



A-533-824
Administrative Review
POR: 07/01/2015-06/30/2016
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DATE: February 6, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of
Antidumping Duty Administrative Review: Polyethylene
Terephthalate Film from India; 2015-2016 Administrative Review

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case briefs submitted by interested parties in the administrative review of the antidumping duty (AD) order¹ on polyethylene terephthalate film, sheet, and strip (PET Film) from India. As a result of this analysis, we made changes to the *Preliminary Results*.² We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

A complete list of the issues in this investigation on which we received comments is provided below.

Comment 1: Whether to Grant Certain Post-Sale Price Adjustments to Jindal for the Final Results
Comment 2: Whether to Grant Certain Post-Sale Price Adjustments to SRF for the Final Results
Comment 3: Whether to Revise SRF’s Home Market Program

¹ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 44175 (July 1, 2002) (*AD Order*).

² See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 36735 (August 7, 2017) (*Preliminary Results*).



II. BACKGROUND

On August 7, 2017, Commerce published the *Preliminary Results*. The review covers two mandatory respondents: Jindal Poly Films Limited of India (Jindal) and SRF Limited (SRF). Jindal and SRF each submitted a case brief on September 27, 2017.³ Neither of the respondents, nor DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC Inc., the petitioners, submitted a rebuttal brief. The period of review (POR) is July 1, 2015, through June 30, 2016.

Commerce has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through January 22, 2018. The revised deadline for this administrative review is now February 6, 2018.⁴

III. SCOPE OF THE ORDER

The products covered by the order are all gauges of raw, pretreated, or primed PET Film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET Film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

On December 29, 2017, Commerce received a response in the scope inquiry filed by Ester Industries Ltd. for this order as well as the countervailing duty order on PET Film from India. We expect to make a ruling shortly.

IV. CHANGES MADE SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received from parties, we made certain changes to the margin calculations.⁵

³ See Jindal Case Brief, dated September 27, 2017 (Jindal Case Brief) and SRF Case Brief, dated September 27, 2017 (SRF Case Brief).

⁴ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018.

⁵ See Analysis Memorandum for the Final Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: Jindal Poly Films Limited (Jindal), dated concurrently with this memorandum (Jindal Final Analysis Memo); see also Analysis Memorandum for the Final Results of the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India: SRF Limited (SRF), dated concurrently with this memorandum (SRF Final Analysis Memo).

V. DISCUSSION OF ISSUES

Comment 1: Whether to Grant Certain Home Market Post-Sale Price Adjustments to Jindal for the Final Results

Jindal argues:

- Commerce mistakenly dis-allowed certain post-sale price adjustments⁶ in the *Preliminary Results* that it has accepted in past reviews of the (*AD Order*). Moreover, Commerce failed to fully explain its analysis and identify any deficiencies in the questionnaire responses with respect to these post-sale price adjustments.⁷
- Commerce did not fully analyze certain post-sale price adjustments using the factors identified in its *Final Modification*⁸ when it arbitrarily and capriciously denied them in the *Preliminary Results*.⁹

Commerce's Position: We have further analyzed Jindal's post-sale price adjustments using the criteria enumerated in the *Final Modification*. Based on our analysis of information on the record, for these *Final Results*, we are granting two post-sale adjustments, which were not granted in the *Preliminary Results*: Jindal's Quantity Discount (REBATE1H) and its VAT/CST Discount (REBATE4H). These two adjustments are granted because: 1) the terms were set prior to the sales, 2) proper timing of the adjustment, and 3) a showing of legitimate transactions. We have continued to disallow Jindal's Financing Charges Discount (REBATE3H) and its Exclusive Dealer Discount (REBATE6H) for these *Final Results* for failing to satisfy the criteria detailed in the *Final Modification*.¹⁰ For further discussion of these issues, *see* Jindal Final Analysis Memorandum.¹¹

Comment 2: Whether to Grant Certain Home Market Post-Sale Price Adjustments to SRF for the Final Results

SRF Argues:

- Commerce erroneously dis-allowed its Cash Discount Rebate (REBATE2H) and Rate Difference Rebate (REBATE3H) because the record shows that SRF and its customers agree to these rebates prior to the sales.¹²

⁶ Jindal did not offer any specific arguments with respect to individual post-sale adjustments in its case brief.

⁷ *See* Jindal Case Brief at 2-5.

⁸ The factors are: (1) Whether the terms and conditions of the adjustment were established and/or known to the customer at the time of sale and whether this can be demonstrated through documentation; (2) how common such post-sale price adjustments are for the company and/or industry; (3) the timing of the adjustment; (4) the number of such adjustments in the proceeding; and (5) any other factors tending to reflect on the legitimacy of the claimed adjustment. *See Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 81 FR 15641 (March 24, 2016) (*Final Modification*) and Section 351.401(c) of Commerce's Regulations.

⁹ *See* Jindal Case Brief at 2-5.

¹⁰ *See Final Modification*.

¹¹ *See* Jindal Final Analysis Memorandum at 3-5.

¹² *See* SRF Case Brief at 2-5.

- While these post-sale adjustments have been granted to SRF in every prior administrative review, Commerce did not explain why it disallowed the adjustments in the *Preliminary Results*.¹³
- Commerce's *Final Modification* states that the "Secretary will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment."¹⁴ SRF maintains that it has placed information on the record which demonstrates that it is entitled to a claimed post-sale price adjustment.
- Commerce should find that its REBATE2H and REBATE3H meet the criteria of the *Final Modification* and grant the adjustments for the *Final Results*.¹⁵

Commerce's Position: We have continued to analyze SRF's post-sale price adjustments using the criteria enumerated in the *Final Modification*. For these *Final Results*, we are continuing to disallow those post sale adjustments as we did in the *Preliminary Results*.¹⁶

We are not granting SRF's REBATE2H because: (1) the terms and conditions were not set prior to sale; (2) such a post-sale price adjustment is not common for the company and/or industry; and (3) there are no other factors tending to reflect on the legitimacy of the claimed adjustment. Finally, the documentation provided to allegedly support this post-sale price adjustment shows an invoice date prior to the start of the POR.¹⁷ As explained above, the burden is on the respondent to provide relevant information which supports the claimed post-sale adjustment, and SRF did not do so in this case.¹⁸

We are not granting SRF's REBATE3H as this post-sale price adjustment because no terms and conditions were set prior to sale and there were no other factors tending to reflect on the legitimacy of the claimed adjustment.¹⁹

Like SRF's REBATE2H, SRF's REBATE3H does not meet the criteria in the *Final Modification*, since the terms and conditions do not appear to be set prior to the sale as described in the narrative response.²⁰ In addition, neither the narrative nor the documentation make clear what the business purpose is for this post-sale price adjustment. For further discussion of these issues, see SRF Final Analysis Memorandum.²¹

¹³ *Id.*

¹⁴ See SRF Case Brief at 3; see also *Final Modification* at 15644-15645.

¹⁵ See SRF Case Brief at 2-5.

¹⁶ See SRF Final Analysis Memorandum.

¹⁷ The invoice date of the supporting documentation ("Sample Allocation of Cash Discount as Reported in REBATE2H) is from June 2015, although the POR begins on July 1, 2015. See SRF December 20, 2016 BQR at Exhibit B-8(b).

¹⁸ See *Final Results for Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539 (January 28, 2015) and the accompanying Issues and Decision Memorandum at 17.

¹⁹ See SRF Final Analysis Memorandum.

²⁰ "These kinds of rebates are generally given to customers on a per kilogram basis in cases where invoicing is done, and thereafter, at times, a credit note is given for the agreed price difference, if any." See SRF December 20, 2016 BQR at 33.

²¹ See SRF Final Analysis Memorandum.

Comment 3: Whether to Revise SRF's Home Market Program

SRF Argues:

- Commerce used the wrong home market gross price. The SRF Prelim Analysis Memorandum²² indicates that Commerce intended to use a revised gross price (GRSUPRH) for the Home Market Program, but instead used the sum of all reported gross prices. Several of these variables are taxes or duties, which do not form part of the sale price. For the *Final Results*, Commerce needs to revise the Home Market Program so that the corrected gross unit price is used in the calculations.
- Commerce failed to deduct (reported) home market commissions because Commerce failed to account for their home market commission variable (COMMH). The SRF Prelim Analysis Memorandum shows that the variable for home market commission (COMMH) was set to zero instead of the reported COMMH.²³ SRF states that this was an obvious mistake. SRF states that “[t]he commissions were agreed to prior to sale, were paid to the commission agent, were reported, and should have been properly dealt with in the programming language.”²⁴

Commerce's Position: We agree with SRF that the errors which they claim to have existed were unintentionally made by Commerce in the *Preliminary Results*. We have therefore made corrections to the Home Market Program for these *Final Results*. First, we are using the revised GRSUPRH. Second, we have replaced the zero in Commerce's Home Market Program with the reported COMMH.²⁵

²² See SRF Preliminary Analysis Memorandum, dated July 31, 2017 (SRF Prelim Analysis Memorandum).

²³ *Id.*

²⁴ See SRF Case Brief at 6.

²⁵ See SRF Prelim Analysis Memorandum.

VI. Recommendation

We recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this administrative review in the *Federal Register*.



Agree

Disagree

2/6/2018

X



Signed by: GARY TAVERMAN