

will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, 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 covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we will calculate importer- (or customer-) specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we will calculate importer- (or customer-) specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific ad valorem rate is greater than de minimis, we will apply the assessment rate to the entered value of the importers'/ customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

#### 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publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate 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 rate 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 recently completed 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 \$2.63 per kilogram; 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(s) 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)(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 are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: July 30, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-837]

#### Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: 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 Taiwan. The period of review (POR) is July 1, 2010, through June 30, 2011. This review covers respondents Shinkong Synthetic Fibers Corporation (SSFC) and its subsidiary Shinkong Materials Technology Co. Ltd. (SMTC) (collectively, Shinkong), and Nan Ya Plastics Corporation, Ltd. (Nan Ya), producers and exporters of PET Film from Taiwan. The Department preliminarily determines that Nan Ya made and Shinkong did not make sales of PET Film from Taiwan below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review."

Interested parties are invited to comment on these preliminary results.

**DATES:** *Effective Date:* August 6, 2012.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 428-3964, or (202) 482-2584, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

On July 1, 2002, the Department published in the **Federal Register** the antidumping duty order on PET Film from Taiwan.<sup>1</sup> On July 1, 2011, the Department published a notice of opportunity to request an administrative review of the order.<sup>2</sup> In response, on July 29, 2011, Petitioners<sup>3</sup> requested that the Department conduct an administrative review of Nan Ya's and Shinkong's sales of PET Film from Taiwan to the United States. Also on July 29, Shinkong requested that the Department conduct an administrative review of its sales. On August 1, 2011, Nan Ya requested that the Department conduct an administrative review of its sales.<sup>4</sup> On November 25, 2011, Petitioners withdrew their request for an administrative review of Nan Ya. However, because Nan Ya requested a review of itself, there was no basis to rescind the review of Nan Ya.

On August 26, 2011, the Department initiated an administrative review of Shinkong and Nan Ya (collectively, the respondents).<sup>5</sup> On September 9, 2011, the Department issued an antidumping duty questionnaire to the respondents. On October 21 and 24, 2011, respectively, Shinkong and Nan Ya timely filed their Section A response. On November 14 and 18, 2011,

<sup>1</sup> See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR 44174 (July 1, 2002), as corrected in 67 FR 46566 (July 15, 2002).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 76 FR 38609, 38610 (July 1, 2011).

<sup>3</sup> Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.

<sup>4</sup> This request was timely because July 31, 2011 was a Sunday. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation In Part*, 76 FR 53404, 53406 (August 26, 2011).

respectively, Shinkong and Nan Ya timely filed their Section B, C, and D responses. On March 27, 2012, the Department extended the time period for issuing the preliminary results of this administrative review.<sup>6</sup>

On April 11, 2012, Petitioners filed comments on Nan Ya's questionnaire response. Between April and July 2012, the Department issued several supplemental questionnaires separately on sections A, B, and C, and section D, to both Shinkong and Nan Ya requesting additional information. All responses were timely submitted. On July 9, 2012, Petitioners filed comments on both Nan Ya's and Shinkong's questionnaire responses. On July 17, 2012, Petitioners filed targeted dumping allegations for both Nan Ya and Shinkong.

For purposes of these preliminary results the Department did not conduct a targeted dumping analysis. In calculating the preliminary weighted-average dumping margins for the mandatory respondents, the Department applied the calculation methodology adopted in *Final Modification for Reviews*.<sup>7</sup> In particular, the Department compared monthly weighted-average export prices (EPs) (or constructed export prices (CEPs)) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margins. Application of this methodology in these preliminary results affords parties an opportunity to meaningfully comment on the Department's implementation of this recently adopted methodology in the context of this administrative review. The Department intends to continue to consider, pursuant to 19 CFR 351.414(c), whether another method is appropriate in these administrative reviews in light of the parties' pre-preliminary comments and any comments on the issue that parties may include in their case and rebuttal briefs.

### Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. 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 of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

### Period of Review

The POR for this administrative review is July 1, 2010, through June 30, 2011.

### Use of Facts Otherwise Available

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if: (1) Necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, can be used without undue difficulties, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied.

For the reasons discussed below, the Department determines that, in accordance with section 776(a)(1) of the Act, the use of facts otherwise available is appropriate for the preliminary results with respect to Nan Ya's sales to certain importers in the United States. Because Nan Ya reported these sales as CEP sales, and we are treating these sales as EP sales for purposes of these preliminary results (see "Affiliation of Nan Ya with U.S. Customers"), necessary information, the invoice date of these sales, is not available on the record.

### Collapsing SSFC and SMTC

The Department will treat two or more affiliated producers as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility; and (2) there is a significant potential for manipulation of price or production pursuant to 19 CFR 351.401(f)(1) and (2). Consistent with the most recently completed administrative review, the Department preliminarily determines that SSFC and SMTC should be treated as a single entity (*i.e.*, Shinkong) for purposes of calculating an antidumping margin pursuant to 19 CFR 351.401(f).<sup>8</sup>

SMTC was established in October 2004 and it is a subsidiary of SSFC. In the past, SSFC and SMTC both produced similar or identical merchandise, including subject merchandise. At the start of the current POR, on July 1, 2010, SSFC sold its equipment and machinery to its subsidiary SMTC, and SSFC stopped producing subject merchandise.<sup>9</sup> However, the equipment remained at SSFC's facility and SSFC charged SMTC a plant management fee. Similar to the structure of companies the Department found affiliated in *Pipe Fittings from Italy*<sup>10</sup> and *Shrimp from Brazil*,<sup>11</sup> because SSFC is the majority shareholder of SMTC, the level of common ownership between SSFC and SMTC is such that operations are so intertwined that they are integral to the operations of each other. Shinkong reported that the management of the two companies is commingled and that SSFC and SMTC are effectively managed and operated as one company.<sup>12</sup> Thus, we find that the two

<sup>8</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 47540, 47541 (August 5, 2011) ("PET Film Prelim 09-10") unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review*, 76 FR 76941 (December 9, 2011) ("PET Film Review 09-10").

<sup>9</sup> See Shinkong's October 21, 2011 submission at 1.

<sup>10</sup> See *Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination*, 76 FR 79655 (December 22, 2011) (*Pipe Fittings from Italy*), unchanged in *Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 24459 (April 24, 2012).

<sup>11</sup> See *Final Results of the Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004).

<sup>12</sup> See Shinkong's October 21, 2011 submission at 7.

<sup>6</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 76 FR 13128 (March 10, 2011).

<sup>7</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

companies could switch roles and restructure manufacturing priorities such that there is a significant potential for the manipulation of price or production and that, according to our practice, they satisfy the first criteria of 19 CFR 351.401(f)(1). With regard to the significant potential for manipulation pursuant to 19 CFR 351.401(f)(2), we find that, because SMTC has a fully functioning facility for producing the subject merchandise, which is located on the same premises and is controlled by SSFC,<sup>13</sup> the role of producer and seller could easily switch from SMTC to SSFC without substantial retooling at either company. We also found that the majority ownership of SMTC by SSFC demonstrates a significant potential for manipulation of price or production between the two companies. In addition, the sale of the production equipment to SMTC without its relocation; the imposition of a plant management fee by SSFC on SMTC; and, the provision of major inputs at cost by SSFC to SMTC demonstrate that production operations are intertwined. Furthermore, the commingled management highlights that the companies are effectively operated and managed as one. Therefore, because both 19 CFR 351.401(f)(1) and (2) are met, we are continuing to collapse SSFC and SMTC, and treat them as a single entity, Shinkong, for these preliminary results.

#### **Affiliation of Nan Ya With U.S. Customers**

In the less-than-fair-value investigation<sup>14</sup> and subsequent administrative reviews,<sup>15</sup> the Department determined that Nan Ya, through a family grouping, was in a position of legal and operational control of three of its U.S. customers, in accordance with section 771(33)(F) of the Tariff Act of 1930, as amended (the Act). We found that members of a family involved in the ownership and

management of Nan Ya also shared ownership and management of three U.S. importers, and that this family possessed the potential to act in concert or act out of common interest to exert restraint or direction over the activities of these U.S. companies.

In the last administrative review that analyzed Nan Ya's affiliation with these three U.S. importers that purchased and sold the subject merchandise, Nan Ya reported that the 2008 death of its Chairman, Mr. Y.C. Wang, dissolved the family ties and common ownership interests such that there was no longer an affiliation between Nan Ya and these three U.S. importers. However, the Department found that Nan Ya had not provided sufficient information to warrant the reconsideration of our prior affiliation finding.<sup>16</sup> Nan Ya now has provided information in the instant review regarding both the disposition of Mr. Y.C. Wang's assets and the current ownership and corporate structure of Nan Ya and the three U.S. importers that the Department found affiliated in past proceedings.<sup>17</sup> Our analysis of this information indicates that following the death of the Chairman, and distribution of his assets to his heirs, there was no longer any evidence of control of Nan Ya by the family unit. Therefore, we preliminarily determine that Nan Ya is no longer affiliated with these three U.S. customers; as such, we are treating all of Nan Ya's U.S. sales as EP sales. For further discussion of the business proprietary ownership information, *see* the Nan Ya affiliation memorandum.<sup>18</sup>

#### **Home Market Viability**

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Shinkong's and Nan Ya's home market sales of the foreign like product to the volume of their U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act and 19 CFR 351.401(b). Based on this comparison, we found that both

companies' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, and have determined that both Shinkong's and Nan Ya's home markets were viable during the POR for comparison purposes.

#### **Comparisons to Normal Value**

To determine whether sales of PET Film were made at less than NV, we compared the respondents' EP sales made in the United States to unaffiliated customers to NV, as described below in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), we compared EP to NV of the foreign like product in the appropriate corresponding calendar month where there were sales made in the ordinary course of trade, as described in the "United States Price" and "Normal Value" sections of this notice. Further, we granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.<sup>19</sup>

#### **Product Comparisons**

Pursuant to section 771(16) of the Act, we determined that products sold by the respondents, as described in the "Scope of the Order" section above, in Taiwan during the POR are foreign like products for purposes of determining appropriate product comparisons to U.S. sales. For product comparisons, we relied on five criteria to match U.S. sales of subject merchandise to comparison-market sales (in order of importance): grade, specification, thickness, thickness range, and surface treatment.<sup>20</sup> Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed above.

#### **Date of Sale**

The Department normally uses invoice date as date of sale, consistent with 19 CFR 351.401(i). In prior

<sup>13</sup> See Shinkong's June 18, 2012 submission at 3.

<sup>14</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR 35474 (May 20, 2002) ("PET Film from Taiwan Investigation").

<sup>15</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review*, 69 FR 50166 (August 13, 2004) and the accompanying Issues and Decision Memorandum at Comments 1 and 3; *see also* *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Preliminary Results of Antidumping Duty Administrative Review* ("Pet Film Prelim 08-09"), 75 FR 49902 (August 16, 2010), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review*, 76 FR 9745 (February 22, 2011) ("Pet Film Review 08-09").

<sup>16</sup> See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Affiliation of Nan Ya Plastics Corporation, Ltd. (Nan Ya) with Certain U.S. Customers," dated August 9, 2010, and attached to the Nan Ya affiliation memorandum for the 2010-11 review period as Exhibit 1.

<sup>17</sup> See Nan Ya's Supplemental Questionnaire Response of June 29, 2012 at Questions 12-14 and Exhibits SE5-Exhibits 12-1 through 12-4.

<sup>18</sup> See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Affiliation of Nan Ya Plastics Corporation, Ltd. (Nan Ya) with Certain U.S. Customers," dated July 30, 2012.

<sup>19</sup> In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Final Modification for Reviews*. In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

<sup>20</sup> See the Department's September 9, 2011 Antidumping Duty Questionnaire, issued to Shinkong and Nan Ya respectively, at sections B and C; *see also* *PET Film Prelim 09-10*, 76 FR at 47572, unchanged in *PET Film Review 09-10*.

administrative reviews,<sup>21</sup> the Department used invoice date as the date of sale. In this review, and as explained further below, the Department continues to find that invoice date should be used as the date of sale for both respondents.

With respect to the specific invoice date the Department is using for Shinkong, this respondent reported that, on occasion, before subject merchandise was shipped, changes to the terms of sale occurred at the customer's request or because of Shinkong's production capacity. According to Shinkong, during the POR, for home market sales and for sales to the United States, the terms of sale were finalized in the Government Uniform Invoice (GUI).<sup>22</sup> As such, we preliminarily determine that for sales in the home market, and for sales to the United States made through domestic trading companies, the GUI date is the date on which the material terms of sale are finalized.<sup>23</sup> Therefore, this invoice date is the most appropriate date to use as Shinkong's date of sale. For sales made directly to U.S. customers, Shinkong explained that it issues its commercial invoice after production of subject merchandise is completed, at which time the terms of sale have been finalized.<sup>24</sup> Therefore, we preliminarily determine that, for sales made directly to the U.S. market, the commercial invoice date is the most appropriate invoice date to use as Shinkong's date of sale in accordance with 19 CFR 351.401(i), except when shipment date predates invoice date. In those instances, and consistent with the Department's practice, we have used shipment date instead of invoice date as the date of sale.<sup>25</sup>

Nan Ya reported the GUI invoice date as the date of sale in the home market during the POR, because Nan Ya allows the customer to change the order quantity after the date of the confirmed purchase order.<sup>26</sup> As such, we preliminarily determine that for sales in the home market, the GUI date is the invoice date on which the material

terms of sale are finalized, and is therefore the most appropriate date to use as Nan Ya's date of sale.

Nan Ya requested that the Department use the sales confirmation date as the date of sale for its reported EP sales because, according to Nan Ya, that is the date on which the material terms of sale are established (*i.e.*, price and major product characteristics such as specification, thickness, and surface treatment).<sup>27</sup> In addition, Nan Ya reported that it establishes a sales confirmation ceiling for total weight by always entering 19,000 kg., which represents the capacity of one order container as a cushion for changes in production conditions. This allows importers to change the width and length of the product, and in rare cases, to add an additional roll, provided that the resulting weight is within the ceiling established on the sales confirmation.<sup>28</sup> Nan Ya also reported that there were a number of instances of sale changes by type and frequency for its reported U.S. sales that included other changes in addition to the product's width and length.<sup>29</sup>

The Department's regulation establishes a presumption for invoice date which may be overcome when a party demonstrates that the material terms of sale such as price and quantity are established on another date. Nan Ya has not demonstrated that the material terms of sale are established on sales confirmation date. Nan Ya allows for changes after the sales confirmation that alters the product, which occurs after the sales confirmation date. Indeed, the record evidence demonstrates that all final alterations to the product and the actual weight are determined at the time of invoicing when the product is released to the customer.<sup>30</sup> Thus, we preliminarily determine that the invoice date is the appropriate date to use as Nan Ya's date of sale in accordance with 19 CFR 351.401(i).

As noted above in the "Affiliation of Nan Ya with U.S. Customers" section, the Department has preliminarily determined that Nan Ya is no longer affiliated with certain U.S. importers and we now find all of Nan Ya's U.S. sales to be EP sales. However, because Nan Ya reported some of these sales as CEP sales, it did not provide its invoice date for these sales but provided the

date of the purchase order between the U.S. importers and their unaffiliated customers as the date of sale. Because we have determined that the invoice date is the most appropriate date to use as Nan Ya's date of sale, necessary information, the invoice date of these sales, is missing from the record for Nan Ya's reported CEP sales, and we must rely on the facts available pursuant to section 776(a) of the Act.

As facts available, we have constructed an invoice date using the adjusted purchase order date as explained below. For the sales it had identified as CEP sales, Nan Ya reported the date of the purchase order between the U.S. importers and their unaffiliated customers as the date of sale. In addition, Nan Ya explained that for all of its U.S. importers, "{o}nce a purchase order is issued by the U.S. customer of the importer to the importer, the latter will place purchase orders via email or facsimile with Nan Ya."<sup>31</sup> Therefore, we have relied on the date of the purchase order between the U.S. customer and the importer to establish the date on which Nan Ya's U.S. importers issued purchase orders to Nan Ya. In order to derive the date on which Nan Ya issued its invoice for these sales, we relied on information on the record that indicates that Nan Ya issues its invoice when the merchandise is released to the customer, which is generally 30 to 60 days after the confirmed export order.<sup>32</sup> For purposes of these preliminary results, we have derived Nan Ya's invoice date for these sales by adding 45 days to the date on which the purchase order was received by Nan Ya from these U.S. importers. Because this change affects the calculation of credit expenses for some of the reported CEP sales that have been reclassified as EP sales, we have used, as facts available, the average credit expense for all reported EP sales to reflect this expense if it was incurred by the U.S. importer when purchasing subject merchandise from Nan Ya. After these preliminary results, we intend to gather information from Nan Ya to establish the actual date of Nan Ya's invoice and credit expenses for these sales.

#### United States Price

In calculating the U.S. price for Shinkong and Nan Ya, we used EP, as defined in section 772(a) of the Act, because sales to the first unaffiliated U.S. customer occurred before

<sup>21</sup> See *PET Film Prelim 09–10*, 76 FR at 47542, unchanged in *PET Film Review 09–10*.

<sup>22</sup> See Shinkong's October 21, 2012 submission at 17.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See *Narrow Woven Ribbons with Woven Selvage from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7244, 7251 (February 18, 2010), unchanged in *Narrow Woven Ribbons With Woven Selvage From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010).

<sup>26</sup> See Nan Ya's Section B Questionnaire Response of November 22, 2011 at 14–15.

<sup>27</sup> See Nan Ya's Section A Questionnaire Response of October 24, 2011 at 20.

<sup>28</sup> See Nan Ya's Section C Questionnaire Response of November 22, 2011 at 14.

<sup>29</sup> See Nan Ya's Supplemental Questionnaire Response of June 5, 2012 at Exhibit SE2 14.a. "Sales Change Type and Frequency in the U.S. Sales."

<sup>30</sup> See Nan Ya's Section C Questionnaire Response of November 22, 2011 at 15.

<sup>31</sup> See Nan Ya's Section A Questionnaire Response of October 24, 2011 at 16.

<sup>32</sup> See Nan Ya's Section C Questionnaire Response of November 22, 2011 at 15.

importation.<sup>33</sup> We based EP on packed prices to customers in the United States. We made deductions from U.S. price for the following movement expenses in accordance with section 772(c)(2)(A) of the Act: domestic inland freight from plant to port of exportation, brokerage and handling incurred in the country of manufacture, marine insurance, and international freight.

### Cost of Production Analysis

Pursuant to 773(b)(2)(A)(ii) of the Act, because the Department disregarded certain of Shinkong's and Nan Ya's sales in the most recently completed reviews of this order,<sup>34</sup> the Department had reasonable grounds to believe or suspect that Shinkong and Nan Ya made home market sales at prices below the cost of production (COP) in this review. As a result, the Department is directed under section 773(b) of the Act to determine whether Shinkong and Nan Ya made home market sales during the POR at prices below COP.

#### 1. Calculation of COP

The Department's normal practice is to calculate an annual weighted-average cost for the entire POR.<sup>35</sup> This methodology is predictable and generally applicable in all proceedings. However, the Department recognizes that distortions may result if our normal annual average cost method is used during a period of significant cost changes. Under such circumstances, in determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department has evaluated the case-specific record evidence using two primary factors: (1) Whether the change in the cost of manufacturing (COM) experienced by the respondent during the POR is significant; and (2) whether the record evidence indicates that sales

prices during the shorter averaging periods could be reasonably linked with the COP or constructed value (CV) during the same shorter averaging periods.<sup>36</sup>

#### a. Significance of Cost Changes

Record evidence shows that Shinkong and Nan Ya experienced significant changes in the total COM during the POR and that the changes in COM are primarily attributable to the price volatility for purified terephthalic acid (PTA) and mono ethylene glycol (MEG),<sup>37</sup> the main inputs consumed in the production of the merchandise under consideration. Specifically, the record data shows that the percentage difference between the high and low quarterly COM exceeded 25 percent during the POR. As a result, we have determined that for these preliminary results the changes in COM for Shinkong and Nan Ya are significant.

#### b. Linkage Between Cost and Sales Information

The Department also evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POR. Absent a surcharge or other pricing mechanism, the Department may alternatively look for evidence of a pattern that changes in selling prices reasonably correlate to changes in unit costs.<sup>38</sup> To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales in the comparison market and in the United States. Our comparison revealed that the quarterly cost and quarterly sales prices for Shinkong and Nan Ya appear to be reasonably correlated during this period of significant cost changes.

In light of the two factors, we preliminarily find that it is appropriate to rely on a quarterly costing approach with respect to both Shinkong and Nan Ya. Thus, we used quarterly average PTA and EG costs and annual weighted-average fabrication costs in the COP calculations. For further discussion of

this issue, see the Shinkong and Nan Ya cost adjustments memoranda.<sup>39</sup>

#### 2. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated quarterly COP based on the sum of Shinkong's and Nan Ya's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A), interest expenses and home market packing costs. These calculations include revisions by the Department to the COP information reported by Shinkong and Nan Ya, consistent with Department practice.<sup>40</sup>

On a product-specific basis, we compared the revised COP figures to home market prices net of applicable billing adjustments, discounts and rebates, movement charges, selling expenses, and packing to determine whether home market sales had been made at prices below COP. In the last review for Shinkong, we ignored the grade product characteristic reported by Shinkong when calculating product-specific costs, as grade differences are the result of inadvertent errors in production that lead to different qualities of PET Film and not the result of variances in production processes or costs. However, in this review, Shinkong reports a difference in grade based on internal PET film cost codes and therefore, different grades result in different weighted average unit COP.<sup>41</sup> Thus, we have included the grade product characteristic in calculating product-specific costs.

In determining whether to disregard Shinkong's and Nan Ya's home market sales that were made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with section 773(b)(2)(C) of the Act, where less than 20 percent of a given

<sup>33</sup> As noted above in the "Affiliation of Nan Ya with U.S. Customers" section, the Department has preliminarily determined that Nan Ya is no longer affiliated with certain U.S. customers and we now find all of Nan Ya's U.S. sales to be EP sales.

<sup>34</sup> In the most recent review, only Shinkong was reviewed. See *PET Film Prelim 09–10*, 76 FR at 47543, unchanged in *PET Film Review 09–10*. Nan Ya was most recently reviewed in the 2008–2009 Administrative Review. See *PET Film Prelim 08–09*, 75 FR at 49905, unchanged in *PET Film Review 08–09*.

<sup>35</sup> See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18; see also *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period).

<sup>36</sup> See *Final Results of the Antidumping Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 76 FR 76939 (December 9, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>37</sup> Nan Ya reported this input as ethylene glycol (EG), which is not chemically different than MEG.

<sup>38</sup> See *Stainless Steel Plate in Coils From Belgium: Final Results of Administrative Review*, 73 FR 75398 (December 11, 2008) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>39</sup> See Memorandum to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Review—Nan Ya Plastics Corporation," dated July 30, 2012 (Nan Ya Cost Adjustments Memorandum); see also Memorandum to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Review—Shinkong Synthetic Fibers Corporation," dated July 30, 2012 (Shinkong Cost Adjustments Memorandum).

<sup>40</sup> *Id.*

<sup>41</sup> See Shinkong's section D response dated November 14, 2011 at 108 and its supplemental D response dated June 18, 2012 at 11.

product was sold at prices less than COP, we did not disregard any below-cost sales of that product, because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a given product was sold at prices less than COP, we disregarded the below cost sales if: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to weighted-average COP figures for the POR, they were made at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. As stated in section 773(b)(2)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. In light of the Court's directives in *SeAH Steel Corp. v. United States*, 704 F. Supp. 2d 1353 (Ct. Int'l Trade 2010), and *SeAH Steel Corporation v. United States*, 764 F. Supp. 2d 1322 (Ct. Int'l Trade 2011) to use an unadjusted annual average cost for purposes of the cost recovery test, in the instant review we have used the approach which we adopted recently to test for cost recovery when using a shorter cost period methodology.<sup>42</sup> Using the methodology adopted in *SPT from Turkey*, we calculated a control-number-specific weighted-average annual price using only those sales that were made below their quarterly COP, and compared the resulting weighted-average price to the annual weighted-average cost per control number. If the annual weighted-average price per control number was above the annual weighted-average cost per control number then we considered those sales to have provided for the recovery of costs and restored all such sales to the NV pool of comparison-market sales available for comparison with U.S. sales. For further details regarding the cost recovery methodology and the application of our shorter-cost period methodology, see Shinkong Cost Adjustments Memorandum and Nan Ya Cost Adjustments Memorandum.

## Normal Value

### 1. Price-to-Price Comparisons

We calculated NV based on packed prices (*i.e.*, including costs for packing) to unaffiliated customers in the home

market.<sup>43</sup> We used Shinkong's and Nan Ya's adjustments and deductions as reported. We made deductions, where appropriate, for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. In addition, for comparisons involving similar merchandise, we made adjustments for cost differences attributable to the physical differences between the products compared, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in the circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, specifically for imputed credit expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

### 2. Results of the Sales Below Cost Test

We found that for certain products, more than 20 percent of Shinkong's home market sales were made at prices below COP and, in addition, these below cost sales were made within an extended period of time and in substantial quantities. In addition, pursuant to the cost recovery analysis described above, we found that these sales were at prices which did not permit the recovery of costs within a reasonable period of time. We therefore disregarded these sales from the calculation of NV and used the remaining home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

### 3. Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the prices at which sales are made to parties not affiliated with the exporter or producer; *i.e.*, sales to home market affiliates must be at arm's-length.<sup>44</sup> Sales to affiliated customers for consumption in the home market that are determined not to be at arm's-length are excluded from our analysis. To test whether sales are made at arm's-length prices, the Department compares the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Pursuant to 19

CFR 351.403(c), and in accordance with the Department's practice, when the prices charged to an affiliated party are, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party are at arm's-length.<sup>45</sup>

In this proceeding, both Shinkong and Nan Ya reported sales of the foreign like product to affiliated customers who consumed the purchased material. Some of Shinkong's and all of Nan Ya's sales to these affiliated home market customers did not pass the arm's-length test, and were therefore excluded from our analysis.<sup>46</sup>

### 4. Constructed Value-to-Price Comparisons

After disregarding certain sales as below cost, as described above, home market sales of contemporaneous identical and similar products existed that allowed for price-to-price comparisons for all margin calculations for both Shinkong and Nan Ya. Therefore, the Department did not need to rely on constructed value for any calculations for these preliminary results.

### Currency Conversions

Pursuant to section 773A of the Act and 19 CFR 351.415, we made currency conversions for Shinkong's and Nan Ya's sales based on the daily exchange rates in effect on the dates of the relevant U.S. sales as certified by the Federal Reserve Bank of New York.

### Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not

<sup>45</sup> See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

<sup>46</sup> See section 773(b)(1) of the Act; see also Memorandum to Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office 6, "Analysis for the Preliminary Results of the 2010–2011 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Shinkong Synthetic Fibers Corporation and Shinkong Materials Technology Co. Ltd.," dated July 30, 2012 and Memorandum to Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office 6, "Analysis for the Preliminary Results of the 2010–2011 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Nan Ya Plastics Corporation," dated July 30, 2012.

<sup>42</sup> See *Certain Welded Carbon Steel Pipe and Tube from Turkey; Notice of Final Results of Antidumping Review*, 76 FR 76939 (December 9, 2011) ("*SPT from Turkey*").

<sup>43</sup> Shinkong and Nan Ya sold a small amount of foreign like product to its affiliates in the home market for consumption during the POR. These sales have failed the arm's-length test and therefore have been excluded from the calculation of NV. See "Arm's Length Test" section, below, for further discussion.

<sup>44</sup> See 19 CFR 351.403(c).

sufficient, condition for determining that there is a difference in the stages of marketing.<sup>47</sup> In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>48</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>49</sup>

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>50</sup>

In implementing these principles, we examined information provided by Shinkong regarding the selling functions involved in its home market and U.S. sales, including a description of these selling functions, provided in Exhibit 8 of Shinkong's October 21, 2011 response and Exhibit 12 of Shinkong's May 24, 2012 response. Shinkong reported that in the home market it made sales to affiliated end users, unaffiliated end users and to unaffiliated distributors, and that all selling functions were

performed at the same or similar levels of intensity in all channels of distribution. We examined the following three activities performed in the comparison market: (1) Sales and marketing (sales forecasting, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); and (3) technical service/warranties. Based on our analysis, we find that Shinkong performed the same selling functions in all three categories to the same or similar degree in all channels of distribution with the exception of rebates, which were provided at a low level only to distributors. Because all comparison market sales are made through these channels of distribution, and Shinkong's selling activities did not vary significantly in intensity among these channels, we preliminarily determine that there is one LOT in the comparison market for Shinkong.

Shinkong reported that sales in the U.S. market were only made to distributors during the POR. Shinkong provided information which consolidated all of the selling activities performed for U.S. sales into this one channel of distribution.<sup>51</sup> These selling activities were grouped into the following three activities: (1) Sales and marketing (sales negotiation, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); and (3) technical services/warranties. Since Shinkong's sales to the U.S. importers were only made through one channel of distribution, we preliminarily determine that there is one LOT in the U.S. market.

Finally, we compared the U.S. market LOT to the home market LOT and found that the selling functions performed for U.S. and comparison home market customers do not differ, as Shinkong performed the same selling functions at the same relative or similar level of intensity in both markets, with the previously noted exception of rebates. There was no substantial difference in these selling activities, therefore, we preliminarily determine that sales to the U.S. and comparison market during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted. These findings are consistent with determinations in past segments of this proceeding based on similar record evidence.<sup>52</sup>

With regard to Nan Ya, because the Department preliminarily determines that Nan Ya is no longer affiliated with

certain U.S. customers as discussed in the "Affiliation of Nan Ya with U.S. Customers" section, above, all of the U.S. sales are preliminarily determined to be EP sales. We obtained information from Nan Ya regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by Nan Ya respondent for each channel of distribution.

In this administrative review, with respect to the comparison market, Nan Ya reported that it made sales to both unaffiliated end users and to unaffiliated distributors, and that most selling functions were performed at the same or similar levels of intensity in both channels of distribution. We examined the following three activities performed in the comparison market: (1) Sales and marketing (sales forecasting, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); and (3) technical service warranties. Based on our analysis, we find that Nan Ya performed the selling functions in all three categories to the same or similar degree in both channels of distribution.<sup>53</sup> Because all comparison market sales are made through these two channels of distribution, and the selling activities to Nan Ya's customers did not vary between these channels, we preliminarily determine that there is one LOT in the comparison market for Nan Ya.

Nan Ya reported that its sales to the U.S. market were only made to distributors during the POR.<sup>54</sup> Nan Ya provided information which consolidated all of the selling activities performed for U.S. sales into this one channel of distribution. These selling activities were grouped into the following three activities: (1) Sales and marketing (sales negotiation, strategic/economic planning, order input/processing, *etc.*); (2) freight and delivery (including packing); and (3) technical services/warranties.<sup>55</sup> Since Nan Ya's sales to the U.S. importers were only made through one channel of distribution, we preliminarily determine that there is one LOT in the U.S. market.

Finally, we compared the U.S. market LOT to the home market LOT and found that the selling functions performed for U.S. and comparison home market customers do not differ significantly, as

<sup>47</sup> See *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

<sup>48</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A expenses, and profit for CV, where possible.

<sup>49</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

<sup>50</sup> See, e.g., *OJ from Brazil*, 75 FR at 51001.

<sup>51</sup> See Shinkong's supplemental questionnaire response of May 24, 2012 at Exhibit 12.

<sup>52</sup> See *PET Film from Taiwan Investigation*; see also *PET Film Review* 09–10.

<sup>53</sup> See Nan Ya's Supplemental Questionnaire Response of June 5, 2012, at Exhibit SE2–Exhibit 9.

<sup>54</sup> See Nan Ya's Section A Questionnaire Response of October 24, 2011 at 13.

<sup>55</sup> See Nan Ya's Supplemental Questionnaire Response of June 5, 2011, at Exhibit SE2–Exhibit 9.



Nan Ya performed the selling functions at the same relative or similar level of intensity in both markets. Nan Ya reported that it conducts more sales activities in the home market than in the U.S. market with respect to sales negotiations and post-sales technical services.<sup>56</sup> Our examination of the selling and marketing activities in the instant review shows that almost all of the selling functions in the home market between end-use customers and distributors are the same.<sup>57</sup> However, we do not find these home market activities or the level of intensity at which they are performed, to be significantly different from the selling and marketing activities performed in the U.S. market. Where some differences appear to exist between the U.S. and comparison markets, the narrative explanations show them to be more similar than different (e.g., the sales process does not differ by channel of distribution in either the U.S. or home market; the same process is used for handling technical inquiries in both the U.S. and home market; and Nan Ya hires outside carriers to deliver the merchandise to both its customers in the home market and to the port of export).<sup>58</sup> Therefore, we preliminarily determine that sales to the U.S. and comparison market during the POR were made at the same LOT and, as a result, no LOT adjustment is warranted. These findings are consistent with determinations in past segments of this proceeding based on similar record evidence.<sup>59</sup>

### Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average antidumping duty margins exist for the period July 1, 2010, through June 30, 2011.

Producer/ Exporter	Weighted- average margin (percent)
Nan Ya Plastics Corporation, Ltd. ....	5.20
Shinkong Synthetic Fibers Corporation .....	0.00

<sup>56</sup> See Nan Ya's Section A Questionnaire Response of October 24, 2011 at 14.

<sup>57</sup> See Nan Ya's Supplemental Questionnaire Response of June 5, 2011 at Exhibit SE2-9.

<sup>58</sup> See Nan Ya's Section A Questionnaire Response of October 24, 2011 at 16; see also Nan Ya's Section B Questionnaire Response of November 22, 2011 at 25; Nan Ya's Section C Questionnaire Response of November 22, 2011 at 26; and Nan Ya's Supplemental Questionnaire Response of June 5, 2011 at 12.

<sup>59</sup> See *PET Film from Taiwan Investigation*; see also *PET Film Review 08-09*.

### Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will instruct CBP to liquidate entries of merchandise produced and/or exported by Shinkong and Nan Ya. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For assessment purposes, where possible, we calculate importer-specific (or customer-specific) *ad valorem* assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales.<sup>60</sup> However, where the respondents do not report the entered value for their sales, we calculate importer-specific (or customer-specific) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of PET Film from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies under review will be the rate established in the final results of this review (except, if the rate is *de minimis*, i.e., less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously reviewed or investigated companies not listed above, 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, a prior review, or the less-than-fair-value 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; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the all others rate for this proceeding, 2.40 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

<sup>60</sup> See 19 CFR 351.212(b).

### Disclosure and Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**.<sup>61</sup> Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.<sup>62</sup> If a hearing is requested, the Department will notify interested parties of the hearing schedule. Oral presentations will be limited to issues raised in the briefs.

Interested parties are invited to comment on the preliminary results of this review. The Department typically requests that interested parties submit case briefs within 30 days of the date of publication of this notice. However, we plan to issue a post-preliminary supplemental questionnaire and, therefore, will be extending the case brief deadline. The Department will inform interested parties of the updated briefing schedule when it has been confirmed. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed not later than five days after the time limit for filing case briefs.<sup>63</sup> Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Executive summaries should be limited to five pages total, including footnotes.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless otherwise extended. See section 751(a)(3)(A) of the Act.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of

<sup>61</sup> See 19 CFR 351.310.

<sup>62</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed.

<sup>63</sup> See 19 CFR 351.309(c) and (d) (for a further discussion of case briefs and rebuttal briefs, respectively).



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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled 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 30, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2012-19149 Filed 8-3-12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-821-807]

#### **Ferrovanadium and Nitrided Vanadium From the Russian Federation: Negative Final Determination of Circumvention of the Antidumping Duty Order**

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

#### **Final Determination**

We determine that the importation of vanadium pentoxide from the Russian Federation (Russia) by the Evraz Group,<sup>1</sup> which is toll-converted into ferrovanadium in the United States by Bear Metallurgical Corporation (Bear), prior to sale to unaffiliated customers in the United States, does not constitute circumvention of the antidumping duty order on ferrovanadium and nitrided vanadium (ferrovanadium) from Russia, within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Act).

**DATES:** *Effective Date:* August 6, 2012.

#### **FOR FURTHER INFORMATION CONTACT:**

David Goldberger or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-4007, respectively.

#### **SUPPLEMENTARY INFORMATION:**

<sup>1</sup> The Evraz Group (otherwise referred to as Evraz in this notice) includes OAO Vanady-Tula, East Metals S.A., and East Metals N.A.

## **Background**

On February 8, 2012, the Department of Commerce (the Department) published in the **Federal Register** its negative preliminary determination that Evraz's imports of vanadium pentoxide from Russia that are toll-converted into ferrovanadium in the United States by Bear are not circumventing the antidumping duty order on ferrovanadium and nitrided vanadium from Russia,<sup>2</sup> pursuant to section 781(a) of the Act.<sup>3</sup>

AMG Vanadium Inc. (AMG Vanadium) and Bear submitted case briefs on March 23, 2012. Both of these parties and Evraz submitted rebuttal briefs on March 28, 2012. We held both a public and a closed hearing on May 3, 2012.

## **Scope of the Antidumping Duty Order**

The products subject to this order are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.*, more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen. Excluded from the scope of the order are vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to this order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.50.40, 8112.40.30.00, and 8112.40.60.00 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 is dispositive.

## **Scope of the Circumvention Inquiry**

The product subject to this anticircumvention inquiry is vanadium pentoxide (V<sub>2</sub>O<sub>5</sub>) from Russia, which is

usually in a granular form and may contain other substances, including silica (SiO<sub>2</sub>), manganese, and sulfur, and which is converted into ferrovanadium in the United States. Such merchandise is classifiable under subheading 2825.30.0010 of the HTSUS. This inquiry only covers such products that are imported by the Evraz Group and converted into ferrovanadium in the United States by Bear.

## **Statutory Provisions Regarding Circumvention**

Section 781(a) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting anticircumvention inquiries under section 781(a)(1) of the Act, the Department determines whether (A) merchandise sold in the United States is of the same class or kind as any other merchandise produced in a foreign country that is the subject of an antidumping duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the antidumping duty order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in (B) is a significant portion of the total value of the merchandise.

With regard to sub-part (C), section 781(a)(2) of the Act specifies that the Department "shall take into account: (A) The level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States."

In addition, the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. R. Doc. No. 103-316, at 893 (1994), states that no single factor listed in section 781(a)(2) of the Act will be controlling. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumvention scenario. *See id.* Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular

<sup>2</sup> See *Notice of Antidumping Order: Ferrovanadium and Nitrided Vanadium From the Russian Federation*, 60 FR 35550 (July 10, 1995).

<sup>3</sup> See *Preliminary Negative Determination and Extension of Time Limit for Final Determination of Circumvention of the Antidumping Duty Order on Ferrovanadium and Nitrided Vanadium From the Russian Federation*, 77 FR 6537, (February 8, 2012) (*Preliminary Determination*).