

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-475-818]

Certain Pasta From Italy: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

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

SUMMARY: On July 22, 2011, the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department's") results of redetermination as applied to Atar, S.r.L. ("Atar") pursuant to the CIT's order granting the Department's voluntary remand request in *Atar, S.r.L. v. United States*, 08-00004, (November 10, 2009) ("Remand Order"). See Final Remand Determination, Court No. 08-00004, filed May 6, 2010 ("Remand Results"), and *Atar, S.r.L. v. United States*, Court No. 08-00004, Slip Op. 11-87 (July 22, 2011). The Department is notifying the public that the final CIT judgment in this case is not in harmony with the Department's final determination and is amending the final results of the administrative review of the antidumping duty order on certain pasta from Italy covering the period of review ("POR") of July 1, 2005, through June 30, 2006, with respect to Atar.

DATES: *Effective Date:* August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4161.

SUPPLEMENTARY INFORMATION:**Background**

On December 11, 2007, the Department published its final results of the administrative review for pasta from Italy for the period from July 1, 2005, through June 30, 2006. See *Certain Pasta from Italy: Notice of Final Results of the Tenth Administrative Review and Partial Rescission of Review*, 72 FR 70298 (December 11, 2007) ("*Final Results*").

Atar appealed the *Final Results* to the CIT arguing, among other things, that the Department should not have rescinded the review with respect to Atar. On October 23, 2009, the Department requested a voluntary remand "to allow the Department to

reconsider its rescission of the administrative review with respect to Atar." See Memorandum in Response to Plaintiff's Motion for Judgment upon the Agency Record at 4. On November 10, 2009, the CIT granted the Department's request for a remand to reconsider its rescission of the administrative review with respect to Atar. See Remand Order.

On May 6, 2010, the Department issued its final results of remand redetermination in which it determined to issue final results of review with respect to Atar rather than rescind the review. See Remand Results. On July 22, 2011, the CIT affirmed the Department's Remand Results. See *Atar, S.r.L. v. United States*, Court No. 08-00004, Slip Op. 11-87 (July 22, 2011). *Timken Notice*

Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co. v. United States*, 893 F.2d 337 (CAFC 1990) ("*Timken*"), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (CAFC 2010), pursuant to section 516A(c) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's judgment on July 22, 2011, sustaining the Department's Remand Results with respect to Atar constitutes a decision of that court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision with respect to Atar, we determine that Atar was not the producer of pasta which it sold to the United States and that the actual pasta producers knew the goods were destined for the United States. Therefore, the appropriate assessment rate for entries during the period July 1, 2005, through June 30, 2006, is the rate applicable to each producer (*i.e.*, either the relevant producer-specific rate or all others rate).

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported during

the POR by Atar using the revised assessment rates calculated by the Department in the Remand Results.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: August 2, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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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 1, 2009 through October 31, 2010. Since Terphane did not 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 made 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 8, 2011.

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 1, 2010, the Department published *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 75 FR 67079 (November 1, 2010). On November 30, 2010, 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 of PET film from Brazil made during the period November 1, 2009, through October 31, 2010. On December 28, 2010, the Department published a notice of initiation for an administrative review of PET film from Brazil for Terphane for the period November 1, 2009, through October 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 81565 (December 28, 2010).

On February 9, 2011, the Department issued an antidumping duty questionnaire to Terphane. On March 14, 2011, Terphane submitted a letter to the Department stating that during the POR, it did not ship any subject merchandise to the United States and all of its shipments to the United States consisted of merchandise outside the scope of the order on PET film from Brazil. Terphane also indicated it did not have any sales or offers for sale of subject merchandise to the United States during the POR. Terphane thus informed the Department it did not intend to respond to the Department's questionnaire or otherwise participate in the administrative review.

On May 11, 2011, the Department placed on the record of this proceeding data from CBP regarding imports of PET film during the POR and entry documentation for a certain entry. On May 27, 2011, the Department issued a letter to Terphane, stating that information in the CBP data suggested subject merchandise had entered the United States during the POR. The Department therefore requested that Terphane review the information in the Department's May 11, 2011, memorandum to the file and provide clarification as to its claim of no

shipments; further, the Department asked that Terphane respond to the February 9, 2011, questionnaire if indeed it had sales, entries or shipments of subject merchandise during the POR.

On June 10, 2011, Terphane submitted a letter stating it did not review the May 11, 2011, memorandum, but it did examine its own transactions during the POR and had identified one "de minimis" entry of subject merchandise. Terphane declared this entry had been accidentally shipped to the United States prior to the POR, and not pursuant to any sale or offer for sale, and that it paid cash deposits on this merchandise when it entered the United States during the POR. As a result, Terphane confirmed it would not be responding to the Department's questionnaire or otherwise participating in this administrative review.

Period of Review

The POR is November 1, 2009, through October 31, 2010.

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 information and information necessary to make a determination in this segment of the proceeding is not on the record. In fact, Terphane specifically stated in its letter of March 14, 2011, and confirmed in its letter of June 10, 2011, that it would not be responding to the Department's questionnaire or otherwise participating in this administrative review. Thus, the Department preliminarily determines that necessary information is not available on the record to serve as the basis for the calculation of Terphane's margin. *See* section 776(a)(1) of the Act. We also preliminarily find that Terphane has withheld information requested by the Department and significantly impeded the proceeding. *See* section 776(a)(2)(A) and (C) of the Act; *see also e.g., Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review*, 74 FR 17149 (April 14, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

Therefore, pursuant to sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act, the Department preliminarily determines that the use of the facts otherwise available is warranted for Terphane. Because Terphane did not

respond to the Department's request for information, sections 782(d) and (e) of the Act are not applicable in this case.

Application of Adverse Facts Available and Selection of Adverse Facts Available Rate

Section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 70295, 70297 (December 11, 2007). 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. Doc. No. 103-316, Vol. 1 (1994) (SAA) at 870. Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003). In this case, the Department finds Terphane failed to cooperate to the best of its ability in this proceeding by refusing to respond to the Department's antidumping questionnaire and otherwise participate in the Department's administrative review. Therefore, since Terphane did not act to the best of its ability by complying with the Department's request for information, the Department has preliminarily determined an adverse inference is warranted in selecting from the facts otherwise available pursuant to section 776(b) of the Act. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where a respondent failed to respond to subsequent antidumping questionnaires).

Section 776(b) of the Act provides the Department may use, as an adverse inference, information derived from the petition, the final determination in the investigation, any previous administrative review, or other information placed on the record. The Department's practice, when selecting

an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

The Department preliminarily determines to assign Terphane an AFA rate of 44.36 percent. This rate is Terphane's cash deposit rate from the investigation and represents the highest margin alleged in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil*, 73 FR 55035, 55036 (September 24, 2008) (*Final Determination*). This rate is also Terphane's margin from the immediately preceding administrative review that was based on AFA. *See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Final Results of Antidumping Duty Administrative Review*, 75 FR 75172 (December 2, 2010).

Corroboration of Secondary Information Used as Adverse Facts Available

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Information from a prior segment of the proceeding constitutes secondary information. *See* SAA at 870; *see also e.g., Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55577 (September 15, 2004). The word "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870; *see also Certain Frozen Warmwater Shrimp from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 39940 (July 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *Id.* Unlike other types of information such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations.

In an administrative review, if the Department chooses to use as facts available a petition rate which was corroborated in the less-than-fair-value (LTFV) investigation and no information has been presented in the current review that calls into the question of reliability of this information, the information is reliable. *See, e.g., Certain Tissue Paper from the People's Republic of China: Preliminary Results and Preliminary Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 17477, 17480-81 (April 9, 2007), unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007). Because the AFA rate of 44.36 percent in this review was corroborated in the LTFV investigation and the immediately preceding administrative review of Terphane, and no information in the current review calls into question the reliability of this rate, we find the AFA rate of 44.36 percent is reliable. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil*, 73 FR 24560 (May 5, 2008), unchanged in *Final Determination*.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as best information available (the predecessor to facts available), because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited or judicially invalidated. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997).

In this review, there are no circumstances present to indicate that the selected margin is not appropriate as AFA. The margin we have selected is the margin we determined for Terphane in the LTFV investigation and represents the highest margin alleged in the petition. This is also the margin we assigned to Terphane in the immediately preceding administrative review. Moreover, because Terphane refused to respond to the Department's questionnaire, there is no information on the record of this review that demonstrates that 44.36 percent is not an appropriate AFA rate for Terphane. Thus, the Department considers this dumping margin relevant for the use of AFA for this administrative review.

As the AFA rate is both reliable and relevant, we find it has probative value. Therefore, with the information at our disposal for the corroboration of this AFA rate, we find the rate of 44.36 percent is corroborated to the extent practicable in accordance with section 776(c) of the Act. We preliminarily find that use of the rate of 44.36 percent as AFA is sufficiently high to ensure that Terphane does not benefit from failing to cooperate in our review by choosing not to respond to the Department's antidumping questionnaire and otherwise participate in the Department's administrative review.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists for the period November 1, 2009, through October 31, 2010:

Producer/Exporter	Margin (percent)
Terphane, Inc.	44.36

Disclosure and Public Comment

Interested parties may submit case briefs 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 briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing the case briefs. See 19 CFR 351.309(d)(1). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2). Furthermore, the Department requests that parties provide the public versions of their case and rebuttal briefs in electronic format (e.g., Microsoft Word, .pdf, etc.).

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d)(1).

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. We preliminarily intend to instruct CBP to apply a dumping margin of 44.36 percent *ad valorem* to PET film from Brazil that was produced and/or exported by Terphane and entered, or withdrawn from warehouse, for consumption during the POR. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Terphane will be the rate established in the final results of this review; (2) for other previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the LTFV investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the

exporter nor the manufacturer has its own rate, the cash deposit rate will be 28.72 percent, the all-others rate established in the *Final Determination*. These cash 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)(2) 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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818]

Certain Pasta From Italy: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests by interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain pasta ("pasta") from Italy for the period of review ("POR") July 1, 2009, through June 30, 2010. This review covers two producers/exporters of subject merchandise: Molino e Pastificio Tomasello S.p.A. ("Tomasello") and Pastificio Lucio Garofalo S.p.A. ("Garofalo"). We preliminarily determine that during the POR, Tomasello and Garofalo sold subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in the final results of this administrative 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