

### Funding Restrictions

Grants to provide emergency services may not exceed \$500,000 and may be limited by geographic area so that multiple grant recipients are not providing similar services to the same service areas. Grants for emergency services may not be used for pre-award costs.

Grants for the construction or repair of section 516 off-farm FLH are not limited to \$500,000, but the grant may not exceed 90 percent of the total development cost of the housing. Grants for the construction or repair of section 516 off-farm FLH is subject to the limitations and conditions listed at 7 CFR 1944.164.

All grants made in response to this Notice are subject to the restrictions contained in 7 CFR parts 3015, 3016, and 3019.

**Intergovernmental review.** The construction of new section 516 off-farm FLH is subject to the Intergovernmental Review provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

**Submission address.** Preapplications should be submitted to USDA—Rural Housing Service; Attention: Douglas H. MacDowell, Multi-Family Housing Processing Division—STOP 0781 (Room 1263-S), 1400 Independence Ave. SW., Washington, DC 20250-0781.

### V. Application Review Information

All applications will be evaluated by a grant committee. The grant committee will make recommendations to the Agency Administrator concerning preliminary eligibility determinations and for the selection of applications for further processing based on the selection criteria contained in this RFP and the availability of funds. The Administrator will inform applicants of the status of their application within 30 days of the closing date of the RFP.

Applications for grants to construct or repair section 516 off-farm FLH will compete against other applications to construct or repair section 516 off-farm FLH. Likewise, applications for grants to provide emergency services to low-income migrant and seasonal farmworkers will compete against other applications for grants for emergency services.

Applications for grants to provide emergency services to low-income migrant and seasonal farmworkers will be evaluated by the types of assistance to be provided. Because the types of assistance may differ depending on the geographic area to be served and the nature of the disaster or emergency

experienced, equal weight will be applied to each form of assistance to be rendered.

### Selection Criteria

(1) Applications to provide emergency services to low-income migrant and seasonal farmworkers will be scored on the following basis:

(a) Experience of applicant providing emergency services.

(b) The number of low-income migrant and seasonal farmworkers (as defined in this Notice) affected by the emergency.

(c) The number of low-income migrant and seasonal farmworkers (as defined in this Notice) to be assisted by the proposal.

(d) Economic and social benefits to low-income migrant and seasonal farmworkers (as defined in this Notice) and their families from the services to be provided.

(2) Proposals for construction or repair of section 516 off-farm FLH for domestic farm laborers will be scored on the following basis:

(a) The number of domestic farm laborers (as defined in 7 CFR part 1944, subpart D) that will be provided with decent, safe and sanitary housing as a result of the proposed use of the grant funds.

(b) The degree to which health and safety issues will be addressed through the use of the grant funds.

Dated: October 22, 2004.

**Russell T. Davis,**

*Administrator, Rural Housing Service.*

[FR Doc. 04-24099 Filed 10-27-04; 8:45 am]

**BILLING CODE 3410-XV-P**

## DEPARTMENT OF AGRICULTURE

### Sunshine Act Meetings

**AGENCY:** Rural Telephone Bank, USDA.

**ACTION:** Staff briefing for the Board of Directors.

**TIME AND DATE:** 2 p.m., Thursday, November 4, 2004.

**PLACE:** Conference Room 104-A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

**STATUS:** Open.

### MATTERS TO BE DISCUSSED:

1. FY 2005 Budget status.
2. Year end Program report.
3. Privatization discussion.
4. Administrative and other issues.

**ACTION:** Board of Directors meeting.

**TIME AND DATE:** 9 a.m., Friday, November 5, 2004.

**PLACE:** Conference Room 104-A, Jamie L. Whitten Federal Building, U.S.

Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the August 10, 2004, board meeting.
3. Secretary's Report on loans approved, FY 2004.
4. Treasurer's Report.
5. Privatization discussion.
6. Establish date for next Board meeting.
7. Governor's Remarks.
8. Adjournment.

**CONTACT PERSON FOR MORE INFORMATION:** Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720-9554.

**Curtis M. Anderson,**

*Acting Governor, Rural Telephone Bank.*

[FR Doc. 04-24159 Filed 10-25-04; 4:21 pm]

**BILLING CODE 3410-15-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-823]

### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand

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

**EFFECTIVE DATE:** October 28, 2004.

### FOR FURTHER INFORMATION CONTACT:

Audrey Twyman or Natalie Kempkey (202) 482-3534 or (202) 482-1698, respectively; AD/CVD Operations Office I, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

### SUPPLEMENTARY INFORMATION:

#### Preliminary Determination

We preliminarily determine that bottle-grade polyethylene terephthalate resin ("PET resin") from Thailand is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The preliminary margin assigned to Thai Shinkong Industry Corporation Ltd. ("Thai Shinkong") is based on adverse facts available ("AFA"). The estimated margins of sales at less than fair value

are shown in the *Suspension of Liquidation* section of this notice

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

#### Petitioner

The petitioner in this investigation is the United States PET Resin Producers Coalition ("the petitioner").

#### Case History

On April 20, 2004, the Department of Commerce ("the Department") published the initiation of the antidumping duty investigations of imports of PET resin from India, Indonesia, Taiwan, and Thailand. See *Notice of Initiation of Antidumping Duty Investigations: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR 21082 (April 20, 2004) ("Initiation Notice"). Since the initiation of the investigation, the following events have occurred.

On May 17, 2004, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are materially injuring an industry in the United States producing the domestic like product. See *United States International Trade Commission Report on Polyethylene Terephthalate Resin from India, Indonesia, Taiwan, and Thailand*, Nos. 701-TA-439-440 and 731-TA-1077-1080 (May 17, 2004).

On May 10, 2004, the Department solicited comments from interested parties in all of the concurrent PET Resin antidumping investigations, providing an opportunity to comment on the criteria to be used for model matching. Between May 17 and June 3, 2004, the Department received comments and/or rebuttal comments on model matching from the petitioner, Far Eastern Textiles, Reliance Industries Ltd., South Asian Petrochem Ltd. and P.T. Indorama Synthetics. The Department took these comments into consideration by the Department in developing the model matching characteristics and hierarchy for all of the PET Resin antidumping investigations. See June 9, 2004, memorandum to Susan Kuhnach, Senior Office Director, "Selection of Model Matching Criteria for Purposes of the Antidumping Questionnaire" ("*Model Match Memorandum*").

On May 20, 2004, the Department selected the two largest producers/exporters of PET resin from Thailand, Bangkok Polyester Public Company Ltd. ("Bangkok Polyester") and Thai Shinkong, as mandatory respondents in this investigation.<sup>1</sup>

On June 9, 2004, the antidumping questionnaire<sup>2</sup> was issued to Thai Shinkong and Bangkok Polyester. During the period July through October 2004, the Department received responses to sections A, B and C of the Department's original and supplemental questionnaires from Bangkok Polyester and Thai Shinkong. See the *Use of Facts Otherwise Available* section of this notice regarding the Department's rejection of Thai Shinkong's responses. On May 18, 2004, Indo Pet (Thailand) Ltd. ("Indo Pet") formally requested to be treated as a voluntary respondent in this investigation in response to the Department's invitation to do so in the *Respondent Selection Memorandum*. On July 26, 2004, Indo Pet withdrew its request for individual examination as a voluntary respondent.

On July 30, 2004, pursuant to 19 CFR 351.205(e), the petitioner made a timely request to postpone the preliminary determination. We granted this request and postponed the preliminary determination until no later than October 20, 2004. See *Notice of Postponement of Preliminary Antidumping Duty Determinations: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR 48842 (August 11, 2004).

On August 10, 2004, the petitioner made an allegation that sales by Bangkok Polyester in Thailand were below the cost of production ("COP"). On August 26, 2004, pursuant to section 7773(b) of the Act, the Department initiated a cost investigation for Bangkok Polyester's Thailand sales of PET Resin.<sup>3</sup> On August 26, 2004, the

<sup>1</sup> See Memorandum to Susan Kuhnach, dated May 20, 2004, entitled "Antidumping Duty Investigation of Bottle-Grade Polyethylene Terephthalate ("PET) Resin from Thailand, Selection of Respondents" ("*Respondent Selection Memorandum*")

<sup>2</sup> Section A of the questionnaire requests general information concerning the company 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 B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

<sup>3</sup> See Memorandum to Susan Kuhnach, dated August 26, 2004, entitled "Antidumping Duty

Department issued a section D questionnaire to Bangkok Polyester. Responses to the questionnaire and supplemental questionnaires were received in September and October 2004.

On October 6, 2004, pursuant to 19 CFR 351.210(b)(2)(i), the petitioner requested that the Department postpone the final determination in the investigation of PET Resin from Thailand in the event of a negative preliminary determination.

#### Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) 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. In accordance with 19 CFR 351.210(e)(2), the Department requires that exporters requesting postponement of the final determination also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months.

On September 29, 2004, we received a request to postpone the final determination from Bangkok Polyester. In its request, Bangkok Polyester consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, and the request for postponement is made by an exporter that 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 have extended provisional measures to no longer than six months.

#### Period of Investigation

The period of investigation ("POI") is January 1, 2003, through December 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition in March 2004 in accordance with 19 CFR 351.204(b)(1).

Investigation of Bottle-Grade Polyethylene Terephthalate (PET) Resin from Thailand: United States PET Resin Producers Coalition's Allegation of Sales Below the Cost of Production for Bangkok Polyester Public Company Limited."

### Scope of Investigation

The merchandise covered by this investigation is bottle-grade polyethylene terephthalate (PET) resin, defined as having an intrinsic viscosity of at least 0.68 deciliters per gram but not more than 0.86 deciliters per gram. The scope includes bottle-grade PET resin that contains various additives introduced in the manufacturing process. The scope does not include post-consumer recycle (PCR) or post-industrial recycle (PIR) PET resin; however, included in the scope is any bottle-grade PET resin blend of virgin PET bottle-grade resin and recycled PET (RPET). Waste and scrap PET is outside the scope of the investigation. Fiber-grade PET resin, which has an intrinsic viscosity of less than 0.68 deciliters per gram, is also outside the scope of the investigation.

The merchandise subject to this investigation is properly classified under subheading 3907.60.0010 of the Harmonized Tariff Schedule of the United States ("HTSUS"); however, merchandise classified under HTSUS subheading 3907.60.0050 that otherwise meets the written description of the scope is also subject to this investigation. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

### Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), 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*. We did not receive any scope comments from interested parties within the comment period.

### Use of Facts Otherwise Available

Sections 776(a)(2)(A), (B), (C), and (D) of the Act provide that the Department shall use facts available when a party withholds information that has been requested by the administering authority under this subtitle; does not provide the Department with information by the established deadline or in the form and manner requested by the Department; significantly impedes a proceeding; or provides such information but the information cannot be verified. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not

acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available in selecting from among the facts available. Such adverse inference may include reliance on information derived from: (1) The petition; (2) A final determination in the investigation under this title; (3) Any previous review under section 751 or determination under 753; or (4) Any other information placed on the record. *See* 19 CFR 351.308(c).

On June 9, 2004, the Department sent an antidumping questionnaire to Thai Shinkong. Although Thai Shinkong did, as discussed below, submit several questionnaire responses in July and August 2004, on August 31, 2004, the Department informed Thai Shinkong that it was rejecting Thai Shinkong's latest attempt to submit a response to the Department's questionnaire because Thai Shinkong's submission was not in compliance with the filing requirements of the statute and regulations. *See* letter to Thai Shinkong from John Brinkmann dated August 31, 2004. On the basis of our findings in this investigation, which are detailed below, we have determined that the use of facts otherwise available is appropriate for Thai Shinkong because it has not provided certain information in the form and manner requested.

The Department received Thai Shinkong's first section A response on July 1, 2004. This submission was rejected by the Department because: (1) It was not filed by the Department's deadline of June 30, 2004; (2) The submission was not properly bracketed and marked as either a public or proprietary version; and (3) Thai Shinkong did not include with its submission the correct number of copies of the public and proprietary versions of the submission and the required certificates of service and accuracy. The Department extended the deadline for submitting the section A response until July 16, 2004.

Thai Shinkong resubmitted its section A response on July 16, 2004. This submission was also rejected by the Department because: (1) It was filed under the incorrect case number; (2) It did not contain the correct number of proprietary versions; (3) It did not contain the required public version of section A; (4) Bracketing of business proprietary information was incorrectly identified both on the top of the page and in the text of the actual document; and (5) The Certificate of Service did not list the names of the parties on whom the response was served. The Department further extended the

deadline for the section A response to July 26, 2004, to coincide with the due date for Thai Shinkong's responses to sections B and C of the questionnaire.

The Department did not receive an official submission of sections A-C from Thai Shinkong until July 30, 2004, four days after the July 26 deadline. While the Department did receive e-mails on July 24 and 26, 2004, from Thai Shinkong with attached copies of the section A-C submissions, e-mailing is not an acceptable format for filing submissions. The sections A-C responses received by the Department on July 30, 2004, had further problems with correct filing and formatting procedures. While the Department notes that some earlier problems had been corrected, such as filing the correct number of proprietary versions for section A and fixing previously noted bracketing errors, we noted that there were still several consistent errors with the filing of sections A-C: (1) There was no cover page to each section (A, B or C) identifying the case number and whether the attached section was public or proprietary; (2) The Certificates of Service and Accuracy were not provided; (3) Only one copy each of both the public version and proprietary version of Thai Shinkong's responses were submitted to the Department for sections B and C; (4) Page C-32 of what appears to be the public version of section C contained bracketed proprietary information; and (5) The required electronic databases for sections B and C sales were not submitted.

On August 4, 2004, the Department advised Thai Shinkong that it was rejecting Thai Shinkong's July 30, 2004, sections A-C submission as improperly filed, and that it would not be able to consider a revised response in the preliminary determination, then scheduled for August 31, 2004. The Department also informed Thai Shinkong that it would not be able to consider a revised response in the final determination unless received by August 16, 2004. The Department's August 4 letter did note that if the preliminary determination were to be postponed, it may be possible for the Department to consider Thai Shinkong's factual information in that postponed preliminary determination, if any factual information was properly filed with the Department no later than August 16, 2004.

On August 13, 2004, the Department received a timely submission of the sections A-C response from Thai Shinkong. Since the Department had extended the preliminary determination on August 11, 2004, to October 20, 2004,

the Department reviewed Thai Shinkong's August 13, 2004, submission for consideration in the extended preliminary determination. While this submission appeared to have corrected some of the filing and bracketing problems previously identified by the Department, several filing problems still remained. Most significantly, while Thai Shinkong did certify that the public version of sections A–C was served to those parties on the administrative protective order service list, it failed to certify that the proprietary version had been served to the parties on that list. The Department was also unable to ascertain by what means these parties had been served, i.e., first class mail or express mail.

On August 16, 2004, the Department sent an e-mail to Thai Shinkong inquiring whether the parties on the APO service list had been served with the August 13 submission and how these documents were sent.<sup>4</sup> The Department received an e-mail response<sup>5</sup> from Thai Shinkong on August 23, 2004, in which Thai Shinkong stated that it only sent the public version of the response to interested parties because its proprietary version contained confidential information. It stated that for that reason, Thai Shinkong only provided the public version of its August 13, 2004, submission to the parties. Thai Shinkong also asserted that it sent the public version of that submission to the petitioner. However, we note that as of August 26, 2004, the petitioner stated it had not received any service of Thai Shinkong's sections A–C response. On August 31, 2004, the Department advised Thai Shinkong that it was rejecting Thai Shinkong's August 13, 2004, submission because of its failure to serve parties on the administrative protective order service list with a proprietary version of the response. The Department also advised Thai Shinkong that it was unable to further extend the deadline for filing the questionnaire responses due to the statutorily mandated deadlines that govern the investigation.

The Department is applying facts available to calculate a dumping margin for Thai Shinkong because Thai Shinkong failed to serve the Proprietary Version of its most recent submission on parties to this proceeding that were authorized to receive this information under an administrative protective

order. By failing to provide this information to the interested parties, Thai Shinkong has not provided the requested information in the form and manner requested by the Department's August 16 due date for filing factual information. As a consequence, the petitioner would not have had adequate time to conduct its own analysis and submit comments on Thai Shinkong's factual submission. Moreover, the Department was unable to further extend the filing deadline because there was no longer sufficient time to evaluate interested party comments on Thai Shinkong's response, follow-up with supplemental questions, and conduct a margin analysis by the October 20, 2004, preliminary determination. Therefore, we determine that the Department's calculation of an antidumping margin for Thai Shinkong should be based on facts otherwise available, in accordance with section 776(a)(2) of the Act.

In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See, e.g., 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). Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, at 870 (1994) (“SAA”). Furthermore, “{a}ffirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” *See Antidumping Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

We find that the application of adverse facts available is appropriate because Thai Shinkong has failed to comply with the Department's requests for information and has not acted to the best of its ability. After each of the submissions by Thai Shinkong, the Department sent a detailed letter to Thai Shinkong, which not only specified the deficiencies in the filing, but also provided examples and citations to appropriate sources for rectifying the deficiencies. Filing deadlines were also extended to the maximum extent practicable. However, as described in detail above, each subsequent filing by Thai Shinkong contained significant deficiencies that caused the Department

to reject each submission. Therefore, we find that, despite being provided ample opportunities to do so, by not remedying the deficiencies in its responses, Thai Shinkong failed to act to the best of its ability to provide the information requested by the Department.

Where the Department applies adverse facts available 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 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); SAA at 829–831. Because there are no prior administrative reviews and no other information has been placed on the record, as adverse facts available, we are assigning Thai Shinkong the higher of: (1) The highest margin listed in the notice of initiation; or (2) The margin calculated for any respondent in this investigation.

For adverse facts available, we have selected the margin from the petition, since the margin derived from information in the petition exceed the margin calculated for the mandatory respondent. When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. 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); *see also* SAA at 870. As discussed in the October 20, 2004, memorandum from Susan Kuhbach, Senior Office Director to Jeffrey May, Deputy Assistant Secretary, “Preliminary Determination of Polyethylene Terephthalate (“PET”) Resin from Thailand: Corroboration Memorandum” (“*Corroboration Memorandum*”) regarding the corroboration of facts available, we find that the margin of 41.28 percent has probative value. Accordingly, we find that the highest margin, based on petition information and adjusted as

<sup>4</sup> *See* Memo to File dated August 23, 2004, entitled “Bottle Grade Polyethylene Terephthalate (PET) Resin from Thailand: E-mail Regarding Sections A–C Submissions.”

<sup>5</sup> *See* Id.

described in the *Corroboration Memorandum*, of 41.28 percent is corroborated within the meaning of section 776(c) of the Act.

### Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Thailand during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on four criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: Intrinsic viscosity, blend, copolymer/homopolymer, and additives. See *Model Match Memorandum*. Where there were no sales of identical merchandise in the home market 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.

### Fair Value Comparisons

To determine whether sales of PET resin from Thailand were made in the United States at less than fair value ("LTFV"), we compared the export price ("EP") to the normal value ("NV"), as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(I) of the Act, we calculated weighted-average EPs. We compared these to weighted-average home market prices in Thailand. For Bangkok Polyester, we compared all U.S. and home market sales made during the POI, based on the date of issuance of Bangkok Polyester's invoices. We determined this to be the appropriate date of sale because, based on the description of the sales process provided by Bangkok Polyester, the quantity, sales price, and product specifications were frequently renegotiated after the purchase order.

### Export Price

For Bangkok Polyester's price to the United States, we used EP. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 722(c) of the Act. We calculated Bangkok Polyester's EP based on the packed prices charged to the first unaffiliated customer in the United States. These sales are properly classified as EP sales because they were

made outside the United States by the exporter or producer to unaffiliated customers in the United States prior to the date of importation.

In accordance with section 772(c)(2) of the Act, we made deductions from the starting price for movement expenses where appropriate. These included inland freight and brokerage and handling fees. In accordance with section 772(c)(1)(B) of the Act, we have preliminarily added to the starting price the amount of import duties imposed by the Government of Thailand that were rebated upon export of the subject merchandise to the United States. We will verify the terms and conditions of this duty drawback claim for the final determination.

### Normal Value

#### A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), that the time of the sales reasonably corresponds to the time of the sale used to determine EP, and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that Bangkok Polyester had a viable home market for PET resin. As such, Bangkok Polyester submitted home market sales data for purposes calculating NV.

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* section, below.

#### B. Cost of Production Analysis

Based on allegations contained in the petitioner's August 10, 2004, sales-below-cost allegation with respect to Bangkok Polyester (See August 10, 2004, letter from the petitioner, "Bangkok Polyester Public Company Limited Sales Below Cost Allegation"), and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that PET resin sales were made in Thailand at prices below the cost of production ("COP"). See August 26, 2004, memorandum to Susan Kubach, Senior Office Director, "Petitioner's Allegation of Sales Below the Cost of Production for Bangkok Polyester Public Company Limited." As a result, the Department has conducted

an investigation to determine whether Bangkok Polyester made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

#### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general administrative ("G&A") expenses, including interest expenses, and packing expenses. We relied on the COP data submitted by Bangkok Polyester in its cost questionnaire response, with the following adjustments: (1) We revised the financial expense ratio to include the net exchange gains; (2) For both the G&A and financial expense ratios, we subtracted Bangkok Polyester's packing expenses from the cost of goods sold denominator. See "Bangkok Polyester Cost Calculation Memorandum," from Gina Lee to Neal Halper, dated October 20, 2004.

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

We compared the adjusted weighted-average COP for Bangkok Polyester to its home-market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, and direct and indirect selling expenses (which were also deducted from COP).

#### 3. Results of the COP Test

Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POI average costs, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded these home-market sales for Bangkok Polyester.

### C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),<sup>6</sup> including selling functions,<sup>7</sup> class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>8</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an

<sup>6</sup> The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

<sup>7</sup> Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

<sup>8</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and we are unable to make a LOT adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In conducting our LOT analysis for Bangkok Polyester, we examined the specific types of customers, the channels of distribution, and the company selling practices. Generally, if the reported LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party reports LOTs that are different for different categories of sales, the functions and activities may be dissimilar.

We found the following: Bangkok Polyester reported that it sells PET resin to trading companies and converters (end users) in the home market, and to distributors in the United States. Bangkok Polyester claims that the selling function it performs are limited and do not materially differ among channels of trade or between the U.S. and home market. We examined the information reported by Bangkok Polyester and found that home market sales in both channels of distribution were similar with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that Bangkok Polyester had only one LOT for its home market sales.

Bangkok Polyester made only EP sales to the United States during the POI. All of Bangkok Polyester's EP sales were made through the same channel of distribution (*i.e.*, sales from the manufacturer to distributors). The EP selling activities do not differ significantly from the home market selling activities. Therefore, we find that the U.S. LOT is similar to the home market LOT and a LOT adjustment is not appropriate. See section 773(a)(7)(A) of the Act.

### D. Calculation of Normal Value Based on Home Market Prices

We determined NV for Bangkok Polyester as follows. We made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. We also adjusted home market prices, where appropriate, by

adding or subtracting billing adjustments to home market prices. In addition, where applicable in comparison to EP transactions, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments for Bangkok Polyester's EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.*, credit expense) and adding U.S. direct selling expenses (*i.e.*, credit expenses).

### Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sale, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

### Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination for Bangkok Polyester.

### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U. S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of PET resin from Thailand, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Producer/exporter	Weighted-average margin (percentage)
Bangkok Polyester Public Company, Ltd .....	26.03
Thai Shinkong Industry Corporation, Ltd .....	41.28
All Others .....	26.03

### Disclosure

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

### International Trade Commission Notification

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

in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of PET resin from Thailand 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 by the later of 50 days after the date of publication of this notice or one week after the issuance of the verification reports. 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 after the deadline for the submission of case briefs. See 19 CFR 351.309(d). 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, we will hold a public hearing, if requested, 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 will tentatively hold the hearing two days after the deadline for submission of 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, Room 1870, within 30 days of the date of 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. At the hearing, oral presentations will be limited to issues raised in the briefs. See 19 CFR 351.310(c).

The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

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

Dated: October 20, 2004.

**James J. Jochum,**  
Assistant Secretary for Import  
Administration.

[FR Doc. 04-24094 Filed 10-27-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-533-841)

#### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from India

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

**EFFECTIVE DATE:** October 28, 2004

**FOR FURTHER INFORMATION CONTACT:** Daniel O'Brien or Saliha Loucif at (202) 482-1376 or (202) 484-1779, respectively; AD/CVD Enforcement, Office 1, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### Preliminary Determination

We preliminarily determine that bottle-grade polyethylene terephthalate (PET) resin from India is being sold, 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 preliminary margin assigned to Reliance Industries Limited (Reliance) is based on adverse facts available. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

##### Petitioner

The petitioner in this investigation is the United States PET Resin Producers Coalition (the petitioner).

##### Case History

This investigation was initiated on April 20, 2004. See *Notice of Initiation of Antidumping Duty Investigations:*

*Bottle-Grade Polyethylene Terephthalate Resin from India, Indonesia, Taiwan, and Thailand*, 69 FR 21082 (April 20, 2004) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

The Department of Commerce (the Department) set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice*, 69 FR 21083. No comments were received from respondents or the petitioner.

The Department issued a letter on May 10, 2004, to interested parties in all of the concurrent PET resin antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and its hierarchy of characteristics. On May 17, 2004, the Department received comments on model matching from the petitioner, Reliance, South Asia Petrochem Ltd. (SAPL), Far Eastern Textiles and P.T. Indorama Synthetics. The Department took these comments were taken into consideration in developing the model matching characteristics and hierarchy for all of the PET resin antidumping investigations. See *Memorandum to Susan Kuhbach, Senior Director, Re: Selection of Model Matching Criteria for Purposes of the Antidumping Duty Questionnaire* (June 9, 2004).

On May 17, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are materially injuring an industry in the United States producing the domestic like product. See *United States International Trade Commission Report on Polyethylene Terephthalate Resin from India, Indonesia, Taiwan, and Thailand*, Nos. 701-TA-439-440 and 731-TA-1077-1080 (May 17, 2004).

On June 9, 2004, the Department issued its antidumping duty questionnaire (the questionnaire) to SAPL and Reliance, specifying that the responses to Section A and Sections B and C would be due on June 30 and July 16, 2004, respectively.<sup>1</sup> We received

<sup>1</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 B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.