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Administrative Review
POR: 9/1/10 – 8/31/11
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AD/CVD O8: CR/GM

April 9, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Lined Paper Products from India: Issues and Decision
Memorandum for the Final Results of the Fifth Antidumping Duty
Administrative Review of Certain Lined Paper Products from India
(2010-2011)

Summary

We have analyzed the case and rebuttal briefs of the Petitioner¹ and Respondents² for the final results in the fifth administrative review of certain lined paper products (CLPP) from India. We recommend that you approve the positions we have developed in the “Department’s Position” sections of this memorandum.

I. Background

On October 9, 2012, the Department of Commerce (the Department) published in the *Federal Register* the preliminary results of the antidumping duty administrative review for certain lined paper products (CLPP) from India.³ The period of review (POR) is September 1, 2010, through August 31, 2011. We invited parties to comment on our *Preliminary Results*.

On November 8, 2012, Riddhi and SAB submitted their respective case briefs. On November 8, 2012, Pioneer Stationery Private Limited (Pioneer) also submitted its case brief; however, the

¹ The Petitioner in this administrative review is the Association of American School Paper Suppliers (AASPS) and its individual members (Petitioner).

² The Respondents in this review include two mandatory respondents, Riddhi Enterprises (Riddhi) and SAB International (SAB) (collectively, Respondents). This review also covers 55 additional manufacturers and exporters of the subject merchandise that were not selected for individual review (collectively, the non-selected respondents). The names of the 55 non-selected respondents are listed in the notice accompanying this memorandum and in *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 67133 (October 31, 2011) (*Initiation Notice*).

³ See *Certain Lined Paper Products From India: Antidumping Duty Administrative Review; 2010-2011*, 77 FR 61381 (October 9, 2012) (*Preliminary Results*).

Department rejected this brief because it contained untimely filed factual information.⁴ On November 13, 2012, Petitioner filed its case briefs regarding Riddhi and SAB. Pursuant to the Department's instructions, Pioneer submitted its revised case brief on December 3, 2012, which excluded the untimely filed factual information. On December 6, 2012, Riddhi and SAB filed their respective rebuttal briefs. On December 7, 2012, Petitioner and Navneet Publications (India) Ltd. (Navneet) filed rebuttal briefs.⁵ On January 14, 2013, Petitioner's counsel met with officials from the Department.⁶ On February 1, 2013, Pioneer requested that the Department extend the deadline for the final results of this review to address issues affecting Pioneer. On February 4, 2013, Petitioner requested that the Department reject Pioneer's extension request.

On February 8, 2013, the Department extended the time limit for the final results from February 8, 2013, to April 9, 2013.⁷

On March 20, 2013, Pioneer submitted an unsolicited letter requesting that the Department completely review and consider all the comments placed by Pioneer on the record of the instant review. On March 27, 2013, Petitioner requested that the Department reject Pioneer's untimely filed letter. On April 1, 2013, the Department rejected both Pioneer's and Petitioner's letters.

On April 1, 2013, Petitioner notified the Department that the membership of the AASPS had changed. Specifically, on March 31, 2013, substantially all of Mead Products LLC's business was transferred to another company, ACCO Brands USA LLC. As a result of this change, the individual members of the AASPS are now the following companies: ACCO Brands USA LLC, Norcom Inc., and Top Flight, Inc. ACCO Brands USA LLC is a direct, wholly-owned subsidiary of ACCO Brands Corporation.

SCOPE OF THE ORDER

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8-3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the

⁴ See the Department's Letter to Pioneer dated November 26, 2012.

⁵ Navneet is one of the 55 non-selected respondents.

⁶ See Memorandum to the File, Through Melissa Skinner, Director, Office 8, from George McMahon, Case Analyst, Office 8, titled "Certain Lined Paper Products from India: Meeting with Interested Party," dated January 14, 2013 (Petitioner Meeting Memorandum).

⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Melissa Skinner, Office Director, AD/CVD Operations 8, from Cindy Robinson, International Trade Compliance Analyst, Office 8, AD/CVD Operations, titled "Certain Lined Paper Products from India: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated February 8, 2013.

notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as “tablets,” “note pads,” “legal pads,” and “quadrille pads”), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as “office planners,” “time books,” and “appointment books”);
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationery (including but not limited to products commonly known as “fine business paper,” “parchment paper”, and “letterhead”), whether or not containing a lined header or decorative lines;
- Stenographic pads (steno pads), Gregg ruled (“Gregg ruling” consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches.

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1" wide elastic fabric band. This band is located 2-3/8" from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post

which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

II. List of Comments

A. General Issue

Comment 1: Whether to Apply Targeted Dumping With Respect to Riddhi and SAB

B. Company-Specific Issues

Comment 2: Whether the Department Properly Calculated Riddhi's Comparison Market Net Price (CMNETPRI)

Comment 3: Whether the Department Properly Applied the Exchange Rate to SAB's Countervailing Duty Offset (CVDU)

Comment 4: Whether to Apply the Adverse Facts Available (AFA) Rate to Pioneer

Comment 5: The Proper Rate to Apply to the Non-Selected Respondents

A. General Issue

Comment 1: Whether to Apply Targeted Dumping With Respect to Riddhi and SAB

Petitioner

For its final results, the Department should make an affirmative finding of targeted dumping and apply an average-to-transaction methodology with zeroing to all Riddhi and SAB sales in order to effectively address targeted dumping by the two respective respondents. First, the Department repeatedly has made clear its intent to consider the use of alternative comparison methodologies in administrative reviews.⁸ As stated in the *Final Modification*, the Department intends:

⁸ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification*).

“to apply a comparison methodology in reviews that parallels the WTO-consistent methodology the Department currently applies in original investigations . . . Accordingly, similar to the conduct of original investigations, when conducting reviews under the modified methodology, the Department will determine on a case-by-case basis whether it is appropriate to use an alternative comparison methodology by examining the same criteria that the Department examines in original investigations pursuant to section 777A(d)(1)(A) and (B) of the Act.”⁹

Use of alternative comparison methodologies is also supported by 19 CFR 351.414(c) and the Department’s recent practice in *Wire Rod from Mexico*, in which the Department conduct a targeted dumping analysis in the context of an administrative review in its preliminary results.¹⁰

The record in this review reveals that both Riddhi and SAB had targeted sales with respect to certain statutory criteria (*i.e.*, time, region, and customer). Specifically, applying the Department’s methodology from *Steel Nails from China*,¹¹ as clarified in *Multilayered Wood Flooring from China*,¹² to Riddhi and SAB reveals that there is a pattern of constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time (*i.e.*, targeted dumping) pursuant to section 777A(d)(1)(B)(i) of the Act.

Finally, upon finding targeted dumping, it is the Department’s current practice to first determine the extent to which the use of the average-to-average methodology “masks” the targeting.¹³ Where the Department finds that its average-to-average methodology masks the price differences, it “unmasks” the targeting by using its average-to-transaction calculation methodology. In this case, because the standard methodology masks Riddhi’s and SAB’s

⁹ See *Final Modification*.

¹⁰ 19 CFR 351.414(c) states that “[i]n an investigation or review, the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case.” See also *Carbon and Certain Alloy Steel Wire Rod from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 66954 (November 8, 2012) (*Wire Rod from Mexico*); see also accompanying Preliminary Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, titled “Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Lined Paper Products from India” (Preliminary Decision Memorandum) at 4-6.

¹¹ See, e.g., *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (*Steel Nails from China*), and accompanying Issues and Decision Memorandum at Comment 8; see also *Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less than Fair Value*, 77 FR 17029 (March 23, 2012) (*Steel Nails from UAE*), and accompanying Issues and Decision Memorandum at Comment 4; see also *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping* 75 FR 20335 (April 19, 2010) (*OCTG from China*), and accompanying Issues and Decision Memorandum at Comment 2.

¹² See *Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Multilayered Wood Flooring from China*), and accompanying Issues and Decision Memorandum at Comment 4.

¹³ See *Steel Nails from UAE*, and accompanying Issues and Decision Memorandum at Comment 4; see also *Multilayered Wood Flooring from China*, and accompanying Issues and Decision Memorandum at Comment 4; see also *OCTG from China*, and accompanying Issues and Decision Memorandum at Comment 2.

targeted dumping, the use of an average-to-transaction methodology (without providing offsets to non-dumped sales) is necessary to further the purpose of the antidumping laws and satisfy the Department's obligation to effectively administer these laws. Therefore, the Department should apply an average-to-transaction methodology for all of the Respondents' sales, as was used in *OCTG from China*.¹⁴

Petitioner's counsel repeated this position in its meeting with Department officials on January 14, 2013.¹⁵

Respondents

The Department should continue to apply the average-to-average methodology utilized for the *Preliminary Results* because Petitioner's targeted dumping allegation was filed in its case brief, which was too late to allow Respondents to provide comments before the final results. Therefore, it would be unjust and would compromise principles of accuracy, fairness and due process if the Department accepted Petitioner's targeted dumping allegation and applied the average-to-transaction method with zeroing in its final results.

Riddhi

A finding of targeted dumping with respect to Riddhi's sales is not justified. Specifically, business proprietary details from Riddhi's questionnaire responses demonstrate that there is no basis for the underlying targeted dumping allegation. Before applying the pattern and price gap portions of the *Steel Nails from China* test, the Department first should define a minimum percentage (*i.e.*, a percentage of total sales) of allegedly targeted sales by period, region or customer to determine whether the specific allegation of targeted dumping will be accepted. The Department should not find that targeted dumping has occurred in instances where less than 100 percent of sales are found to be targeted by allegation type (*e.g.*, customer, region or time period). Further, a particular sales transaction should be found to be either targeted or non-targeted in overall terms rather than deemed targeted under a specific type of allegation (*e.g.*, time) but not in another type of allegation (*e.g.*, region) and vice versa. Finally, the Department should reject Petitioner's targeted dumping allegation because it contains calculation mistakes. Specifically, discrepancies exist regarding certain business proprietary details in the calculations of the "Percentage of Total Pattern Volume to Total Sales Volume" and the "Price Gap Test Percentage" portions of the targeted dumping test, as referenced on pages 51, 57, and 70 of Exhibit 2 of Petitioner's case brief.

SAB

SAB submitted its U.S. sales database in its supplemental questionnaire response on June 21, 2012. Its last submission for its section D supplemental questionnaire response was on July 20, 2012. The Department published the *Preliminary Results* on October 9, 2012. Thus, Petitioner had 102 days to allege targeted dumping prior to the *Preliminary Results*, but failed to do so.

¹⁴ See *OCTG from China*, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁵ See *Petitioner Meeting Memorandum*.

Accepting the targeted dumping allegation would be unfair to SAB because SAB was denied an opportunity to comment on the final results. Further, such an approach would run counter to the *Final Modification* where the Department stated that:

“This *Final Modification for Reviews* entails a modification to the averaging methodology applied in reviews that was longstanding. Therefore, in transitioning to the new methodology, the Department will need to ensure that sufficient time is provided within the context of individual proceedings to allow parties to submit any new data that may be necessary, if desired. The Department will then need time to examine and analyze any additional data, and will need to permit parties to provide comments on any new data that is submitted. Additionally, applying the new methodology prior to issuance of the preliminary results is appropriate because the Department will need to allow sufficient time for parties to comment on the application of the new methodology as it applies in the context of individual proceeding...With respect to this *Final Modification for Reviews*, the Department determines that the modified methodology must apply only in proceedings where the preliminary results have not yet been issued in order to ensure that all parties have ample time to submit any new data and provide comment, and that the Department has adequate time to consider any new data and comments. For all of these reasons, the Department is not persuaded by arguments that it could apply the new method more expeditiously without compromising principles of accuracy, fairness, and due process.”¹⁶

Department’s Position: Petitioner first raised its targeted dumping allegations with respect to Riddhi and SAB in its November 13, 2012 case briefs, 35 days after the Department issued the *Preliminary Results* on October 9, 2012. Although the Department has not established specific deadlines for targeted dumping allegations in administrative reviews, we find Petitioner’s targeted dumping allegations are untimely. Given the elapsed time between the issuance of the respondents’ questionnaire responses, and the *Preliminary Results*, we find that Petitioner had ample opportunity to have filed its targeted dumping allegations prior to October 9, 2012, and certainly prior to its case briefs.

For example, in *AFBs 2012*, the petitioners submitted a targeted dumping allegation for several respondents, prior to the issuance of the preliminary results.¹⁷ This allowed the Department to issue a post-preliminary analysis and receive and analyze comments from interested parties prior to issuing final results.¹⁸ In contrast, we find in the instant case, that the Petitioner’s filing of its

¹⁶ See *Final Modification* at 8111 (underlining added).

¹⁷ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Preliminary Results of Antidumping Duty Administrative Reviews and Rescission of Antidumping Duty Administrative Reviews in Part*, 77 FR 33159 (June 5, 2012)(*AFBs 2012*).

¹⁸ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) (*AFBs 2012 Final Results*), and accompanying Issues and Decision Memorandum.

targeted dumping allegations in its case briefs did not provide Riddhi, SAB, or other interested parties with sufficient time to adequately review and comment on such allegations. Furthermore, the timing of Petitioner's filing of its targeted dumping allegations within its respective case briefs did not provide sufficient time for the Department to analyze the allegation, any potential comments, and issue a post-preliminary analysis for comment within the statutory deadlines for completion of this proceeding.

Accordingly, we are not examining Petitioner's targeted dumping allegations in the instant review and have continued to apply the average-to-average methodology from the *Preliminary Results* for both Riddhi and SAB.

Because the Department finds Petitioner's targeted dumping allegations untimely, we are not addressing Riddhi's additional business proprietary arguments.

B. Company-Specific Comments

Comment 2: Whether the Department Properly Calculated Riddhi's Comparison Market Net Price (CMNETPRI)

Riddhi

In the *Preliminary Results*, the Department's margin calculation for Riddhi contains an error in the calculation of the comparison market net price (CMNETPRI), which is used in the Department's price-to-price (P2P) comparisons. Specifically, the Department incorrectly added the CMGUPADJ_USD variable to the CMGUP_USD variable in line 23429 of the Margin Program log, instead of correctly subtracting the CMGUPADJ_USD variable from the CMGUP_USD variable.

This error originated at line 7438 of the Comparison Market SAS program log, where the Department created the variable, CMGUPADJ_USD by setting the gross unit price field, GRSUPR1T, equal to a negative amount as follows: (CMGUPADJ_USD = - GRSUPR1T). Since the Department calculated the CMGUPADJ_USD variable by converting the GRSUPR1T field as a negative value, the Department should have added the CMGUPADJ_USD variable to the CMGUP_USD variable for purposes of calculating CMNETPRI. However, instead of adding the negative CMGUPADJ_USD variable to the CMGUP_USD variable, the Department incorrectly subtracted the negative CMGUPADJ_USD variable from the CMGUP_USD variable. As a result of this error, the transaction for which Riddhi had reported GRSUPR1T in Indian Rupees (*i.e.*, CMGUPADJ_USD (converted into U.S. Dollars)) resulted in an inflated CMNETPRI for the P2P comparisons.

Petitioner

Petitioner did not comment on this issue.

Department's Position: We agree with Riddhi that the Department inadvertently added the CMGUPADJ_USD variable (which was set equal to a negative GRSUPR1T field) to the

CMGUP_USD variable in line 23429 of the Margin Program log, instead of correctly subtracting the CMGUPADJ_USD variable from the CMGUP_USD variable. Accordingly, for these final results, we have corrected the calculation of the CMNETPRI to correctly subtract the CMGUPADJ_USD variable from the CMGUP_USD variable (by adding the negative CMGUPADJ_USD variable to the CMGUP_USD variable). For further information, *see* the Riddhi Calculation Memorandum.¹⁹

Comment 3: Whether the Department Properly Applied the Exchange Rate to SAB's Countervailing Duty Offset (CVDU)

SAB

The Department incorrectly applied the Indian exchange rate to convert the reported CVDU in its U.S. sales database. SAB had already reported the CVDU in U.S. Dollars (USD); therefore, applying the Indian exchange rate to convert the reported CVDU into USD as was done in the Department's Margin Program for the *Preliminary Results* was an error. Information supplied by SAB in its questionnaire responses shows that SAB's reported CVDU field is in USD and not Indian Rupees (INR).²⁰ The Department should correct this error in the final results.

Petitioner

Petitioner did not comment on this issue.

Department's Position: We agree with SAB and confirm that SAB already reported the CVDU field in USD. Accordingly, we have corrected this error in the Margin Program for the final results. For further information, *see* the SAB Calculation Memorandum.²¹

Comment 4: Whether to Apply the Adverse Facts Available (AFA) Rate to Pioneer

Pioneer

As reflected in the Department's records, Pioneer received the Department's Quantity and Value (Q&V) questionnaire on December 24, 2011, two days after the due date of December 22, 2011.²² Since Pioneer received the Q&V questionnaire after the due date, Pioneer was not able

¹⁹ See Memorandum to the File, Through Eric B. Greynolds, Program Manager, Office 8, from George McMahon, Case Analyst, Office 8, titled "Certain Lined Paper Products from India: Calculation Memorandum – Riddhi Enterprises Ltd.," dated February 8, 2013 (Riddhi Calculation Memorandum).

²⁰ See page C-57 and Exhibit C-11 of SAB's original Section C questionnaire response dated March 19, 2012, and the revised Exhibit C-1 (02) of the 1st Supplemental response dated July 20, 2012.

²¹ See Memorandum to the File, Through Eric B. Greynolds, Program Manager, Office 8, from Cindy Robinson, Case Analyst, Office 8, titled "Certain Lined Paper Products from India: Calculation Memorandum – SAB International," dated February 8, 2013 (SAB Calculation Memorandum).

²² On December 8, 2011, as part of the respondent selection process, the Department sent out, via FedEx, Q&V questionnaires to 13 companies in India. Our FedEx records show that two companies (Pioneer and Magic International (Magic)) received the Q&V questionnaire after the initial due date of December 22, 2011. Specifically, Magic received the Q&V questionnaire on December 23, 2011, and Pioneer received it on December 24, 2011. *See also* Memorandum to the File from Cindy Robinson, Senior Analyst, titled "Placing FedEx's Delivery Information on the Record Regarding the 2010-2011 Antidumping Duty Administrative Review on Certain Lined

to timely request an extension of time to file its response. If Pioneer had requested an extension of time to respond, its request would have been rejected as untimely because it would have been made after the stated due date.

Pioneer is a small, *pro se* company. Further, Pioneer had never received a Q&V questionnaire or any type of questionnaire from the Department in previous reviews. As a result, Pioneer was not familiar with the Department's rules, regulations and procedures. Therefore, Pioneer believes that considering Pioneer an uncooperative respondent and applying an AFA rate of 36.27 percent is inappropriate, unjustified and will seriously impact Pioneer's small business.

Petitioner

The Department should continue to apply an AFA rate to Pioneer in the final results. Pioneer failed to cooperate to the best of its ability in responding to the Department's information request, which impeded the respondent selection process. Due to Pioneer's failure to cooperate, the Department is permitted to apply an adverse inference to Pioneer from among the facts available pursuant to section 776(b). Affirmative evidence of bad faith on the part of a respondent that has received an information request is not required before the Department can draw an adverse inference. Therefore, for the final results of this review, it is appropriate for the Department to continue to apply an AFA rate to Pioneer.

Department's Position: In this review, the Department received Q&V responses from eight companies, seven of which are *pro se*. These eight firms, including Magic, contacted the Department on numerous occasions in order to learn how to properly file their Q&V responses via IA ACCESS. We have no record of Pioneer making any attempt to contact the Department from December 24, 2011 (the day Pioneer received the Q&V questionnaire) to January 13, 2012 (the extended due date for recipients that contacted the Department). Moreover, the Department has no records indicating that Pioneer attempted to contact the Department until after the issuance of the *Preliminary Results* on October 9, 2012.

Nonetheless, our record shows that Pioneer received the Q&V questionnaire two days after the stated due date.²³ Since the Department's Q&V questionnaire did not include specific instructions directing what actions a respondent must take if it receives a Q&V questionnaire after the due date, including how to properly file a Q&V response under the circumstances, we determine that it is appropriate to assign Pioneer the rate applicable to non-selected respondents in these final results. In the future, Q&V and other types of questionnaires will include specific instructions for those respondents that may receive a questionnaire after the due date, which will ensure that future respondents are aware that they will remain responsible for contacting the Department via IA ACCESS when they receive a questionnaire after the due date.

With respect to the determination of the rate for non-selected respondents in these final results, *see* Comment 5 below for details.

Paper Products from India," dated August 22, 2012 (FedEx Memorandum).

²³ See Memorandum to the File from Cindy Robinson, Senior Analyst, entitled, "Placing FedEx's Delivery Information on the Record Regarding the 2010-2011 Antidumping Duty Administrative Review on Certain Lined Paper Products from India," dated August 22, 2012.

Comment 5: The Proper Rate to Apply to the Non-Selected Respondents

Navneet

The Respondents have raised clerical and methodological issues with the Department's *Preliminary Results*, which, if accepted by the Department could result in a zero percent dumping margin for both mandatory respondent in this review. In that case, the Department should apply the average margin found for the mandatory respondents to Navneet, and should not apply a positive margin derived from an earlier segment of this case. All previous final margins in this case are tainted by the use of the zeroing methodology, which distorted and exaggerated the dumping margins, and therefore, cannot be the source of a "reasonable" margin for a non-selected respondent such as Navneet. In the prior segment of the proceeding (*i.e.*, the review of the 2009-2010 period), Navneet demonstrated that without the use of the zeroing methodology, it would have had a zero margin.²⁴ Further, in the absence of the application of the zeroing methodology, Navneet likely would have obtained a calculated margin of zero percent in this review had its sales been individually reviewed.

Navneet should not be punished as a result of the Department's decision to individually examine two mandatory respondents in this segment of the proceeding. Navneet formally certified to the Department that it had not sold subject merchandise at prices less than normal value during the POR, and was eager and prepared to demonstrate that fact.²⁵ It was the Department's decision to review only two sample mandatory respondents that deprived Navneet of its right to prove its own zero margin. Thus, if the mandatory respondents are assigned zero margins, it would be inappropriate to assume a positive dumping margin for Navneet.

Accordingly, the Department should assign Navneet the average of the calculated margins for the mandatory respondents in the final results, even if that average margin is *de minimis* or zero percent. To do otherwise, and to assign Navneet an anomalous positive margin, would be arbitrary, unreasonable, and an abuse of discretion. Furthermore, there is no statutory basis for a ban on the use of zero-average margins in an administrative review, and using an all-zero average margin is explicitly recognized in the statute as a potentially reasonable methodology. In addition, banning the use of zero-average margins in an administrative review runs counter to

²⁴ See *Certain Lined Paper Products From India: Notice of Final Results of Antidumping Duty Administrative Review*, 77 FR 14729 (March 13, 2012) (Fourth Review), and accompanying Issues and Decision Memorandum at Comment 1 (reflecting Navneet's presentation that "its margin is solely based on the zeroing methodology" and "the zeroing methodology created an artificial dumping margin when it was not dumping" (citing Navneet's case brief at 9-14)).

²⁵ In requesting the review, Navneet stated its belief that the proper calculation of the margin would yield a zero percent duty rate, and requested revocation on the basis of three consecutive zero margins. It formally certified that "Navneet sold subject merchandise at not less than normal value in the current review period and will not sell subject merchandise at less than normal value in the future." See *Request for Antidumping Administrative Review and Request for Revocation of the Antidumping Order of Navneet Publications (India) Ltd.* (September 30, 2011).

the Department's practice in *Honey from Argentina*, in which the Department calculated zero margins for both mandatory respondents individually examined in the review, and preliminarily assigned non-zero margins drawn from prior reviews to the non-selected respondents.²⁶ Importantly, however, for the final results the Department ultimately assigned the zero-average margin calculated for the mandatory respondents to all non-selected respondents.²⁷

The Department's decision in *Honey from Argentina* confirms that the Department is not bound to follow the investigations rule about zero-average margins.²⁸ Further, the decision establishes that in cases similar to the present review, the Department has assigned the zero margin for mandatory respondents to the non-selected respondents in a review as the "most appropriate" methodology for determining the margin for non-selected respondents.²⁹ Accordingly, in the present review, the Department should follow the precedent from *Honey from Argentina* and assign a zero margin to Navneet if the final margins for both mandatory respondents in this review are found to be zero or *de minimis*.

Petitioner

Petitioner did not comment on this issue.

Department's Position: Generally, when calculating the margin for non-selected respondents (non-selected rate), the Department has looked to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others margin in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others margin, the Department will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, the Department's normal practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available.³⁰ Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis* or based on total facts available, the Department may use "any reasonable method" for assigning a margin to non-selected respondents. One method contemplated by section 735(c)(5)(B) of the Act is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In this review, we have calculated weighted-average dumping margins of zero for both mandatory respondents. We are also using AFA in determining a rate for certain companies that

²⁶ See *Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty*, 77 FR 1458 (January 10, 2012) (*Honey from Argentina*).

²⁷ See *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 77 FR 36253 (June 18, 2012) (*Honey from Argentina Final*), and accompanying Issues and Decision Memorandum at Comment 1.

²⁸ The Department has summarized the effect of all-zero margins thus: "if there are only zero or *de minimis* margins determined in the investigation...the investigation would terminate and no order would be issued." See *Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 40689 (July 11, 2011).

²⁹ See *Honey from Argentina Final*, and accompanying Issues and Decision Memorandum at Comment 1.

³⁰ See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008) (*AFBs 2008*), and accompanying Issues and Decision Memorandum at Comment 16.

failed to respond to our requests for Q&V information. In past reviews, the Department has determined that a “reasonable method” to use when the margins of selected mandatory respondents are zero or *de minimis* is to assign non-selected respondents the average of the most recently determined margins that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior review or a new shipper review or the investigation).³¹ However, if a non-selected respondent has its own calculated margin that is contemporaneous with or more recent than such previous margins, the Department has applied that calculated margin to the non-selected respondent, including when that margin is zero or *de minimis*.³²

In the instant proceeding, all prior calculated margins were calculated using the Department’s zeroing methodology. The Department has stated that it will not use its zeroing methodology in administrative reviews with preliminary determinations issued after April 16, 2012.³³ Therefore, the Department is unable to rely on weighted-average margins calculated in prior segments for the non-selected rate in this review. Accordingly, the Department must rely on a reasonable method for assigning the non-selected rate. In determining the non-selected rate, we must account for the fact that the Department was not able to conduct its respondent selection analysis based on responses to all of the Q&V questionnaires issued.³⁴ Because certain companies refused to provide Q&V data, the Department was obligated to conduct its respondent selection analysis based on an incomplete universe of potential respondents. Under these circumstances, we cannot reasonably conclude that the zero rates determined for the two mandatory respondents in the instant review alone serve as a proper basis for determining a rate for the other respondents that received and responded to the Q&V questionnaires from the Department. The fact that there are other companies that might otherwise have been selected for investigation but chose not to respond to the Q&V questionnaires is also relevant to the Department’s analysis.

We have determined that a reasonable method for assigning a margin to non-selected respondents in this review is to utilize the weighted-average dumping margins calculated for the two mandatory respondents (zero percent) and the AFA rate assigned to the four uncooperative companies (22.02 percent).³⁵ By doing so, we account for the fact that the Department was precluded from conducting its respondent selection analysis based on responses to all of the Q&V questionnaires issued. Furthermore, we have limited the number of rates used in the average that are based on AFA due to failures to respond to the Q&V questionnaires to the same number of companies that we determined we could reasonably examine in this review, which was two. We consider this reasonable because, without the requested information from these companies, all we know is that we may have selected up to two of these companies as mandatory respondents. Accordingly, we determined in the instant review the non-selected rate by taking the simple average of the rates calculated for the two selected mandatory respondents and two

³¹ See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191, 47194 (September 15, 2009).

³² *Id.*

³³ See *Final Modification*.

³⁴ See *supra*, at Comment 4.

³⁵ In the present proceeding, because prior calculated rates involved zeroing, consistent with *AFBs 2012* and pursuant to section 776(b) of the Act, we are relying on information placed on the record by the cooperative respondents. Specifically, the 22.02 percent AFA rate we have selected is the highest, non-aberrational transaction-specific margin calculated for one of the mandatory respondents in the instant review.

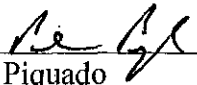
AFA rates for companies that failed to respond to the Q&V questionnaire.

In light of our determination to use the average of the margins calculated for the two mandatory respondents and two of the AFA rates, we are assigning an average dumping margin of 11.01 percent to all non-selected respondents, including Pioneer, in these final results.³⁶

III. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

Agree ✓ Disagree



Paul Piquado
Assistant Secretary
for Import Administration

9 APRIL 2013

Date

³⁶ See Memorandum to the File through Eric Greynolds, Program Manager, AD/CVD Operations 8, from the Team titled "Certain Lined Paper Products from India: Margin for Respondents Not Selected for Individual Examination: (Non-selected Rate Memo)," dated April 9, 2013.

U.S. DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

DATE

1/21/13

CONCURRENCE RECORD

(Prescribed by ITA A.I. 8-1)

ROUTING PURPOSE

SYMBOLS (RPS)

C- CONCURRENCES

S- SIGNATURE

SUBJECT OF DOCUMENT:

Certain Lined Paper Products from India: Final Results in the 5th Antidumping Duty Administrative Review (A-533-843)

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ADDITIONAL INFORMATION OR SPECIAL INSTRUCTIONS: (Continue on reverse if necessary)

