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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A-570-924]

Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011

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

SUMMARY: On December 10, 2012, the Department of Commerce (“Department”) published its Preliminary Results of the third administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (“PET film”) from the People's Republic of China (“PRC”).¹ We gave interested parties an opportunity to comment on the Preliminary Results. After reviewing interested parties' comments and information received, we have made changes for the final results of this review. The final antidumping duty margins for this review are listed below in the “Final Results of the Review” section of this notice. The period of review (“POR”) is November 1, 2010, through October 31, 2011.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

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¹ See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Administrative Review; 2010-2011, 77 FR 73428 (December 10, 2012), and accompanying Decision Memorandum (“Preliminary Results”).

SUPPLEMENTARY INFORMATION:

Background

The Department published the Preliminary Results on December 10, 2012. In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on our Preliminary Results.² On January 28, 2013, the following interested parties filed timely case briefs: Bemis Company, Inc., and its affiliate Curwood Inc.; Shaoxing Xiangyu Green Packing Co., Ltd. (“Green Packing”); Terphane Inc.; Tianjin Wanhua Co., Ltd. (“Wanhua”),³ Fuwei Films (Shandong) Co., Ltd. (“Fuwei Films”), and Sichuan Dongfang Insulating Material Co., Ltd. (“Dongfang”)⁴ (collectively, “Wanhua et al.”); Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. (collectively, “Petitioners”); DuPont Teijin Films China Limited,⁵ DuPont Hongji Films Foshan Co., Ltd., and DuPont Teijin Hongji Films Ningbo Co., Ltd. (“DuPont Group”). On February 4, 2013, the following interested parties filed timely rebuttal briefs: Terphane Inc., Petitioners, Green Packing, DuPont Group, and Wanhua et al.⁶

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the “Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Issues and Decision Memorandum for the Final Results of the 2010 - 2011 Administrative Review,” dated concurrently with this notice (“Issues & Decision Memo”). A list of the issues raised by

² See id., 77 FR at 73429.

³ In the Preliminary Results, Tianjin Wanhua Co., Ltd. was erroneously referred to in the rate table as “Tianjin Wanhua Co., Ltd. Sichuan” The correct name of Tianjin Wanhua Co., Ltd. is shown in the rate table in this notice.

⁴ In the Preliminary Results, Sichuan Dongfang Insulating Material Co., Ltd. was erroneously referred to in the rate table as “Dongfang Insulating Material Co., Ltd.” The correct name of Sichuan Dongfang Insulating Material Co., Ltd. is shown in the rate table in this notice.

⁵ In the Preliminary Results, DuPont Teijin Films China Limited was erroneously referred to in the rate table as “DuPont Teijin China Limited.” The correct name of DuPont Teijin Films China Limited is shown in the rate table in this notice.

⁶ The Department removed the rebuttal brief of Wanhua et al. from the administrative record because it contained untimely filed new factual information. The Department permitted the resubmission of a redacted version of the rebuttal brief, with the untimely factual information removed, on February 12, 2013.

interested parties is attached to this notice as an Appendix. The Issues & Decision Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). IA ACCESS is available to registered users at <http://iaaccess.trade.gov>, and it is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues & Decision Memo can be accessed directly on the Internet at <http://www.trade.gov/ia>. The signed Issues & Decision Memo and the electronic versions of the Issues & Decision Memo are identical in content.

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.⁷ PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. A full description of the scope of the order is contained in the Issues & Decision Memo.

Changes since the Preliminary Results

Based on the comments received from the interested parties, we have made the following changes from the Preliminary Results:

1. We are including the reported reintroduced PET chip factor of production in the DuPont Group's normal value;
2. We are excluding the DuPont Group's reported billing adjustments from the calculation of U.S. net price;

⁷ 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).

3. We are correcting a clerical error in the calculation of surrogate selling, general, and administrative expenses, interest expenses, and profit for the DuPont Group and Green Packing;
4. Due to the changes in the dumping margins for DuPont Group, the rate calculated for the separate rate companies has also changed.

For a discussion of the issues, see the Issues & Decision Memo.

Non-Market Economy Country

The PRC has been treated as a non-market economy (“NME”) in every proceeding conducted by the Department. 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 shall remain in effect until revoked by the administering authority. The Department has not revoked the PRC’s status as an NME. Therefore, the Department continues to treat the PRC as an NME for purposes of these final results and, accordingly, applied the NME methodology.

Separate Rates

In proceedings involving NMEs, the Department maintains a rebuttable presumption that all companies within the NME are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.⁸ The Department’s policy is to assign all exporters of merchandise subject to review 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.⁹ The Department analyzes whether each entity exporting the merchandise under consideration is

⁸ See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039, 55040 (September 24, 2008).

⁹ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China, 56 FR 20588, 20589 (May 6, 1991) (“Sparklers”).

sufficiently independent under a test established in Sparklers¹⁰ and further developed in Silicon Carbide.¹¹ According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both de jure and de facto government control over its export activities. If, however, the Department determines that a company is wholly foreign owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

In the Preliminary Results, the Department found that Dongfang, DuPont Group, Green Packing, Fuwei Films, and Wanhua demonstrated their eligibility for separate-rate status.¹² No party commented on these preliminary results. For the final results, the Department continues to find that the evidence placed on the record of this administrative review by Dongfang, DuPont Group, Green Packing, Fuwei Films, and Wanhua demonstrate both a de jure and de facto absence of government control and, therefore, are eligible for separate-rate status.

Rate for Non-Selected Companies

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are zero, de minimis, or based entirely on facts available. Accordingly, the Department's usual practice

¹⁰ See id.

¹¹ See 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").

¹² See Preliminary Results, and accompanying Decision Memorandum at 3.

has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, de minimis, or based entirely on facts available.¹³ Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, de minimis, or based entirely on facts available, we may use “any reasonable method” for assigning the all-others rate, including “averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.”

In this instance, consistent with our practice, we have established a margin for the separate rate applicants based on the rate we calculated for the mandatory respondents whose rates were not zero, de minimis, or based entirely on facts available. Therefore, for the final results, we have excluded Green Packing’s rate, and assigned DuPont’s rate as the separate rate, i.e., 12.80 percent.

Surrogate Country

In the Preliminary Results, we treated the PRC as an NME country and, therefore, we calculated normal value in accordance with section 773(c) of the Act. We selected Indonesia as the surrogate country, pursuant to section 773(c)(4) of the Act, because it is a significant producer of merchandise comparable to subject merchandise and is at a level of economic development comparable to the PRC.¹⁴ For the final results of review, we have continued to treat the PRC as an NME country and have used the same primary surrogate country, Indonesia.

¹³ See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

¹⁴ See Preliminary Results, and accompanying Decision Memorandum at 7.

Final Results of the Review

The dumping margins for the POR are as follows:

Exporter	Weighted - Average Dumping Margin
DuPont Teijin Films China Limited	12.80%
Shaoxing Xiangyu Green Packing Co., Ltd.	0.00%
Fuwei Films (Shandong) Co., Ltd.	12.80%
Tianjin Wanhua Co., Ltd.	12.80%
Sichuan Dongfang Insulating Material Co., Ltd	12.80%

Assessment Rates

Consistent with these final results, and pursuant to section 751(a)(2)(A) of the Act , and 19 CFR 351.212(b), the Department will direct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer (or customer) -specific assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales.¹⁵ The Department will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate is above de minimis.

The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales

¹⁵ In these final results, the Department applied the assessment rate calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012).

databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (i.e., at that exporter's rate) will be liquidated at the NME-wide rate.¹⁶

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for the exporter listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or de minimis, i.e., less than 0.5 percent, no cash deposit will be required for that company); (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 which have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; 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 exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

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

¹⁶ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

Notification to Importers Regarding The Reimbursement of Duties

This notice serves as a final 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 POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

June 5, 2013
Date

Appendix – Issues & Decision Memorandum

I. General Issues

- Issue 1: Respondent Selection
- Issue 2: Surrogate Country Selection
- Issue 3: Calculation of the Surrogate Financial Ratios
- Issue 4: Calculation of a Separate Rate

II. Company-Specific Issues

- Issue 5: Treatment of the DuPont Group's Reintroduced PET Chip
- Issue 6: Calculation of the DuPont Group's U.S. Indirect Selling Ratio
- Issue 7: Calculation of the DuPont Group's Foreign Brokerage and Handling Expenses
- Issue 8: Calculation of the DuPont Group's Margin Using the Average-to-Transaction Method
- Issue 9: The DuPont Group's Billing Adjustments
- Issue 10: Green Packing's By-Product Offsets
- Issue 11: Assessment Rate to Curwood

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