

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-533-824]

**Certain Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review**

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

**ACTION:** Notice of preliminary results and rescission in part of Antidumping Duty Administrative Review.

**SUMMARY:** In response to requests from U.S. and Indian interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET film) from India. The review covers one manufacturer/exporter of subject merchandise and the period December 21, 2001, through June 30, 2003. Based upon our analysis, the Department has preliminarily determined that a dumping margin exists for the manufacturer/exporter covered by this administrative review. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results of review.

**EFFECTIVE DATE:** August 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jeff Pedersen or Drew Jackson, AD/CVD Enforcement, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2769 or (202) 482-4406, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On July 2, 2003, the Department published in the *Federal Register* a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on PET film from India. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, (68 FR 39511) (July 2, 2003); see also *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty*

*Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 44175 (July 1, 2002) (*Amended Final Determination and Order*). On July 31, 2003, Garware Polyester Ltd., and Global PET films, Inc. (collectively, Garware), requested an administrative review of Garware. Garware withdrew its request for review on August 21, 2003. Additionally, on July 31, 2003, Dupont Teijin Films, Mitsubishi Polyester Film Of America, Toray Plastics (America), Inc., and SKC America, Inc., (collectively, the petitioners), requested an administrative review of Polyplex Corporation Ltd. (Polyplex). Finally, on July 31, 2003, Jindal Polyester Ltd. (Jindal) and Valencia Specialty Films (Valencia), a U.S. importer, requested an administrative review of Jindal.

The Department initiated an administrative review of Jindal and Garware on August 19, 2003, and September 24, 2003, respectively. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750 (August 22, 2003), and *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferment of Administrative Review*, 68 FR 56262 (September 30, 2003) (Garware was inadvertently not named in the August 19, 2003, initiation notice). The Department did not initiate an administrative review of Polyplex because this company was excluded from the antidumping duty order on PET film from India. See Letter from Thomas F. Futtner, Acting Office Director, to Lynn M. Fischer, counsel for the petitioners, concerning, Request for Administrative Review of Polyplex, dated August 6, 2003.

On August 1, 2003, the Department issued its antidumping questionnaire to Jindal and Garware. Subsequently, the Department issued supplemental questionnaires to Jindal and Valencia. With the exception of Garware, which did not respond to the Department's questionnaire because it withdrew its request for review on August 21, 2003, the other parties responded to the Department's questionnaires in a timely manner.

On March 22, 2004, the Department extended the time limit for the preliminary results of this review until July 30, 2004. See *Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 17644 (April 5, 2004).

The Department is conducting this administrative review in accordance

with section 751 of the Tariff Act of 1930, as amended, (the Act).

**Scope of the Review**

For purposes of this order, the products covered are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

**Verification**

As provided in section 782(i) of the Act, the Department verified the sales and cost information provided by Jindal, as well as information provided by Valencia, using standard verification procedures. Those procedures include an examination of relevant sales and financial records, and the selection of relevant source documentation as exhibits. Our verification findings are detailed in the following memoranda to the file from Jeffrey Pedersen and Drew Jackson: "Export Price and Home Market Sales Verification Report for Jindal Polyester Limited (EP Verification Report); Constructed Export Price Sales Verification Report for Jindal Polyester Limited (CEP Verification Report); and Cost Verification Report for Jindal Polyester Limited (Cost Verification Report). The public versions of these memoranda are on file in the Central Records Unit (CRU), room B-099 of the Department's main building.

**Period of Review**

The period of review (POR) is December 21, 2001, through June 30, 2003.

**Partial Rescission of Review**

19 CFR 351.213(d)(1) provides that the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested administrative review. Garware withdrew its request to be reviewed by the Department before the 90-day time period expired and no other parties requested an administrative review of Garware. Consequently, the Department is rescinding this administrative review with respect to Garware.

## Affiliation

During the POR, Jindal's affiliated U.S. reseller, Jindal America Inc. (Jindal America), ceased operations. Jindal employed Jindal America's president, Mr. Hotmer, to sell Jindal America's remaining inventory of PET film. At the same time, Jindal began selling PET film to Valencia, a company wholly owned by Mr. Hotmer.

Section 771(33)(D) of the Act identifies an employer and its employee as affiliated persons. Jindal employed Mr. Hotmer during a portion of the POR. Although the word "employee" denotes a single person, the Court of International Trade has recognized that "words importing the singular may {not} extend and be applied to several persons or things \* \* \* except where it is necessary to carry out the evident intent of the statute (emphasis added)." See *Ferro Union v. United States*, 44 F. Supp. 2d 1310, 1325 (CIT, March 23, 1999) citing *First Nat'l Bank in St. Louis v. Missouri*, 263 U.S. 640, 657 44 S. Ct. 213, 68 L. Ed. 486 (1924). Mr. Hotmer is the sole owner of, and performed the principal selling functions for Valencia, a small company that employed no more than three people during the POR. Thus, when Jindal engaged in business dealings with Valencia while it employed Mr. Hotmer, it was essentially dealing with its employee. The intent of the statute was to recognize such relationships. By treating Mr. Hotmer and Valencia as one for purposes of our affiliation analysis, we give effect to this intent. Therefore, the Department has preliminarily determined that Mr. Hotmer and Valencia were affiliated with Jindal during the portion of the POR that Jindal employed Mr. Hotmer. For a complete discussion of this issue, see the memorandum from Holly A. Kuga, Senior Director, Office IV, to Jeffrey A. May, Deputy Assistant Secretary, Group I, concerning, Affiliation and Use of Adverse Facts Available which is dated concurrently with this notice (Affiliation/AFA memorandum).

## Use of Partial Facts Available

### Valencia's Sales

The Department's antidumping questionnaire requires respondents to identify parties with whom they are affiliated, or potentially affiliated (see the definition of affiliated persons in Appendix I of the antidumping questionnaire which restates the criteria listed in section 773(33) of the Act). Specifically, section A of the Department's antidumping questionnaire requests respondents to describe all of their relationships with

affiliated persons and any relationship with a person where the respondent is unsure whether the relationship may result in the person being considered an affiliate. Additionally, the antidumping questionnaire requests information regarding sales of subject merchandise made by parties in the United States that are affiliated with the respondent (*i.e.*, constructed export price (CEP) sales, see the definition of CEP sales in Appendix I of the antidumping questionnaire). Despite the definitions and instructions contained in the Department's questionnaire, in its questionnaire response, Jindal did not identify Valencia as an affiliate or a potential affiliate, nor did it report Valencia's sales of Jindal's PET film during the time that Jindal employed Mr. Hotmer. After examining Jindal's questionnaire responses and comments filed by the petitioners, the Department determined that additional information was needed regarding Jindal America, Mr. Hotmer, and one of Jindal's customers, Valencia. Subsequently, on November 7, 2003, December 19, 2003, and April 7, 2004, the Department issued supplemental questionnaires to Jindal requesting information regarding Jindal's relationship with Jindal America, Mr. Hotmer, and Valencia. Jindal's responses to these supplemental questionnaires contained conflicting and inaccurate information that was not clarified until verification. Thus, the Department did not have the information needed to make its determination regarding Jindal's affiliation with Valencia until late in this administrative review, and the record lacks sales information regarding Valencia's sales of Jindal's PET film during the period that Jindal employed Mr. Hotmer.

Section 776(a)(1) of the Act provides that if the necessary information is not on the record the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act requires the Department to inform a party that submits a deficient response of the nature of the deficiency and to give the party an opportunity to correct the deficiency; however, the Act does permit the Department to eventually cease issuing supplemental questionnaires if a respondent's responses continue to be inadequate and deficient. Jindal's questionnaire responses continue to be deficient because the record lacks Valencia's sales information. Therefore, pursuant to section 776(a) of the act, we are resorting to the use of partial facts

available in determining Jindal's dumping margin.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of the party. The Act provides that an adverse inference may include reliance on information derived from the petition, a final determination in an antidumping investigation or review, or any other information placed on the record. See sections 776(b)(1), (2), (3), and (4) of the Act.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Rep. No. 103-316 at 870 (1994); *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221 (CIT 1998); *Mannesmannrohren-Werke AG v. United States*, 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1380 (Fed. Cir. 2003), provided an explanation of the "failure to act to the best of its ability" standard, holding that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed, *i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown." *Id.*

During the course of the instant administrative review, Jindal initially failed to identify its relationship with Valencia, even though the Department's questionnaire requested such information, reported conflicting information regarding the relationship, and reported information regarding the relationship that was not clarified until verification. Thus, Jindal did not cooperate by acting to the best of its ability to comply with the Department's requests for information regarding its relationship with Valencia. Therefore, the Department has preliminarily determined that in selecting from among the facts available, an adverse inference is warranted. As partial adverse facts available, we assigned the highest dumping margin calculated in any segment of this proceeding to Jindal's sales to Valencia during the portion of the POR that Jindal employed Mr. Hotmer. For a complete discussion of

our use of adverse facts available, see the Affiliation/AFA memorandum.

Section 776(c) of the Act requires that the Department, to the extent practicable, corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” See SAA at 870. The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. As noted in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information.

The AFA rate used in these preliminary results constitutes secondary information. However, unlike other types of secondary information, such as input costs or selling expenses, there are no independent sources of information from which the Department can derive calculated dumping margins; the only source for dumping margins is administrative determinations. The preliminary AFA rate was calculated in the investigative phase of this proceeding using verified information. Moreover, this rate reflects recent commercial activity of an Indian company that sold PET film to the United States. Therefore, we consider this rate to be both reliable and relevant.

#### *U.S. Inland Freight Expense*

At verification, Jindal America was unable to substantiate the per-unit inland freight expense reported for its U.S. sales of subject merchandise. See CEP Verification Report at 19. Section 776(a)(D) of the Act provides that the Department shall use the facts otherwise available in reaching the applicable determination if the information provided cannot be verified. Thus, for all CEP sales, we have based the per-unit U.S. inland freight expense on facts available. Although Jindal America attempted to support the reported U.S. inland freight expenses with available documentation, it was unable to definitively link invoices for U.S. inland freight to specific U.S. sales. However,

there is no indication that Jindal or Jindal America failed to act to the best of their abilities in attempting to supply the documentation required to verify the per-unit U.S. inland freight expenses for the sales at issue. Therefore, for these preliminary results, we have not made an inference that is adverse to Jindal’s interests in selecting from among the facts otherwise available. As partial, non-adverse facts available, the Department replaced the per-unit U.S. inland freight expense reported for CEP sales with a weighted-average, per-unit U.S. inland freight expense. The Department calculated this weighted-average freight expense by dividing Jindal America’s total freight expense by the total quantity of PET film sold by Jindal during the POR and delivered to customers. For additional information on this partial facts available adjustment, see the Department’s Calculation Memorandum, issued concurrently with this notice.

#### **Normal Value Comparisons**

To determine whether the respondent’s sales of PET film to the United States were made at less than normal value (NV), we compared the export price (EP) and CEP, as appropriate, to the NV, as described in the “Export Price,” “Constructed Export Price” and “Normal Value” sections of this notice, below. We first attempted to compare contemporaneous U.S. and comparison-market sales of products that are identical with respect to the following characteristics, listed in order of importance for matching purposes: grade, thickness, and surface quality.<sup>1</sup> Where we were unable to compare sales of identical merchandise, we compared U.S. sales to comparison-market sales of the most similar merchandise based on the above characteristics. Where there were no appropriate sales of foreign like product to compare to a U.S. sale, we compared the price of the U.S. sale to constructed value (CV).

#### **Export Price**

Except for sales through Jindal America, the Department based U.S. price on EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, to unaffiliated purchasers in the United States, or to an unaffiliated purchaser for exportation to the United States, and CEP methodology was not otherwise

<sup>1</sup> These matching criteria, which differ from those used in the investigative phase of the proceeding, are based on comments from the petitioners and the respondent as well as findings at verification. For additional information on these matching criteria, see the Department’s Calculation Memorandum issued concurrently with this notice.

warranted based on the facts on the record. We calculated EP based on the packed, delivered prices charged to unaffiliated customers in the United States or to unaffiliated customers for exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price, where applicable, for foreign movement expenses (including brokerage and handling and inland freight), international freight, and marine insurance. Where appropriate (see the “Duty Drawback” section below), we added to the starting price duty drawback received on imported materials, pursuant to section 772(c)(1)(B) of the Act. In accordance with section 772(c)(1)(C) of the Act, where appropriate, we increased U.S. price by the countervailing duty (CVD) rate attributable to the export subsidies found in the CVD investigation of PET film from India (the ongoing first administrative review of the CVD order has not yet been completed).

#### **Constructed Export Price**

For Jindal’s sales through Jindal America, we based U.S. price on CEP, as defined in section 772(b) of the Act, because the merchandise was sold, after importation, by Jindal’s U.S. affiliate, Jindal America, to unaffiliated purchasers in the United States.<sup>2</sup> We calculated CEP based on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for foreign and U.S. brokerage and handling, foreign and U.S. inland freight, international freight, marine insurance, U.S. duties, and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States in accordance with sections 772(c)(2)(A) and 772(d)(1)(B) and (D) of the Act. The direct selling expenses include credit expenses. In accordance with section 772(d)(3) of the Act, we made a deduction for CEP profit.

For both EP and CEP, pursuant to section 772(c)(1)(C) of the Act, we increased U.S. price by the amount of the export subsidy found in the countervailing duty investigation of PET film from India. See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002). We note that the Department is currently conducting a

<sup>2</sup> Although certain sales through Valencia should have been based on CEP, Jindal failed to report these sales and thus, as noted above, the Department is basing the margin for these sales on adverse facts available.

countervailing duty review of PET film from India, which will be completed before the Department issues the final results of this antidumping duty review. Hence, for the final results of this antidumping duty administrative review, we intend to adjust U.S. price to reflect any export subsidy found in the concurrent countervailing duty review of PET film from India.

#### Duty Drawback

Jindal reported that it received duty drawback under both the Advance License program and the Duty Entitlement Passbook Scheme (DEPS). The Advance License program allows Indian companies to import specified materials duty-free if such materials are used to produce a product that is exported by the company. According to information on the record, each advance license limits the quantity of each material that may be imported duty-free. No customs duties are paid on the imported materials; however, there is a contingent liability for the unpaid duties. This contingent liability is extinguished by exporting finished products containing the types of materials covered by the advance license. Under the DEPS program, Indian companies are granted a credit which is equivalent to 14 percent of the free-on-board (FOB) value of their exports. These companies then use this credit to offset the customs duty paid on imported materials used to manufacture exported products.

Before increasing a respondent's reported U.S. sales prices by the amount of duty drawback, pursuant to section 772(c)(1)(B) of the Act, the Department's practice is to examine whether: (1) Import duties and rebates are directly linked to and are dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996).

With regard to Jindal's experience under the Advance License program, the Department has preliminarily determined that import duties and rebates are directly linked and dependent upon one another and Jindal imported sufficient quantities of raw materials to account for the duty drawback granted. Accordingly, the Department has added an amount for duty drawback to EP and CEP.

With regard to the DEPS program, the Department has preliminarily

determined that Jindal failed to demonstrate that import duties and rebates are directly linked and dependent upon one another. The DEPS program does not require a company to link the DEPS credit granted on the exported merchandise to the import duties paid on the types of raw materials used to manufacture the exported product. In fact, at verification, the Department found that Jindal may apply the DEPS credit toward the payment of import duties on any type of material (other than illegal or dangerous materials listed by the GOI) or simply sell the DEPS credit. *See* the "DEPS" section of the EP Sales Verification Report. While the Department does not require a respondent to link a specific entry of materials on which duties were paid (or which was imported duty-free) to a specific export of finished product on which the rebate is based, it does require the respondent to demonstrate that the imported materials are of the same type used to produce the exported product. Further, the Department will only grant a duty drawback adjustment if the rebated import duty is on materials used to produce subject merchandise. Jindal made no attempt to link the quantity of materials imported under the DEPS program with the quantity of materials consumed in producing exported PET film. *See* the "DEPS" section of the EP Sales Verification Report. Based on the foregoing, the Department has not increased Jindal's reported U.S. sales prices by the amount of duty drawback granted under the DEPS program.

#### Level of Trade (LOT)

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale. For CEP sales, it is the level of the constructed sale from the exporter to the importer. The Department adjusts the CEP, pursuant to section 772(d) of the Act, prior to performing the LOT analysis, as articulated by the Department's regulations at section 351.412. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than the EP or CEP sales, we examine stages in the marketing process and selling activities

along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV as provided under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs exist, we obtained information regarding the marketing stages for the reported home market and U.S. sales, including a description of the selling activities performed by Jindal and Jindal America for each channel of distribution. We generally expect that, if claimed LOTs are the same, the selling functions and activities of the seller at each level should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar. Based on our comparisons of Jindal's direct sales to unaffiliated customers and its sales through Jindal America, we have determined that the U.S. sales are at two different LOTs.

Jindal reported home market sales to two categories of customers through two channels of distribution. However, the record indicates that the sales processes for all home market sales are essentially the same. Therefore, we have preliminarily determined that, during the POR, Jindal sold foreign like product in the home market at one LOT.

The Department then compared the LOT of Jindal's home market sales to the LOT of its direct sales to unaffiliated U.S. customers. Based on this comparison, the Department has determined that Jindal's home market sales were made at the same LOT as its direct sales to unaffiliated U.S. customers. Therefore, the Department has preliminarily determined that no LOT adjustment for Jindal's sales to unaffiliated U.S. customers is warranted.

Additionally, we have preliminarily determined that Jindal's sales to its unaffiliated customers in the home

market were not made at an LOT that is more advanced than its sales to its U.S. affiliate, and therefore, a CEP offset adjustment is not warranted.<sup>3</sup> See Memorandum to the file from the Team to the File, concerning, Level of Trade Analysis: Jindal Polyester Limited which is dated concurrently with this notice.

### Normal Value

After testing home market viability, whether home market sales to affiliates were at arm's-length prices, and whether comparison-market sales failed the cost test, we calculated NV as noted in the subsections, "Price-to-Price Comparisons" and "Price-to-CV Comparisons," below.

#### 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.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product is greater than five percent of its aggregate volume of U.S. sales of subject merchandise, we determined that the home market is viable for the respondent, and have used the home market as the comparison-market.

#### Affiliated-Party Transactions and 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 producer, *i.e.*, sales at arm's-length. See section 773(f)(2) of the Act; 19 CFR 351.403(c). Where the home market prices charged to an affiliated customer were, on average, found not to be arm's-length prices, sales to the affiliated customer were excluded from our analysis. Jindal reported one sale of the foreign like product to an affiliated end-user. To test whether this sale was made at an arm's-length price, the Department compared the price of this sale to sales of comparable merchandise to unaffiliated customers, net of all rebates, 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 were, 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 determined that the sales to the affiliated party were at arm's-length prices. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). We included in our NV calculations all sales to an affiliated party if sales to the affiliate were made at an arm's-length price.

#### Cost of Production Analysis

On October 15, 2003, the petitioners alleged that, during the POR, Jindal made home market sales of PET film at prices below the cost of production (COP). After finding that the petitioners' allegation provided reasonable grounds to initiate a COP investigation, the Department, pursuant to section 773(b) of the Act, initiated a COP investigation of Jindal. We conducted the COP analysis as described below.

##### A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, for the POR, based on the sum of materials and fabrication costs, SG&A expenses, and packing costs.

##### B. Test of Home Market Sales Prices

As required under section 773(b) of the Act, we compared the weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to home market sales prices, less any applicable movement charges and direct and indirect selling expenses.

##### C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Jindal's sales of a given product were made at prices below the 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 Jindal's sales of a given product were made at prices below the COP, we determined that such sales were made

in substantial quantities within an extended period of time (*i.e.*, a period of one year). Further, because we compared prices to POR-average costs, we determined that the below-cost prices would not permit recovery of all costs within a reasonable time period, and thus, we disregarded the below-cost sales in accordance with sections 773(b)(1) and (2) of the Act.

We found that for certain products, Jindal made home market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

*Price-to-Price Comparisons.* Where it was appropriate to base NV on prices, we used the prices at which the foreign like product was first sold for consumption in India, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same LOT as the comparison EP or CEP sale.

We determined price-based NVs for Jindal as follows: we calculated NV based on packed, delivered and ex-factory prices to home market customers. Where appropriate, we increased the starting price for interest revenue. We made deductions from the starting price for foreign inland freight, where appropriate, pursuant to sections 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments to the starting price, where appropriate, for differences in credit and bank expenses.

We deducted home market packing costs from, and added U.S. packing costs to, the starting price, in accordance with sections 773(a)(6)(A) and (B) of the Act. Where appropriate, we made adjustments to NV to account for differences in the physical characteristics of the merchandise sold in the U.S. and home market, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (COM) the U.S. product, we based NV on CV.

*Price-to-CV Comparisons.* In accordance with section 773(a)(4) of the Act, we based NV on CV when we were unable to compare the U.S. sale to a home market sale of an identical or similar product. For each unique PET film product sold by the respondent in

<sup>3</sup>Jindal stated in its response to section A of the Department's questionnaire that it was not requesting a CEP offset.

the United States during the POR, we calculated a weighted-average CV based on the sum of the respondent's materials and fabrication costs, SG&A expenses, including interest expenses, packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in India. We based selling expenses on weighted-average actual home market direct and indirect selling expenses. In calculating CV, we adjusted the reported costs as described in the COP section above.

**Currency Conversion.** Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts 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

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period December 21, 2001, through June 30, 2003:

Manufacturer/exporter	Margin (percent)
Jindal Polyester Ltd. ....	9.59

We will disclose the calculations used in our analysis to parties to this proceeding within 10 days of publicly announcing the preliminary results of review. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication date of this notice. See 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties are invited to comment on the preliminary results. The Department will consider case briefs filed by interested parties within 30 days of the date of publication of this notice. Also, interested parties may file rebuttal briefs, limited to issues raised in the case briefs. The Department will consider rebuttal briefs filed not later than five days after the deadline for filing case briefs. Parties who submit arguments 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. Further, we ask that parties submitting written comments provide the Department with a copy of the public version of any such comments on a diskette. Unless extended, the

Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments, within 120 days from the publication date of this notice.

#### Assessment Rate

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), when possible, we calculated an importer-specific assessment rate for merchandise subject to this review. Where the importer-specific assessment rate is above *de minimis*, we will instruct CBP to assess the importer-specific rate uniformly on the entered customs value of all entries of subject merchandise made by the importer during the POR. When it was not possible to calculate an importer-specific assessment rate because the importer was not known, we calculated an exporter-specific *ad valorem* assessment rate. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the instant administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results (except that if the rate is *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required); (2) for previously investigated or reviewed 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 (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 5.71 percent, which is the "all others" rate established in the LTFV investigation, adjusted for the export subsidy rate in the countervailing duty investigation. See *Amended Final Determination and Order*. These deposit requirements, when imposed, shall remain in effect until publication of the

final results of the next administrative review.

#### 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: July 30, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-18404 Filed 8-11-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 080904A]

#### Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Aquaculture Advisory Panel (AP) to redraft the Generic Amendment Providing for Regulation of Offshore Marine Aquaculture in August 2004.

**DATES:** The Council's Aquaculture Advisory Panel will convene from 1 p.m. on August 25, 2004 and conclude no later than 3 p.m. on August 26, 2004 (see **ADDRESSES** for the meeting location).

**ADDRESSES:** The meeting will be held at the Saint Louis Hotel, 730 Rue Bienville, New Orleans, LA; telephone: 888-508-3980 (see **DATES** for the meeting date and time).

Copies of the discussion material for this meeting may be obtained by calling 813-228-2815.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.