Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC. 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1994, the Department published in the **Federal Register** (59 FR 9960) the preliminary results of its administrative review of the antidumping duty order on PET film (56 FR 25660, June 5, 1991). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22.

One firm, Diafoil, did not respond to the Department's questionnaire. Therefore, we are using best information otherwise available (BIA) for cash deposit and appraisement purposes. As BIA for Diafoil, we determined the dumping margin to be 14.00 percent, the highest margin calculated in any administrative review or the original investigation.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioners, all three respondents and one interested party. All parties participated in the hearing held on April 14, 1994.

Scope of the Review

Imports covered by the review are shipments of all gauges of raw, pretreated, or primed PET film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of this order are metallized films and other finished films that have had a least one of their surfaces modified by the application of performance-enhancing resin or inorganic layer more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film from Japan is currently classifiable under Harmonized Tariff Schedule (HTS) item number 3920.62.0000. The HTS item numbers are provided for convenience and for Customs purposes only. The written descriptions remain dispositive.

Analysis of Comments Received

Comment 1: Toray Plastics America (TPA), an interested party, argues that the Department should use BIA for Diafoil, because Diafoil refused to answer the Department's questionnaire.

Diafoil responds that it is not uncooperative, only unresponsive. Diafoil objects to TPA's attempt to characterize Diafoil as an ''uncooperative party'' just because Diafoil declined to respond to the Department's questionnaire. Diafoil argues that, as a small exporter, it did not respond because of the excessive burden and cost involved.

Department's Position: In accordance with section 776(c) of the Tariff Act, the Department uses BIA in cases where a party refuses to respond to the questionnaire, is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes the proceedings. The Department uses a two-tiered approach in its choice of BIA. For uncooperative respondents or respondents who substantially impede the proceedings (first tier), the Department uses the higher of (1) the highest rate for any company from the original investigation or any prior administrative review or (2) the highest rate found in the current review for any company. For respondents which attempt to cooperate (second tier), the Department uses the higher of (1) the highest rate ever applicable to that firm for the subject merchandise or (2) the highest calculated rate in the current review for any firm (*see Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from France, et al.*, 58 FR 39729, July 26, 1993).

Accordingly, whether Diafoil is characterized as uncooperative or unresponsive, in accordance with the current statute, we must apply BIA. In accordance with our two-tier BIA policy, Diafoil's rate will be 14 percent, the highest rate for any company from the original investigation (*see Polyethylene Terephthalate Film, Sheet, and Strip from Japan*, 56 FR 25660, June 5, 1991).

Comment 2: TPA states that since Diafoil refused to answer the Department's questionnaire and in light of the substantial difference between Diafoil's current deposit rate and its new BIA rate, the Department should publish immediately a determination establishing a new BIA deposit rate for future entries of PET film produced or exported by Diafoil.

TPA claims that nothing in the antidumping law, or in the Department's regulations, requires that the Department wait until the conclusion of its review before establishing a new deposit rate for a foreign producer or exporter that has utterly refused to participate in the proceeding.

Department's Position: Deposit rates can only be changed after conducting an administrative review, in accordance with Section 751 of the Tariff Act. Our regulations require that we issue preliminary results of review and allow parties to ask for disclosure of the calculation methodology, submit written argument and rebuttal comments and the opportunity to ask for hearings (19 CFR 353.22 and 353.38).

Comment 3: Toray argues that for these final results the Department should calculate two margins for this review: one for the period preceding issuance of the antidumping duty order (*i.e.*, November 30, 1990, through May 31, 1991) and a second for Toray's sales in the first 12 months following issuance of the order (*i.e.*, June 1, 1991, through May 31, 1992). Toray maintains that the Department should instruct Customs to use the margin from the latter period as the basis for Toray's cash deposits on future entries.

Toray states that because antidumping duties are intended to be remedial, rather than punitive, in nature, they should reflect a respondent's current pricing practices. Accordingly, the Department's final results in this review should demonstrate that Toray has eliminated or substantially reduced its dumping margin in the period following publication of the antidumping duty order. Toray argues that the Department's regulations implicitly require the calculation of a separate, weighted-average margin for a respondent's first full year of sales under an order. If the Department fails to do this, Toray contends, it frustrates the intent of its own regulations by effectively extending the qualifying period for company-specific revocations to four years, thereby making necessary additional administrative reviews that otherwise might have been made unnecessary by respondents' good faith efforts to amend their pricing practices immediately after a less-than-fair-value (LTFV) investigation. Toray further contends that the courts have held that a respondent's weighted-average dumping margin should reflect a respondent's current pricing practices.

The petitioners, E. I. Du Pont de Nemours & Company, Inc., Hoeschst Celanese Corporation, and ICI Americas Inc., argue that the Department's consistent practice during the first administrative review is to use the period between the date provisional measures were first applied and the month before the first anniversary date of the antidumping duty order. This is a reasonable exercise of the Department's administrative discretion in implementing section 751 of the