

endangered and threatened species (50 CFR parts 222–226).

The permit authorizes three projects. Under Project I (Pinnipeds) population assessments will be conducted of northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and harbor seals (*Phoca vitulina*) via aerial photography, ground or vessel surveys, and photogrammetry to determine abundance, distribution patterns, length frequencies, and breeding densities. Scats and spewings will be collected from California sea lions to determine their diet. Under Project II (Cetaceans) surveys will be conducted to determine the abundance, distribution, movement patterns, and stock structure of cetaceans in U.S. territorial and international waters. These studies will be conducted through vessel surveys, aerial surveys, small plane photogrammetry, photo-identification (from vessels and small boats), biological sampling, radio tagging, and satellite tagging. Under Project III (Sea Turtles) surveys will be conducted to determine the abundance, distribution, movement patterns, stock structure, and diet of sea turtles in U.S. territorial and international waters. Sea turtles will be opportunistically captured during Project II surveys for collection of blood samples, stomach contents, and tissue biopsy and to attach satellite tags. Cetacean, pinniped, and sea turtle parts, specimens, and biological samples collected during these projects will also be salvaged and imported/exported.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment. Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on July 1, 2010.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room

13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

Dated: July 7, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (“Department”) is conducting the second administrative review of the antidumping duty order on certain polyester staple fiber (“PSF”) from the People’s Republic of China (“PRC”) for the period of review (“POR”) June 1, 2008, through May 31, 2009. The Department has preliminarily determined that sales have not been made below normal value (“NV”) with respect to certain exporters who participated fully and are entitled to a separate rate in this administrative review. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

DATES: *Effective Date:* July 14, 2010.

FOR FURTHER INFORMATION CONTACT: Jerry Huang or Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4047 or (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2007, the Department published in the **Federal Register** an antidumping duty order on certain polyester staple fiber from the PRC. See *Notice of Antidumping Duty Order: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 30545 (June 1, 2007) (“Order”). On July 29, 2009, the Department published a notice of initiation of an administrative review of certain polyester staple fiber from the People’s Republic of China covering the period June 1, 2008, through May 31, 2009, for 27 companies.¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 74 FR 37690 (July 29, 2009) (“Initiation Notice”). On February 9, 2010, the Department published in the **Federal Register** a notice extending the time period for issuing the preliminary results by 101 days. See *Certain Polyester Staple Fiber from the People's Republic of China: Extension of Time Limits for Preliminary Results of the Antidumping Duty Administrative Review*, 75 FR 6352 (February 9, 2010). On February 16, 2010, the Department issued a memorandum that tolled the deadlines for all Import Administration cases by seven calendar days due to the recent Federal Government closure. See Memorandum for the Record from Ronald Lorentzen, DAS for Import Administration, regarding Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010. On June 1, 2010, the Department published in the **Federal Register** a second notice extending the time period for issuing the preliminary results by 19

¹ Those companies are: Far Eastern Industries, Ltd., (Shanghai) and Far Eastern Polychem Industries; Ningbo Dafa Chemical Fiber Co., Ltd.; Cixi Sansheng Chemical Fiber Co., Ltd.; Cixi Santai Chemical Fiber Co., Ltd.; Cixi Waysun Chemical Fiber Co., Ltd.; Hangzhou Best Chemical Fibre Co., Ltd.; Hangzhou Hanbang Chemical Fibre Co., Ltd.; Hangzhou Huachuang Co., Ltd.; Hangzhou Sanxin Paper Co., Ltd.; Hangzhou Taifu Textile Fiber Co., Ltd.; Jiakang Fuda Chemical Fibre Factory; Nantong Loulai Chemical Fiber Co., Ltd.; Nan Yang Textile Co., Ltd.; Suzhou PolyFiber Co., Ltd.; Xiamen Xianglu Chemical Fiber Co.; Zhaoqing Tifo New Fiber Co., Ltd.; Zhejiang Anshun Pettechs Fibre Co., Ltd.; Zhejiang Waysun Chemical Fiber Co., Ltd.; Dragon Max Trading Development; Xiake Color Spinning Co., Ltd.; Jiangyin Hailun Chemical Fiber Co., Ltd.; Hyosung Singapore PTE Ltd.; Jiangyin Changlong Chemical Fiber Co., Ltd.; Ma Ha Company, Ltd.; Jiangyin Huahong Chemical Fiber Co., Ltd.; Jiangyin Mighty Chemical Fiber Co., Ltd.; and Huvis Sichuan.

days. See *Certain Polyester Staple Fiber from the People's Republic of China: Extension of Preliminary Results of the Antidumping Duty Administrative Review*, 75 FR 30373 (June 1, 2010).

Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that Hangzhou Best Chemical Fibre Co., Ltd. ("Hangzhou Best") and Xiamen Xianglu Chemical Fiber Co. ("Xiamen Xianglu") made no shipments of subject merchandise during the POR of this administrative review. The Department received no-shipment certifications from Hangzhou Best and Xiamen Xianglu on August 24, 2009, and August 28, 2009, respectively. The Department also issued no-shipment inquiries to CBP in September 2009, asking CBP to provide any information contrary to our findings of no entries of subject merchandise for merchandise manufactured and shipped by Hangzhou Best and Xiamen Xianglu during the POR. We did not receive any response from CBP, thus indicating that there were no entries of subject merchandise into the United States exported by these companies. Consequently, as neither company made exports of subject merchandise during the POR, we are preliminarily rescinding the review, in part, with respect to Hangzhou Best and Xiamen Xianglu.

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended ("the Act") directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

On July 31, 2009, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order ("APO") to all interested parties having an APO, inviting comments regarding the CBP data and respondent selection. The Department received comments and rebuttal comments on August 10, 2009, and August 17, 2009, respectively.

On September 18, 2009, the Department issued its respondent selection memorandum after assessing its resources and determining that it could reasonably examine two exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the

Department selected Ningbo Dafa Chemical Fiber Co., Ltd. ("Ningbo Dafa") and Cixi Santai Chemical Fiber Co. ("Cixi Santai") as mandatory respondents.² The Department sent antidumping duty questionnaires to Ningbo Dafa and Cixi Santai on September 25, 2009.

Ningbo Dafa and Cixi Santai submitted the Section A Questionnaire Responses on November 2, 2009, the Section C & D Questionnaire Responses on November 16, 2009. Petitioners submitted deficiency comments regarding respondents' questionnaire responses between January and April 2010. The Department issued supplemental questionnaires to Ningbo Dafa and Cixi Santai between March 2010 and May 2010 to which both companies responded.

Surrogate Country and Surrogate Value Data

On February 18, 2010, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value data.³ No parties provided comments with respect to selection of a surrogate country. On April 16, 2009, the Department received information to value factors of production ("FOP") from Ningbo Dafa, Cixi Santai, and Petitioners. All the surrogate values placed on the record were obtained from sources in India.

Scope of the Order

The merchandise subject to this proceeding is synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The subject merchandise may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.

The following products are excluded from the scope: (1) PSF of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff

² See Memorandum to James Dole, Director, AD/CVD Operations, Office 9, from Emeka Chukwudebe and Tim Lord, Analysts, AD/CVD Operations, Office 9, regarding Second Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the PRC: Selection of Respondents for Individual Review, dated September 18, 2009 ("Respondent Selection Memo").

³ See the Department's Letter to All Interested Parties; Antidumping Administrative Review of Certain Polyester Staple Fiber ("PSF") from the People's Republic of China ("PRC"): Surrogate Country List, dated February 18, 2010 ("Surrogate Country List").

Schedule of the United States ("HTSUS") at subheading 5503.20.0025 and known to the industry as PSF for spinning and generally used in woven and knit applications to produce textile and apparel products; (2) PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting; and (3) low-melt PSF defined as a bi-component fiber with an outer, non-polyester sheath that melts at a significantly lower temperature than its inner polyester core (classified at HTSUS 5503.20.0015).

Certain PSF is classifiable under the HTSUS subheadings 5503.20.0045 and 5503.20.0065. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the orders is dispositive.

Non-Market Economy ("NME") Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See, e.g., *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's FOPs, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined India, Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development.⁴

⁴ See Surrogate Country List.

Based on publicly available information placed on the record (e.g., production data), the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of subject merchandise, and has publicly available and reliable data. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection.

Separate Rates

In 2005, the Department notified parties of a new application and certification process by which exporters and producers may obtain separate rate status in an NME review. The process requires exporters and producers to submit a separate rate status certification and/or application. See also *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005) (*Policy Bulletin 05.1*"), available at: <http://www.trade.gov/ia>. However, the standard for eligibility for a separate rate, which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities, has not changed.

A designation of a country as an NME remains in effect until it is revoked by the Department. See section 771(18)(c)(i) of the Act. In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. See, e.g., *Policy Bulletin 05.1*; see also *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006) (*"Diamond Sawblades"*). It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See, e.g., *Diamond Sawblades*, 71 FR at 29307.

Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of 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"*), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) (*"Silicon Carbide"*). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

In addition to the two mandatory respondents, Ningbo Dafa and Cixi Santai, the Department received separate rate applications or certifications from the following 13 companies (*"Separate-Rate Applicants"*): Far Eastern Industries, Ltd., (Shanghai) and Far Eastern Polychem Industries; Cixi Sansheng Chemical Fiber Co., Ltd.; Cixi Waysun Chemical Fiber Co. Ltd.; Hangzhou Hanbang Chemical Fibre Co., Ltd.; Hangzhou Huachuang Co., Ltd.; Hangzhou Sanxin Paper Co., Ltd.; Hangzhou Taifu Textile Fiber Co., Ltd.; Jiaxiang Fuda Chemical Fibre Factory; Nantong Loulai Chemical Fiber Co., Ltd.; Nanyang Textile Co., Ltd.; Zhaoqing Tifo New Fiber Co., Ltd.; Zhejiang Anshun Pettechs Fibre Co., Ltd.; and Zhejiang Waysun Chemical Fiber Co., Ltd.

However, the following 10 companies did not submit either a separate-rate application or certification: Dragon Max Trading Development; Xiake Color Spinning Co., Ltd.; Jiangyin Hailun Chemical Fiber Co., Ltd.; Hyosung Singapore PTE Ltd.; Jiangyin Changlong Chemical Fiber Co., Ltd.; Ma Ha Company, Ltd.; Jiangyin Huahong Chemical Fiber Co., Ltd.; Jiangyin Mighty Chemical Fiber Co., Ltd.; Huvis Sichuan; and Suzhou PolyFiber Co., Ltd. Therefore, because these companies did not demonstrate their eligibility for separate rate status, they have now been included as part of the PRC-wide entity.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining

whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589. The evidence provided by Ningbo Dafa, Cixi Santai, and the Separate-Rate Applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. See, e.g., Ningbo Dafa's Section A Supplemental Questionnaire Response, dated March 16, 2010, at Exhibit 1SA–1; and Cixi Santai's Section A Questionnaire Response, dated November 2, 2009, at A2–12.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586–87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Ningbo Dafa, Cixi Santai, and the Separate-Rate Applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) The companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate

and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue. *See, e.g.,* Ningbo Dafa's Section A Supplemental Questionnaire Response at Exhibit 1SA-1; and Cixi Santai's Section A Questionnaire Response at A2-12. Therefore, the Department preliminarily finds that Ningbo Dafa and Cixi Santai have established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Separate Rate Calculation

As stated previously, this administrative review covers 25 exporters. Of those, the Department selected two exporters, Ningbo Dafa and Cixi Santai, as mandatory respondents in this review. As stated above, 10 companies are part of the PRC-Wide entity and thus are not entitled to a separate rate.⁵ The remaining 13 companies submitted timely information as requested by the Department and thus, the Department has preliminarily determined to treat these companies as cooperative Separate-Rate Applicants.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked 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 we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's practice in this regard, in reviews involving limited respondent selection based on exporters accounting for the largest volumes of trade, has been to average the rates for the selected companies, excluding zero and *de minimis* rates and rates based entirely on facts available. Section 735(c)(5)(B)

⁵ Those companies are: Dragon Max Trading Development; Xiake Color Spinning Co., Ltd.; Jiangyin Hailun Chemical Fiber Co., Ltd.; Hyosung Singapore PTE Ltd.; Jiangyin Changlong Chemical Fiber Co., Ltd.; Ma Ha Company, Ltd.; Jiangyin Huahong Chemical Fiber Co., Ltd.; Jiangyin Mighty Chemical Fiber Co., Ltd.; Huviv Sichuan; and Suzhou PolyFiber Co., Ltd.

of the Act also provides that, where all margins are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents, including "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

The Department has available in administrative reviews information that would not be available in an investigation, namely rates from prior administrative and new shipper reviews. Accordingly, since the determination in the investigation in this proceeding, the Department has determined that in cases where we have found dumping margins in previous segments of a proceeding, a reasonable method for determining the rate for non-selected companies is to use the most recent rate calculated for the non-selected company in question, unless we calculated in a more recent review a rate for any company that was not zero, *de minimis* or based entirely on facts available. *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 Review in Part*, 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16; *see also Certain Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review*, 73 FR 52015 (September 8, 2008) (changed in final results as final calculated rate for mandatory respondent was above *de minimis*, which remained unchanged in the amended final results).⁶

In this case, all the Separate-Rate Applicants received a separate rate in the original investigation. Therefore, for the preliminary results, we are assigning all the Separate-Rate Applicants a separate rate of 4.44%, which is the separate rate from the original investigation. Entities receiving this rate are identified by name in the "Preliminary Results of Review" section of this notice.

⁶ *See Notice of Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 74 FR 11349 (March 17, 2009) and accompanying Issues and Decision Memorandum at Comment 6; *Notice of Amended Final Results of the Fourth Antidumping Duty Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 74 FR 17816 (April 17, 2009).

Date of Sale

Ningbo Dafa and Cixi Santai reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date. The Department preliminarily determines that the invoice date is the most appropriate date to use as Ningbo Dafa's and Cixi Santai's date of sale is in accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale.⁷

Fair Value Comparisons

To determine whether sales of certain polyester staple fiber to the United States by Ningbo Dafa and Cixi Santai were made at less-than-fair-value, the Department compared the export price ("EP") to NV, as described in the "U.S. Price," and "Normal Value" sections below.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated the EP for the sales to the United States from Ningbo Dafa and Cixi Santai because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP ("CEP") was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, the Department based the deduction of these movement charges on surrogate values.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOPs methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of

⁷ *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 10.

government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a market economy ("ME") country and pays for it in a ME currency, the Department may value the factor using the actual price paid for the input. During the POR, both Ningbo Dafa and Cixi Santai reported that they purchased certain inputs from a ME supplier and paid for the inputs in a ME currency. See Ningbo Dafa Section D Questionnaire Response, dated November 16, 2009, at D-5-6 and Exhibit D-3; and Cixi Santai's Section D Questionnaire Response, dated November 16, 2009, at D-5-6 and Exhibit D-2.b. The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (October 19, 2006) ("*Antidumping Methodologies*").

In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. See *Antidumping Methodologies*. When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair

determination of whether valid ME purchases meet the 33-percent threshold. See *Antidumping Methodologies*. Cixi Santai reported as ME purchases certain input purchases from a NME supplier that were sourced from a ME country. See Cixi Santai's Section D Questionnaire Response at Exhibit D-2.b. Consistent with the Department's regulations at 19 CFR 351.408 (c)(1), the Department has preliminarily determined that such purchases from a NME supplier, even if the material was originally sourced from a ME country, should not be considered as ME purchases for the purposes of antidumping margin calculations, given that the sale price for the input was set by an NME vendor.

In accordance with section 773(c) of the Act, for subject merchandise produced by Ningbo Dafa and Cixi Santai, the Department calculated NV based on the FOPs reported by Ningbo Dafa and Cixi Santai for the POR. The Department used Indian import data and other publicly available Indian sources in order to calculate surrogate values for Ningbo Dafa and Cixi Santai's FOPs. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties. See, e.g., *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where we relied on an import value. This adjustment is in accordance with the decision of the *Federal Circuit in Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Additionally, Ningbo Dafa and Cixi Santai both reported that they incurred brokerage and handling fees and import duties for some or all of their ME input purchases. See Ningbo Dafa's Second Section A, C and D Supplemental Questionnaire Response, dated May 20, 2010, at 2-3; and Cixi Santai's Second

Section A, C&D Questionnaire Response, dated May 18, 2010, at 3. The Department adjusted the appropriate input prices to include the brokerage and handling fees based on a surrogate value. However, the Department made no adjustment for the import duties, as NME producers are not expected to pay import duties on products used in the manufacture of finished goods for export. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953 (January 10, 2001) and accompanying Issues and Decision Memorandum at Comment 12. Furthermore, these duties are assessed and collected by the PRC government, and the Department explained recently that the tax payments by NME respondents to NME governments are intra-NME transfers that do not provide a basis for the Department to adjust U.S. price. See *Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

In those instances where the Department could not obtain publicly available information contemporaneous to the POR with which to value factors, the Department adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund, a printout of which is attached to the Prelim Surrogate Value Memo at Attachment 2. Where necessary, the Department adjusted surrogate values for inflation and exchange rates, taxes, and the Department converted all applicable items to a per-kilogram basis.

The Department used Indian import data from the Global Trade Atlas ("GTA") published by Global Trade Information Services, Inc. ("GTIS"), which is sourced from the Directorate General of Commercial Intelligence & Statistics, Indian Ministry of Commerce, to determine the surrogate values for certain raw materials, by-products, and packing material inputs. The Department has disregarded statistics from NMEs, countries with generally available export subsidies, and undetermined countries, in calculating the average value. In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to

believe or suspect the source data may be subsidized.⁸ In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.⁹ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. For a detailed description of all surrogate values used for Ningbo Dafa and Cixi Santai, see Memorandum to the File through Scot T. Fullerton, Program Manager, Office 9 from Jerry Huang, International Trade Analyst: Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China ("PRC"): Surrogate Values for the Preliminary Results ("Prelim Surrogate Value Memo") dated July 7, 2010.

In past cases, it has been the Department's practice to value various FOPs using import statistics of the primary selected surrogate country from World Trade Atlas ("WTA"), as published by GTIS. See *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 50946, 50950 (October 2, 2009). However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. Dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian Rupee to the U.S. Dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian

Rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the U.S. Dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian Rupee to the U.S. Dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted. See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances, and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

However, the data reported in the GTA software, published by GTIS, reports import statistics, such as from India, in the original reporting currency and thus this data corresponds to the original currency value reported by each country. Additionally, the data reported in the GTA software is reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing various FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained and have the same level of accuracy as the original data released.

The Department valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided.

The Department valued water using data from the Maharashtra Industrial Development Corporation ("MIDC") as it includes a wide range of industrial water tariffs. To value water, we used the average rate for industrial use from MIDC water rates at <http://>

www.midcindia.org. See Prelim Surrogate Value Memo.

For direct, indirect, and packing labor, pursuant to a recent decision by the Court of Appeals for the Federal Circuit, we have calculated an hourly wage rate to use in valuing each respondent's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.¹⁰ Because this wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents. See Prelim Surrogate Value Memo.

The Department valued truck freight expenses using a per-unit average rate calculated from data on the Infobanc Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POR, the Department deflated the rate using WPI. See Prelim Surrogate Value Memo.

The Department valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India*, by the World Bank. See Prelim Surrogate Value Memo.

To value factory overhead, selling, general, and administrative ("SG&A") expenses, and profit, the Department used the audited financial statements of Ganesh Polytex Limited.

We are preliminarily granting a by-product offset to Ningbo Dafa for waste paper and waste bottle hood. We are also preliminarily granting a by-product offset to Ningbo Dafa for waste fiber based on its production of waste fiber, as opposed to its POR reintroduction of waste fiber. See Ningbo Dafa's Third Section D Supplemental Questionnaire Response, dated May 27, 2010, at 3. Similarly, we are preliminarily granting a by-product offset to Cixi Santai for polypropylene ("PP") waste and polyethylene terephthalate ("PET") waste. Cixi Santai stated that it sells at the end of each month the scrap generated in the month. See Cixi Santai's Second Section A, C and D

⁸ Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("OTCA 1988") at 590.

⁹ See e.g., *Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at pages 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at page 23.

¹⁰ See *Dorbest Ltd. v. United States*, 2009–1257 at 20 (CAFC 2010).

Supplemental Questionnaire Response at 6.

Currency Conversion

Where necessary, the Department made currency conversions into U.S.

dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

CERTAIN POLYESTER STAPLE FIBER FROM THE PEOPLE'S REPUBLIC OF CHINA

Manufacturer/exporter	Weighted average margin (percent)
Ningbo Dafa Chemical Fiber Co., Ltd	* 0.02
Cixi Santai Chemical Fiber Co	* 0.48
Far Eastern Polychem Industries	4.44
Cixi Sansheng Chemical Fiber Co., Ltd	4.44
Cixi Waysun Chemical Fiber Co. Ltd	4.44
Hangzhou Hanbang Chemical Fibre Co., Ltd	4.44
Hangzhou Huachuang Co., Ltd	4.44
Hangzhou Sanxin Paper Co., Ltd	4.44
Hangzhou Taifu Textile Fiber Co., Ltd	4.44
Jiaxang Fuda Chemical Fibre Factory	4.44
Nantong Loulai Chemical Fiber Co., Ltd	4.44
Nanyang Textile Co., Ltd	4.44
Zhaoqing Tifo New Fiber Co., Ltd	4.44
Zhejiang Anshun Pettechs Fibre Co., Ltd	4.44
Zhejiang Waysun Chemical Fiber Co., Ltd	4.44
PRC-Wide Rate	44.30

* *De minimis*.

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809

(October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Pursuant to 19 CFR 351.310(c), 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, Room 1117, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding 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. See 19 CFR 351.309(c) and (d).

The Department will 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 these reviews. 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 calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated 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). See 19 CFR 351.212(b)(1). 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. See 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). See 19 CFR 351.212(b)(1). To determine whether the duty assessment

rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, the assessment rate will be based on the rate from the investigation or, if appropriate, a simple average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

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 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 the PRC-wide rate of 44.3 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(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.

This determination is 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 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-17180 Filed 7-13-10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-807]

Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET film) from the Republic of Korea (Korea). This review covers one company, Kolon Industries Inc. (Kolon) and the period June 1, 2008, through May 31, 2009. We preliminarily determine that Kolon has not made sales below normal value (NV). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* July 14, 2010.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke 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) 482-5604 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2009, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on PET film

from Korea. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 26202 (June 1, 2009).

In accordance with Section 751(a)(1) of the Tariff Act, as amended (the Act) and 19 CFR 351.213(b)(2), on June 30, 2009, Kolon requested an administrative review of the antidumping duty order on PET film from Korea. On June 30, 2009, DuPont Teijin Films (DuPont), Mitsubishi Polyester Film, Inc. (Mitsubishi), and Toray Plastics America Inc. (Toray) (collectively "Petitioners"), also requested a review of Kolon.

On July 29, 2009, the Department initiated an administrative review for Kolon covering the period June 1, 2008, through May 31, 2009. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 74 FR 37690 (July 29, 2009).

On August 6, 2009, we issued our antidumping questionnaire to Kolon. We received Kolon's response to our questionnaire on September 16, 2009 (Section A) and October 13, 2009 (Sections B, C, and D). On February 1, 2010, we issued a supplemental questionnaire to Kolon which covered sections A through D. Kolon responded to this supplemental questionnaire on March 1, 2010. Then, on June 15, 2010 we issued a second supplemental questionnaire to Kolon which covered sections B through D. Kolon filed its response to this questionnaire on June 29, 2010.

On March 3, 2010, we extended the deadline for the preliminary results of this review until no later than July 7, 2010. See *Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review*, 75 FR 9579 (March 3, 2010).

Scope of the Order

Imports covered by this order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review 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 (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3920.62.00. The HTSUS subheading is provided for convenience and for