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January 2, 2014

**MEMORANDUM TO:** Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**FROM:** Richard Weible  
Office Director  
Antidumping and Countervailing Duty Operations, Office 6

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
2011 to 2012 Administrative Review of the Antidumping Duty  
Order on Polyethylene Terephthalate Film, Sheet, and Strip from  
Brazil

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## I. Summary

We have analyzed the case and rebuttal briefs of interested parties in this administrative review of the antidumping duty order on Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Brazil. We recommend you approve the conclusions described in the “Discussion of Issues” section of this memorandum. The issues for which we received comments are discussed below.

## II. Background

On August 16, 2013, the Department of Commerce (the Department) published the Preliminary Results of the 2011-2012 administrative review of the antidumping duty order on Polyethylene Terephthalate Film, Sheet, and Strip from Brazil.<sup>1</sup> This review covers one respondent, Terphane Ltda., and Terphane’s U.S. affiliate, Terphane, Inc. (collectively, Terphane). The petitioners in this proceeding are Mitsubishi Polyester Film, Inc. and SKC, Inc. (collectively, Petitioners). We invited parties to comment on the Preliminary Results. In response, we received a case brief

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<sup>1</sup> See Polyethylene Terephthalate Film, Sheet and Strip From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 50029 (August 16, 2013) (Preliminary Results), and accompanying Decision Memorandum (Preliminary Decision Memorandum).

from Petitioners on September 16, 2013.<sup>2</sup> Terphane filed a rebuttal brief on September 23, 2013.<sup>3</sup>

### **III. Scope of the Order**

The products covered by the order are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

### **IV. Discussion of Issues**

#### **Issue 1: Whether to Rescind or to Complete the Administrative Review**

Petitioners argue the Department should rescind this administrative review in full because Petitioners claim that all parties that requested a review, Terphane Ltda. and Petitioners,<sup>4</sup> submitted timely requests for withdrawal.<sup>5</sup> Petitioners note 19 C.F.R. 351.213(d)(1) states, “The Secretary of Commerce will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.” Petitioners argue, therefore, that 19 C.F.R. 351.213(d)(1) directs the Department to rescind an administrative review if the parties that request the review withdraw the request within 90 days of the publication of the notice of initiation of the review.<sup>6</sup>

Petitioners note that in a letter to the Department dated February 28, 2013, Terphane stated: “pursuant to 19 C.F.R. § 351.213(d)(3), we request that the Department of Commerce rescind the above-referenced administrative review with regard to Terphane.”<sup>7</sup> Petitioners note that in a letter to the Department dated April 1, 2013, Petitioners and Toray Plastics (America), Inc.,

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<sup>2</sup> See case brief from Petitioners, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip From Brazil: Petitioners' Case Brief” (September 16, 2013) (Petitioner’s Case Brief).

<sup>3</sup> See rebuttal brief from Terphane, “Polyethylene Terephthalate (PET) Film, Sheet, And Strip From Brazil/Rebuttal Brief Of Terphane, Inc. And Terphane, Ltda.” (September 23, 2013) (Terphane’s Case Brief).

<sup>4</sup> See letter from Petitioners and Toray Plastics (America), Inc., to the Department, “Request for Antidumping Duty Administrative Review” (Nov. 30, 2013) (Petitioner’s Review Request); and letter from Terphane to the Department, “Request for Administrative Review” (Nov. 30, 2013) (Terphane’s Review Request).

<sup>5</sup> See Petitioner’s Case Brief at 1.

<sup>6</sup> The Notice of Initiation published on December 31, 2012 (See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 77017, 77019 (December 31, 2012) (Notice of Initiation). Therefore, the 90-day deadline for withdrawing a review request expired March 31, 2013.

<sup>7</sup> See letter from Terphane to the Department, “No Shipment Certification for Terphane” (February 28, 2013) (Terphane’s No-Shipment Certification), at 2.

stated: “we hereby withdraw our request for an antidumping duty administrative review of Terphane, Inc., and Terphane, Ltda.”<sup>8</sup> Petitioners also note that Terphane repeated its request on April 16, 2013, stating: “pursuant to 19 C.F.R. § 351.213(d)(3), we again request that the Department of Commerce rescind the above-referenced administrative review with regard to Terphane.”<sup>9</sup> Petitioners argue, therefore, that the Department must rescind the review, in accordance with 19 C.F.R. 351.213(d)(1).<sup>10</sup>

Petitioners also note the Department’s statement that we would “complete the review with respect to {Terphane} ... as is our recent past practice”<sup>11</sup> and the Department’s citation to Shrimp from Thailand.<sup>12</sup> Petitioners claim, however, that in Shrimp from Thailand, the Department affirmed the general principle that “[s]ince the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of {U.S. Customs and Border Protection} data that there were no shipments of subject merchandise during the POR.”<sup>13</sup> Petitioners argue, therefore, that in Shrimp from Thailand, rather than abandoning that practice of rescinding with regard to no-shipment respondents, the Department departed from this general principle in one instance, because it would have to complete the review with respect to two other respondents, and in order to maintain the Department’s treatment of U.S. reseller sales of which the foreign producers had no knowledge. Petitioners argue, in contrast, that similar circumstances do not exist in the instant review. Therefore, Petitioner’s argue that the Department should adhere to its established practice of rescinding no-shipment respondents.<sup>14</sup>

Terphane takes no position on Petitioners’ argument that the Department should rescind this administrative review rather than issuing final results. Terphane argues, however, that it never withdrew its request for an administrative review pursuant to 19 C.F.R. 351.213(d)(1). Terphane insists, rather, that it requested that the review be rescinded pursuant to 19 C.F.R. 351.213(d)(3), which states that the Department “may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if {the Department} concludes that, during the period covered by this review, there were no entries, exports, or sales of the subject merchandise.”

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<sup>8</sup> See letter from Petitioners to the Department, “Withdrawal of Request for Antidumping Duty Administrative Review” (April 1, 2013) (Petitioner’s Review Request Withdrawal), at 1.

<sup>9</sup> See Letter from Terphane to the Department, “Response to Department’s March 27, 2013 Deficiency Letter” (April 16, 2013) (Terphane’s March 27, 2013, Response), at 2.

<sup>10</sup> See Petitioner’s Case Brief at 3.

<sup>11</sup> See Preliminary Results, 78 FR 50029, 50031.

<sup>12</sup> See Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke the Order (in Part); 2011-2012, 78 FR 15686 (March 12, 2013) (Shrimp from Thailand) and accompanying Decision Memorandum (Shrimp from Thailand Preliminary Decision Memorandum) (unchanged in Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part); 2011-2012, 78 FR 42497 (July 16, 2013) (Shrimp from Thailand Final)).

<sup>13</sup> See Shrimp from Thailand Preliminary Decision Memorandum at 8.

<sup>14</sup> See Petitioner’s Case Brief at 4.

## Department's Position:

We disagree with Petitioner. Consistent with our current practice, we have completed this review after confirming that Terphane had no shipments during the period of review ("POR"). This practice ensures that all relevant entries covered in this review will be subject to liquidation at the all others rate, which is applicable to this review. Moreover, contrary to the Petitioner's assertion that Shrimp From Thailand represents a departure from our normal practice, the position taken in this review and in Shrimp from Thailand is consistent with the Department's current practice.<sup>15</sup>

In Shrimp from Thailand, the Department received no-shipment claims from 13 companies named in the initiation notice. The Department subsequently confirmed with U.S. Customs and Border Protection (CBP) the no-shipment claims made by 11 of the companies enumerated in the initiation notice, and preliminarily determined that the 11 companies had no reviewable transactions during the POR.<sup>16</sup> The Department further noted in the Shrimp from Thailand Preliminary Decision Memorandum, that "since the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR."<sup>17</sup> The Department further explained that as a result, "we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry," in such circumstances.<sup>18</sup>

The Department also noted in the Shrimp from Thailand Preliminary Decision Memorandum, that "in our May 6, 2003, 'automatic assessment' clarification, we explained that, where respondents in an administrative review demonstrate they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding."<sup>19,20</sup>

However, in Shrimp from Thailand, the Department also recognized the possibility that where there are entries of respondents' merchandise which were sold through resellers without the knowledge of respondents, the practice of liquidating no-shipments respondents' entries at the deposit rate in effect on the date of entry could thwart our intent to liquidate entries at the all-others rate which is applicable to that proceeding. As the Department explained in the Shrimp

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<sup>15</sup> See, e.g., Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 38938, 38939 (June 28, 2013) (Polyester Staple Fiber from Taiwan); Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012, 78 FR 42492, 42493 (July 16, 2013) (Shrimp from India); and Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 50376, 50377 (August 19, 2013) (Polyethylene Retail Carrier Bags from Thailand).

<sup>16</sup> See Shrimp from Thailand Preliminary Decision Memorandum at 7.

<sup>17</sup> Id. at 8.

<sup>18</sup> Id.

<sup>19</sup> Id., citing Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

<sup>20</sup> We explained in Shrimp from Thailand that this applies only if there was no rate for the intermediate companies involved in the transaction, otherwise we assess duties at intermediate company's own rate. See Shrimp from Thailand, 78 FR 15686, 15690-15691.

from Thailand Preliminary Decision Memorandum, “Because ‘as entered’ liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the 11 companies listed above, and exported by other parties, at the all-others rate....”<sup>21</sup> Accordingly, we did not rescind the administrative review with regard to those 11 respondents. On the contrary, we explained that “it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to these 11 companies and issue appropriate instructions to CBP based on the final results of the review.”<sup>22</sup>

The circumstances which the Department found to be sufficient to complete the review with regard to the 11 companies in Shrimp from Thailand (no-shipment claims, confirmation with CBP of the no-shipments, and a preliminary finding that companies had no reviewable transactions) are comparable to those which pertain to Terphane here. In this review, we received a no-shipment claim from Terphane. We subsequently confirmed the no-shipment claim made by Terphane using CBP data. We then preliminarily found Terphane had no reviewable transactions during the POR. Thus, all of the relevant facts discussed in Shrimp from Thailand concerning whether to complete the review with regard to the 11 companies in question are analogous to the circumstances which exist for Terphane in the instant proceeding.<sup>23</sup> Moreover, we note that the Department’s practice has been confirmed in several subsequent proceedings to Shrimp from Thailand, including Shrimp from Thailand Final, Polyester Staple Fiber from Taiwan, Shrimp from India, and Polyethylene Retail Carrier Bags from Thailand.

Further, Petitioners’ arguments regarding our reasons in Shrimp from Thailand for rescinding the review for one no-shipment respondent, but completing the review with regard to certain other no-shipment respondents, is a misreading of our reasoning. There, the Department rescinded the review with respect to Tanaya International Co., Ltd., a no-shipment respondent who had never been a producer or exporter because, as we explained in that case, “According to 19 C.F.R. § 351.213(b), the Department conducts administrative reviews on exporters or producers covered by an order. In this particular situation, Tanaya is neither an exporter nor manufacturer of the subject merchandise.”<sup>24</sup> No party has claimed that Terphane is not a producer/exporter or the subject merchandise. On the contrary, record evidence shows Terphane is a producer/exporter.<sup>25</sup> Therefore, rescinding the review would be contrary to our current and considered practice of completing reviews of no-shipment respondents covered by the order.

Further, as explained above, 19 C.F.R. § 351.213(d)(3), under which Terphane made its rescission request, discusses the Department’s authority to rescind an administrative review with regard to an exporter or producer if there were no entries of the subject merchandise. Moreover, 19 C.F.R. § 351.213(d)(3) states that the Department may rescind the review with regard to such respondents. That regulation, however, does not compel the Department to rescind the review.

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<sup>21</sup> See Shrimp from Thailand Preliminary Decision Memorandum at 8.

<sup>22</sup> Id.

<sup>23</sup> See Shrimp from Thailand Preliminary Decision Memorandum at 7 and Preliminary Decision Memorandum at 1.

<sup>24</sup> See Shrimp from Thailand, 78 FR 15686, 15688.

<sup>25</sup> See, e.g., Terphane’s Review Request at 1.

With respect to the Petitioner's argument that Terphane's No-Shipment Certification constitutes a withdrawal of a request for review under 19 C.F.R. § 351.213(d)(1), we disagree. First, Terphane's submission did not state that Terphane is withdrawing its review request under 19 C.F.R. § 351.213(d)(1); rather Terphane stated that "pursuant to 19 C.F.R. § 351.213(d)(3), we request that the Department of Commerce rescind the above-referenced administrative review with regard to Terphane."<sup>26</sup> Moreover, Terphane itself claims that it did not withdraw its request for an administrative review pursuant to 19 C.F.R. § 351.213(d)(1), a position that is consistent with Terphane's rescission request. Because Terphane's request was made solely on the basis of Terphane's no-shipment claim, we find that Terphane's submission was not a withdrawal of review request in accordance with 19 C.F.R. § 351.213(d)(1). Accordingly, applying the reasoning in Polyester Staple Fiber from Taiwan, Shrimp from Thailand Final, Shrimp from India, and Polyethylene Retail Carrier Bags from Thailand in the instant review, we have completed the review with regard to Terphane, and applied the applicable all-others rate of 28.27 percent.

## **Issue 2: Whether to Structure the Final Results and Resulting Customs Instructions to Allow for Subsequent Revision, In Light of Pending Litigation**

Petitioners argue in the alternative, that Terphane had subject imports during the POR, namely those entries of merchandise subject to the Department's January 7, 2013, scope determination regarding PET film from Brazil,<sup>27</sup> which Petitioners have appealed, and which is currently pending before the Court of International Trade (CIT).<sup>28</sup> Therefore, Petitioners argue that any final results and any liquidation instructions issued in this review should account for the fact that the Department's Scope Ruling may ultimately be overturned by the CIT.<sup>29</sup>

Petitioners note that in the Preliminary Results, the Department stated there is "no evidence of any reviewable entries, shipments or sales of subject PET film by Terphane during the POR, {and therefore} we are issuing a preliminary no shipment determination."<sup>30</sup> Petitioners argue that the Department's ruling is based on the Department's finding that "entries of PET film {during the POR} had been liquidated as non-subject merchandise, with a refund of all tendered cash deposits."<sup>31</sup> However, Petitioners suggest that entries during the POR for which Terphane deposited duties relate to subject merchandise.<sup>32</sup> Petitioners note that the Department's Scope Ruling states that Terphane's copolymer surface film products are "outside the scope of the antidumping duty order on PET film, sheet, and strip from Brazil, provided Terphane can establish, to the satisfaction of {CBP}, that the performance-enhancing layer is greater than 0.00001 inches thick."<sup>33</sup> Petitioners claim that Terphane submitted no evidence regarding the thickness of the copolymer layer on its entries of PET film during the POR. Petitioners argue

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<sup>26</sup> See Terphane's No-Shipment Certification at 2.

<sup>27</sup> See Memorandum from Richard Weible to Christian Marsh, "Antidumping Duty Order on PET Film, Sheet, and Strip from Brazil: Final Scope Ruling, Terphane, Inc. and Terphane Ltda." (Jan. 7, 2013) (Department's Scope Ruling).

<sup>28</sup> See Mitsubishi et al. v. United States, Court No. 13-62.

<sup>29</sup> See Petitioner's Case Brief at 1 and 5.

<sup>30</sup> See Preliminary Decision Memorandum at 1.

<sup>31</sup> Id. at 9.

<sup>32</sup> See Petitioner's Case Brief at 5.

<sup>33</sup> See Department's Scope Ruling at 14.

that the thickness of such a performance-enhancing layer is a necessary factor in determining whether the merchandise is subject to the order.<sup>34</sup> Petitioners conclude, therefore, that CBP decided to liquidate Terphane's entries as non-subject merchandise on the basis of the Department's Scope Ruling.<sup>35</sup>

Accordingly, Petitioners argue if the Department issues final results or liquidation instructions in this review, then the Department should structure them so they can be revised subsequently in light of the outcome of the CIT case, in order to preserve Petitioners' right to relief with respect to subject entries during the POR.<sup>36</sup>

Terphane insists it did not have subject imports during the POR.<sup>37</sup> Terphane argues that the Department and CBP have already determined that Terphane's entries during the POR do not contain subject merchandise.<sup>38</sup> Terphane disagrees with Petitioners' assertion that Terphane has not submitted sufficient evidence to show that the entries did not contain subject merchandise. Terphane notes that the scope determination required that Terphane establish to the satisfaction of CBP that the resinous surface layer on Terphane's Products is 0.00001 inches thick. Terphane also notes that the liquidation instructions state that CBP should liquidate entries containing copolymer surface films with measurable "COEX" surface layers greater than 0.00001 inches in thickness, "as determined by CBP."<sup>39</sup> Terphane argues that because CBP has liquidated all of its entries from this POR, CBP was satisfied that the merchandise covered by the entries in question is not subject merchandise.<sup>40</sup>

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

We find no basis for including merchandise determined to be outside the scope of this review in the final results of this review. The Department determined that Terphane's copolymer surface film products<sup>41</sup> are outside the scope of the order "provided Terphane can establish, to the satisfaction of {CBP}, that the performance-enhancing layer is greater than 0.00001 inches thick."<sup>42</sup> As we explained in the Preliminary Results, Terphane provided evidence that all of its type 03/antidumping entries of PET film had been liquidated by CBP as non-subject merchandise, with a refund of all tendered cash deposits.<sup>43</sup> Further, we confirmed the last of these entries were, in fact, liquidated by CBP without regard to antidumping duties in a customs data run placed on the record on June 5, 2013.<sup>44</sup> Moreover, Terphane's entries during the POR were not covered by any injunction preventing the liquidation of such entries. We will not speculate regarding the outcome of litigation concerning the scope ruling.

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<sup>34</sup> See Petitioner's Case Brief at footnote 14.

<sup>35</sup> Id. at 5.

<sup>36</sup> Id.

<sup>37</sup> See Terphane's Rebuttal Brief at 1.

<sup>38</sup> Id. at 3.

<sup>39</sup> See Terphane's Rebuttal Brief at 2, referencing CBP Message No. 3023302 (Jan. 23, 2013).

<sup>40</sup> See Terphane's Rebuttal Brief at 2.

<sup>41</sup> According to Terphane, its copolymer surface film products were covered by Terphane's 10.21/32, 10.21/40, 10.21/48, 10.21/92, 10.81/48, 10.91/48, 10.96/48 commercial product codes during the POR (see, e.g., Terphane's No-Shipment Certification at 2).

<sup>42</sup> See Department's Scope Ruling at 14.

<sup>43</sup> See Letter from Terphane, dated April 16, 2013.

<sup>44</sup> See Letter from Robert James, Program Manager, to all interested parties, dated June 5, 2013.

Although Petitioner challenged the Department’s Scope Ruling before the CIT, unless or until there is a final judgment invalidating the Department’s determination, by statute, this administrative determination is presumed to be correct.<sup>45</sup> The Department’s scope ruling is entitled to the presumptions of administrative correctness and finality. The Department will not, therefore, as Petitioners suggest, “structure {the final results or liquidation instructions} so they can be revised subsequently, in light of the outcome of the CIT case.” Rather, the Department’s Scope Ruling remains in effect, pending the outcome of the CIT case.

**Recommendation:**

Based on our analysis of the comments received, we recommend adopting the positions set forth in the “Department’s Position” sections above. If this recommendation is accepted, we will publish these final results, including the final dumping margins for all companies subject to this review in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

\_\_\_\_\_  
Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

\_\_\_\_\_  
Date

<sup>45</sup> See Shandong Huarong Gen. Group Corp. v. United States, 122 F. Supp. 2d 143, 148 (CIT 2000) (“By statute, Commerce’s administrative review determinations are presumed to be correct and the burden of proving otherwise rests exclusively upon the party challenging such decision.” (citing 28 U.S.C. 2639a(1))). Because the results of the administrative reviews are presumed to be correct for a court action appealing them, they must also be presumed to be correct in the context of an administrative review.