

Circumstances Memorandum) (August 9, 2010) at 2.

With regard to whether imports of subject merchandise by the “all other” exporters of drill pipe in the PRC were massive, the Department normally relies on data sourced from the International Trade Commission’s (ITC’s) Dataweb, adjusted to remove shipments by the respondents participating in the investigation.⁷ In this case, however, use of data from the ITC’s Dataweb is not meaningful, because when the DP Master Group’s monthly shipments are subtracted from the monthly data generated by the ITC’s Dataweb for the main HTSUS categories (*i.e.*, 7304.22 and 7304.23),⁸ the results for a number of months are a negative amount. See Critical Circumstances Memorandum at 3. This indicates that some of the DP Master Group’s shipments entered under the “may also enter under” HTSUS categories listed in the scope. We note that those numbers represent basket categories and, therefore, would not provide accurate data for use in our analysis. As such, we are basing our preliminary finding of critical circumstances for “all other” exporters of drill pipe from the PRC on the shipping experience of the DP Master Group.

Regarding the preliminary conclusion to base our finding of critical circumstances for “all other” exporters of drill pipe from the PRC on the shipping experience of the DP Master Group, we note that the two firms initially identified by the Department in the Customs and Border Protection (CBP) Data Query Memorandum as the two largest shippers of drill pipe to the United States during the POI subsequently claimed that their shipments do not, in fact, reflect subject merchandise. Assuming that the non-shipment claims of these two firms are valid,⁹ then the share of the DP Master

Group’s exports of drill pipe to the United States during the POI is larger than is indicated in the CBP Data Query Memorandum and, thus, constitutes an additional basis for the Department to base its finding of critical circumstances for “all other” exporters of drill pipe from the PRC on the shipping experience of the DP Master Group.

Conclusion

Based on the analysis above, we preliminarily determine critical circumstances exist for imports of drill pipe from the DP Master Group. We also preliminarily determine, based on the shipment experience of the DP Master Group, that critical circumstances exist as well for imports of drill pipe from “all other” exporters from the PRC. We will make a final determination concerning critical circumstances for drill pipe from the PRC when we make our final countervailable subsidy determination in this investigation.

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, we are directing CBP to suspend liquidation of any unliquidated entries of subject merchandise from the PRC entered, or withdrawn from warehouse for consumption, on or after March 13, 2010, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: August 9, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-20210 Filed 8-13-10; 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 Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce (“the Department”) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (“PET film”) from the People’s Republic of China (“PRC”). The period of review (“POR”) is November 6, 2008, through October 31, 2009. This administrative review covers two mandatory respondents, and four separate rate respondents (*i.e.*, one separate rate respondent that filed a separate rate certification, one separate rate respondent that claimed it did not ship or sell subject merchandise to the United States during the POR, and two separate rate respondents who currently have a separate rate, but that failed to either recertify the separate rate, or, in the alternative, make a claim that they did not ship or sell subject merchandise to the United States during the POR).

We have preliminarily determined that sales have been made below normal value (“NV”) by certain companies subject to this review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

We invite interested parties to comment on these preliminary results of review. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument. We intend to issue the final results of this review no later than 120 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT:

Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3936.

SUPPLEMENTARY INFORMATION: The Department received a timely request from DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. (collectively, “Petitioners”), in accordance with 19 CFR 351.213(b)(1), for an administrative review of the antidumping duty order on PET film from the PRC for six companies: Fuwei Films (Shandong) Co., Ltd. (“Fuwei Films”), Shaoxing Xiangyu Green Packing Co., Ltd. (“Green Packing”), Tianjin Wanhua Co., Ltd. (“Wanhua”), Sichuan Dongfang Insulating Material

⁷ See, e.g., *Certain Oil Country Tubular Goods From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47212 (September 15, 2009), unchanged in *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009).

⁸ Query of the 7304.22 and 7304.23 HTSUS categories is in keeping with the data analysis conducted for respondent selection where the Department relied solely on Customs and Border Protection data of 7304.22 and 7304.23 for selecting respondents. See Memorandum to the File from Eric G. Greynolds, Program Manager, AD/CVD Operations, Office 3, regarding “Release of Initial Customs and Border Protection Data,” (January 22, 2010) (CBP Data Query Memorandum).

⁹ The Department has requested entry documents from CBP to verify the companies’ claim of non-shipment of subject merchandise.

Co., Ltd. (“Dongfang”), Shanghai Xishu Electric Material Co., Ltd. (“Xishu”), and Shanghai Uchem Co., Ltd. (“Uchem”).¹ The Department also received timely requests in accordance with 19 CFR 351.213(b)(2) for an administrative review from Fuwei Films, Green Packing, and Wanhua. On December 23, 2009, the Department published a notice of initiation of an antidumping duty administrative review on PET film from the PRC, in which it initiated a review of Fuwei Films, Green Packing, Wanhua, Dongfang, Xishu, and Uchem.²

On December 29, 2009, the Department placed on the record CBP import data for the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 3920.62.0090. On January 19, 2010, the Department selected Fuwei Films and Green Packing as mandatory respondents.³

On January 20, 2010, the Department issued the antidumping questionnaire to Fuwei Films and Green Packing. On January 22, 2010, Wanhua filed a separate rate certification, and Dongfang certified that it had no entries of subject merchandise during the POR. Between February 26, 2010 and July 23, 2010, Fuwei Films and Green Packing responded to the Department’s questionnaire and supplemental questionnaires, and Petitioners commented on the responses of Fuwei Films and Green Packing.

In response to the Department’s April 5, 2010, letter providing parties with an opportunity to submit comments regarding surrogate country and surrogate value (“SV”) selection,⁴ Petitioners filed surrogate country and SV comments on April 19, 2010 and May 3, 2010, respectively. On June 21, 24, and 29, 2010, Petitioners submitted comments regarding data considerations for selecting a surrogate country. Fuwei Films and Green Packing filed surrogate

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

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 68229 (December 23, 2009) (“Initiation Notice”).

³ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, AD/CVD Operations, Office 4, “Respondent Selection in the First Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China,” dated January 19, 2010 (“Respondent Selection Memo”).

⁴ See Letter from Robert Bolling, Program Manager, Office 4, to All Interested Parties, “Antidumping Duty Administrative Review of PET film from the People’s Republic of China (PRC),” dated April 5, 2010.

country and SV rebuttal comments on June 18, 2010 and July 13, 2010.

Scope of the Order

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

Intent To Rescind the Administrative Review, in Part

As noted above, Dongfang reported that it did not have any entries of subject merchandise during the POR.⁵ The Department has not obtained any evidence contradicting Dongfang’s claims and, thus, has preliminarily determined to rescind this administrative review with respect to Dongfang pursuant to 19 CFR 351.213(d)(3).⁶

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (“NME”) country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the “Act”), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

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 subject

merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test set out in the *Notice of 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*”). However, 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.⁷ Fuwei Films submitted information indicating that it is a wholly foreign-owned enterprise under Chinese law.⁸ Therefore, for the purposes of these preliminary results, the Department finds that it is not necessary to perform a separate-rate analysis with respect to Fuwei Films.

Green Packing and Wanhua reported that they are either wholly Chinese-owned companies, or joint ventures between Chinese and Foreign companies.⁹ 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.¹⁰

The evidence provided by Green Packing and Wanhua supports a

⁷ See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People’s Republic of China*, 64 FR 71104, 71104–71105 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

⁸ See Fuwei Films’ March 12, 2010 Section A Questionnaire response at question 2(a)(i).

⁹ See Wanhua’s January 22, 2010 Separate Rate Certification response at question 2; see also Green Packing’s March 12, 2010, Section A Questionnaire response at question 2(a)(i).

¹⁰ See *Sparklers*, 56 FR at 20589.

preliminary finding of *de jure* absence of governmental control based on the following: (1) There is an absence of restrictive stipulations associated with the companies' business and export licenses; (2) there are applicable legislative enactments decentralizing control of PRC companies; and (3) there are formal measures by the government decentralizing control of PRC companies.¹¹

2. Absence of De Facto Control

The Department typically 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.¹² 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 the evidence on the record supports a preliminary finding of *de facto* absence of governmental control with respect to Green Packing and Wanhua based on record statements and supporting documentation showing that the companies: (1) Set their own export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) have autonomy from the government regarding the selection of management; and (4) retain the proceeds from their sales and make independent decisions regarding disposition of profits or financing of losses.¹³

¹¹ See Wanhua's January 22, 2010 Separate Rate Certification response at questions 10 through 14; see also Green Packing's March 12, 2010, Section A Questionnaire response at question 2(d) through 2(f).

¹² 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).

¹³ See Wanhua's January 22, 2010 Separate Rate Certification response at questions 15 through 20; see also Green Packing's March 12, 2010, Section A Questionnaire response at questions 2(a)(iii)–(v); 2(b)–(c); 2(g)–(q).

The evidence placed on the record of this administrative review by Green Packing and Wanhua demonstrates an absence of *de jure* and *de facto* government control with respect to the companies' exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have preliminarily granted Green Packing and Wanhua separate rate status.

Separate Rate Calculation

For exporters subject to administrative review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available.¹⁴ Consequently, because the Department has calculated positive margins for both mandatory respondents, Fuwei Films and Green Packing, in these preliminary results, consistent with our practice, we have preliminarily established a margin for the separate rate respondent Wanhua based on the rates we calculated for the two mandatory respondents. However, because there are only two respondents for which a company-specific margin was calculated in this review, the Department has calculated a simple average margin to ensure that the total import quantity and value for each company is not inadvertently revealed. The rate established for the separate rate respondents is 126.49 percent.

The PRC-Wide Entity

1. Xishu and Uchem

Xishu and Uchem currently have separate rates.¹⁵ The record of this review shows that Xishu and Uchem were named in the *Initiation Notice* and, thus, they are subject to this administrative review. However, Xishu and Uchem both failed to recertify their separate rates using the separate rate certification provided at the Department's Web site at <http://ia.ita.doc.gov/nme/nme-sep-rate.html>, to demonstrate their continued eligibility for separate-rate status. Also, Xishu and

¹⁴ See, e.g., *Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273, 8279 (February 13, 2008), unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008).

¹⁵ Xishu currently has a separate rate only as part of a producer/exporter combination with Uchem. See *Orders*, 73 FR at 66596.

Uchem did not make a claim that they did not ship or sell subject merchandise to the United States during the POR. As neither company timely certified that it had no shipments or demonstrated that it was entitled to a separate rate, the Department finds that each company is properly considered to be part of the PRC-wide entity for this review. In accordance with the Department's established NME methodology, a party's separate rate status must be established in each segment of the proceeding in which the party is involved.¹⁶ Thus, we preliminarily determine that Xishu and Uchem are part of the PRC-wide entity, because they have not demonstrated their entitlement to a separate rate or certified that they had no shipments.

Selection of a Surrogate Country

When the Department conducts an antidumping duty administrative review of imports from an NME country, section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer's factors of production ("FOP") valued in a surrogate market-economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOP using "to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are—(A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise." Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country.

In the instant review, the Department identified India, Indonesia, the Philippines, Colombia, Thailand, and Peru as a non-exhaustive list of countries that are at a level of economic development comparable to the PRC and for which good quality data is most likely available.¹⁷ On April 19, 2010, Petitioners proposed selecting Thailand as the surrogate country because (1) the PRC and Thailand share comparable levels of economic development, as evidenced by the fact that Thailand's per capita gross national income is the closest to the PRC among the countries

¹⁶ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1405–06 (Fed. Cir. 1997) (affirming Department's presumption of state control over exporters in non market economy cases).

¹⁷ See Memorandum from Carole Showers, Director, Office of Policy, to Robert Bolling, Program Manager, Office 4, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China" (April 5, 2010) ("Policy Memorandum").

included in the Policy Memorandum listing potential surrogate countries, and (2) Thailand is a significant producer of merchandise identical to subject merchandise, PET film.¹⁸ On June 18, 2010, Fuwei Films and Green Packing filed rebuttal comments arguing that the Department should select India as the surrogate country.¹⁹

The Department finds that both Thailand and India are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise.²⁰ Thus, the Department bases its selection of a surrogate country on the availability of contemporaneous Indian and Thai data for valuing FOP.

With respect to data considerations, in selecting a surrogate country, Policy Bulletin 04.1 describes the Department's practice. Specifically, " * * * if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country."²¹ Currently, the record contains SV information, including possible surrogate financial statements, from Thailand and India. However, the Department has determined that the financial statements from Thailand do not permit the Department to calculate accurately surrogate financial ratios.²² Therefore, the Department has preliminarily determined to select India as the surrogate country on the basis that: (1) It is at a comparable level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOP.²³ Accordingly, we have calculated NV using Indian prices, when available and appropriate, to value the FOP of Fuwei Films and

Green Packing.²⁴ In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly-available information to value FOP until 20 days after the date of publication of the preliminary results.²⁵

Fair Value Comparisons

In accordance with section 777A(d)(2) of the Act, to determine whether Fuwei Films and Green Packing sold PET film to the United States at less than NV, we compared the export prices ("EP") and constructed export prices ("CEP") of individual transactions of the PET film to the NV of the PET film, as described in the "U.S. Price," and "Normal Value" sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, the Department used EP as the basis for U.S. price for Fuwei Films' and Green Packing's sales where the first sale to unaffiliated purchasers were made prior to importation and the use of CEP was not otherwise warranted. In accordance with section 772(c)(2)(A) of the Act, the Department calculated EP for Fuwei Films and Green Packing by deducting the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: Foreign inland freight from the plant to the port of exportation, domestic inland insurance, foreign brokerage and handling, international freight, and marine insurance. Additionally, the Department based movement expenses on SVs where the service was purchased from a PRC company.²⁶ For details regarding our EP calculations, see Memorandum to the File through Robert

Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Calculation Memorandum for the Preliminary Results of the First Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Fuwei Films (Shandong) Co., Ltd.," dated August 9, 2010 ("Fuwei Calculation Memo"); see also Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Calculation Memorandum for the Preliminary Results of the First Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Shaoxing Xiangyu Green Packing Co., Ltd.," dated August 9, 2010 ("Green Packing Calculation Memo").

In accordance with section 772(b) of the Act, the Department used CEP as the basis for U.S. price for Fuwei Films' sales where Fuwei Films first sold subject merchandise to its affiliated company in the United States, which in turn sold subject merchandise to unaffiliated U.S. customers. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. The Department calculated CEP for Fuwei Films based on delivered prices to unaffiliated purchasers in the United States and made deductions, where applicable, from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These movement expenses included foreign inland freight from the plant to the port of exportation, domestic inland insurance, international freight, marine insurance, U.S. customs duty, U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, the Department deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. For details regarding the CEP calculation, see Fuwei Calculation Memo.

¹⁸ See Letter from Petitioners to Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Choice of Surrogate Country," (April 19, 2010).

¹⁹ See Letter from Respondents to Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Rebuttal Comments to the Petitioners' April 19, 2010, Surrogate Country Selection Comments" (June 18, 2010).

²⁰ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Selection of a Surrogate Country," dated August 9, 2010 ("Surrogate Country Memo") at 5-7.

²¹ 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>.

²² See Surrogate Country Memo at 8-10.

²³ See Surrogate Country Memo.

²⁴ See Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Selection of Factor Values," dated August 9, 2010 ("Surrogate Value Memorandum").

²⁵ In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

²⁶ See Surrogate Value Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies.²⁷ Under section 773(c)(3) of the Act, FOP include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on FOP reported by the respondents for materials, energy, labor and packing.

Thus, in accordance with section 773(c) of the Act, we calculated NV by adding together the values of the FOP, overhead, selling, general and administrative (“SG&A”) expenses, profit, and packing costs.²⁸ We calculated FOP values by multiplying the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). Specifically, we valued material, labor, energy, and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit SV of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the U.S. Court of Appeals for the Federal Circuit’s decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). We calculated surrogate

overhead expenses, SG&A expenses, and profit, and added these to the FOP costs.²⁹

With respect to the application of the by-product offset to NV, consistent with the Department’s determination in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decisions Memorandum at Comment 9, unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 35864 (June 22, 2006) (“*Diamond Sawblades*”), because our surrogate financial statements contain no references to the treatment of by-products and because Fuwei Films and Green Packing reported that they sold certain by-products, “wasted film” and PET chip by-product, we will deduct the SV of these by-products from NV. This is consistent with accounting principles based on a reasonable assumption that if a company sells a by-product, the by-product necessarily incurs expenses for overhead, SG&A, and profit.³⁰

Selected Surrogate Values

In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data.

In selecting the best available information for valuing FOP in accordance with section 773(c)(1) of the Act, the Department’s practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.³¹ The record shows that the Indian import statistics represent import data that are contemporaneous with the POR, product-specific, and tax-exclusive.

In past cases, it has been the Department’s practice to value various FOP using import statistics of the primary selected surrogate country from World Trade Atlas (“WTA”), as published by Global Trade Information Services (“GTIS”).³² However, in a

recent case, the *OCTG Final*, the Department explained, based on discussions with GTIS, that the Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. Dollar rather than the Indian rupee, as was previously reported by GTIS for Indian import data.³³ While the original India import data³⁴ obtained by GTIS are denominated and published in Indian rupees, in the *OCTG Final*, the Department noted that GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the U.S. Dollar in order to reduce the loss of the number of significant digits when obtaining data through the WTA software. Additionally, in the *OCTG Final*, the Department also noted that subsequently, GTIS restored the ability to view Indian Rupee values in the WTA software for Indian import data. However, because these data were twice converted,³⁵ it was found that these data would not correspond to the original India data based on the WTA software’s capability to only handle a limited number of significant digits in each conversion calculation.

Because of conversion and rounding in the data reported by the WTA, the Department will now obtain import statistics from Global Trade Atlas (“GTA”), as published by GTIS in October 2009, for valuing various FOP. The data reported in the GTA software reports import statistics, such as from India, in the original reporting currency and thus these data correspond to the original currency value reported by each country. Additionally, the data reported in the GTA software are reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently the import statistics we obtain from GTA have the same level of accuracy as the original data released.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing

50946, 50950 (October 2, 2009), unchanged in *Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review*, 74 FR 65520 (December 10, 2009).

³³ See *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 4 (“*OCTG Final*”).

³⁴ GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India.

³⁵ Converted from Indian Rupee to U.S. Dollar, then converted from U.S. Dollar to Indian Rupee.

²⁷ See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744, 39754 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517, 2521 (January 17, 2006).

²⁸ We applied SVs to the FOP, as indicated in the “Selected Surrogate Values” section below.

²⁹ See Fuwei Calculation Memo at 10; see also Green Packing Calculation Memo at 7.

³⁰ See, e.g., *Diamond Sawblades*.

³¹ See, e.g., *Pure Magnesium from the People’s Republic of China: Preliminary Results of 2007–2008 Antidumping Duty Administrative Review*, 74 FR 27090, 27094 (June 8, 2009), unchanged in *Pure Magnesium from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66089 (December 14, 2009).

³² See, e.g., *Certain Preserved Mushrooms From the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR

practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.³⁶ In this regard, the Department has previously found that it is appropriate to disregard such prices from *e.g.*, Indonesia and South Korea, because we have determined that these countries maintain broadly available, non-industry specific export subsidies.³⁷ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from certain countries may have benefitted from these subsidies. Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from either an NME country, or from a country with generally available subsidy programs. Where we could only obtain SVs that were not contemporaneous with the POR, we inflated (or deflated) the SVs using the Indian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund.³⁸

We valued FOP in the preliminary results of this review using SVs, as follows (*see* Surrogate Value Memorandum for more specific details). We valued PET Chips, Paper Core, Iron Clip, Plywood, Wooden Pallets, Plastic Cap, Labels, Plastic Packing Band, Stretch Wrap Film, Plastic Bag, Paper Plate, PE Foam using November 2008 through October 2009 weighted-average Indian import values derived from the GTA. *See* <http://www.gtis.com/gta.htm>. The Indian import statistics that we obtained from the GTA were published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and are contemporaneous with the POR.³⁹

We valued water using the revised Maharashtra Industrial Development Corporation water rates available at

<http://www.midcindia.com/water-supply>. The rates were contemporaneous with the POR.⁴⁰

We valued steam using an average unit value obtained from information in the publicly-available financial statements of Hindalco Industries Limited, an Indian producer of aluminum products that reported its steam consumption during the fiscal year April 2007 through March 2008. We inflated the value for steam using the POR average WPI rate.⁴¹

We valued electricity using rates for large industries at 33 Kilo Volts, as published by the Central Electricity Authority of the Government of India in "Electricity Tariff & Duty and Average Rates of Electricity Supply in India", dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation.⁴²

We valued natural gas using April through June 2002 data from the Gas Authority of India Ltd. Since the rates are not contemporaneous with the POR, we inflated the values using the WPI.⁴³

We valued truck freight using a per-unit average rate calculated from POR data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this website contains inland freight truck rates between many large Indian cities. The rates were contemporaneous with the POR.⁴⁴

We valued domestic inland insurance using information submitted by Agro Dutch Industries Limited in the sixth administrative review of the antidumping proceeding of Certain Preserved Mushrooms from India, for the period February 2004 through January 2005.⁴⁵ The Department inflated the domestic inland insurance value using the appropriate WPI inflator.⁴⁶

To value the respondents' international ocean freight from the PRC

to the United States on NME carriers in instances where the exporter was responsible for these charges, the Department is using data obtained from the Descartes Carrier Rate Retrieval Database ("Descartes"), which can be accessed via <http://descartes.com/>. The Descartes rates were contemporaneous with the POR.⁴⁷

We valued marine insurance using the price quote retrieved from RJG Consultants, online at <http://www.rjgconsultants.com/163.html>, a market-economy provider of marine insurance. The price quote was contemporaneous with the POR.⁴⁸

The Department valued brokerage and handling using a fee schedule of brokerage and handling charges for a standardized cargo of goods in India. The fee schedule was compiled based on a survey case study of the procedural requirements for a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India*, by the World Bank. The price list data is contemporaneous with the POR.⁴⁹

Fuwei Films and Green Packing claimed by-product offsets since they produced certain by-products, and were able to demonstrate a commercial value for the by-product by having sold a portion of this production during the POR. We valued these by-products using GTA data for entries under HTSUS number 3915.90.90 ("Waste, Parings and Scrap, of Plastics; Other").⁵⁰

For direct, indirect, and packing labor, pursuant to a recent decision by the Court of Appeals for the Federal Circuit, we revised our calculation of the hourly wage rate to use in valuing each respondent's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.⁵¹ Because this wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents.⁵²

³⁶ See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 590, 100th Cong., 2nd Sess. (1988) ("OTCA 1988").

³⁷ See *e.g.*, *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20.

³⁸ See Surrogate Value Memorandum at 2 and Exhibit 2.

³⁹ See Surrogate Value Memorandum at 3–4 and Exhibit 1.

⁴⁰ See Surrogate Value Memorandum at 5 and Exhibit 4.

⁴¹ See Surrogate Value Memorandum at 5 and Exhibit 5.

⁴² See Surrogate Value Memorandum at 4 and Exhibit 3.

⁴³ See Surrogate Value Memorandum at 5 and Exhibit 6.

⁴⁴ See Surrogate Value Memorandum at 8 and Exhibit 12.

⁴⁵ See Agro Dutch Industries Ltd.'s section A–D submission, dated May 24, 2005, at Exhibit B–1; (*see also Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006)).

⁴⁶ See Surrogate Value Memorandum at 8 and Exhibit 10.

⁴⁷ See Surrogate Value Memorandum at 8 and Exhibit 13.

⁴⁸ See Surrogate Value Memorandum at 7 and Exhibit 9.

⁴⁹ See Surrogate Value Memorandum at 8 and Exhibit 11.

⁵⁰ See Surrogate Value Memorandum at 4 and Exhibit 1.

⁵¹ See *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372–73 (Fed. Cir. 2010). See also Surrogate Value Memorandum at 5–7 for a detailed discussion of the Department's revised labor wage rate methodology.

⁵² See Surrogate Value Memorandum at 5–7 and Exhibit 7.

Lastly, we valued SG&A expenses, factory overhead costs, and profit using the contemporaneous 2008–2009 financial statements of Polyplex Corporation Ltd., an Indian producer of PET film.⁵³ As both Petitioners and the respondents have pointed out, the 2008–2009 financial statement of Polyplex Corporation Ltd. shows evidence of participation in the Duty Entitlement Passbook scheme at page 61, which the Department has found to be a countervailable subsidy. *See Carbazole Violet Pigment 23 From India: Final Results of Countervailing Duty Administrative Review*, 75 FR 33243 (June 11, 2010) and the accompanying Issues and Decision Memorandum at II.A.2. However, since there are currently no other financial statements on the record of this administrative review that the Department can use to calculate the surrogate financial ratios, we have determined that the 2008–2009 financial statement of Polyplex Corporation Ltd. is the best available information for calculating surrogate financial ratios. *See* section 773(c)(1) of the Act (“* * * the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country * * *”). Therefore, based on the above data considerations, we consider India to have the most appropriate surrogate financial ratio data for use in this proceeding.⁵⁴

Further, consistent with the Department’s practice to not rely on incomplete surrogate financial statements, we did not use the 2008–2009 financial statement of Ester Industries Ltd. placed on the record by Fuwei Films and Green Packing, because these respondents’ joint submission failed to include a significant portion of the financial statement.⁵⁵ *See* Surrogate Country Memo at 9.

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.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for Fuwei Films, Green Packing, Wanhua, and the PRC-Entity, for the period

November 6, 2008, through October 31, 2009:

Exporter	Antidumping duty percent margin
Fuwei Films (Shandong) Co., Ltd	122.58
Shaoxing Xiangyu Green Packing Co., Ltd	130.39
Tianjin Wanhua Co., Ltd	126.49
PRC-wide Entity ⁵⁶	76.72

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days after the date of publication of these preliminary results of review in accordance with 19 CFR 351.224(b).

Comments

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal comments must be limited to the issues raised in the written comments and may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Parties submitting written comments or rebuttal comments are requested to provide the Department with an additional copy of those comments on CD–R. Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department will issue the final results of the administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with section 751(a)(3)(A) of the Act, unless the time limit is extended.

Assessment Rates

Pursuant to 19 CFR 351.212, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, the Department calculated exporter/importer- (or customer) -specific assessment rates for

merchandise subject to this review. The Department calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, the Department will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to assess that importer’s (or customer’s) entries of subject merchandise without regard to antidumping duties. The Department intends to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the review, as provided by sections 751(a)(1) and (a)(2)(C) of the Act: (1) For all respondents receiving a separate rate in this review, the cash deposit rate will be that established in the final results of the review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 76.72 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the

⁵³ *See* Surrogate Value Memorandum at 7 and Exhibit 8.

⁵⁴ *See* Surrogate Value Memorandum at 7 and Exhibit 8.

⁵⁵ *See* Surrogate Country Memo at 9.

⁵⁶ Shanghai Xishu Electric Material Co., Ltd. and Shanghai Uchem Co., Ltd. are part of the PRC-wide entity.

Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these preliminary results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: August 9, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-20190 Filed 8-13-10; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-841]

Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Brazil. This administrative review covers one respondent, Terphane, Inc. (Terphane) and the period of review (POR) is November 6, 2008 through October 31, 2009. Given Terphane's failure to respond to the Department's requests for information, we have assigned Terphane a margin based on adverse facts available (AFA). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

DATES: *Effective Date:* August 16, 2010.

FOR FURTHER INFORMATION CONTACT: Deborah Scott 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) 482-2657 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 2008, the Department published the antidumping duty order on PET film from Brazil. *See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595 (November 10, 2008). On November 2, 2009, the Department published *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 56573 (November 2, 2009). On November 30, 2009, DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. (collectively, petitioners) requested that the Department conduct an administrative review of Terphane's sales or offers for sales of PET film from Brazil made during the period November 6, 2008 through October 31, 2009. On December 23, 2009, the Department published a notice of initiation of an administrative review of PET film from Brazil for Terphane for the period November 6, 2008 through October 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 68229 (December 23, 2009). On January 12, 2010, the Department issued an antidumping duty questionnaire to Terphane. On February 12, 2010, Terphane submitted a letter to the Department stating it had only one very small shipment of subject merchandise to the United States during the POR and that it had deposited duties on this merchandise at the applicable cash deposit rate. Because the value of the subject merchandise shipped to the United States during the POR was small, Terphane declared it would not be responding to the Department's questionnaire or otherwise participating in the administrative review.

Period of Review

The POR is November 6, 2008 through October 31, 2009.

Scope of the Order

The products covered by this order 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 customs purposes, our written description of the scope of these orders is dispositive.

Application of Facts Available

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, apply "the facts otherwise available" if (1) necessary information is not available on the record of an antidumping proceeding or (2) an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in 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 with an opportunity to remedy or explain the deficiency. Section 782(d) of the Act further provides that if the party submits further information that is unsatisfactory or untimely, the Department may, subject to subsection (e), disregard all or part of the original and subsequent responses. 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 the applicable requirements established by the administering authority if the information is submitted in a timely manner, can be verified, is not so incomplete that it cannot be used, and 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.

In this case, Terphane did not provide a response to our request for