, Acting Director, Office of Policy, regarding "Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China (PRC): Request for List of Surrogate Countries," dated January 16, 2008.

On January 18, 2008, the Department requested comments on surrogate country selection from the interested parties in this investigation. Petitioners and the DuPont Group submitted surrogate country comments on February 1, 2008. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, see "Surrogate Country" section below.

#### Surrogate Value Comments

On March 19, 2008, Petitioners and the DuPont Group submitted comments on surrogate information with which to value the factors of production in this proceeding.

#### Targeted Dumping

On March 24, 2008, Petitioners filed an allegation of targeted dumping by the DuPont Group based on a pattern of export prices for comparable merchandise that differ significantly over periods of time. Petitioners also submitted the programming code they used in their targeted dumping allegations on March 24, 2008. On April 9, 2008, Petitioners submitted a letter

behalf of DTFC, the exporter of the subject merchandise, and its affiliated producers, DPHJ and DTHFN, collectively the "DuPont Group."

withdrawing their targeted dumping allegation.

#### Postponement of Preliminary Determination

On January 23, 2008, Petitioners made a timely request, pursuant to section 733(c)(1)(A) of the Act, for a 50-day postponement of the preliminary determinations with respect to Brazil, the People's Republic of China, Thailand, and the United Arab Emirates. See also 19 CFR 351.205(e). The Department published a postponement of the preliminary determination on February 11, 2008. See *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 7710 (February 11, 2008).

#### Period of Investigation

The period of investigation ("POI") is January 1, 2007, through June 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, September, 2007. See 19 CFR 351.204(b)(1).

#### Scope of Investigation

The products covered by this investigation are all gauges of raw, pre-treated, or primed PET Film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is Roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET Film is classifiable under subheading 3920.62.00.90 of the HTSUS. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

#### Non-Market-Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses for the PRC as a non-market economy ("NME"). See *Initiation Notice*, 73 FR at 60804. The Department considers the PRC to be a NME country. See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's*

*Republic of China*, 72 FR 60632 (October 25, 2007). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

#### Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production ("FOP") valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department's practice with respect to determining economic comparability is explained in *Policy Bulletin 04.1*,<sup>4</sup> which states that "Per capita GNI<sup>5</sup> is the primary basis for determining economic comparability." The Department considers the five countries identified in its Surrogate Country List as "equally comparable in terms of economic development." See *Policy Bulletin 04.1* at 2. Thus, we find that India, Indonesia, the Philippines, Colombia, and Thailand are all at an economic level of development equally comparable to that of the PRC.

Second, *Policy Bulletin 04.1* provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. Based on the data provided by Petitioners, we find that India is a producer of identical merchandise. See Petitioners' February 1, 2008, Comments on Surrogate Country at 2. Petitioners

<sup>4</sup> See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process*, (March 1, 2004), ("Policy Bulletin 04.1") available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

<sup>5</sup> GNI stands for gross national income, which comprises GDP plus net receipts of primary income (compensation of employees and property income) from nonresident sources. See, e.g., <http://www.facts.com/biz10/globalworldincomepercapita.htm>.

provided a list of Indian companies that produce PET Film. *Id.* Additionally, Petitioners submitted on the record of the investigation worldwide export data for PET Film, detailed in the *ITC Sunset Review of PET Film from India and Taiwan*, Prehearing Report to the Commission on Investigation Nos. 701-TA-415 and 731-TA-933 and 934 (Review) (January 29, 2008), Tables IV-8 and IV-10. See Petitioners' February 1, 2008, Comments on Surrogate Country at Attachment I. Because the Department was unable to find production data, we are relying on export data as a substitute for overall production data in this case. Of the five countries listed in the Surrogate Country List, only three countries, India, Thailand, and Indonesia are exporters of PET Film. *Id.* Consequently, at this time, the Philippines and Colombia are not being considered as appropriate surrogate countries for the PRC because they are not exporters of PET Film. Moreover, India, Thailand, and Indonesia are significant producers of identical merchandise. Specifically, during 2006 India exported 95,925,000 pounds of identical merchandise, while Thailand exported 75,447,000 pounds and Indonesia exported 67,723,000 pounds. *Id.*

With respect to data considerations in selecting a surrogate country, it is the Department's practice that, ". . . if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country." See *Policy Bulletin 04.1* at 4. Currently, the record contains surrogate factor value data, including possible surrogate financial statements, only from India.

Thus, the Department is preliminarily selecting India as the surrogate country on the basis that: (1) it is at a similar level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of identical merchandise; and (3) we have reliable data from India that we can use to value the factors of production. Thus, we have calculated normal value using Indian prices when available and appropriate to value DTFC's affiliated producers' factors of production. See Memorandum to the File through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding "Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Selection of Factor Values," dated April 25, 2008 ("Surrogate Value Memorandum").

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of the preliminary determination.<sup>6</sup>

#### Affiliation

We preliminarily find the DuPont Group, comprised of DTFC, DPHJ, and DTHFN, to be affiliated parties within the meaning of section 771(33)(E) of the Act, due to common ownership. Specifically, DTFC is an owner of DPHJ, and DPHJ and DTFC are owners of DTHFN. See DTFC's December 17, 2007, Separate Rate Application at Exhibit 12, DPHJ's December 17, 2007, Separate Rate Application at 18; DTHFN's December 17, 2007, Separate Rate Application at 18, and the DuPont Group's January 11, 2008, Section A response at Exhibit A-3.

#### Separate Rates

Additionally, in the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations. See *Initiation Notice*, 72 FR at 60804-60805. The process requires exporters and producers to submit a separate-rate status application. The Department's practice is discussed further in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005), ("*Policy Bulletin 05.1*") available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.<sup>7</sup> However, the standard

<sup>6</sup>In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>7</sup>The *Policy Bulletin 05.1*, states: "{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies

for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. As discussed fully below, DTFC and the SR Applicants have provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control, and therefore satisfy the standards for the assignment of a separate rate.

We have considered whether each PRC company that submitted a complete application is eligible for a separate rate. The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each

both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." See *Policy Bulletin 05.1* at 6.

entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. Additionally, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

### Wholly Foreign-Owned

In its separate rate application, DTFC<sup>8</sup> reported that it is wholly foreign-owned and incorporated in Hong Kong. Additionally, Fuwei Films, a separate rate applicant, reported that it is wholly foreign-owned in its separate-rate application. Therefore, because there is no PRC ownership of DTFC and Fuwei Films, *i.e.*, they are wholly foreign-owned, and we have no evidence indicating that they are under the control of the PRC, a separate rates analysis is not necessary to determine whether these companies are independent from government control. See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71104-05 (December 20, 1999) (where the respondent was wholly foreign-owned, and thus, qualified for a separate rate). Accordingly, we have preliminarily granted a separate rate to DTFC and Fuwei Films.

### Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-owned Companies

Certain companies stated that they are either joint ventures between Chinese and foreign companies or are wholly

Chinese-owned companies (collectively “PRC SR Applicants”). Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

The evidence provided by the PRC SR Applicants – Green Packing, Tianjin Wanhua, Sichuan Dongfang, and Shanghai Uchem – supports a preliminary finding of *de jure* absence of governmental control based on the following: 1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; 2) there are applicable legislative enactments decentralizing control of the companies; and 3) and there are formal measures by the government decentralizing control of companies. See, *e.g.*, Shanghai Uchem Co., Ltd.'s February 11, 2008, Separate Rate Application (“Shanghai Uchem SRA”) and Shaoxing Xiangyu Green Packing Co., Ltd.'s December 14, 2007, Separate Rate Application (“Green Packing SRA”).

#### 2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22544-22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in

determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for the PRC SR Applicants, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: 1) each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) each exporter has the authority to negotiate and sign contracts and other agreements; and 4) each exporter has autonomy from the government regarding the selection of management. See, *e.g.*, Shanghai Uchem SRA and Green Packing SRA.

Therefore, the evidence placed on the record of this investigation by the PRC SR Applicants demonstrates an absence of *de jure* and *de facto* government control with respect to each exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. See Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Toni Dach, International Trade Analyst, AD/CVD Operations, Office 9, regarding “Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Separate Rates Memorandum,” dated April 25, 2008. As a result, for the purposes of this preliminary determination, we have granted a separate company-specific rate to DTFC. Additionally, we have granted the SR Applicants a weighted-average margin for the purposes of this preliminary determination.

### Application of Facts Available Section

776(a)(1) and (2) of the Act provides that the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be

<sup>8</sup>DTFC's affiliated producers, DPHJ and DTHFN, submitted timely separate applications. DPHJ and DTHFN stated that during the POI, they sold the subject merchandise through their affiliated Hong Kong exporter, DTFC, who then resold the merchandise to the United States through its U.S. affiliate. Additionally, both DPHJ and DTHFN stated that neither company exported directly to the U.S. affiliate or to any unaffiliated U.S. customers directly. Therefore, we are considering DTFC as the exporter of the subject merchandise, and we did not consider the separate rate status of DPHJ and DTHFN on an individual basis.

verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.<sup>9</sup>

#### Application of Total Adverse Facts Available

#### The PRC-Wide Entity

On December 26, 2007, the Department selected JJ New Material as one of the mandatory respondents, and on December 27, 2007, we issued our questionnaire to JJ New Material. On January 22, 2008, the Department placed on the record of the investigation an email response from JJ New Material, indicating that it would not respond to the Department’s questionnaire and would not participate in the investigation. Thus, there is no information on the record of this investigation with respect to JJ New Material. Because JJ New Material was selected as a mandatory respondent and

failed to demonstrate its eligibility for separate-rate status, it remains subject to this investigation as part of the PRC-wide entity.

Pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we find that it is appropriate to apply a dumping margin for the PRC-wide entity using the facts otherwise available on the record, because the PRC-wide entity (including JJ New Material) withheld information requested by the Department and impeded the proceeding. Specifically, the PRC-wide entity failed to respond to the Department’s questionnaires and withheld or failed to provide information in a timely manner or in the form or manner requested by the Department. Thus, the PRC-wide entity impeded the proceeding. Additionally, because this party failed to cooperate by refusing to respond to our requests for information, we find an adverse inference is appropriate pursuant to section 776(b) of the Act for the PRC-wide entity.

#### Selection of the Adverse Facts Available Rate

Because the PRC-wide entity failed to respond to our request for information, it has failed to cooperate by not acting to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate pursuant to section 776(b) of the Act for the PRC-wide entity.

Further, section 776(b) of the Act authorizes the Department to use as adverse facts available (“AFA”) information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse so “as to effectuate the purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>10</sup> Moreover, the Department will select a rate that ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>11</sup>

<sup>10</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>11</sup> See Statement of Administrative Action, accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (“SAA”) at 870. See also *Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005).

It is the Department’s practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.<sup>12</sup> As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 76.72 percent, the highest calculated rate from the petition. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department’s reliance on the petition rate to determine an AFA rate is subject to the requirement to corroborate secondary information.<sup>13</sup>

#### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as “information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>14</sup> The SAA explains that to “corroborate” means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* The SAA also explains that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.<sup>15</sup>

<sup>12</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People’s Republic of China*, 73 FR 6479, 6481 (February 4, 2008).

<sup>13</sup> See the “Corroboration” section below.

<sup>14</sup> See SAA at 870.

<sup>15</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part.*, 62 FR 11825 (March 13, 1997).

<sup>9</sup> See 19 CFR 351.308(c).

The AFA rate that the Department used is from the petition.<sup>16</sup> Petitioners' methodology for calculating the export price ("EP") and NV in the petition is discussed in the initiation notice.<sup>17</sup> To corroborate the AFA margin we have selected, we compared that margin to the margins we found for the respondent. We found that the margin of 76.72 percent has probative value because it is in the range of margins we found for the cooperating mandatory respondent. Accordingly, we find that the rate of 76.72 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying 76.72 percent as the single antidumping rate to the PRC-wide entity. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from DTFC, and the separate rate applicants receiving a separate rate.

#### Margin for the Separate Rate Applicants

The Department received timely and complete separate rates applications from the SR Applicants, who are all exporters of PET Film from the PRC, which were not selected as mandatory respondents in this investigation. Through the evidence in their applications, these companies have demonstrated their eligibility for a separate rate, as discussed above. Consistent with the Department's practice, as the separate rate, we have established a margin for the SR Applicants based on the rate we calculated for the cooperating mandatory respondent, DTFC.<sup>18</sup> Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice.

#### Date of Sale

Section 351.401(i) of the Department's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." However, the

Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001) ("*Allied Tube*"). The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. In *Allied Tube*, the Court of International Trade ("CIT") noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to satisfi{y} the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." *Allied Tube* 132 F. Supp. 2d at 1090 (quoting 19 CFR 351.401(i)). In order to simplify the determination of date of sale for both the respondent and the Department and in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In other words, the date of the invoice is the presumptive date of sale, although this presumption may be overcome. For instance, in *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064, 14067 (March 29, 1996), the Department used the date of the purchase order as the date of sale because the terms of sale were established at that point.

After examining the questionnaire responses and the sales documentation that the DuPont Group placed on the record, we preliminarily determine that invoice date is the most appropriate date of sale for all CEP sales made by DTFC. See DuPont Group February 8, 2008, Section C questionnaire response at C–13 and March 17, 2008, supplemental response at C–3–4.

#### Fair Value Comparisons

To determine whether sales of PET Film to the United States by DTFC were made at less than fair value, we compared the constructed export price ("CEP") to normal value ("NV"), as described in the "U.S. Price," and "Normal Value" sections of this notice.

#### U.S. Price

In accordance with section 772(b) of the Act, we based the U.S. price on CEP

because all of these sales were first made to unaffiliated U.S. customers by DTFC's U.S. affiliate. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States: foreign movement expenses, international freight, discounts, and United States movement expenses. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: credit expenses, direct selling expenses, and indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. Where foreign movement or international ocean freight was provided by PRC service providers or paid for in Renminbi ("RMB"), we valued these services using surrogate values (see "Factors of Production" section below for further discussion).

For a complete discussion of the calculations of the U.S. price for DTFC, see Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding "Program Analysis for the Preliminary Determination of Antidumping Duty Investigation of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," dated April 25, 2008 ("*DTFC Analysis Memorandum*").

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

#### Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by DTFC's affiliated producers for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as

<sup>16</sup> See "Antidumping Duty Investigation Initiation Checklist: Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China" at 9. See also *Initiation Notice*, 72 FR at 60806.

<sup>17</sup> See *Initiation Notice*, 72 FR at 60803-60804 and 60806.

<sup>18</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the Indian surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). A detailed description of all surrogate values used for DTFC can be found in the Surrogate Value Memorandum and DTFC Analysis Memorandum. Additionally, for detailed descriptions of all actual values used for market–economy inputs, see DTFC Analysis Memorandum dated April 25, 2008.

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for DTFC's affiliated producers' FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POI, product–specific, and tax–exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, represent data that are contemporaneous with the POI, product–specific, and tax–exclusive. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price

Index (“WPI”) as published in the International Financial Statistics of the International Monetary Fund.

Furthermore, with regard to the Indian import–based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry–specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7 (“CTVs from the PRC”). Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100–576 at 590 (1988). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries either in calculating the Indian import–based surrogate values or in calculating market–economy input values. In instances where a market–economy input was obtained solely from suppliers located in these countries, we used Indian import–based surrogate values to value the input. See *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.

DTFC reported that its affiliated producers purchased an input, which was consumed in the production of the merchandise under review, from a market economy (“ME”) supplier and paid for in a market economy currency. Pursuant to 19 CFR 351.408(c)(1), the Department normally will accept input prices to value the factors of production of inputs purchased from a ME supplier

and paid for in a ME currency. Furthermore, consistent with the Department's stated policy reflected in *Antidumping Methodologies: Market Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (“2006 Statement of Policy”), when a sufficient proportion of an input is purchased from a market economy, the Department will use the reported market economy prices to value that input when the item was paid for in a market economy currency. For purposes of the preliminary determination, we have determined that DTFC's reported market economy purchases accounted for a significant portion of total purchases of that input and, therefore, have used the reported purchase prices to value the input in the Department's normal value calculation. See DTFC Analysis Memorandum.

The Department used the Indian Import Statistics to value the raw material and packing material inputs that DTFC's affiliated producers used to produce the subject merchandise during the POI, except where listed below.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in January 2007, <http://ia.ita.doc.gov/wages/index.html>. The source of these wage–rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2004, ILO (Geneva: 2004), Chapter 5B: Wages in Manufacturing. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. See Surrogate Value Memorandum.

To value factory overhead, selling, general, and administrative expenses, and profit, we averaged the audited 2006–2007 financial statements from Jindal Poly Films Limited, Garware Polyester Limited, Polyplex Corporation Ltd., and UFlex Limited, four large producers of PET Film in India.

For a detailed discussion of all surrogate values used for this preliminary determination, see Surrogate Values Memorandum.

#### Currency Conversion

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

**Verification**

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

**Combination Rates**

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See*

*Initiation Notice*, 72 FR at 60806. This practice is described in *Policy Bulletin 05.1*, available at <http://ia.ita.doc.gov/>.

**Preliminary Determination**

The weighted-average dumping margins are as follows:

**PET FILM FROM THE PRC**

| Exporter  | Producer                                       | Weighted-Average Margin |
|---|--|-------------------------|
| DuPont Teijin Films China Ltd. ....                                   | DuPont Hongji Films Foshan Co. Ltd.            | 46.82%                  |
| DuPont Teijin Films China Ltd. ....                                   | DuPont Teijin Hongji Films Ningbo Co., Ltd.    | 46.82%                  |
| Fuwei Films (Shandong) Co., Ltd. ....                                 | Fuwei Films (Shandong) Co., Ltd.               | 46.82%                  |
| Shaoxing Xiangyu Green Packing Co., Ltd. ....                         | Shaoxing Xiangyu Green Packing Co., Ltd.       | 46.82%                  |
| Sichuan Dongfang Insulating Material Co., Ltd. ....                   | Sichuan Dongfang Insulating Material Co., Ltd. | 46.82%                  |
| Tianjin Wanhua Co., Ltd. ....   | Tianjin Wanhua Co., Ltd.                       | 46.82%                  |
| Shanghai Uchem Co., Ltd. ....   | Sichuan Dongfang Insulating Material Co., Ltd. | 46.82%                  |
| Shanghai Uchem Co., Ltd. ....   | Shanghai Xishu Electric Material Co., Ltd.     | 46.82%                  |
| PRC-wide (including Jiangyin Jinzhongda New Material Co., Ltd.) ..... |  | 76.72%                  |

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of PET Film from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption from DTFC, Fuwei Films, Green Packing, Tianjin Wanhua, Sichuan Dongfang, Shanghai Uchem, and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of PET Film, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant

Secretary for Import Administration no later than seven days after the date of the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs no later than five days after the deadline date for case briefs (*see* 19 CFR 351.309(c)(i) and (d)). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on

arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 25, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-9845 Filed 5-2-08; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

(A-351-841)

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 5, 2008.

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that polyethylene terephthalate film, sheet, and strip (PET film) from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Tariff Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination. Accordingly, we will make our final determination not later than 75 days after the signature date of

the preliminary determination, in accordance with 19 CFR 351.210.

**FOR FURTHER INFORMATION CONTACT:**

Michael J. Heaney, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4475, or (202) 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background:**

On October 26, 2007, the Department initiated the antidumping duty investigation of PET film from Brazil. *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates: Initiation of Antidumping Duty Investigations*, 72 FR 60801 (October 26, 2007) (*Initiation Notice*). The petitioners in this investigation are DuPont Teijin Films, Mitsubishi Polyester Film Inc., SKC Inc, and Toray Plastics (America) Inc.

On November 13, 2007, the United States International Trade Commission (the Commission) preliminarily determined there is a reasonable indication that imports of PET film from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates are materially injuring the U.S. industry and notified the Department of its findings. *See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, China, Thailand, and the United Arab Emirates Case Number. 731-TA-1131-1134 (Preliminary)*, 72 FR 67756, (November 30, 2007).

On November 15, 2007, Avery Dennison Fason Roll North America (Avery Dennison) requested that the Department find that "release liner," a PET film product treated on one or both sides with a specially-cured silicon coating of less than 0.00001 inches, is outside the scope of the investigations. Petitioners objected to Avery Dennison's request on November 29, 2007; petitioners re-submitted their objections with amended bracketing on December 14, 2007, and the document was accepted for the record on that date. Petitioners insist release liner is "PET film that clearly falls within the scope of these investigations." *See* Petitioners' December 14, 2007 submission at 1 and 2. Avery Dennison responded to petitioners comments on February 1, 2008.

In accordance with section 731(1) of the Tariff Act, we have determined that the descriptions of the merchandise contained in the petition and the *Notice of Initiation* support the conclusion that

release film is of the same class or kind of merchandise covered by the proposed antidumping order. *See* also generally 19 CFR 351.225(k)(1). The product descriptions in the petition and in the Department's *Notice of Initiation* specifically exclude finished films with a "performance enhancing resinous or inorganic layer of more than 0.00001 inches thick." There is nothing in the proposed scope language of either the petition or our *Notice of Initiation* that excludes products bearing a performance enhancing resinous or inorganic layer of less than 0.00001 inches from the scope of the order. Moreover, there is no language in either the proposed scope language of the petition or our *Notice of Initiation* that limits the scope of the investigation to "PET base film" (*i.e.*, PET film prior to the application of in-line coatings), as Avery Dennison suggests. In addition, release liner shares the chemical composition of PET film described in the proposed scope of the petition and *Notice of Initiation*.

One of the purposes of a less than fair value investigation is to decide the class or kind of merchandise specifically covered by the scope of the ultimate antidumping order. Based upon the foregoing, we have preliminarily determined that release film is of the same class or kind of merchandise covered by the scope of the AD investigation of PET film from Brazil. Thus, we have determined that release film is covered by the scope of the AD investigation of PET film from Brazil. For a full discussion of this issue *see* the memorandum titled "Antidumping Duty Investigations on Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates," from Michael J. Heaney, Senior Case Analyst, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated April 25, 2008, and issued concurrently with this notice.

On January 23, 2008, the petitioners requested the Department postpone the preliminary determination by 50 days. The Department published a notice of postponement on February 11, 2008, which set the new deadline for the preliminary determination at April 25, 2008. *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 73 FR 7710, (February 11, 2008).

In their September 28, 2007 petition, Petitioners identified one respondent,

Terphane Ltda. (Brazil) (Terphane). *See* Antidumping Petition: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, People's Republic of China, Thailand, and the United Arab Emirates at 11. *See* also, October 18, 2007, Initiation Checklist: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil (Initiation Checklist) at 2.

We issued our antidumping questionnaire to Terphane on November 21, 2007. Terphane submitted its section A response on December 21, 2007. The Department received Terphane's response to sections B, C, D, and E of our questionnaire on January 15, 2008. Our analysis of Terphane's section A, B, C, D, and E responses indicated numerous areas requiring additional information and clarification from Terphane. Those areas which required additional information and clarification from Terphane included: 1) whether affiliated parties provided any of the sales or production inputs used in the sale of PET film, 2) how the United States and home market sales totals shown in Terphane's response relate and reconcile to Terphane's financial statements, 3) the allocation method used by Terphane to derive U.S. ocean freight, warehousing, and U.S. inland freight charges, and 4) how Terphane derived the cost of production (COP) and constructed value (CV) data reported in its section D response. Petitioners provided comments on Terphane's response on February 19, 2008. On February 13, 2008, we sent a supplemental questionnaire to Terphane requesting additional information concerning its January 15, 2008 Section D Response. *See* the Department's February 13, 2008, letter to Terphane Ltda. (February 13 letter). On February 29, 2008, we issued a supplemental questionnaire covering Terphane's Section A, B, and C responses. *See* February 29, 2008 letter to Terphane Ltda., (February 29, 2008 letter). However, on March 26, 2008, Terphane submitted a letter indicating that it was withdrawing from the investigation, and thus would no longer participate or cooperate with the Department's request for information.

As a result, the home market and U.S. sales and cost data submitted by Terphane are incomplete, and as noted above, there are still significant deficiencies in Terphane's Section A, B, C, D and E responses that require additional information and/or clarification. In addition, we cannot verify Terphane's responses. Thus, because we are unable to trust the reliability of the information conveyed in Terphane's questionnaire responses, Terphane's questionnaire responses

cannot serve as the basis of Terphane's margin calculation. See Section below entitled, "Use of Facts Otherwise Available."

**Period of Investigation:**

The POI is July 1, 2006, to June 30, 2007.

**Scope of Investigation:**

The products covered in this investigation 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). While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

**Model Match:**

In accordance with section 771(16) of the Tariff Act, all products produced by the respondent covered by the description in the *Scope of Investigation* section, above, and sold in Brazil during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

The Department set aside a period of time for parties to raise issues regarding model match and encouraged all parties to submit comments concerning our model-match procedures. See October 30, 2008, letter from Robert James to All Interested Parties. We received model-match comments from petitioners on November 7, 2007. In their comments, petitioners suggested that we employ each of the model match criteria used in the Preliminary Results of the Changed Circumstances Review of PET film from Korea. See, *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Preliminary Results of Changed Circumstances Review and Intent to Reinstate Kolon Industries Inc. in the Antidumping Order*, 72 FR 56048 (October 2, 2007) *Korean CC Review*. The model-match criteria employed in the *Korean CC Review* were: 1) specification, 2) thickness, 3) surface treatment, and 4) grade. *Id.*, at 56049. In addition to 1) specification, 2) thickness, 3) surface treatment, and 4)

grade. In addition, petitioners suggested that we also consider a fifth criterion: whether the product has been extruded. See Petitioners November 7, 2007, letter at 1-2. For purposes of this preliminary determination, the Department has determined that it is unnecessary to change the proposed product characteristics and model matching methodology with regard to coextrusion. For purposes of distinguishing subject merchandise, the Department will take into account the grade of PET film, as advocated by petitioners in their submission.

**Use of Facts Otherwise Available:**

For the reasons discussed below, we determine the use of facts available is appropriate for the preliminary determination with respect to Terphane. As noted in the Supplementary Information section above, Terphane has withdrawn from the proceeding. Additionally, Terphane failed to respond to our supplemental questionnaires of February 13, 2008 and February 29, 2008. As such, Terphane has withheld information necessary to calculate a margin for Terphane.

Section 776(a)(2) of the Tariff Act provides that if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Tariff Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Tariff Act provides that if the administering authority determines a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Tariff Act states further the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, Terphane has withdrawn from the proceeding, and, thus, has determined not to participate further or to cooperate with the Department's requests for information. Moreover, as noted previously, the U.S., home market, and cost information provided by Terphane in its December 21, 2007, Section A response and its January 15, 2008, Section B, C, D, and E responses is substantially deficient. Terphane also failed to provide requested information by the established deadlines. Additionally, Terphane's decision to withdraw from this investigation has precluded the Department from conducting the verification of Terphane's questionnaire responses required by Section 782(i)(1) of the Act, and has demonstrated its failure to act to the best of its ability in responding to our requests for information.

**Application of Adverse Inferences for Facts Available**

Section 776(b) of the Act stipulates that if the Department finds an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference adverse to the interests of that party in selecting from the facts otherwise available. See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. See, e.g., *Certain Polyester Staple Fiber From Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (Nippon); and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

Although the Department provided Terphane with notice informing it of the consequences of its failure to fully

respond to sections A through E of our antidumping questionnaire, Terphane has withdrawn from this investigation and has failed to provide complete responses to the Department's requests for information. This constitutes a failure on the part of Terphane to cooperate to the best of its ability to comply with a request for information by the Department, pursuant to section 776(b) of the Tariff Act. Moreover, because Terphane has withdrawn from the proceeding and did not provide the information requested in our supplemental questionnaires of February 13, 2008, and February 29, 2008, the requirements of section 782(e) of the Tariff Act have not been satisfied.

Based on the above, the Department has preliminarily determined that Terphane has failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total adverse facts available (AFA) where the respondent failed to respond to the antidumping questionnaire).

#### **Selection and Corroboration of Information Used as Facts Available**

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Tariff Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to Terphane the highest margin alleged in the petition, as referenced in the *Initiation Notice*, or 44.36 percent. *See Initiation Notice* at 60806.

When using facts otherwise available, section 776(c) of the Tariff Act provides that where the Department relies on secondary information (such as the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal.

The SAA clarifies that “corroborate” means the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this preliminary determination. *See Initiation Checklist* at pages 8 through 10. *See also Initiation Notice* at 60803 and 60806. We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis we examined the key elements of the constructed export price (CEP) and normal-value calculations used in the petition to derive margins. During our pre-initiation analysis we also examined information from various independent

sources provided either in the petition or in supplements to the petition that corroborates key elements of the constructed export price and normal-value calculations used in the petition to derive estimated margins. *Id.*

The petitioners calculated CEP from information regarding a representative sale of 48-gauge packaging film by Terphane to an unaffiliated customer in the United States. *See Initiation Checklist* at 6. Petitioners made deductions from CEP for a distributor mark up and for international freight and insurance, U.S. customs duties, inland freight from the U.S. warehouse to the U.S. customer and credit expenses. *Id.* at 6–7. We adjusted petitioner's calculation of the distributor mark-up to exclude certain charges covered in separate deductions from U.S. price (*i.e.* inland freight from the U.S. port to the distribution warehouse and brokerage charges. *Id.* at 6.

The petitioners based normal value on a sale of 48 gauge packaging film by Terphane to a customer in Brazil during the POI. *Id.* at 8. Petitioners made an adjustment to home market price for credit. *Id.* Based upon the Department's deficiency questions, petitioners revised their calculation of normal value by eliminating deductions from the home market price for advertising, slitting, and material losses. *Id.*

Petitioners also alleged that Terphane made sales below the home market below its cost of production. *Id.* Petitioners calculated constructed value (CV) as the cost of manufacture (COM); selling general and administrative expenses (SG&A) expenses; packing expenses, and profit. In calculating CV, we recalculated factory overhead based upon the financial statements of a Brazilian thermoplastic resin producer. (The resins manufactured by this Brazilian producer include PET film.) *Id.* at 9. Based upon the methodology described above, the estimated dumping margins for Brazil ranged from 13.08 percent (price-to price margin) to 44.36 percent (price-to CV margin). *Id.* at 10.

Based on our examination of the aforementioned information, we consider the petitioners' calculation of normal value based both upon a sale of 48 gauge packaging film by Terphane to a customer in Brazil and constructed value to be corroborated. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the petition by examining source documents as well as publicly available information, we preliminarily determine the margins in the petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as “best information available” (the predecessor to “facts available”) because the margin was based on another company’s uncharacteristic business expense that resulted in an unusually high dumping margin.

In the pre-initiation stage of this investigation, we confirmed the calculation of margins in the Petition (e.g., prices, expenses, adjustments, etc.) reflects the commercial practices of the particular industry during the period of investigation. See Memorandum to the File, “Telephone Call to Market Research Firm,” dated July 17, 2007. No information has been presented in the investigation that calls into question the relevance of this information. As such, and as established during our pre-initiation analysis, we preliminarily determine the highest margin in the petition was based on adequate and accurate information. Accordingly, we consider that highest margin corroborated for purposes of this preliminary determination. Therefore, it is relevant as the adverse facts-available rate for Terphane.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving this company, we find there are no probative alternatives to the margins alleged in the petition. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determining it to be relevant for the uncooperative respondents in this investigation, we have corroborated the adverse facts-available rate “to the extent practicable.” See section 776(c) of the Tariff Act, 19 CFR 351.308(d). Therefore, we find that the estimated margin of 44.36 percent in the *Initiation*

*Notice* has probative value. Consequently, with respect to Terphane, we have applied the margin rate of 44.36 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice* at 60806.

**All-Others Rate:**

Section 735(c)(5)(B) of the Tariff Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Tariff Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign as the all-others rate the simple average of the margins in the petition. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271, 67272 (November 28, 2007). See also *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128, 34129 (June 18, 2004). Consistent with our practice we used the rates in the petition that were considered in the Department’s initiation to calculate a simple average to be assigned as the all-others rate. That simple average, 28.72 percent, is derived from the following petition rates: 13.08 (price to price margin) and 44.36 percent (price to CV margin). This 28.72 percent rate will be applied to all Brazilian producers and exporters of PET film other than Terphane.

**Preliminary Determination:**

We preliminarily determine the following weighted-average dumping margins exist for the period April 1, 2006, through March 31, 2007:

| Producer/Exporter | Margin |
|-------------------|--------|
| Terphane .....    | 44.36  |
| All Others .....  | 28.72  |

**Suspension of Liquidation:**

In accordance with section 733(d)(2) of the Tariff Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of PET film from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average

margins, as indicated in the chart above, as follows: (1) the rate for Terphane will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 28.72 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

**Commission Notification:**

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of the Department’s preliminary affirmative determination. If the Department’s final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of PET film from Brazil are materially injuring, or threaten material injury to, the U.S. industry.

**Public Comment:**

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than fifty days after the date of publication of this notice. See 19 CFR 351.309(c)(1)(i). Rebuttal briefs, limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. See 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Tariff Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will be scheduled two days after the deadline for submitting rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is

requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, APO/Dockets, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. See 19 CFR 351.310(c). At the hearing oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: April 25, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-9846 Filed 5-2-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-549-825)

#### Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 5, 2008.

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that polyethylene terephthalate film, sheet, and strip (PET Film) from Thailand is not being, nor likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). Interested parties are invited to comment on this preliminary determination.

**FOR FURTHER INFORMATION CONTACT:**

Stephen Bailey or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0193, or (202) 482-3019, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 17, 2007, the Department initiated the antidumping duty investigation of PET Film from Thailand. See *Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Brazil, the People's Republic of China, Thailand, and the*

*United Arab Emirates: Initiation of Antidumping Duty Investigations*, 72 FR 60801 (October 26, 2007) (*Notice of Initiation*).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Notice of Initiation*. See *Notice of Initiation*. On November 15, 2007, Avery Dennison Fason Roll North America (Avery Dennison) requested that the Department find "release liner," a PET film product treated on one or both sides with a specially-cured silicon coating, is outside the scope of these investigations. Petitioners (DuPont Teijin Films, Mitsubishi Polyester Film of America, Inc., SKC, Inc. and Toray Plastics (America), Inc. (collectively, petitioners)) objected to Avery Dennison's request on November 29, 2007; petitioners re-submitted their objections with amended bracketing on December 14, 2007, and the document was accepted for the record on that date.

On August 28, 2007, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of PET Film from Brazil, China, Thailand, and the United Arab Emirates (UAE) are materially injuring the U.S. industry and the ITC notified the Department of its findings. See *Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, China, Thailand, and the United Arab Emirates Case Number: 731-TA-1131-1134*, 72 FR 67756, (November 30, 2007) (*Preliminary ITC Determination*).

Polyplex (Thailand) Public Company Ltd. (Polyplex Thailand) and Polyplex (Americas) Inc. (PA) (collectively Polyplex) was issued an antidumping duty questionnaire on November 29, 2007. The Department received the Section A response from Polyplex on January 4, 2008 (AQR), and received the Sections B and C responses from Polyplex on January 18, 2008 (BCQR).

On January 23, 2008, petitioners requested that the Department postpone the preliminary determination by 50 days. The Department published an extension notice on February 11, 2008, which set the new deadline for the preliminary determination at April 25, 2008. See *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 73 FR 7710 (February 11, 2008).

Petitioners filed comments on Polyplex's Sections A, B and C

responses on February 13, 2008. The Department issued a supplemental questionnaire regarding Polyplex's Sections A, B and C responses on February 19, 2008. Also on February 19, 2008, based on a timely allegation filed by petitioners on February 6, 2008, the Department initiated a sales-below-cost investigation for Polyplex, finding reasonable grounds to believe that Polyplex made comparison market sales of PET Film at prices below its cost of production (COP). See "Sales Below Cost of Production" section below for further information. Consequently, the Department requested that Polyplex respond to Section D of the Department's antidumping duty questionnaire. We received Polyplex's Section D response on March 11, 2008.

On March 12, 2008, Polyplex filed its response to the Department's supplemental questionnaire regarding Sections A-C (SABCQR). Additionally on March 12, 2008, a U.S. customer of Polyplex filed a response to Department questions regarding this U.S. customer's relationship with Polyplex Thailand.

On March 14, 2008, the Department requested a SAS version of Polyplex's comparison market, United States market, and cost datasets submitted with its SABCQR, which Polyplex did on March 17, 2008. See the Department's March 17, 2008, Memorandum to the File.

On March 21, 2008, petitioners filed a targeted dumping allegation on sales made by Polyplex in the U.S., and also filed section D comments. On March 24, 2008, the Department issued a section D supplemental questionnaire to Polyplex. On March 31, 2008, Polyplex filed comments on petitioners' targeted dumping allegation.

The Department issued a second supplemental questionnaire to Polyplex concerning the company's Sections A, B, C, and D responses and information regarding the value added to PET Film by one U.S. customer on April 1, 2008.

On April 7, 2008, the Department issued a memorandum in which it determined that Polyplex Thailand was affiliated with one of Polyplex Thailand's U.S. customers that produces non-subject merchandise using PET Film. See Affiliation section below. Because the name of this customer is proprietary we will refer to it here as "Company A."

In light of our finding of affiliation, on April 7, 2008, the Department requested that Polyplex Thailand and Company A respond to Section E (Cost of Further Manufacture or Assembly Performed in the United States) of the Department's November 29, 2007, antidumping questionnaire in regard to the PET Film

further processed by the U.S. customer after importation.

On April 8, 2008, Polyplex submitted its section D supplemental questionnaire response.

Upon review of petitioners' targeted dumping allegation, we determined that further information was needed in order to adequately analyze petitioners' allegation, and issued a targeted dumping supplemental questionnaire to petitioners on April 8, 2008.

On April 9, 2008, Polyplex submitted a letter requesting that the Department not collect section E information because the value added by Company A substantially exceeds the value of the PET Film input. Because the application of the Department's standard further manufacture methodology pursuant to section 772(d)(2) of the Act would be particularly burdensome based on the special facts of this case, Polyplex requested that the Department apply section 772(e) of the Act (the "special rule") and base the margin for Company A sales on prices of other subject merchandise sold by Polyplex Thailand and PA to companies other than Company A pursuant to the special rule.

On April 11, 2008, Polyplex filed its second supplemental questionnaire response regarding Sections A, B, C, and D. Petitioners filed their targeted dumping supplemental questionnaire response on April 16, 2008. Also on April 16, 2008, petitioners submitted comments regarding the Department's methodology for calculating the margin for sales made to Company A in light of the Department's affiliation determination. Because there was a need for supplemental information regarding this allegation, we did not have sufficient time to analyze the targeted dumping allegation prior to the April 25, 2008, deadline for issuance of the preliminary determination. We intend to address this allegation in full upon receipt of a satisfactory response by petitioners to our request for additional information. Similarly, we will address in full petitioner's April 16, 2008, comments regarding the Department's methodology for calculating the margin for sales made to Company A in light of the Department's affiliation determination for the final determination.

April 17, 2008, the Department telephoned counsel to Polyplex and requested that Polyplex resubmit its April 11, 2008, section D supplemental cost dataset to correct certain errors identified by the Department. Polyplex resubmitted its cost database on April 18, 2008, correcting the errors in question. See the Department's April 17, 2008, Memorandum to the File.

Also on April 17, 2008, Polyplex submitted a request for extension in filing its response to Section E (Cost of Further Manufacture or Assembly Performed in the United States) of the Department's November 29, 2007, antidumping questionnaire from April 21, 2008, until May 2, 2008. The Department granted this request on April 21, 2008. See the Department's April 18, 2008, Memorandum to the File.

On April 23, 2008, the Department requested a SAS version of the cost dataset Polyplex originally submitted with its April 18, 2008, section D supplemental questionnaire response. Polyplex submitted a SAS version of its cost dataset on April 24, 2008. See the Department's April 23, 2008, Memorandum to the File.

#### **Period of Investigation**

The period of period of investigation (POI) is July 1, 2006, to June 30, 2007.

#### **Scope of Investigation**

The products covered by this investigation are all gauges of raw, pre-treated, or primed PET Film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer 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). While HTSUS subheadings are provided for convenience and purposes of Customs and Border Protection (CBP), our written description of the scope of this investigation is dispositive.

#### **Party Comments on Scope and Model Matching**

On October 30, 2007, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of PET Film from Brazil, the People's Republic of China (PRC), and the United Arab Emirates (UAE), for comments on the appropriate product characteristics for defining individual products. In addition, the Department requested that all parties in this investigation and in the concurrent antidumping duty investigations of PET Film Brazil, the PRC, and the UAE submit comments on the appropriate model matching methodology. See Letter from Robert James, Program

Manager, AD/CVD Enforcement 7, dated October 7, 2007.

We received comments from petitioners on November 6, 2008, requesting that the Department include the grade of PET Film in the model match criteria. Additionally, petitioners requested that the Department include a field identifying whether PET Film has been coextruded. In its November 29, 2007, questionnaire, the Department requested that Polyplex report the grade of the PET Film, but did not request a field identifying whether the PET Film is coextruded. For purposes of this preliminary determination, the Department has determined that it is unnecessary to change the proposed product characteristics and model matching methodology with regard to coextrusion. For purposes of distinguishing subject merchandise, the Department will take into account the grade of the PET Film, as advocated by petitioners in their submission.

On November 15, 2007, Avery Dennison requested that the Department find that "release liner," a PET Film product treated on one or both sides with a specially-cured silicon coating, is outside the scope of these investigations. Petitioners filed a submission objecting to Avery Dennison's request on November 29, 2007; petitioners re-submitted their objections with amended bracketing on December 14, 2007, and the document was accepted for the record on that date. Petitioners argue that release liner is "PET film that clearly falls within the scope of these investigations." See Petitioners' December 14, 2007, submission at 1 and 2. Avery Dennison responded to petitioners' comments on February 1, 2008.

In accordance with section 731(i) of the Act, we have determined that the descriptions of the merchandise contained in the petition and in our *Notice of Initiation* support the conclusion that release film is of the same class or kind of merchandise covered by the scope of the proposed antidumping duty order. See also generally 19 CFR 351.225(k)(1). The product descriptions in the petition and in the Department's *Notice of Initiation* specifically exclude finished films with a "performance enhancing resinous or inorganic layer of more than 0.00001 inches thick." There is nothing in the proposed scope language of either the petition or our *Notice of Initiation* that excludes products bearing a performance enhancing resinous or inorganic layer of less than 0.00001 inches from the scope of the order. Moreover, there is no language in either the proposed scope language of the

petition or our *Notice of Initiation* that limits the scope of the investigation to "PET base film," (*i.e.*, PET film prior to the application of in-line coatings), as Avery Dennison suggests. In addition, release liner shares the chemical composition of PET film described in the proposed scope of the petition and *Notice of Initiation*.

One of the purposes of a less than fair value investigation is to decide the merchandise specifically covered by the scope of the ultimate antidumping duty order. Based upon the foregoing, we have preliminarily determined that release film is of the same class or kind of merchandise as that described in the Petition and in the Department's *Notice of Initiation*. Thus, we have determined that release film is covered by the scope of the antidumping investigation of PET film from Thailand. For a full discussion of this issue, see the memorandum titled "Antidumping Duty Investigations on Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from Brazil, the People's Republic of China, Thailand, and the United Arab Emirates," from Micheal J. Heaney, Senior Case Analyst, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated April 25, 2008, issued concurrently with this notice.

We have relied on four criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: grade, specification, thickness, and surface treatment. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

### Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. The Department determined that there were six Thai producers/exporters of PET Film that made shipments to the United States during the POI. In the Department's *Respondent Selection Memorandum*, we determined that, in light of resource constraints, it would not be practicable in this investigation for us to examine all known producers or exporters of subject merchandise. See the November 28, 2007, Memorandum to Deputy Assistant Secretary Stephen J. Claeys, titled "Antidumping Duty Investigation on Polyethylene Terephthalate Film, Sheet, and Strip from Thailand (A-549-

825): Respondent Selection" (*Respondent Selection Memorandum*). Further, no party to this case argued for the examination of all companies. Accordingly, pursuant to section 777A(c)(2) of the Act, the Department determined that it would investigate only a limited number of exporters or producers. Section 777A(c)(2) allows the Department to select respondents either through a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or by using the exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

In selecting the respondents in this investigation, we determined that it is most appropriate to choose the largest producers/exporters in order to cover the greatest possible export volume, pursuant to section 777A(c)(2)(1)(B) of the Act. The petition and the Department identified a single producer and exporter of PET Film from Thailand, Polyplex, who accounted for the overwhelming majority of subject merchandise exported to the United States during the POI. Therefore, we concluded that we would review only Polyplex's exports for purposes of this investigation. See *Respondent Selection Memorandum*.

### Date of Sale

Section 351.401(i) of the Department's regulations states the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. See 19 CFR 351.401(i).

Polyplex reported the sales invoice date as the date of sale for all sales in the comparison market and the U.S. market, except for export price (EP) sales, in which case Polyplex reported the bill of lading date as the date of sale. See BCQR at B-17 and C-16, respectively.

In the comparison market, Polyplex stated on pages 27-29 of its AQR that changes in price and quantity sometimes occur after the production order is issued up until the time of shipment, and that changes did occur during the POI. See page 10 of Polyplex's April 11, 2008, submission. Additionally, Polyplex stated that for accounting purposes it recognizes a sale based on date of invoice.

For EP sales, Polyplex stated on page 6 of its April 11, 2008, submission that changes occur between the order date and invoice. Additionally, on page 29 of its AQR, Polyplex stated that it issues a commercial invoice to the Thai Customs Department for export approval and to obtain an export entry number. Polyplex stated that it does not book the sale in its accounting system until the goods are cleared by Thai customs (*i.e.*, Polyplex's receipt of the bill of lading from Thai customs).

For constructed export price (CEP) sales, Polyplex provided invoice date as the sale date based on the invoice from its U.S. affiliate to the first unaffiliated U.S. customer or to Company A discussed below in the section *U.S. Sales of Further-Manufactured PET Film*. See page C-16 of Polyplex's sections BCQR. Similar to the explanation for EP sales, Polyplex stated on page 6 of its April 11, 2008, submission that changes occur between the order date and invoice.

Based on the responses of Polyplex, and having no record evidence that would indicate otherwise, we preliminarily determine that the sales invoice date is the appropriate date of sale for the comparison market and for CEP sales in the U.S. market, while bill of lading date is the appropriate date of sale for Polyplex's EP sales. For a further discussion of this issue, see Polyplex Preliminary Analysis Memo.

### Affiliation

On April 7, 2008, the Department determined that Polyplex Thailand and PA are affiliated with Company A pursuant to section 771(33)(F) of the Act and 19 CFR 351.102(b). Due to the proprietary nature of this issue, see the Department's Memorandum to the File, from Stephen Bailey, Case Analyst, and Angelica Mendoza, Program Manager, through Richard Weible, Director Office 7, dated April 7, 2008 ("Affiliation Memo").

Due to this affiliation, as noted above, on April 7, 2008, the Department requested that Polyplex Thailand and Company A respond to Section E (Cost of Further Manufacture or Assembly Performed in the United States) of the Department's November 29, 2007, questionnaire for purchases of PET Film from Polyplex Thailand and PA.

### U.S. Sales of Further-Manufactured PET Film

During the POI, Polyplex Thailand and its U.S. affiliate, PA, sold PET Film to Company A, which further manufactured the PET Film into non-subject merchandise. Company A did not sell PET Film directly acquired from

Polyplex Thailand or PA in the United States during the POI, but rather further processed the material and resold it as non-subject merchandise. After examining the various relationships between Polyplex Thailand, PA, and Company A, the Department, as noted above, has preliminarily determined that Company A is affiliated with both Polyplex Thailand and PA. As noted above, on April 9, 2008, Polyplex requested that the Department not collect section E information because the value added by Company A substantially exceeds the value of the PET Film input. Polyplex requested that the Department instead apply the special rule found at section 772(e) of the Act and base the margin for Company A's sales of further-manufactured goods on prices of other subject merchandise sold by Polyplex Thailand and PA to companies other than Company A.

*Polyplex's Argument For Use of the Special Rule*

Polyplex notes that the special rule, as discussed in section 772(e) of the Act, provides that where the subject merchandise is imported by a person affiliated with the exporter or producer and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the Department shall determine the CEP for such merchandise using either 1) the price of identical subject merchandise sold by the exporter or producer to an unaffiliated person, or 2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person. If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under subsets 1 or 2, or the Department determines that neither of the prices described is appropriate, then the CEP may be determined on any other reasonable basis.<sup>1</sup>

<sup>1</sup>With respect to the specified alternative methods the Department may use after invoking the special rule, the Statement of Administrative Action notes:

The alternative methods for establishing export price are: (1) the price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person. There is no hierarchy between these alternative methods of establishing the export price. If there is not a sufficient quantity of sales under either of these alternatives to provide a reasonable basis for comparison, or if the Department determines that neither of these alternatives is appropriate, it may use any other reasonable method to determine constructed export price, provided that it provides to interested parties a description of the method chosen and an explanation of the basis for its selection. Such a method may be based upon the price paid to the exporter or producer by the affiliated person for the

In arguing for application of the special rule, Polyplex notes the following: 1) Company A's value-added substantially exceeds the value of the PET Film input, 2) Company A made a "very substantial" number of further manufactured products that contained PET Film (both subject and non-subject merchandise) during the POI, 3) Company A sold further manufactured products containing PET Film in a very high number of invoices and line items during the POI, 4) Company A manufactured the further manufactured product at many plants in the United States, and 5) Company A purchased PET Film from many producers during the POI, and cannot identify the producer of the PET Film used in the further manufactured product based on its books and records. See page 4 of Polyplex's April 9, 2008, submission. Polyplex maintains that all of the above-mentioned facts were present in the Indian investigation of PET Film, of which Polyplex Corporation, Ltd. (India) (Polyplex India), was the respondent. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India*, 67 FR 34899 (May 16, 2002) and accompanying Issues and Decision Memorandum at Comment 13 (PET Film from India Decision Memo).

Polyplex contends that the facts in the instant investigation are similar to the facts in *Silicon Metal from Brazil*, where the Department also applied the special rule. See *Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*, 66 FR 40980 (August 6, 2001) (*Silicon Metal from Brazil*). In *Silicon Metal from Brazil*: 1) the U.S. affiliate of the respondent also further manufactured the subject merchandise it purchased from respondent into numerous products; 2) the respondent was unable to trace the subject merchandise purchased by the affiliate to the manufactured product since the subject merchandise was purchased from different producers and commingled in the production process; and 3) products containing subject merchandise were processed at a variety of plants both in the United States and overseas, making it difficult to assess the value added solely in the United States. Polyplex notes that in *Silicon Metal from Brazil*, the Department applied the special rule due to the burden placed on the

subject merchandise, if the Department determines that such a price is appropriate.

See URAA, Statement of Administrative Action, H. Doc 316, Vol. 1, 103d Cong., (1994) (SAA) at 826.

Department in calculating a dumping margin for the subject merchandise imported by the U.S. affiliate.

Polyplex argues that the Department has also applied the special rule in *Lemon Juice from Mexico*. See *Notice of Preliminary Determinations of Sales at Less Than Fair Value and of Critical Circumstances in Part: Lemon Juice from Mexico*, 72 FR 20830 (April 26, 2007). In *Lemon Juice from Mexico*, Polyplex maintains that the Department applied the special rule because "the value added in the United States is likely to exceed substantially the value of the subject merchandise and that is a sufficient quantity of U.S. sales of non-further-processed merchandise to provide a reasonable basis for comparison to normal value." See *Lemon Juice from Mexico*, 72 FR 20833. Polyplex contends that similar to *Lemon Juice from Mexico*, the Department should apply the special rule for Company A's purchases of subject merchandise from Polyplex Thailand and PA.

Polyplex proposes two alternate special rule methodologies. First, Polyplex suggests that the Department base the margin for further manufactured sales on the price of other subject merchandise sold to unaffiliated U.S. customers, *i.e.*, all other sales excluding sales to Company A. Polyplex contends that this methodology was used by the Department in other special rule decisions in the past. Alternatively, Polyplex suggests that Department rely on the "arm's length prices" from Polyplex and PA (Polyplex's U.S. sales affiliate) to Company A.

*Petitioner's Comments on Use of the Special Rule*

In its April 16, 2008, comments, petitioners argue that the Department should assess the dumping margin on sales to Company A using the margin calculated on sales of the identical grade of merchandise sold to customers in the targeted group of customers. Because of the timing of petitioner's comments so close to the preliminary determination date, we did not have sufficient time to analyze petitioner's comments prior to the April 25, 2008, deadline for issuance of the preliminary determination. We intend to address this allegation in full for purposes of the final determination.

*Department's Analysis For Use of the Special Rule*

The information on the record indicates that the value added in the United States substantially exceeds the value of the subject merchandise and that any potential accuracy gained by applying the standard methodology is likely outweighed by the burden of its application. Specifically, the significant

number of models of further manufactured products produced and sold by Company A during the POI and the inability of Company A to identify the source of the PET film used in a particular further manufactured product greatly complicates the analysis required to apply the standard methodology. Furthermore, the fact that Company A is unable to identify the source of the PET film used in a particular further manufactured product, and both Polyplex Thailand and PA sold PET film to Company A, further complicates the analysis by requiring the Department to develop assumptions about the adjustments that need to be made in order to calculate net U.S. price.

Given the forgoing, and the fact that there is a sufficient quantity of non-further processed subject merchandise sales to unaffiliated parties in the United States to provide a reasonable basis for comparison under the special rule, we have determined that it is appropriate to apply the special rule of section 772(e) of the Act in this case.

In this proceeding, we have determined that it is appropriate to base the dumping margins for Polyplex's further manufactured sales on the weighted-average dumping margins calculated on sales of other subject merchandise sold to unaffiliated U.S. customers.

#### Fair Value Comparisons

To determine whether sales of PET Film from Thailand were made in the United States at less than normal value (NV), we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections below. In accordance with section 777A(d)(i) of the Act, we calculated the weighted-average prices for NV and compared these to the weighted-average of EP (and CEP), when appropriate.

#### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first

unaffiliated purchaser in the United States of the subject merchandise. See section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale, where appropriate.

We calculated EP based on prices charged to the first unaffiliated U.S. customer. We used the bill of lading date as the date of sale.<sup>2</sup> We based EP on the packed free on board (FOB) prices to the first unaffiliated purchasers outside Thailand. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, foreign inland insurance, and foreign brokerage and handling.

We calculated CEP based on prices charged to the first unaffiliated U.S. customer after importation, where appropriate. We used the sale invoice date as the date of sale. We based CEP on the gross unit price from PA to its unaffiliated U.S. customers, making adjustments where necessary for billing adjustments, pursuant to section 772(c)(1) of the Act. Where applicable, the Department made deductions for movement expenses (foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, U.S. movement from warehouse to customer, U.S. customs duty and brokerage, marine insurance and warehousing), in accordance with section 772(c)(2) of the Act and section 351.401(e) of the Department's regulations. In accordance with sections 772(d)(1) and (2) of the Act, we also deducted, where applicable, U.S. direct selling expenses, including credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs incurred in the United States and Thailand associated with economic activities in the United States. We also deducted CEP profit in accordance with section 772(d)(3) of the Act.

#### Normal Value

##### A. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(i) of the Act, because Polyplex Thailand had an aggregate volume of home market sales of the foreign like product that was greater

than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market is viable for comparison purposes. Accordingly, we calculated NV for Polyplex based on sales prices to Thai customers.

##### B. Cost of Production Analysis

Based on our analysis of the petitioners' allegation, we found that there were reasonable grounds to believe or suspect that Polyplex Thailand's sales of PET Film in the home market were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Polyplex Thailand's sales were made at prices below its COP. See Memorandum to Richard Weible, Director, Office 7, AD/CVD Operations, from The Team entitled "The Petitioners' Allegation of Sales Below the Cost of Production for Polyplex Public Company Ltd. and Polyplex Americas, Inc." dated February 19, 2008.

##### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondent's COP based on the sum of its costs of materials and conversion for the foreign like product, plus an amount for general and administrative (G&A) expenses and financial expenses. See the "Test of Comparison Market Sales Prices" section below for the treatment of comparison market selling expenses.

The Department relied on the COP data submitted by Polyplex in its section D questionnaire and supplemental questionnaire responses for the COP calculation with the exception of the financial expense ratio. We have recalculated the financial expense ratio to include the net amount of the foreign exchange gains and losses recognized by Polyplex's parent company in its 2006-2007 consolidated financial statements and exclude the interest income offset related to interest charges collected from customers for late payment.

For a complete discussion of the changes made to the cost information submitted by Polyplex, see Memorandum to Neal M. Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Polyplex (Thailand) Public Company Ltd. and Polyplex (Americas) Inc.," dated April 25, 2008 (Polyplex Cost Calculation Memo).

##### 2. Test of Comparison Market Sales Prices

<sup>2</sup> See the Department's Sales Analysis Memorandum for a further discussion of this issue.

On a product-specific basis, we compared the adjusted weighted-average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

### 3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than COP, we determined that such sales have been made in "substantial quantities." See section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POI. In such cases, because we compared prices to POI-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

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

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

We calculated NV based on packed prices to unaffiliated customers in Thailand and matched U.S. sales to NV. We made deductions, where appropriate, for discounts, rebates, movement expenses, and packing pursuant to section 773(a)(6)(B) of the Act. When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a) and (b). We based this adjustment on the difference in the variable cost of

manufacturing for the foreign like product and subject merchandise. See 19 CFR 351.411(b). We also made adjustments for differences in circumstances of sale (COS) as appropriate (*i.e.*, commissions and credit), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

In addition, for comparisons made to CEP sales, we only deducted Thai credit expenses from comparison market prices, because U.S. credit expenses were deducted from U.S. price, as noted above and in accordance with section 772(c)(2) of the Act.

### D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on constructed value (CV). Accordingly, for PET Film for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on the CV.

Section 773(e) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication, selling and administrative (SG&A), and interest based on the methodology described in the "Cost of Production Analysis" section, above.

We based profit on the actual amounts incurred and realized by Polyplex in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2A) of the Act.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from, and adding U.S. direct selling expenses to, CV.

### E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison

market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. prices for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the first unaffiliated importer. See section 351.412(c)(i) of the Department's regulations. For CEP, the LOT is that of the constructed sale from the exporter to the affiliated importer. See section 351.412(c)(ii) of the Department's regulations. See also *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001) (*Micron Technology*).

To determine whether comparison market sales were at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Under the Department's LOT practice, if the comparison market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We also analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we further make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. See section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the

LOT identified by the respondent are meaningful. See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

In the present investigation, Polyplex did not request a LOT adjustment. See BCQR at B-28. In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "channel of distribution"), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Polyplex reported two channels of distribution in the comparison market (*i.e.*, Thailand), distributors and end-users. Polyplex reported its selling functions to both distributors and end-users in the comparison market as: technical services/support, customer interaction, sales calls, marketing research, order processing, price negotiation, credit/payment collection, delivery/freight, inventory maintenance (non-consignment sales), inventory maintenance (consignment sales), sales forecasting, sales promotion, and warranty. We examined the selling activities reported for each channel of distribution and found that Polyplex's level of selling functions to its comparison market customers did not vary significantly by channel of distribution. Specifically, Polyplex performed the same selling functions at a similar level of performance for sales in both comparison market channels of distribution (*e.g.*, price negotiation, credit/payment collection, delivery/freight, inventory maintenance (non-consignment sales), sales forecasting, sales promotion, and warranty). See AQR at Exhibit 8 (*i.e.*, selling functions chart) and Exhibit S1 of the SABCQR. We find that the only meaningful difference between the two channels in terms of the services provided in the stages of marketing (and the degree of performance of those services) is that Polyplex provides customer interaction, sales calls, and order processing services at a higher degree for its end-use customers than distributors. *Id.* We do not find these differences alone to be

sufficient for finding more than one LOT. Therefore, we preliminarily find that the selling functions for the reported channels of distribution constitute one LOT in the comparison market.

Polyplex reported that its EP and CEP sales to the United States were made through four channels of distribution: 1) CEP PA direct to customer drop ship sales (no warehousing) (channel 1); 2) CEP PA warehousing in customer's warehouse (consignment sales) (channel 2); 3) CEP PA warehousing in PA's warehouse (from inventory) (channel 3); and 4) EP direct sales on an FOB basis (channel 4). For EP and CEP sales, we examined the selling activities related to each of the selling functions between Polyplex and its U.S. customers. Polyplex reported its selling functions to distributors (*i.e.*, PA) and end-users in the United States as: technical services/support, customer interaction, sales calls, marketing research, order processing, price negotiation, credit/payment collection, delivery/freight, inventory maintenance (non-consignment sales), inventory maintenance (consignment sales), sales forecasting, sales promotion, and warranty. We examined Polyplex's selling functions for its U.S. sales and found that channels 1, 2, and 3 (*i.e.*, CEP sales to PA) are essentially the same channel with the same selling functions performed.<sup>3</sup>

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. See *Micron Technology*, 243 F.3d at 1314-1315. We reviewed the selling functions and services performed by Polyplex on CEP sales for the three channels of distribution relating to the CEP LOT, as described by Polyplex in its questionnaire response, after these deductions. Exhibit 8 of the AQR and Exhibit S1 of the SABCQR detail the selling functions performed for sales from Polyplex to PA and, then to distributors and end use customers. All three channels are included in the same selling function columns. Therefore, the Department finds that there are two channels of distribution in the United States, consisting of Polyplex's EP sales

(*i.e.*, channel 4) and Polyplex's CEP sales (*i.e.*, channels 1, 2, and 3). We then compared the selling functions between Polyplex's CEP sales and Polyplex's EP direct U.S. sales.

The Department finds that the two channels of distribution in the U.S. vary significantly. For instance, the selling functions provided by Polyplex to unaffiliated customers in the U.S. (*i.e.*, EP direct sales to end-users) were usually at a medium level, while providing a high level of technical support. Polyplex provided a minimum level of sales calls, marketing research, inventory maintenance (non-consignment sales), while providing no sales promotion and warranty services. However, Polyplex usually provided no selling functions for sales to PA; only providing a minimum of technical services, order processing, delivery services, and moderate sales forecasting. See Exhibit A1 of Polyplex's March 12, 2008, supplemental questionnaire response. Therefore, we preliminarily determine that Polyplex's U.S. sales are made at two LOTs (*i.e.*, CEP and EP).

We then compared the selling functions Polyplex provided in the comparison market LOT with the selling functions provided for the two U.S. LOTs. On this basis, we determined that the comparison market LOT is similar to Polyplex's U.S. LOT for EP sales. We made this determination based upon the minor differences that exist between Polyplex's comparison and U.S. EP sales, specifically the minimum level of sales calls and market research provided in the U.S. compared to medium to high level provided in the comparison market. See Exhibit A1 of Polyplex's March 12, 2008, supplemental questionnaire response. Moreover, we find that the degree to which Polyplex provides these identical selling functions for its customers in both markets to be the same or similar (*i.e.*, technical services, customer interaction, order processing, price negotiation, credit/payment collection, delivery/freight, inventory maintenance (non-consignment sales), sales forecasting, and warranty). Therefore, we preliminarily determine that Polyplex is not entitled to a LOT adjustment with respect to these sales.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the comparison market is at a more advanced stage than the LOT of the CEP sales and there are no data available to determine the existence of a pattern of price difference. Polyplex reported that it provided minimal selling functions and services for the one (CEP) LOT in the United States and that, therefore, the

<sup>3</sup> The Department notes that Polyplex's U.S. sales to Company A are being excluded from our analysis pursuant to the *Department's Analysis For Use of the Special Rule* section above. As such, Polyplex Thailand's EP sales, and certain CEP sales to Company A, will not be used in the margin analysis. The Department has conducted an LOT analysis for this preliminary determination because removing the sales in question is a preliminary decision and removing the sales in question does not affect the ultimate conclusion reached by the LOT analysis.

comparison market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by Polyplex for sales in the comparison market and CEP sales in the U.S. market, we preliminarily find that the comparison market LOT is at a more advanced stage of distribution when compared to CEP sales because Polyplex provides many more selling functions in the comparison market at a higher level of service as compared to selling functions performed for its CEP sales (*i.e.*, technical services/support, customer interaction, sales calls, marketing research, order processing, price negotiation, credit/payment collection, delivery/freight, inventory maintenance (non-consignment sales), inventory maintenance (consignment sales), and sales promotion). *See* Exhibit S1 of Polyplex's SABCQR. Thus, we find that Polyplex's comparison market sales are at a more advanced LOT than its CEP sales. There is one LOT in the comparison market, and there are no data available to determine the existence of a pattern of price difference, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment. Therefore, consistent with section 773(a)(7)(B) of the Act, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted from NV the comparison market indirect selling expenses from NV for comparison market sales that were compared to U.S. CEP sales. As such, we limited the comparison market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

#### Currency Conversion

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

#### Verification

As provided in section 782(i) of the Act, we intend to verify all information upon which we will rely in making our final determination.

#### Preliminary Determination

The weighted-average dumping margin in the preliminary determination is as follows:

| Producer/Exporter                          | Weighted-Average Margin (Percentage) |
|--|--------------------------------------|
| Polyplex (Thailand)<br>Public Company Ltd. | 0.00                                 |

#### Suspension of Liquidation

In accordance with section 733(b)(3) of the Act, the Department will disregard any weighted-average dumping margin that is zero or *de minimis*, *i.e.* less than 2 percent ad valorem. Based on our preliminary margin calculation, we will not direct the U.S. CBP to suspend liquidation of any entries of PET Film from Thailand as described in the "Scope of Investigation" section that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department does not require any cash deposit or posting of a bond for this preliminary determination.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of PET Film from Thailand are materially injuring, or threaten material injury to, the U.S. industry. We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days of the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, and 19 CFR 351.310, the Department will hold a

public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, pursuant to 19 CFR 351.310(c) the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined.

Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties, who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Secretary of Commerce, Attention Assistant Secretary for Import Administration, U.S. Department of Commerce, APO/Dockets Unit Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the case and rebuttal briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: April 25, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-9840 Filed 5-2-08; 8:45 am]

BILLING CODE 3510-DS-S