

FUWEI FILMS (SHANDONG) CO., LTD. v. UNITED STATES

Court No. 11-00061

Slip Op. 12-69 (June 1, 2012)

**FINAL RESULTS OF REDETERMINATION  
PURSUANT TO COURT REMAND**

**I. SUMMARY**

The U.S. Department of Commerce (“ the Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT or Court”) in Fuwei Films (Shandong) Co., Ltd. v. United States, Consol. Court No. 11-00061, Slip Op. 12-69 (June 1, 2012) (“PET Film AR1 Remand”). The CIT remanded three issues from the Final Results of the administrative review<sup>1</sup> to the Department, including two for which the Department requested a voluntary remand. Specifically, the CIT held that: 1) the Department must correct Shaoxing Xiangyu Green Packing Co. Ltd.’s (“Green Packing”) per unit water and electricity costs; 2) the Department must reconsider the surrogate value (“SV”) for labor expenses; and 3) the Department must clarify or reconsider the SV for polyethylene terephthalate (“PET”) chips. Fuwei Films (Shandong) Co., Ltd. (“Fuwei Films”) and Green Packing are the mandatory respondents in this administrative review (collectively, “Respondents”).

On September 6, 2012, the Department issued its Draft Remand Results.<sup>2</sup> The Department invited interested parties to comment on the Draft Remand Results and gave the parties until September 13, 2012 to submit comments. On September 12, 2012, at Petitioners’<sup>3</sup> request, the Department extended the deadline to submit comments until September 17, 2012 at 10:00 a.m. Fuwei Films and Petitioners submitted timely comments on September 14, 2012, and

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<sup>1</sup> See Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753 (February 22, 2011) (“Final Results”).

<sup>2</sup> See “Draft Results of Redetermination Pursuant to Court Remand,” (“Draft Remand Results”).

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

September 17, 2012, respectively.<sup>4</sup> Additionally, Petitioners submitted rebuttal comments on September 21, 2012.<sup>5</sup> On September 24, 2012, Respondents, at the Department's request, submitted certifications regarding their September 17, 2012 Draft Remand Results comments along with comments regarding Petitioners' Draft Comments Rebuttal.<sup>6</sup> On October 1, 2012, the Department requested an extension of the deadline to file the remand final results. The CIT granted our request, and extended the deadline until October 15, 2012.<sup>7</sup> On October 3, 2012, Fuwei Films submitted rebuttal comments addressing Petitioners Draft Comments.<sup>8</sup>

As set forth in detail below, pursuant to the Court's Remand Opinion and Order, we have reconsidered our determination, taking into account all record evidence pertaining to the Department's decision with regard to Green Packing's water and electricity costs, Respondents' labor rate, and the selection of an SV for Respondents' Bright Polyester and Master Batch ("BP&MB") PET chip input.

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<sup>4</sup> See Letter from Fuwei Films to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Comments of Fuwei Films (Shandong) Co., Ltd. on the Draft Remand Results Issued Pursuant to Fuwei Films (Shandong) Co., Ltd. v. United States, Consol. Court No. 11-00061, Slip Op. 12-69 (Ct. Int'l. Trade, June 1, 2012)," ("Fuwei Films Draft Comments") dated September 17, 2012; see also Letter from Petitioners to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Comments on Draft Remand Redetermination," ("Petitioners Draft Comments") dated September 17, 2012.

<sup>5</sup> See Letter from Petitioners to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Rebuttal of Fuwei's Comments on the Department's Draft Remand Redetermination," ("Petitioners' Draft Comments Rebuttal") dated September 21, 2012.

<sup>6</sup> See Letter from Fuwei Films to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Objection to the Rebuttal Comments Filed by Petitioners in Reply to the Comments of Fuwei Films (Shandong) Co., Ltd. on the Draft Remand Results Issued Pursuant to Fuwei Films (Shandong) Co., Ltd. v. United States, Consol. Court No. 11-00061, Slip Op. 12-69 (Ct. Int'l. Trade, June 1, 2012) and Copy of Certifications Requested by the Department on September 21, 2012," ("Fuwei Films' Objection") dated September 24, 2012.

<sup>7</sup> See Defendant's Consent Motion for an Extension of Time, October 1, 2012, and Court's Order of October 1, 2012.

<sup>8</sup> See Letter from Fuwei Films to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Rebuttal to Petitioner's Comments on Draft Remand Determination" (October 3, 2012) ("Fuwei Films Draft Comments Rebuttal").

## II. REMANDED ISSUES

### a. Labor

#### Background

In the Final Results, the Department applied a wage rate of 1.45 United States Dollar (“USD”)/hour to Fuwei Films and Green Packing based on a simple-average, industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization (“ILO”). Specifically, the Department achieved an industry-specific labor value by relying on industry-specific labor data from eight countries determined to be both economically comparable to the People’s Republic of China (“PRC”), and significant producers of comparable merchandise based, in part, on export levels of comparable merchandise.<sup>9</sup> The eight countries identified were 1) Ecuador, 2) Egypt, 3) Indonesia, 4) Jordan, 5) Peru, 6) the Philippines, 7) Thailand, and 8) Ukraine. The simple-average wage rate was applied to the labor input used in the production of the subject merchandise as the surrogate wage rate. Respondents argued that six of those countries did not produce comparable merchandise and submitted supporting documentation.<sup>10</sup> Because the Department did not specifically address Respondents’ submissions, the Department requested a voluntary remand to further explain its reasoning. The CIT granted the Department’s request.<sup>11</sup>

On June 21, 2011, the Department determined that it would rely on a single surrogate country to value labor, and would use labor data from ILO Yearbook Chapter 6A as its primary data source. On June 21, 2011, based on comments received from interested parties, and the

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<sup>9</sup> See Memorandum from Thomas Martin to the File, regarding “First Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Industry-Specific Wage Rate Selection,” dated October 18, 2010.

<sup>10</sup> See Letter from Respondents and Tianjin WanHua Co., Ltd. to the Department, regarding “Polyethylene Terephthalate PET Film from the Peoples Republic of China A-570-924 Comments on the Departments Memorandum Regarding the Proposed Industry Specific Wage Rate Selection,” dated October 26, 2010.

<sup>11</sup> See PET Film AR1 Remand, at 4.

Department's concurrent determination to develop a labor methodology that would be applied in all on-going nonmarket economy ("NME") cases (timing of the segment allowing), the Department developed a methodology in compliance with section 773(c)(3) of the Tariff Act of 1930, as amended ("the Act"), as described below.<sup>12</sup> Accordingly, for the draft results of this redetermination, the Department is valuing labor using an Indian industry-specific labor rate based on labor cost and compensation data from Chapter 6A of the ILO.

### **Analysis**

Previously, due to the variability in wage rates among economically comparable market economy countries, the Department included wage data from as many countries as possible that were also economically comparable to the NME and significant producers of comparable merchandise, within the meaning of section 773(c)(4) of the Act. Following the Court of Appeals for the Federal Circuit's ("CAFC") decision in Dorbest, the Department attempted to balance its desire for multiple data points with the statutory requirements that factors of production ("FOP") data be from countries that are both economically comparable and significant producers of comparable merchandise.<sup>13</sup> While the amount of available data was more constrained following Dorbest, the Department determined that the industry-specific interim methodology still provided the best available wage rate because it allowed for multiple data points, and adhered to the constraints set forth in the statute. Under this methodology, the Department considered countries that exported comparable merchandise to be "significant

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<sup>12</sup> See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

<sup>13</sup> See Dorbest Ltd. v. United States, 604 F.3d 1363, 1372-73 (Fed. Cir. 2010) ("Dorbest"); see also sections 773(c)(4)(A) and (B) of the Act.

producers.” However, in Shandong Rongxin, the CIT found the Department’s sole reliance on exports alone to define “significant producers” was unsupported by substantial evidence.<sup>14</sup>

The Department has carefully considered the “significant producer” prong of section 773(c)(4)(B) of the Act, in light of the CIT’s decision in Shandong Rongxin, and concluded that this decision imposed an even further restriction on the “significant producer” definition. Upon careful examination of our options, we found that any alternative definition for “significant producer” that would also be compliant with the court’s decision would unduly restrict the number of countries from which the Department could source wage data.<sup>15</sup> We, therefore, find that the basket for an average wage calculation would be so limited that there would be little, if any, benefit from relying on averaged wage rate data from multiple countries for the purpose of minimizing the variability in wages across countries. Therefore, in light of both the CAFC’s decision in Dorbest, and the CIT’s recent decision in Shandong Rongxin, we find that relying on multiple countries to calculate the wage rate is no longer the best approach for calculating the labor value. Consistent with Labor Methodologies, we have altered our labor methodology for this draft redetermination to rely on labor cost data from the primary surrogate country.

Accordingly, the Department finds that using the data on industry-specific labor cost data from the surrogate country in this proceeding is the best approach for valuing the labor input. It is fully consistent with how the Department values all other FOPs, and results in the use of a uniform basis for FOP valuation—a single surrogate country.

#### Data Relied Upon In This Remand Proceeding

In the underlying proceeding of this draft remand redetermination, the Department selected India as the surrogate country, because it was, at that time, at a comparable level of

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<sup>14</sup> See Shandong Rongxin Import & Export Co., Ltd. v. United States, 774 F. Supp. 2d 1307, 1315-16 (Ct. Int’l Trade 2011) (“Shandong Rongxin”).

<sup>15</sup> See Labor Methodologies, 76 FR at 36093.

economic development pursuant to section 773(c)(4) of the Act, a significant producer of comparable merchandise and had publicly available and reliable data.<sup>16</sup> Therefore, for this remand redetermination, the Department will use ILO Chapter 6A industry-specific labor cost data from India that was available during the conduct of the underlying administrative review to calculate the surrogate labor rate. In the Final Results, the Department calculated a simple-average wage rate based on ILO Chapter 5B data. India was excluded from the simple-average wage rate calculation because India was one of nine countries which did not report wage data under the International Standard Industrial Classification (“ISIC”)-Revision.3, under Sub-Classification 25, “Manufacture of Rubber and Plastics Products.”<sup>17</sup> As stated in Labor Methodologies, due to the Department’s presumption that Chapter 6A data is more comprehensive than Chapter 5B data and better accounts for all direct and indirect labor costs, the Department transitioned from using ILO Chapter 5B data to Chapter 6A data during the shift to using single-country labor data.<sup>18</sup> We note that ILO Chapter 6A industry-specific labor data is available for India.

The period of review (“POR”) covers November 6, 2008, to October 31, 2009. For the Final Results, the Department relied on ILO Chapter 5B using the most recent data available from 2008 and went back five years, resulting in wage data from 2003-2008. For this draft remand redetermination, the Department is relying on the reported 2008 ILO Chapter 6A data, provided under the ISIC-Revision.3-D standard because these were the most contemporaneous Chapter 6A data that were available at the time the Department conducted the underlying review. Within ISIC-Revision 3-D standard, the Department identified the two-digit series most specific to PET film production as Division 25, which is described as “Manufacture of Rubber and

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<sup>16</sup> See Final Results, 76 FR at 9754.

<sup>17</sup> See Final Results, and accompanying Issues and Decision Memorandum at Issue 8.

<sup>18</sup> See Labor Methodologies, 76 FR at 36093.

Plastics Products.” As stated above, the Department selected India. Accordingly, the Department placed additional industry specific labor cost data on the record in order to determine the surrogate labor rate derived from Indian labor cost data.<sup>19</sup>

#### Re-Valuation of the Labor Rate

The Department obtained monthly Consumer Price Index (“CPI”) data as reported by the International Monetary Fund’s (“IMF”) International Financial Statistics under series “64..ZF Consumer Prices,” and then calculated an average CPI rate based on the months of the POR (November 2008 to October 2009). Subsequently, we inflated the Indian labor rate from March 2005, the most recent data available, by the average POR CPI. We intend to use the surrogate wage rate valued in Indian Rupees (Rs.) and apply the daily exchange rate in the SAS program, consistent with the Department’s methodology applied to all other SVs denominated in foreign currencies. The Department has calculated an Indian industry specific labor rate of 47.0255 Rs./hour (“Hr.”).<sup>20</sup>

#### Adjustments to the Surrogate Financial Ratios

As stated above, the Department has used Indian ILO data reported under Chapter 6A “Labor Cost in Manufacturing” of the Yearbook of Labor Statistics to calculate the SV for labor. Chapter 6A reflects all costs related to labor, including wages, benefits, housing, training, etc. In using Chapter 6A it is the Department’s practice to adjust, when possible, the calculated surrogate overhead (“OH”) and selling, general and administrative (“SG&A”) ratios to reflect all applicable indirect labor costs itemized in the company’s financial statements. While the Department’s ability to identify and adjust for indirect labor costs depends on the information

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<sup>19</sup> See Memorandum from Jonathan Hill to Robert Bolling, “Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Surrogate Value Memorandum Pursuant to Draft Remand Redetermination,” dated September 6, 2012 (“Redetermination SV Memo”) at Exhibit 2.

<sup>20</sup> Id. at 2.

available on the record of the specific proceeding, the Department accounts for direct and indirect labor costs when it is able to make the necessary adjustments.<sup>21</sup>

In order to ensure that Chapter 6A labor costs included in the ILO defined “Labor cost” are accounted for only once in the calculation of normal value, it is best to adjust, where possible, the surrogate financial ratios employed by the Department to value OH expenses, SG&A expenses and profit. Accordingly, we will categorize all individually identifiable direct labor costs included in the ILO’s definition Chapter 6A “Labor cost” and as direct labor in the surrogate financial ratio calculations. Such adjustments to the surrogate financial ratios are fact- specific in nature and subject to available information on the record.

In the Final Results, we used the 2008-2009 financial statements of JBF Industries Limited (“JBF”), a manufacturer in India of merchandise comparable to subject merchandise, to derive the surrogate financial ratios applied in the calculation of normal value. However, because there is no indication that labor costs are being overstated in the allocation of JBF’s financial statements used in the underlying administrative review, the Department has not made any adjustments to the financial statements’ allocation.

For this remand redetermination, the Department continues to apply the ratios calculated with the Final Results. The labor wage rate the Department has applied for this redetermination is 47.0255 Rs./Hr.<sup>22</sup>

#### **b. Calculation for Green Packing’s Per-Unit Water and Electricity Costs**

##### **Background**

Green Packing reported its per-unit water and electricity consumption as part of its Section D and Supplemental Questionnaires.<sup>23</sup> The Department relied on the FOP database MS

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<sup>21</sup> See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61721 (October 19, 2006) (“Antidumping Methodologies Notice”).

<sup>22</sup> See Redetermination SV Memo at 1.



Excel files which Green Packing submitted with its March 12, 2010, submission. In that database, Green Packing correctly labeled its columns for the electricity and water factors, but juxtaposed the variable names “ELECTRICITY” and “WATER” in the row below the column headings. For the Final Results, the Department created a SAS data set from the submitted MS Excel file, and in doing so deleted the column headings, leaving only the erroneous variable names.

### **Analysis**

In response to the CIT’s decision in PET Film AR1 Remand, the Department has revised its calculation of Green Packing’s reported per-unit water and electricity consumption. To correct the error, the Department has assigned Green Packing’s reported electricity factor to the calculated water input, and Green Packing’s reported water factor to the calculated electricity input, in the calculation of Green Packing’s cost of production.<sup>24</sup>

#### **c. Surrogate Valuation of PET Chips**

### **Background**

Petitioners stated that Fuwei Films’ BP&MB PET chips should be valued using Indian Harmonized Tariff Schedule (“HTS”) code 3907.60.20, covering PET with an intrinsic viscosity (“IV”) in the range of 0.64 deciliters (“DL”)/gram (“G”) and 0.72 DL/G.<sup>25</sup> However, Respondents stated that the Indian data for HTS 3907.60.20 is inapplicable because India used the ASTM<sup>26</sup>

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<sup>23</sup> See Green Packing’s March 12, 2010, Section D Questionnaire Response at Exhibit D-5 and V-2-3; see also Green Packing’s May 14, 2010, Section C and D Supplemental Questionnaire Response at Exhibit SD-11.

<sup>24</sup> See Memorandum from Jonathan Hill to Robert Bolling, “2008-2009 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Shaoxing Xiangyu Green Packing Co., Ltd. Calculation Memorandum Pursuant to Draft Remand Redetermination,” dated September 6, 2012 (“Green Packing Redetermination Calculation Memo”) at 3.

<sup>25</sup> See Letter from Petitioners to the Secretary of Commerce “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Submission of Publicly Available Information to Value Factors of Production,” dated May 3, 2012 at 12 and Exhibit 18.

<sup>26</sup> ASTM, originally known as the American Society for Testing and Materials, is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services.

testing method (“ASTM 3:2”) rather than the ISO<sup>27</sup> method (“ISO 1:1”), and if their BP&MB PET chips had been tested using the ASTM method, the IV would have been less than 0.64 DI/G and covered by HTS 3907.60.10.<sup>28</sup> In the Final Results, to value BP&MB PET chips, the Department used a simple average of data from Indian HTS 3907.60.10 and 3907.60.20.<sup>29</sup> In doing so, the Department recognized that record evidence (i.e., the certificates of quality for Respondents’ inputs) supported using HTS 3907.60.20.<sup>30</sup> However, the Department also acknowledged that the certificates of quality did not specify the testing method used and stated that, based on record evidence regarding India’s and the PRC’s testing methods, it believed that at least some of Respondents’ inputs were properly classifiable under HTS 3907.60.10.<sup>31</sup> Accordingly, the Department determined that record evidence weighed equally in favor of both alternatives and used a simple average of data from the two categories.<sup>32</sup> The Department also rejected Respondents’ submission of InfoDrive data because they were under-inclusive of officially-reported import data and because using the data required “speculative interpretation.”<sup>33</sup> In PET Film AR1 Remand, the CIT identified three specific infirmities that require further explanation or reconsideration by Department.

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<sup>27</sup> ISO is an international-standard-setting body composed of representatives from various national standards organizations, with the mission of promulgating worldwide proprietary industrial and commercial standards.

<sup>28</sup> See Letter from Tianjin Wanhua Co., Ltd. and Respondents to the Secretary of Commerce, “Polyethylene Terephthalate (PET) Film from the People’s Republic of China; A-570-924; Case Brief Submitted by TianJin WanHua Co., Ltd., Shaoxing Xiangyu Green Packing Co., Ltd., and Fuwei Films (Shangdong) Co., Ltd.” (September 28, 2010) at 6-8.

<sup>29</sup> See Final Results, and accompanying Issues and Decision Memorandum at 14.

<sup>30</sup> Id. at 13.

<sup>31</sup> Id.

<sup>32</sup> Id. at 14.

<sup>33</sup> Id. at 16.

**i. The Department's use of Indian HTS subheadings 3907.60.10 and 3907.60.20**

The CIT requested further amplification of the Department's explanation that it agreed that Respondents had provided additional information showing that "HTS 3607.60.10 represents a more reliable quantity than the Indian HTS 3907.60.20" and found a "reasonable likelihood" that Indian HTS 3907.6010 may apply to "some" but not all of Respondents' PET chips.<sup>34</sup> Specifically, the CIT asked the Department to explain why it found that only "some" but not all of those chips were within HTS category 3907.60.10 if one accepts the logic that the proper classification of Respondents' BP&MB PET chips in India requires conversion from ISO (PRC) to ASTM (India). Further, the CIT asked the Department to explain why that logic also does not undermine the reasonableness of any continued reliance upon the "stated" facial declarations of the IV levels on the BP&MB chip test reports.

**Analysis**

When selecting SVs with which to value the FOPs used to produce subject merchandise, the Department is directed to use the "best available information" on the record.<sup>35</sup> The CIT has stated that the Department accepted the logic that the proper classification of Respondents' BP&MB PET chips in India requires conversion from one standard to another applicable to the PRC. Additionally, the CIT stated that the Department's inference regarding the general utilization of the ISO 1:1 PET chip testing methodology by the PRC PET chip producers was reasonable. On August 1, 2012, in an attempt to clarify the nature of Respondents' BP&MB PET chips and Indian Customs' PET chip testing methodologies, the Department opened the record and issued a supplemental questionnaire to Respondents requesting information regarding their BP&MB PET chip test certificates, BP&MB PET chip supplier details, and Indian Customs

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<sup>34</sup> See PET Film AR1 Remand at 16.

<sup>35</sup> See Section 773(c)(1) of the Act.

PET chip testing standards.<sup>36</sup> On August 13, 2012, Respondents submitted timely responses to the Department's supplemental questionnaire.<sup>37</sup> On August 20, 2012, Petitioners submitted timely rebuttal comments.<sup>38</sup> On August 23, 2012, Fuwei Films submitted rebuttal comments addressing Petitioners' Rebuttal.<sup>39</sup> After reviewing Respondents' responses and comments as well as Petitioners' Rebuttal, the Department finds that the information on the record regarding the IV of Respondents' BP&MB chips can be used to identify the specific eight-digit Indian HTS classification, *i.e.*, 3907.60.10, for valuing all of the BP&MB PET chips at issue.

The technical information placed on the record by Respondents from the ISO states that the value of the viscosity number of a saturated polyester depends on the solvent used.<sup>40</sup> ISO then specifies for PET IV that four different solvents can be used, and for one solvent, two different concentrations can be used. ISO then provides equations in an annex for interconversion of the viscosity numbers determined using the four solvents, which enables the conversion from the results of one testing methodology to that of another.

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<sup>36</sup> See Letter from Robert Bolling to Fuwei Films, "Sections D Supplemental Questionnaire Pursuant to Fuwei Films (Shandong) Co. v. United States, SLIP OP. 12-69, 837 F. Supp. 2d 1347 (CIT 2012): Polyethylene Terephthalate Film, Sheet, and Strip ("PET film") from the People's Republic of China A-570-924" (August 1, 2012) ("Fuwei Films Questionnaire"); see also letter from Robert Bolling to Green Packing, "Sections D Supplemental Questionnaire Pursuant to Fuwei Films (Shandong) Co. v. United States, SLIP OP. 12-69, 837 F. Supp. 2d 1347 (CIT 2012): Polyethylene Terephthalate Film, Sheet, and Strip ("PET film") from the People's Republic of China A-570-924" (August 1, 2012) ("Green Packing Questionnaire").

<sup>37</sup> See Letter from Green Packing to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Response to Remand Questionnaire by Shaoxing Xiangyu Green Packing Co., Ltd." (August 13, 2012) ("Green Packing Response"); see also letter from Fuwei Films to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Response to Remand Questionnaire by Fuwei Films (Shandong) Co., Ltd." (August 13, 2012) ("Fuwei Films Response").

<sup>38</sup> See Letter from Petitioners to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Petitioners' Comments on Respondents' Responses to Remand Questionnaire" (August 20, 2012) ("Petitioners' Rebuttal").

<sup>39</sup> See Letter from Fuwei Films to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Reply to Petitioner's Letter of August 20, 2012" ("Fuwei Films Rebuttal") (August 23, 2012).

<sup>40</sup> Letter from TianJin WanHua Co., Ltd., Shaoxing Xiangyu Green Packing Co., Ltd., and Fuwei Films (Shandong) Co., Ltd. to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Post-Preliminary Surrogate Value Information by TianJin WanHua Co., Ltd., Shaoxing Xiangyu Green Packing Co., Ltd., and Fuwei Films (Shandong) Co., Ltd." (September 8, 2010) ("Respondents Post-Preliminary Surrogate Value Submission") at Exhibit PSV-8, Investigation Submission of DuPont Teijin Films at 6.F.

In the supplemental questionnaire response dated August 13, 2012, Fuwei Films provided a list for each BP&MB PET chip supplier, detailing the date of the test and the lot number for all BP&MB PET chip test certificates received during the 2008-2009 POR.<sup>41</sup> From this list, Fuwei Films also provided BP&MB PET chip test certificates representing the two largest months in which Fuwei Films received BP&MB PET chip test certificates from each of its suppliers, as well as interconversions (ISO 1:1 to ASTM 3:2) based on the reported IV from the test certificates.<sup>42</sup> Additionally, Fuwei Films provided letters from three out of six of its BP&MB PET chip six suppliers, which confirm that each of those suppliers used the ISO 1:1 testing methodology.<sup>43</sup> Also, Fuwei Films stated that upon receipt of the BP&MB PET chips from its suppliers, it tests BP&MB PET chips samples using the ISO 1:1 testing methodology for quality purposes.<sup>44</sup>

In its supplemental questionnaire response dated August 13, 2012, Green Packing claimed that it was unable to provide BP&MB PET chip test certificates contemporaneous with the 2008-2009 POR, because it destroyed the test certificates for this period.<sup>45</sup> Green Packing stated that once PET film is produced from the BP&MB chips, and the quality of the chips are confirmed, there are no commercial reasons to maintain the test certificates.<sup>46</sup> However, Green Packing did provide IV data for its BP&MB PET chips from test certificates contemporaneous with the 2009-2010 POR along with interconversions (ISO 1:1 to ASTM 3:2) based on the reported IV results from that data.<sup>47</sup> Additionally, Green Packing stated that it also tests

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<sup>41</sup> Fuwei Films' list included data from 446 total test certificates.

<sup>42</sup> See generally Fuwei Films Response exhibits.

<sup>43</sup> See Fuwei Films Response at Exhibits D-1(d), D-2(d), and D-7(d).

<sup>44</sup> Id. at 2-3.

<sup>45</sup> See Green Packing Response at 2.

<sup>46</sup> Id.

<sup>47</sup> Id. at Exhibit Remand-1.

incoming BP&MB PET chips in accordance with the ISO 1:1 testing methodology for quality purposes.<sup>48</sup>

Petitioners, in their rebuttal comments dated August 20, 2012, claim that Fuwei Films failed to provide supplier testing methodology certifications for half of its suppliers, and the supplier certifications that were submitted are not on the suppliers' letterhead and are all identical.<sup>49</sup> With regard to Green Packing, Petitioners claim that Green Packing failed to provide any of the supporting documentation requested regarding its BP&MB PET chips, and only makes assumptions regarding the PET chip testing methodologies used by its suppliers. Therefore, Petitioners claim that Green Packing has not provided "support for the Department's core inquiry: what testing methodology was used to determine the IV of Green Packing's PET chips?"<sup>50</sup>

As previously mentioned, the CIT stated that the Department's inference regarding the general utilization of the ISO 1:1 PET chip testing methodology by the PRC PET chip producers was reasonable.<sup>51</sup> To further clarify the nature of Respondents' specific BP&MB PET chips, the Department analyzed Respondents' supplemental questionnaire responses and the record for the 2008-2009 POR. We have concluded that the record evidence confirms the use of the ISO 1:1 PET chip testing methodology for the BP&MB PET chips in question. Of their six suppliers, Fuwei Films provided letters from three, which confirm the use of the ISO 1:1 testing methodology. Although Fuwei Films has not confirmed that all of its suppliers use the ISO 1:1 testing methodology, we have analyzed the information from Fuwei Films' supplemental questionnaire and have found that these three suppliers account for approximately 85 percent of

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<sup>48</sup> Id. at 2.

<sup>49</sup> See Petitioners' Rebuttal at 3-4.

<sup>50</sup> See Petitioners' Rebuttal at 3.

<sup>51</sup> See PET Film AR1 Remand at 14.

the 446 PB&MB PET chip test certificates received by Fuwei Films from its suppliers during the 2008-2009 POR. Thus, record evidence shows that the majority of the BP&MB PET chip test certificates received by Fuwei Films from its suppliers during the 2008-2009 POR are based on the ISO 1:1 testing methodology. Additionally, in its supplemental questionnaire response, Fuwei Films provided interconversions for approximately 27 percent of their total 2008-2009 POR BP&MB PET chip test certificates. We examined these interconversions (ISO 1:1 to ASTM 3:2), and found that all of IVs are less than 0.64 DI/G, and, therefore, classifiable under Indian HTS 3907.60.10.

With regard to Green Packing's suppliers, while Green Packing did not provide evidence indicating its testing methodology during the 2008-2009 POR, our review of the Fuwei Films Rebuttal confirms the general use of the ISO 1:1 PET chip testing methodology by PRC PET chip producers. Fuwei Films provided an excerpt from the public version of the Tianjin Wanhua Co., Ltd. verification report from the 2009 – 2010 POR,<sup>52</sup> and in this report an employee of a PRC PET chip supplier stated, “{The supplier} uses the national standard of the 1:1 ratio for testing PET chip intrinsic viscosity” (emphasis added).<sup>53</sup> This statement confirms that PRC PET chip suppliers recognize the existence of a PRC standard and that, the standard is ISO 1:1. As stated by the CIT, which affirmed the Department's inference regarding the PRC's use of the ISO standard, “...the statute does not require, nor have the courts imposed, a requirement of evidentiary exactitude for Commerce's surrogate valuations.”<sup>54</sup> Therefore, we conclude that the record evidence continues to support our finding that Green Packing's BP&MB PET chip suppliers use the ISO 1:1 testing methodology, notwithstanding the lack of explicit evidence identifying the testing methodology of each of its suppliers.

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<sup>52</sup> See Fuwei Films Rebuttal at Exhibit RE-2.

<sup>53</sup> Id.

<sup>54</sup> See PET Film AR1 Remand at 13.

Although Green Packing did not place additional test certificates on the record that are contemporaneous with the 2008-2009 POR in response to our supplemental questionnaire, Green Packing did previously submit three BP&MB PET chip test certificates during the 2008-2009 POR administrative review.<sup>55</sup> We examined these BP&MB PET chip test certificates and found that the majority (i.e., two of three)<sup>56</sup> of the IVs fall within the same range as the IVs listed in the table of interconversions placed on the record by Green Packing from the 2009-2010 POR and Fuwei Films for the 2008-2009 POR. Given that the ISO equations do not change, the Department can deduce that the IVs of Green Packing's BP&MB PET chips consumed during the 2008-2009 POR are reflected in the results of the interconversions on the record. As previously stated with regard to the interconversion results (ISO 1:1 to ASTM 3:2), all of the converted IVs are less than 0.64 DI/g; therefore, the Department finds that Green Packing's BP&MB PET chip IV are classifiable under Indian HTS 3907.60.10.

Although Petitioners identified several deficiencies within Respondents' responses regarding the PET chip testing methodology used by Respondents and their PET chip suppliers, Petitioners have not provided any evidence regarding Respondents' PET chip testing methodologies, the testing methodologies of their suppliers, or otherwise refuting the CIT's holding that the Department may reasonably find that PRC PET chip producers generally and uniformly use the ISO standard. In fact, for the reasons described above, substantial evidence on the record confirms the use of the ISO 1:1 PET chip testing methodology by Respondents and their suppliers.

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<sup>55</sup> See Letter from Green Packing to Secretary of Commerce, "First Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Response to third Supplemental Section D questionnaire by Shaoxing Xiangyu Green Packing Co., Ltd." (June 30, 2010) at Exhibit 3SD-1.

<sup>56</sup> The third of Green Packing's certificates lists an IV based on the ISO standard that does not convert to an IV within the HTS 3907.60.10 range. However, the certificate lists a margin of error, and the "low" IV would fall within HTS 3907.60.10 after conversion.



Respondents placed evidence on that record that confirms the use of the ASTM 3:2 testing methodology by Indian Customs. Specifically, Respondents have provided two letters from Indian Customs representatives.<sup>57</sup> The first letter dated April 11, 2011, from the Commissioner of Customs Appraising (General) in Mumbai India, states that "...intrinsic viscosity is an important parameter to ascertain grade/classification of PET Chips which can be determined as per procedure/methods prescribed under ASTM D 4603-03. However, this Custom House Laboratory is not equipped to determine intrinsic viscosity of PET."<sup>58</sup> This letter illustrates that the ASTM testing methodology is "a" methodology used to determine IV, not the standard PET chip testing methodology used by Indian Customs. However, the second letter, dated April 7, 2008, from an Assistant Commissioner of Customs in Mumbai, India, states (1) to check intrinsic viscosity a sample must be sent to a laboratory, (2) the Chief Chemist of the Ballard Estate, Mumbai, New Custom House confirmed that the laboratory used the ASTM standard to verify the intrinsic viscosity, and (3) the goods are classified on the basis of intrinsic viscosity.<sup>59</sup> Although this letter does not confirm a standard Indian Customs PET chip testing methodology, it does confirm the use of the ASTM methodology at one Indian Customs laboratory. Thus, record evidence indicates that Indian Customs has knowledge of and is well acquainted with the ASTM 3:2 testing methodology and its application.

Petitioners contend that Respondents failed to provide additional information from Customs authorities in India regarding the IV testing standards that they required for importers to classify PET chips during the POR, whether Customs authorities required importers to use one single IV testing method, and whether the Customs authorities contracted with or possessed

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<sup>57</sup> See Fuwei Films Response at Exhibit D-8; see also Green Packing Response at Exhibit Remand-2.

<sup>58</sup> Id.

<sup>59</sup> Id.

themselves a laboratory capable of measuring IV under the ISO 1:1 standard during the POR.<sup>60</sup> However, similar to the above analysis regarding Respondents and their suppliers' PET chip testing methodologies, Petitioners have failed to provide any record evidence concerning Indian PET chip testing methodologies or facts contradicting the evidence which at a minimum illustrates the use of ASTM 3:2 by Indian Customs. For example, Petitioners have not provided any record evidence showing that Indian Customs uses a testing standard other than the ASTM 3:2 methodology to classify imported PET chips. Petitioners only argue that Respondents have not provided enough evidence to prove that Indian Customs uses the ASTM 3:2 testing methodology as a standard. However, the CIT has found that “{the Department} is not required to find all conceivable data in order to comply with the law.”<sup>61</sup> There is sufficient evidence in this case (and a complete lack of contrary evidence) to support a reasonable conclusion that Indian Customs use a specific testing standard to classify imported PET chip. Therefore, the Department finds that the record evidence supports our conclusion that Indian Customs uses the ASTM 3:2 testing methodology as a standard, because there is nothing on the record that disputes the use of ASTM 3:2 or confirms the use of any other testing methodology by Indian Customs.

Based on our analysis of the record evidence, we have found that Respondents and their suppliers use the ISO 1:1 testing methodology to test PET chip IV, and that Indian Customs bases its PET chip classification on the ASTM 3:2 testing methodology. Therefore, we find that: (1) the IV of Respondents' BP&MB PET chips upon entry into India would reflect a different IV than that which is reported on the test certificates received from their suppliers, and (2) that it is necessary to convert the reported IVs to their ASTM 3:2 equivalent to classify properly

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<sup>60</sup> See Petitioners' Rebuttal at 6.

<sup>61</sup> See Trust Chem Co. v. United States, 819 F. Supp. 2d 1373, 1378 (CIT 2012) (citing Makita Corp. v. United States, 21 CIT 734, 753, 974 F. Supp. 770, 787 (1997)).

Respondents' BP&MB PET chips under the Indian HTS. We have also determined that there is no evidence on the record that disputes these findings. Thus, upon, review of the interconversions placed on the record by Respondents, we determine that all BP&MB PET chips consumed by Fuwei Films and Green Packing during the 2008-2009 POR are properly classified under Indian HTS category 3907.60.10. Accordingly, we have recalculated Respondents' BP&MB PET chip SV in accordance with Indian HTS category 3907.60.10.<sup>62</sup>

**ii. The Department's use of the simple average of the unit values of Indian HTS subheadings 3907.60.10 and 3907.60.20**

The CIT stated that because the Department applied a simple average of the average unit values of Indian HTS subheadings 3907.60.10 and 3907.60.20 for the first time in the Final Results, Respondents did not have the opportunity to challenge that decision during the administrative review.<sup>63</sup> Respondents argue that the Department's use of a simple average gives inordinate weight to HTS 3907.60.20, which has very small quantities and does not consist of the kind of goods that comprise the FOP. The CIT has remanded this issue to the Department to address the arguments raised by Respondents.

**Analysis**

Because the Department is now classifying Respondents' BP&MB PET chips solely under Indian HTS 3907.60.10, the issue of whether the Department may use a simple average for valuing Respondents' BP&MB PET chips is no longer relevant.

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<sup>62</sup> See Redetermination SV Memo at 2.

<sup>63</sup> See PET Film AR1 Remand at 18-19.

**iii. The Department’s rejection of InfoDrive Data as a corroborative tool for HTS 3907.60.20**

The CIT has requested further clarification regarding the Department’s decision not to consider Respondents’ InfoDrive<sup>64</sup> data.<sup>65</sup> Specifically, the CIT has ordered the Department to explain why it accepted InfoDrive data that represented 88 percent of the quantity of country-specific imports in Lightweight Thermal Paper<sup>66</sup> but considered import quantity data covering slightly less than 85 percent unreliable.<sup>67</sup> The CIT also ordered the Department to consider Respondents’ arguments that the InfoDrive India data show that 84.72 percent of POR quantity for Indian HTS 3907.60.20 are distorted by misclassified non-PET material, and that there is no information regarding the remaining quantity, which could be considered insignificant.<sup>68</sup>

**Analysis**

Because the Department has classified Respondents’ BP&MB PET chips solely under Indian HTS 3907.60.10, the issue of whether the Department should consider InfoDrive information to evaluate the validity of Indian HTS 3907.60.20 is no longer relevant.

**III. COMMENTS FROM INTERESTED PARTIES**

**Comment 1: Whether the Record Evidence Supports the Department’s Conclusion Regarding Testing Standards used by Indian Customs and the Respondents’ Suppliers To Measure PET Chip IV**

Petitioners argue that the evidence on the record prior to the CIT’s determination in PET Film AR1 Remand did not support the conclusion that Indian Customs data are classified based on the ASTM 3:2 methodology, and state that the evidence placed on the record since the CIT’s

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<sup>64</sup> InfoDrive India Pvt Ltd. (“InfoDrive”) is an Indian company that publishes export and import information from India and other countries.

<sup>65</sup> See PET Film AR1 Remand at 17.

<sup>66</sup> See Lightweight Thermal Paper From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) (“Lightweight Thermal Paper”), and accompanying Issues and Decision Memorandum at Comment 9.

<sup>67</sup> See PET Film AR1 Remand at 18.

<sup>68</sup> Id.

determination has only confirmed this point.<sup>69</sup> Therefore, the Department should use only data from Indian HTS category 3907.60.20 to value Respondents' BP&MB PET chips. Petitioners state that, prior to the CIT's determination, there was one piece of evidence on the record referencing the use of the ASTM 3:2 standard by Indian Customs, which was a letter from an Indian Customs official dated April 7, 2008. The letter states:

To check the intrinsic viscosity sample has to be forwarded for test and is confirmed from the Dy. Chief Chemist of this Custom House that the laboratory used the ASTM standard to verify the intrinsic viscosity and the goods are classified on the basis of intrinsic viscosity declared and forward after testing.<sup>70</sup>

Petitioners state that the Department, in its remand questionnaire to Fuwei Films, asserts that the above caption "does not clearly state if Indian Customs used the ASTM standard exclusively, if the ASTM standard is only one accepted standard, or if Indian Customs once tested a sample according to the ASTM standard on a single occasion."

Petitioners then cite to the April 15, 2011, letter submitted by Respondents from J. Sagar Associates to the New Custom House (Mumbai, India) dated April 15, 2011, that makes the following request:

{W}e are writing this letter with the request to kindly confirm whether the Customs House still uses the same {ASTM} test to verify intrinsic viscosity of PET Chips to determine classification purposes of PET Chips under the Customs Tariff.<sup>71</sup>

Respondents also provided the New Custom House's response dated April 20, 2011, which states:

Please refer to your letter dated 15/04/2011 on the above subject, to confirm whether ASTM standards test a methods is {sic} used for determining intrinsic viscosity of PET chips for the purpose of classification under Customs Tariff Act 1975. The matter has been referred to the Joint Director (CRCL), New Custom House, Mumbai, who in turn has stated that the intrinsic viscosity is an important parameter to ascertain grade classification of PET Chips which can be determined as per procedural methods

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<sup>69</sup> See Petitioners Draft Comments at 7.

<sup>70</sup> Id.

<sup>71</sup> Id. at 8.

prescribed under ASTM D 4603-03. However, this Custom House Laboratory is not equipped to determine intrinsic viscosity of PET.<sup>72</sup>

Petitioners claim that the Department acknowledged that the April 20, 2011, letter “illustrates that the ASTM testing methodology is ‘a’ methodology used to determine IV, not the standard PET chip testing methodology used by Indian Customs.”<sup>73</sup> Petitioners further claim that the remand questionnaire concluded that the April 7, 2008, letter “does not clearly state”<sup>74</sup> whether the ASTM 3:2 testing methodology was used in more than one isolated instance, and that because that “isolated” test occurred prior to the POR, it is “not included in” (i.e., not applicable to) the SV data that the Department is using to value Respondents’ BP&MB PET chips. Petitioners state that the Department changed its view of the April 7, 2008, letter by stating that it “confirm{s} the use of the ASTM methodology at one Indian Customs laboratory. Thus, record evidence indicates that Indian Customs has knowledge of and is well acquainted with the ASTM 3:2 testing methodology and its application.”<sup>75</sup> Petitioners argue that the post-remand evidence placed on the record by Respondents does not provide additional support for their claim that Indian Customs generally uses the ASTM 3:2 testing methodology as a standard. Therefore, Petitioners state that the Department’s conclusion that Indian Customs generally uses the ASTM 3:2 testing methodology is unwarranted.

Furthermore, Petitioners maintain that the evidence placed on the record by Respondents in their remand questionnaire response confirms that the ASTM 3:2 methodology is not the standard methodology used in connection with the import of merchandise falling under Indian HTS 3907.60. Petitioners claim that if Indian Customs truly uses the ASTM 3:2 testing methodology as a standard, then Indian Customs would have responded in its April 20, 2011,

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<sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> Id. at 9.

<sup>75</sup> Id.

letter with a clear statement indicating which testing standard it uses.<sup>76</sup> However, Petitioners claim that Indian Customs was “unwilling” to do so and; therefore, the Department cannot reasonably conclude that Indian Customs uses the ASTM 3:2 testing methodology as a standard.

In regard to PET chip testing standards used by Respondents’ suppliers, Petitioners claim that Fuwei Films only provided PET chip testing methodology certifications for half of its suppliers, and failed to provide the communications soliciting these certificates from the suppliers (which the Department had also requested). Moreover, Petitioners argue that the certificates that Fuwei Films did supply contain exactly the same Chinese text, with the only difference among them being the company seal. This suggests that Fuwei Films sent ready-made certifications to its suppliers and asked that they supply a seal.<sup>77</sup> Petitioners contend that it would be unreasonable, and an abuse of discretion, if the Department were to conclude these test certificates have any probative value with respect to the IV testing methodology used by Respondents’ BP&MB PET chip suppliers. Furthermore, Petitioners argue that the three test certificates on the record for Green Packing’s BP&MB PET chips are insufficient to reasonably conclude that the IVs of all of Green Packing’s BP&MB PET chips, once converted, are less than 0.64 DI/G.<sup>78</sup>

Fuwei Films states that the Department has correctly found that the record evidence establishes the testing standards used in both India and the PRC. Fuwei Films states further that the Department correctly decided to use the World Trade Atlas (“WTA”) data for HTS 2907.60.10 as the basis for a SV for Respondents’ BP&MB PET chips. However, in order to avoid waiving any issues, Fuwei Films submits that the Department also should have addressed substantively the other questions directed to it by the CIT in the remand order, i.e., the

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<sup>76</sup> Id. at 10.

<sup>77</sup> Id. at 14.

<sup>78</sup> Id. at Footnote 44.

Department's use of the simple average of the unit values of Indian HTS subheadings 3907.60.10 and 3907.60.20 and the Department's rejection of InfoDrive Data as a corroborative tool for HTS 3907.60.20. Fuwei Films claims that should the Department change its position, or should the CIT reject the remand results, then these issues would remain active and important.

In rebuttal, Fuwei Films claims that Petitioners' assertion that the Department should use Indian HTS category 3907.60.20 to value its BP&MB PET chips is based on a lack of evidence about the need to convert IVs in order to determine the classification, and that Petitioners wholly ignore the additional issues relating to the Department's use of Indian HTS category 3907.60.20 (i.e., Indian InfoDrive data and the use of a simple average), which render the category unusable as a basis for surrogate values.<sup>79</sup> First, in regard to the use of the ASTM 3:2 PET chip testing methodology as a standard by Indian customs, Fuwei Films claims that a certified statement of one petitioner, DuPont Teijin Films, which is on the record of the underlying review, states: "The ASTM test method is the prevailing standard in many countries, including India."<sup>80</sup> Fuwei Films states that this statement directly supports the conclusion that Indian Customs uses the ASTM 3:2 testing methodology as a standard. Second, regarding the Indian Customs letter dated April 20, 2011, Fuwei Films argues that a statement that a particular lab does not have the capability to test for a particular property cannot reasonably be read as meaning that such property is irrelevant as Petitioners suggest. Fuwei Films argues further that Indian Customs stated that the ASTM standard can be used to test for IV at the time of importation, and did not mention any other standard testing methodology that could be used in determining IV.<sup>81</sup> Third, Fuwei Films claims that the very small volume of chips classified using Indian HTS category

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<sup>79</sup> See Fuwei Films Draft Comments Rebuttal at 4.

<sup>80</sup> Id. at 5; see also Respondents Post-Preliminary Surrogate Value Submission at Exhibit PSV-8, Investigation Submission of DuPont Teijin Films at 6.F.

<sup>81</sup> See Fuwei Films Draft Comments Rebuttal at 7.



3907.60.20, the fact that the supermajority of the chips falling within Indian HTS category 3907.60.20 are not PET chips used in the production of film, and the fact of record that many of the chips that fall in competing provision HTS 3907.60.10 are chips of the kind used in the production of film further support an inference that India uses the ASTM 3:2 standard.<sup>82</sup> If India did not use the ASTM standard, the chips classified under HTS 3907.60.10 upon importation into India would have been classified in HTS 3907.60.20, resulting in a larger quantity of imports under this category.<sup>83</sup> Finally, Fuwei Films states that Indian Customs is aware of the impact of improper surrogate values on any antidumping calculation involving China due to the competition between Indian and Chinese film producers for the U.S. market, and therefore would have no incentive to make clear statements regarding the use of a standard PET chip testing methodology.<sup>84</sup>

In regard to a standard PET chip testing methodology used by Fuwei Films' BP&MB PET chip suppliers, Fuwei Films states that although three suppliers did not supply test methodology certificates, the physical characteristics of the chips supplied by these suppliers was placed on the record and such test results are consistent with those of the other three suppliers that did certify their use of the ISO 1:1 testing methodology.<sup>85</sup> Fuwei Films claims that had these test results been based on another test standard, either the results would have varied or Fuwei Films would have been purchasing chips with different properties. Therefore, because the chips were used in the same applications, the only reasonable conclusion is that the suppliers used same test methodology, *i.e.*, ISO 1:1.<sup>86</sup> Additionally, Fuwei Films claims that Petitioners, in a submission for the original investigation, states, "One of the tests, for example, involves the use

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<sup>82</sup> *Id.* at 7-8

<sup>83</sup> *Id.* at 8.

<sup>84</sup> *Id.* at 9.

<sup>85</sup> *Id.* at 14.

<sup>86</sup> *Id.*

of the solvents phenol and tetracholorethane at a ratio of 1:1{ISO 1:1} - this is the standard typically used in China, and the standard that the DuPont Group and its suppliers used to specify and test the PET chips at issue.”<sup>87</sup> Fuwei Films claims that Petitioners have supported the Department’s Draft Remand Results with this statement, and have again contradicted their own argument in this remand.<sup>88</sup>

**Department’s Position:**

The CIT ordered the Department to explain why it found that only “some” but not all of Respondents’ BP&MB PET chips were within HTS category 3907.60.10 if one accepts the logic that the proper classification of Respondents’ BP&MB PET chips in India requires conversion from ISO (PRC) to ASTM (India). To do so, we issued supplemental questionnaires to both Respondents to: 1) clarify the testing methodologies generally used in India and the PRC, and by Respondents’ BP&MB PET chip suppliers; and 2) obtain additional IV information and test certificates for Respondents’ BP&MB PET chips.<sup>89</sup>

In its questionnaire response, Fuwei Films provided a list for each BP&MB PET chip supplier for all BP&MB PET chip test certificates received during the 2008-2009 POR, along with BP&MB PET chip test certificates from the two months in which Fuwei Films received the largest volume of BP&MB PET test-certificated chips from each of its suppliers.<sup>90</sup> Fuwei Films also provided interconversions (ISO 1:1 to ASTM 3:2) based on the reported IV from the test certificates.<sup>91</sup> Additionally, Fuwei Films provided letters from three out of six of its BP&MB PET chip six suppliers, which confirm that each of those suppliers used the ISO 1:1 testing

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<sup>87</sup> Id. at 19; see also Respondents Post-Preliminary Surrogate Value Submission at Exhibit PSV-8, Investigation Submission of DuPont Teijin Films at 6.F.

<sup>88</sup> Id.

<sup>89</sup> See generally Fuwei Films Questionnaire; see also generally Green Packing Questionnaire.

<sup>90</sup> See generally Fuwei Films Response exhibits.

<sup>91</sup> Id.

methodology.<sup>92</sup> Green Packing provided IV data for its BP&MB PET chips from test certificates contemporaneous with the 2009-2010 POR along with interconversions (ISO 1:1 to ASTM 3:2) based on the reported IV results from that data.<sup>93</sup> After examining and analyzing the Respondents' questionnaire responses, we have determined that the IV of all Respondents' BP&MB PET chips, after conversion, are less than 0.64 DI/G, and, therefore, should be classified under Indian HTS 3907.60.10.<sup>94</sup>

Petitioners characterize our attempt to clarify the record as an admission of uncertainty by the Department as to the testing methodologies used by Indian Customs and PRC PET chip producers. This misrepresents the Department's intent to clarify the record by seeking additional information to determine whether it is appropriate to classify PET chips using either or both HTS categories. The CIT previously has upheld the Department's conclusion that based on record evidence from the underlying review, the PRC generally uses the ISO 1:1 testing methodology.<sup>95</sup> Furthermore, based on evidence from the underlying review, we agree with Fuwei Films that one of the petitioners, in an earlier segment, provided support for the Department's determination that the PRC generally uses the ISO 1:1 testing methodology for testing PET chips. In the investigation, DuPont Teijin Films (a respondent during the investigation and a petitioner in the underlying review) stated, "One of the tests, for example, involves the use of the solvents phenol and tetrachlorethane at a ratio of 1:1 - this is the standard typically used in China, and the standard that the DuPont Group and its suppliers used to specify and test the PET chips at issue."<sup>96</sup> We recognize that DuPont Teijin Films itself has not commented on general PRC testing methodologies since Petitioners' September 2011 court brief in Fuwei Films, and has not

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<sup>92</sup> Id.

<sup>93</sup> See Green Packing Response at Exhibit Remand-1.

<sup>94</sup> Id. at 18.

<sup>95</sup> See PET Film AR1 Remand at 14.

<sup>96</sup> See Respondents Post-Preliminary Surrogate Value Submission at Exhibit PSV-8, Investigation Submission of DuPont Teijin Films at 6.F.

commented on this remand at all since August 20, 2012.<sup>97</sup> Even so, the Department finds that Petitioners' positions regarding the PRC testing methodology (and Indian Customs' use of the ASTM 3:2 standard) are inconsistent with the positions previously articulated and certified by DuPont Teijin Films, and that Petitioners' current arguments remain unsupported by new or existing evidence that contradicts DuPont Teijin Films' previous statements.

Furthermore, by affirming the Department's use of HTS 3907.60.10, the CIT upheld the proposition that Respondents' BP&MB PET chips require conversion from the ISO 1:1 test results to the ASTM 3:2 test results to be properly classified in India.<sup>98</sup> This conversion is contingent upon acknowledging that Indian Customs uses the ASTM 3:2 methodology as its standard; otherwise, there is no way to define the conversion factor that results in an IV within the HTS 3907.60.10 range. Therefore, our determination that Indian Customs uses the ASTM 3:2 test as a standard is reasonable given the record of the underlying review and additional evidence from this remand proceeding.

In reference to the letters placed on the record regarding Indian Customs' PET chip testing methodologies, we disagree with Petitioners' claim that the Department "changed its mind" in regard to the content of the April 7, 2008, letter. We continue to find that the letter does not clearly state if Indian Customs used the ASTM standard exclusively, if the ASTM 3:2 standard is only one accepted standard, or if Indian Customs once tested a sample according to the ASTM standard on a single occasion. However, this letter, which confirms the use of the ASTM 3:2 testing methodology by at least one Indian Customs laboratory,<sup>99</sup> along with the letter dated April 20, 2011, which confirms that Indian Customs officials are aware of the importance

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<sup>97</sup> See Petitioners' Rebuttal, Petitioners Draft Comments, and Petitioners' Draft Comments Rebuttal.

<sup>98</sup> *Id.* at 15 ("Given the information on the administrative record, it was reasonable for Commerce to include data from HTS 3907.60.10 in its surrogate valuation of Respondents' PET chips.").

<sup>99</sup> See Letter dated April 7, 2008, where a Customs official stated "...confirmed from the Dy. Chief Chemist of this Custom House that the laboratory used the ASTM standard to verify the intrinsic viscosity and the goods are classified on the basis of intrinsic viscosity declared and forward after testing."

of IV and are familiar with the ASTM 3:2 testing methodology,<sup>100</sup> constitutes substantial evidence that Indian Customs uses the ASTM 3:2 testing methodology as a standard. In addition, the record lacks evidence contradicting the two letters from Indian Customs or supporting a conclusion that Indian Customs uses a different testing standard than ASTM 3:2 to classify imported PET chips. Therefore, our determination is supported by substantial evidence.<sup>101</sup>

Petitioners claim that the evidence placed on the record by Respondents confirms that ASTM 3:2 is not the standard methodology used by Indian Customs, because Indian Customs officials were “unwilling” to provide the standard used by Indian Customs to test PET chips. We disagree with Petitioners. The fact that Indian Customs did not identify a standard testing methodology in its April 20, 2011, letter does not support a finding that they were “unwilling” to do so as Petitioners suggest. We acknowledge the fact that Indian Customs did not specify a standard testing methodology, but neither the Department nor Petitioners can speculate as to its reason for not doing so. However, the April 20, 2011, letter confirming Indian Customs’ familiarity with the ASTM 3:2 methodology also clarifies that the New Custom House in Mumbai to which the question was directed is not equipped to determine IV and, therefore, personnel familiar with PET chip testing methodologies were not on hand to answer such questions. We based our determination on the contents of the April 7, 2008, and April 20, 2011, letters, which provide substantial evidence that Indian Customs uses the ASTM 3:2 testing methodology as a standard. The fact that the Customs House in Mumbai is not equipped to do

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<sup>100</sup> See letter dated April 20, 2011, where a Customs official stated “...intrinsic viscosity is an important parameter to ascertain grade classification of PET Chips which can be determined as per procedural methods prescribed under ASTM D 4603-03.”

<sup>101</sup> *Thai Plastic Bags Indus. Co. v. United States*, Slip Op. 12-86 at 3-4 (CIT 2012) (“Substantial evidence is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,’ ‘taking into account the entire record, including whatever fairly detracts from the substantiality of the evidence.’” (internal citations omitted)).

this testing is not sufficient evidence to support a finding that all of Indian Customs does not use this testing methodology, when other evidence clearly indicates the contrary. Furthermore, after reviewing the record of the underlying review, we agree with Fuwei Films that one of the petitioners itself has provided support, in an earlier segment, for the Department's determination in the Draft Remand Results regarding the standard use of the ASTM 3:2 testing methodology by Indian Customs. As mentioned above, DuPont Teijin Films stated, "The ASTM test method is the prevailing standard in many countries, including India." This statement provides additional support for our determination on this matter by indicating that even a petitioner once acknowledged that Indian Customs uses the ASTM 3:2 PET chip testing methodology as a standard.

In regard to Petitioners' assertion that the PET chip testing methodology certifications placed on the record by Fuwei Films have been fabricated, we find that it would not be unreasonable, or an abuse of discretion, to conclude that these test certificates have probative value with respect to the IV testing methodology used by Fuwei Films' BP&MB PET chip suppliers. Fuwei Films and their counsel have properly certified their submissions to us in accordance with 19 CFR 351.303 (g)(1) and (g)(2). Petitioners speculate based on the text of the certificates that they are false. The Department does not find this speculation persuasive and absent direct evidence that the testing methodology certifications are false, we accept them as accurate and legitimate. Therefore, we continue to find the PET chip testing methodology certifications placed on the record by Fuwei Films are valid and support our determinations that the PRC PET chip producers generally use the ISO 1:1 testing methodology, and that Fuwei Films' BP&MB PET chips should be classified under Indian HTS category 3907.60.10.

In reference to Petitioners' claim that there is insufficient evidence regarding the IV of Green Packing's BP&MB PET chips on the record to reasonably conclude that Green Packing's BP&MB PET chips, once converted, are less than 0.64 DI/G, we found Green Packing's statement that it destroyed all of its relevant BP&MB PET chip test certificates from the 2008-2009 POR creditable. Thus, we cannot reasonably require Green Packing to provide evidence which it no longer possesses. Green Packing submitted IV data contemporaneous with the 2009-2010 review, which, when converted, illustrate an IV less than 0.64 DI/G (i.e., Indian HTS 3907.60.10). We used the 2009-2010 review data along with the three certificates from the 2008-2009 administrative review and found a historical pattern that the BP&MB PET chips consumed by Green Packing fall within a certain range (i.e., Indian HTS 3907.60.10). There is no evidence that Green Packing would use BP&MB PET chips that fall outside that range. Therefore, our determination that all of Green Packing's chips consumed during the 2008-2009 POR reflect an IV less than 0.64 DI/g and should be classified under Indian HTS 3907.60.10 is supported by substantial evidence.

Based on the above analysis, we continue to find that substantial record evidence supports our conclusion that Indian Customs uses the ASTM 3:2 testing methodology as a standard, and that there is nothing on the record that disputes the use of ASTM 3:2 or confirms the use of any other testing methodology. Additionally, we find that Fuwei Films' test methodology certifications are valid evidence for this review. Finally, we continue to find that substantial evidence supports our conclusion that the BP&MB PET chips Green Packing consumed during the POR convert to an IV within the range of Indian HTS 3907.60.10.

Therefore, for the final remand determination for both Fuwei Films and Green Packing, we have continued to treat their BP&MB PET chips as classifiable under Indian HTS 3907.60.10.<sup>102</sup>

In reference to Fuwei Films' claim that the Department should have addressed substantively the other questions directed to it by the CIT in the remand order, we continue to find this consideration unnecessary. Because the Department continues to find that the record evidence supports classifying of all Respondents' BP&MB PET chips solely under Indian HTS 3907.60.10, the issue of whether the Department may use a simple average for valuing Respondents' BP&MB PET chips, and the issue of whether the Department should consider InfoDrive information to evaluate the validity of Indian HTS 3907.60.20 are moot. Should the CIT reject the Department's finding with regard to Respondents' BP&MB PET chips, the Department could reconsider these issues at that time.

**Comment 2: Whether the Department was Incorrect to Fault Petitioners for a "Lack of Contrary Evidence"**

Petitioners claim that Respondents bear the burden of proving that Indian SV data for 3907.60.20 are inappropriate. Petitioners claim that after Respondents failed to provide the Department with new evidence that would confirm that Indian Customs uses the ASTM 3:2 testing methodology as a standard, the Department faulted Petitioners for the "complete lack of

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<sup>102</sup> See Memorandum from Jonathan Hill to Robert Bolling, "2008-2009 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Fuwei Films (Shandong) Co., Ltd. Calculation Memorandum Pursuant to Final Remand Redetermination," ("Fuwei Films Final Redetermination Calculation Memo") dated October 1, 2012 at 1-2; see also memorandum from Jonathan Hill to Robert Bolling, "2008-2009 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Shaoxing Xiangyu Green Packing Co., Ltd. Calculation Memorandum Pursuant to Final Remand Redetermination," ("Green Packing Final Redetermination Calculation Memo") dated October 1, 2012 at 1-2; see also Memorandum from Jonathan Hill to Robert Bolling, "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Surrogate Value Memorandum Pursuant to Final Remand Redetermination," dated October 1, 2012 ("Final Redetermination SV Memo") at 2.



contrary evidence.”<sup>103</sup> Petitioners argue that the Department cannot blame Petitioners for a lack of evidence if the Department did not solicit the information from Petitioners.<sup>104</sup>

Additionally, Petitioners claim that the Department improperly dismissed the Petitioners’ concerns, by stating that “Petitioners have not provided any evidence regarding Respondents’ PET chip testing methodologies, the testing methodologies of their suppliers, or otherwise refuting the CIT’s holding that the Department may reasonably find that PRC PET chip producers generally and uniformly use the ISO standard.” Petitioners further claim that the Department is not justified in assigning blame to Petitioners, both because most, if not all, of the relevant evidence is in the sole possession of Respondents, and because the Department did not afford Petitioners an opportunity to provide such information in the post-remand proceedings.<sup>105</sup>

Fuwei Films states that the Department was not “blaming” Petitioners for a lack of contrary evidence, but rather holding that Petitioners had failed to submit evidence to the contrary.<sup>106</sup> In regard to evidence on the record, Fuwei Films states that Petitioners, under 19 CFR 351.301(c), had a right to submit rebuttal factual information up until August 23, 2012, and elected not to do so.<sup>107</sup> Further, Petitioners never chose, during the course of the remand proceeding, to place evidence on the record contrary to that supplied by respondents. Rather, Petitioners’ “approach” was to question the evidence submitted.<sup>108</sup>

### **Department’s Position:**

We agree with Petitioners that Respondents bear the burden of proving that Indian SV data for 3907.60.20 are inappropriate for valuing Respondents’ BP&MB PET chips. However, we disagree with Petitioners that Respondents have failed to do so. As previously discussed in

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<sup>103</sup> See Petitioners Draft Comments at 13.

<sup>104</sup> Id.

<sup>105</sup> See Petitioners Draft Remand Comments at 15.

<sup>106</sup> See Fuwei Films Draft Comments Rebuttal at 10.

<sup>107</sup> Id. at 11.

<sup>108</sup> Id. at 12.

the Department's Position under Comment 2, Respondents have provided record evidence proving their PET Chips should be classified under HTS 3907.60.10 and not under HTS 3907.60.20, and the Department has found that this record evidence constitutes substantial evidence to support our conclusion that all of Respondents' BP&MB PET chips are properly classified under Indian HTS classification 3907.60.10.

Petitioners' argument that the Department did not solicit evidence from them is an incorrect interpretation of the Department regulations and practice. Pursuant to 19 CFR 351.301(c), "any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party..." Therefore, once the Department opened the record to obtain new factual information from Respondents, Petitioners had the opportunity to provide information to rebut any factual information on the record. We agree with Fuwei Films that Petitioners chose not to take advantage of this opportunity. Instead, Petitioners only argue that Respondents have not provided enough evidence, or that somehow the information is flawed. For the reasons explained above in Comment 2, we disagree with Petitioners' assessment of the evidence and continue to find that Petitioners' arguments are not supported by the record. Indeed, in the underlying administrative proceeding, Petitioners availed themselves of this very regulatory provision.<sup>109</sup>

With respect to whether Petitioners had access to relevant rebuttal information, even though evidence regarding Respondents' PET chip testing methodologies may be in the sole possession of Respondents, evidence regarding the testing methodologies of Respondents' suppliers and other PRC PET chip producers is not. Furthermore, regardless of whether

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<sup>109</sup> See generally letter from Petitioners to the Secretary of Commerce "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Rebuttal comments regarding Post-Preliminary Surrogate Value Information by TianJin WanHua Co., Ltd., Shaoxing Green Packing Co., Ltd., and Fuwei Films (Shandong) Co., Ltd." dated September 20, 2010 (Petitioners placed factual information on the record to rebut SV information).

Petitioners have access to Respondents' information, the issue in this remand redetermination is whether any evidence exists to suggest that PRC PET chip producers use a different methodology than the ISO 1:1. Petitioners have not provided any record evidence that they attempted to obtain this information, nor have they explained why it would have been unavailable. As stated above, once the Department issued its supplemental questionnaires to the Respondents to obtain additional factual information about testing methods in the PRC, Petitioners had the opportunity to provide additional information to rebut any factual information on the record. However, Petitioners did not avail themselves of this opportunity. Specifically, Petitioners did not provide any additional information that would refute the use of the ISO 1:1 PET chip testing methodology or that would identify the use of any other testing methodology by Respondents' PET chip suppliers or PRC suppliers in general. Petitioners only argued (i.e., with no record evidence supporting their argument) that the facts on the record, which substantiate the use of the ISO 1:1 testing methodology, are in some way flawed.<sup>110</sup>

Additionally, we note that Petitioners had the opportunity during the 2008-2009 review to provide information which rebuts the argument that Indian Customs uses of the ASTM 3:2 testing methodology as a standard or that PRC PET chip producers use the ISO 1:1 testing methodology, including information that identifies the use of another testing methodology, but failed to do so. Therefore, Petitioners' assertion that the Department unfairly denied them the opportunity to place this information on the record is without merit.

Accordingly, we determine Petitioners had the opportunity rebut factual information placed on the record by Respondents and did not avail themselves of this opportunity, and that substantial record evidence continues to support the application of an IV conversion to properly classify Respondents PET chips under HTS 3907.60.10.

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<sup>110</sup> See Petitioners Draft Remand Comments at 14-15.

### **Comment 3: Whether the Department Has Properly Calculated Green Packing's Water and Electricity Costs**

Petitioners argue that the Department did not cite any record evidence or provide any explanation as to why it deems the column headings a more reliable indicator than the variable names for its determination to assign Green Packing's reported electricity factor to the calculated water input, and Green Packing's reported water factor to the calculated electricity input.

#### **Department's Position:**

In Green Packing's Supplemental Section D questionnaire response dated May 14, 2010, at Exhibit SD-11, Green Packing submitted a supporting worksheet containing the per-unit consumption calculation of its electricity and water factors. The worksheet reflects that Green Packing's FOP database column headings for these two factors were correct, but that the variable names below them were juxtaposed. Thus, the Department's corrections with respect to the calculation of Green Packing's water and electricity costs are supported. Therefore, for the final remand determination for electricity and water for Green Packing, we have not altered our calculation for electricity and water from our Draft Remand Results.<sup>111</sup>

### **Comment 4: Whether the Department Properly Calculated the Labor Rate for Respondents**

Petitioners claim that it is unclear how the Department calculated the labor rate for the draft remand redetermination. Specifically, Petitioners claim that they were unable to replicate the Department's calculation of the inflated Indian labor rate from March 2005 using the average POR CPI.

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<sup>111</sup> See Green Packing Redetermination Calculation Memo at 3; see also Green Packing Final Redetermination Calculation Memo at 1-2.

## **Department's Position:**

As an initial matter, Petitioners have not asserted any error in our labor rate calculation but instead simply stated that they are unable to replicate it. Consistent with Labor Methodologies, the Department obtained monthly CPI data as published by the IMF's International Financial Statistics under series "64..ZF Consumer Prices," and then calculated an average CPI rate based on the months of the POR (November 2008 to October 2009).<sup>112</sup> Subsequently, we inflated the Indian labor rate from March 2005, the most recent data available.<sup>113</sup> We inflated the March 2005 labor rate by dividing the average POR CPI by the reported 2005 CPI and multiplying the resulting quotient by the labor rate.<sup>114</sup> We used the surrogate wage rate valued in Indian rupees and applied the daily exchange rate in the SAS program, consistent with the Department's methodology applied to all other SVs denominated in foreign currencies.<sup>115</sup> The Department has calculated an Indian industry specific labor rate of 47.0255 Rs./Hr. Therefore, for the final remand determination for labor, we have not altered our calculation from our Draft Remand Results.<sup>116</sup>

## **Comment 5: Whether the Department should Offset Positive Margins by Negative Margins in the Calculation for Fuwei Films**

In its Draft Remand comments, Fuwei Films claims that it is unlawful for the Department to refuse to offset the very few positive margins by the very large number of negative margins and that the Department should, therefore, adjust the margin to reflect a final assessment rate of zero for all Fuwei Films transactions. Fuwei Films argues that the statute does not differentiate

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<sup>112</sup> See Redetermination SV Memo at Exhibit 2.

<sup>113</sup> Id.

<sup>114</sup> Id.; see also Final Redetermination SV Memo at 1.

<sup>115</sup> See Memorandum from Jonathan Hill to Robert Bolling, "2008-2009 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Fuwei Films (Shandong) Co., Ltd. Calculation Memorandum Pursuant to Draft Remand Redetermination," dated September 6, 2012 at Attachment 2; see also Green Packing Redetermination Calculation Memo at Attachment 2.

<sup>116</sup> See Redetermination SV Memo at 2; see also Final Redetermination SV Memo at 1.

between reviews and investigations for purposes of determining whether or not to offset positive margins with negative margins; therefore, the Department cannot have inconsistent interpretations of the same statutory provision when calculating dumping margins in reviews and investigations. Fuwei Films also claims that the Department is now offsetting positive margins with negative margins in administrative reviews,<sup>117</sup> and has done so retroactively in multiple reviews which cover periods prior to the period covered in this administrative review. Thus, Fuwei Films states that the Department is treating reviews which occurred both before and after this review in a different manner than this review. Fuwei Films states that the statute does not contain any language which would permit the Department to act differently in different reviews. Therefore, the Department should adjust the calculation for Fuwei by offsetting the positive margins with the negative margins.

Petitioners state that the Final Modification stipulated that it would apply only with respect to administrative reviews where the preliminary results were issued on or after April 16, 2012.<sup>118</sup> In this review, the Preliminary Results were issued on August 16, 2010.<sup>119</sup> Therefore, consistent with the Final Modification, the Department should not offset positive dumping margins with negative margins in this review.<sup>120</sup> Furthermore, Petitioners argue that the text of Section 129 of the URAA<sup>121</sup> expressly provides that action taken pursuant to Section 129 need not be consistent with the provisions of the Act. Therefore, there is no requirement that the

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<sup>117</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (“Final Modification”) (February 14, 2012).

<sup>118</sup> See Final Modification, 77 FR at 8111-13.

<sup>119</sup> See Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review, 75 FR 49893 (August 16, 2010) (“Preliminary Results”).

<sup>120</sup> See Petitioners’ Draft Comments Rebuttal at 6.

<sup>121</sup> 19 U.S.C. 3538(b)(2).

Department's actions in this review be consistent with the Department's recent Section 129 Determination.<sup>122</sup>

### **Department's Position:**

We disagree with Fuwei Films. Fuwei Films had the opportunity during the administrative review to raise the issue of whether or not the Department should offset positive margins with negative margins but failed to do so. In fact, the Court has already ruled that the Department never had the opportunity to decide the issue in the Final Results because Fuwei Films failed to raise the issue in its case brief, and specifically denied Fuwei Films' motion to amend its complaint to include that issue in the resulting litigation.<sup>123</sup> Therefore, it is both unnecessary and inappropriate for the Department to address Fuwei Films' arguments, particularly in light of the Court's remand which limits the Department's reconsideration to specific issues regarding the SV for the respondent's BP&MB PET chips, and the issues for which the Department requested voluntary remands. We, therefore, decline to reconsider whether or not to offset positive margins with negative margins in this instance.

### **Comment 6: Whether the Department should Reject Petitioners' Rebuttal Comments**

Fuwei Films objects to the Petitioners' Rebuttal Comments and requests that they be stricken from the record and not considered by the Department.<sup>124</sup> Fuwei Films claims that in the Draft Remand Results, the Department stated, "Please submit comments to the Department on this draft redetermination no later than September 13, 2012."<sup>125</sup> Fuwei Films contends that no

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<sup>122</sup> See Petitioners' Draft Comments Rebuttal at 8 (citing Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act: Stainless Steel Plate in Coils From Belgium, Steel Concrete Reinforcing Bars From Latvia, Purified Carboxymethylcellulose From Finland, Certain Pasta From Italy, Purified Carboxymethylcellulose From the Netherlands, Stainless Steel Wire Rod From Spain, Granular Polytetrafluoroethylene Resin From Italy, Stainless Steel Sheet and Strip in Coils From Japan, 77 FR 36257 (June 18, 2012) ("Section 129 Determination")).

<sup>123</sup> See Fuwei Films (Shandong) Co. v. United States, 791 F. Supp. 2d 1381 (CIT 2011).

<sup>124</sup> See Fuwei Films Objection at 1.

<sup>125</sup> Id. at 2.

other deadlines were set forth for this matter and no request was filed by any party seeking leave to file rebuttal comments and requesting that the Department set such a deadline.<sup>126</sup>

**Department's Position:**

We agree with Fuwei Films in part. Although the Department did not set a deadline for submitting rebuttal comments, the Department did not preclude rebuttal comments by any interested party or explicitly state in the Draft Remand Results that interested parties could not submit rebuttal comments. However, the Department recognizes that Fuwei Films was not aware that Petitioners were told rebuttal comments could be filed.<sup>127</sup> Therefore, to ensure all interested parties were treated equally, we requested an extension of the deadline to file the final remand results in order to give Fuwei Films and Green Packing the opportunity to file rebuttal comments regarding Petitioners' Draft Remand Comments. As mentioned above, the CIT granted our extension request and set a new deadline of October 15, 2012. On October 3, 2012, Fuwei Films submitted rebuttal comments. Therefore, all parties have had an equal opportunity to provide rebuttal comments, and we will not strike from the record Petitioners' Rebuttal Comments.

**IV. RESULTS OF THE FINAL REDETERMINATION**

Pursuant to the CIT's instructions, we have examined the record of this administrative review and remand proceeding and considered interested parties' arguments in this segment of the proceeding. Upon full examination of the record evidence, the Department has determined to use Indian HTS 3907.60.10 to generate an SV for all of Fuwei Films' and Green Packing's PB&MB PET chips, revised the labor rate to reflect the Department's current methodology, and revised its calculation of Green Packing's reported per-unit electricity and water consumption.

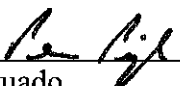
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<sup>126</sup> *Id.*

<sup>127</sup> See Letter from Jonathan Hill to the File "Phone Conversation with Counsel for DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc." dated September 28, 2012.



We have implemented all changes discussed above and have revised the margins for Fuwei Films and Green Packing. As a result of the redetermination, the antidumping duty margin for Fuwei Films is 0.27 percent and the antidumping duty margin for Green Packing is 0.00 percent.

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

15 OCTOBER 2012  
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(Date)