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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of Review in the 2001/2003 Administrative Review of Automotive Replacement Glass ("ARG") Windshield from the People's Republic of China

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SUMMARY:

We have analyzed the case briefs of interested parties in response to Automotive Replacement Glass Windshields from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 25545 (May 7, 2004) ("Preliminary Results"). As a result of our analysis, we have made changes from the Preliminary Results. The specific calculation changes can be found in our Memorandum to the File from Will Dickerson: Automotive Replacement Glass Windshields From the People's Republic of China: Pilkington ("Final Analysis Memo"), dated October 14, 2004.

We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this review:

Fuyao's Comments

Comment 1: Water as a Separate Component of Normal Value
Comment 2: Certain Inputs as a Separate Component of Normal Value

Shenzhen CSG's Comments

Comment 3: Liquidation Instructions for Shenzhen CSG's Entries

PNA's Comments

Comment 4: Proper Set of Sales as Basis for the Margin for PNA
Comment 5: Rejection of Market Purchases from Indonesia, Thailand, and South Korea
Comment 6: Surrogate Profit Ratio
Comment 7: Allocation of Credit Expense, Inventory Carrying Cost, and Marine Insurance
Comment 8: Market-Price Value for Marine Insurance
Comment 9: Surrogate Value for Metal Clips
Comment 10: Double-Counting of Labor

BACKGROUND:

On May 21, 2003, the Department published in the Federal Register a notice of the initiation of the antidumping duty administrative review of ARG from the People's Republic of China ("PRC") for the period September 19, 2001, through March 31, 2003. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 68 FR 27781 (May 21, 2003). The respondents included Changchun Pilkington Safety Glass Company, Ltd., Shanghai Yaohua Pilkington Autoglass Company, Ltd., Wuhan Yaohua Pilkington Safety Glass Company, Ltd., Guilin Pilkington Safety Glass Company, Ltd. (collectively "Pilkington JVs"), Dongguan Kongwan Automobile Glass Ltd. and Peaceful City, Ltd., (collectively "Peaceful City"), Fuyao Glass Industry Group company, Ltd. ("Fuyao"), Shenzhen CSG Automotive Glass Co., Ltd. (formerly Shenzhen Benxun AutoGlass Co., Ltd.) ("Shenzhen CSG"), TCG International, Inc. ("TCGI"), and Xinyi Automotive Glass (Shenzhen) Co., Ltd. ("Xinyi").

On September 8, 2003, the Department published a notice in the Federal Register rescinding the administrative reviews of TCGI, Xinyi, and Shenzhen CSG. See Certain Automotive Replacement Glass Windshields from the People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review, 68 FR 52893 (September 8, 2003).

In the Department's original investigation, Shenzhen Benxun AutoGlass Co., Ltd. ("Benxun") received a rate separate from the PRC-wide entity. When Shenzhen CSG requested an administrative review, it indicated it was the company known formerly as Benxun, but that it had undergone a name change since the Department's original investigation. On July 8, 2003, Shenzhen CSG withdrew its request for an administrative review. Because Shenzhen CSG withdrew its request for administrative review, the Department did not have the information necessary to make a successor-in-interest determination. Therefore, the Department did not determine that Shenzhen CSG was entitled to receive the same antidumping rate accorded Benxun within the context of this administrative review. In a changed-circumstance review subsequent to the September 8, 2003, Notice of Rescission, the Department determined that entries of merchandise from Shenzhen CSG are eligible for Benxun's cash-deposit rate.

See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Automotive Replacement Glass Windshields from the People's Republic of China, 69 FR 43388 (July 20, 2004).

On June 7, 2004, the Department received case briefs from Pilkington North America, Inc. ("PNA"), Fuyao, and Shenzhen CSG. On June 9, 2004, the Department received an untimely-filed case brief from Peaceful City, which was rejected in accordance with 19 CFR 351.302(d). See Letter to Peaceful City Rejecting Case Brief, dated July 9, 2004. We did not receive any rebuttal comments.

DISCUSSION OF THE ISSUES

Comment 1: Water as a Separate Component of Normal Value

Fuyao argues that the Department should not value Fuyao's consumption of water as a separate component of normal value. Fuyao stated that the Department indicated in its Memorandum from Jon Freed and Jon Herzog to Ed Yang: Factors of Production Valuation Memorandum for the Preliminary Results of Review, April 29, 2004 ("Factor Valuation Memorandum"), that it valued water as a component of energy in the calculation of normal value. Fuyao argues that no party in this proceeding has ever suggested that Fuyao consumed water as a source of energy. Further, Fuyao contends that water is not used to generate electricity, to transport inputs, or to operate machinery in the form of steam.

Additionally, Fuyao argues that the identification of water as an energy source conflicts with the Department's observations at verification. Fuyao asserts that the Department observed during the plant tour that water is used by Fuyao to help clean glass prior to cutting and to remove wet ink from imperfectly silk-screened windshields. Fuyao argues that water is essentially a cleaning material used in the production process and cannot be considered a source of energy.

In addition, Fuyao argues that water used in its production of ARG windshields cannot be considered a direct material. Fuyao cites the Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19040 (April 30, 1996) ("Bicycles"), to argue that the Department only considers a material to be a direct material if the input is "significant" or "essential" to the production process and it is "incorporated into the product." Fuyao cites Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160 (February 28, 1997) ("Brake Rotors"), as another example of the Department's emphasis of "incorporation of the input" into the finished good as the standard for determining whether a material constitutes a direct material. Fuyao cites four other cases as support for the same standard articulated in Brake Rotors.

Fuyao cites Freshwater Crawfish Tailmeat from the PRC; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty

Administrative Review, 66 FR 20634 (April 24, 2001) ("Crawfish"), as an example of where the Department valued water as a separate component of normal value because it was incorporated into the finished product and was essential to the fundamental characteristics of the finished product. Fuyao argues that, in Crawfish, water was valued separately because the fresh crawfish were brought to the plant in water, were cooked in water, and were frozen in water.

Department Position:

The Department determines whether to value water separately on a case-by-case basis in accordance with section 773(c)(1) of the Act. See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review 65 FR 49537 ("Sebacic Acid") (August 14, 2000), and accompanying Issues and Decision Memorandum at Comment 3. Normally, the Department values water directly and not in factory overhead when water is used for more than incidental purposes, is required for a particular segment of the production process, or appears to be a significant input in the production process. See Crawfish and accompanying Issues and Decision Memorandum at Comment 7, Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 8383 (January 31, 2001) ("Glycine"), and accompanying Issues and Decision Memorandum at Comment 3, Bicycles, 61 FR at 19040, and Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 11.

The Department disagrees with Fuyao that the decisions in Bicycles and Brake Rotors limit the Department's ability to value water separately in this case. In Bicycles and Brake Rotors, the Department cited "incorporation into the product" as one justification for considering an input to be considered a direct material, but incorporation was not characterized as an essential requirement for an input to be considered a direct material. See Bicycles, 61 FR at 19040, and Brake Rotors, 62 FR at 9169. In Bicycles, the Department valued the input as a separate component of normal value because the input was so significant that it would not normally be considered a part of factory overhead and, therefore, determined that no double-counting would occur by valuing it separately. See Bicycles, 61 FR at 19040. Also, in Brake Rotors, the Department did not value certain inputs separately because the inputs were considered "stores and spares consumed" by the Indian surrogate companies and, therefore, it determined that double-counting would occur if it valued the inputs separately. See Brake Rotors, 62 FR at 9169. Fuyao's interpretation of the Department's precedent is too narrow. The fact that physical incorporation was one factor it considered in previous decisions does not indicate that physical incorporation of a major component of production into the finished product is a necessary condition for separate valuation by the Department.

Other instances demonstrate that incorporation is not a prerequisite for separate valuation. For example, in determining that water was a significant input and should be valued separately in Crawfish, the Department found at verification that "the process of cleaning and boiling live crawfish to produce

subject merchandise requires large quantities of water, and this is clearly different from water used by a company for incidental purposes." See Crawfish Issues and Decision Memorandum at Comment 7. The Court of International Trade ("CIT") upheld the Department's decision to value water as a separate factor of production as reasonable. See Pacific Giant Inc. v United States, 223 F. Supp. 2d 1336, 1346 (CIT 2002).

In the production of ARG windshields, water is not incorporated into the finished product, however, we find that it is undisputed that water is an essential element in the production of ARG windshields. At verification, the Department observed water consumption at the cutting stage and cleaning stages in the production process. The Department's position in this review is consistent with its determination in the original investigation that water is a significant input in the production of ARG windshields and should be valued as a separate component of normal value. See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China ("Final Determination"), 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 25. As in the original investigation, water does not appear to be captured in any components of factory overhead in the surrogate financial statement we used for this review.[1] Therefore, because water is an essential element in the production of ARG windshields and the factory overhead ratio does not include an amount for water, we find it appropriate to value water as a separate factor of production.

Contrary to Fuyao's argument, we did not characterize water as a source of energy in the production of ARG windshields. Section 773(c)(3) of the Tariff Act of 1930, as amended ("the Act"), states that factors of production utilized in producing subject merchandise include, but are not limited to, (a) hours of labor required, (b) quantities of raw materials employed, and (c) amounts of energy and other utilities consumed. Whether we characterized the water consumed in the production of ARG windshields as an energy or an "other utility," we must value it in order to calculate an accurate normal value.

We find that water is a essential element in the production of ARG windshields and we have determined that valuing it separately does not result in double-counting because it is not contained in any components of the factory overhead calculation. Therefore, for the final results, the Department has valued water as a separate component of normal value.

Comment 2: Certain Input as a Separate Component of Normal Value

[1]To value factory overhead and selling, general, and administrative ("SG&A") expenses, we used the 2002 audited financial statements of Saint-Gobain Sekurit India Limited ("St. Gobain"), the same surrogate company used in the investigation. St Gobain's 2002 financial statement was submitted by Pilkington on November 14, 2003.

Fuyao argues that the Department should not have valued a certain input[2] as a separate component of normal value for the same reasons explained in its comments on the valuation of water. Fuyao asserts that the Fuyao Verification Report, page 9 (April 29, 2004), confirms that this certain input covers one layer of the windshield glass to prevent the two pieces from sticking together during the bending stage but is then cleaned off after the two pieces pass through the bending furnace. Fuyao argues that the function of this input is similar to the function of dextrin, steel shot, and certain oils that the Department considered as indirect materials in Brake Rotors, 62 FR 9160, 9164 (February 28, 1997). Fuyao argues that this input is used to "assist" in the manufacturing process but that it does not physically enter the composition of the finished product.

Department Position:

We disagree with Fuyao. We have decided to value this input as a separate component of normal value for these final results. As we explained in Bicycles and Brake Rotors, described above, the decision to value an input separately is guided, largely, by assessing the significance of the input to the production process and determining how the cost of the input is captured in the financial statement of the surrogate company. In most cases, the Department values the input separately unless the financial statement of the surrogate company indicates that the cost of the input is captured in factory overhead.

In this instance, the input does not appear to be captured in the surrogate company's factory overhead. This may indicate that the surrogate company does not consume this input. If the surrogate company does consume this input, however, it is most likely valued in the surrogate company's "Cost of Materials Consumed." The "Cost of Materials Consumed" is not included in the factory overhead total or the SG&A total. The line-item "stores and spares consumed" is the only other place where this input could possibly be valued in the surrogate financial statement. See St. Gobain's 2002 financial statement at page 19. Given the amount of consumption and its importance to the production of ARG windshields, we find that this input would not be valued in the "stores and spares consumed" of the surrogate company. To the contrary, the input in question constitutes the primary material consumed at a critical stage in the production process for every piece of subject merchandise Fuyao produced. Therefore, the consumption of this input is significant and more than incidental or occasional and does not fit the description as a "store" or "spare."

The Department has determined that this input is critical to the production of ARG windshields and that valuing it separately does not result in double-counting because it is not contained in any components of

[2]Fuyao has requested proprietary treatment of the name of the input at issue pursuant to 19 CFR 351.304(a)(i). More detailed information regarding this input can be found in the Memorandum to The File from Jonathan Herzog and Jon Freed, Verification of Sales and Factors of Production of Fuyao Glass Industry Group Co., Ltd. in the Antidumping Review of Automotive Replacement Glass Windshields from the People's Republic of China, p. 9 (April 29, 2004) ("Fuyao Verification Report").

the factory overhead calculation. Therefore, the Department has valued this certain input as a separate component of normal value for the final results of review.

Comment 3: Liquidation Instructions for Shenzhen CSG's Entries

Shenzhen CSG requests that the Department respond to a request it made in a January 12, 2004, letter. Shenzhen CSG requests that the Department amend its December 29, 2003, message to Customs and Border Protection ("CBP") instructing CBP to liquidate entries from Shenzhen CSG at the PRC-wide rate of 124.5 percent.

Shenzhen CSG summarizes the facts of Benxun's and Shenzhen CSG's participation in the original investigation and this administrative review as follows:

> Benxun received a company-specific cash deposit rate in the original investigation. On April 30, 2003, Shenzhen CSG submitted a letter requesting an administrative review of its entries during the POR and therein informed the Department that the company had changed its name from Benxun to Shenzhen CSG. On May 21, 2003, the Department initiated the administrative review on behalf of "Shenzhen CSG Automotive Glass Co., Ltd. (formerly Shenzhen Benxun AutoGlass Co., Ltd.)." On July 8, 2003, Shenzhen CSG withdrew its request for review. On September 8, 2003, the Department published a notice of rescission of review as to "Shenzhen CSG Automotive Glass Co., Ltd., (formerly Shenzhen Benxun Auto Glass Co., Ltd.)."
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> On October 24, 2003, the Department published a notice extending the due date for the preliminary results of review and explained in a footnote that, because Shenzhen CSG withdrew its request for review, the Department was unable to ascertain whether Shenzhen CSG was the successor-in-interest to Benxun and therefore did not determine that Shenzhen CSG was entitled to receive the same antidumping cash deposit rate accorded to Benxun.
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> On December 29, 2003, the Department issued liquidation instructions to CBP reflecting the partial rescission of review. The Department instructed CBP to liquidate entries from Benxun at its rate of approximately 9 percent and to liquidate entries from Shenzhen CSG at the PRC-wide rate of 124.5 percent. The instruction also set the cash deposit rate for Shenzhen CSG at 124.5 percent.
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> On January 12, 2004, Shenzhen CSG requested that the Department amend its instruction to CBP such that CBP would liquidate entries from Shenzhen CSG at duties equal to the deposits made upon entry of the subject merchandise. In its January 12, 2004, submission, Shenzhen CSG argued that all of its correspondence with the Department identified Shenzhen CSG as formerly known as Benxun and that, in all of its notices, the Department identified Shenzhen CSG as being known formerly as Benxun. In Exhibit 9 of the January 12, 2004, submission, Shenzhen CSG submitted Benxun's August 12, 1999, business license showing its business

registration number, date of establishment, local address, legal representative, business status as a foreign joint venture, and description of business scope. Exhibit 9 also included the Change of Name Notification issued to the licensing agency on September 27, 2002. The Change of Name Notification included the identical business registration number and included the name change from Shenzhen Benxun AutoGlass Co., Ltd., to Shenzhen CSG Automotive Glass Co., Ltd.

Shenzhen CSG comments that on June 7, 2004, the Department published its preliminary results of the changed circumstances review where it preliminarily determined that Shenzhen CSG should be given the same antidumping duty treatment as Benxun.

Shenzhen CSG argues that the Department should take notice in this administrative review of its decision in the changed circumstance review because the changed circumstance review will only affect the cash deposit rate. Shenzhen CSG argues that, in order for the Department to effectuate its determination that "Shenzhen CSG should be given the same antidumping duty treatment as Benxun," the Department must change its December 29, 2003, liquidation and cash deposit instructions to CBP.

In addition, Shenzhen CSG argues that the Department's decision in its December 29, 2003, instructions to CBP to change the assessment rate and the duty deposit rate for Shenzhen CSG is contrary to law because the decision was made outside of the context of a final results of an administrative review or a changed circumstance review. Shenzhen CSG cites Marine Harvest (Chile), S.A. v. United States, 26 CIT __, Slip Op. 02-134 at 19 (October 31, 2002) ("Marine Harvest"), to argue that a change in the antidumping duty assessment rate from the amount originally posted as antidumping duty deposits or a change in a company's deposit rate can only be made in the context of the final results of an administrative review or changed circumstance review. Shenzhen CSG asserts that it paid deposits of approximately 9 percent but is now subject to an assessment rate of 124.5 percent under the current liquidation instruction. Shenzhen CSG argues that the liquidation instruction for this review period is untenable considering the Department's determination in the changed circumstance review. Shenzhen CSG requests that for these final results of review, the Department amend its December 29, 2003, instruction to CBP and instruct it to liquidate entries from Shenzhen CSG during the first period of review ("POR") at the duty deposit rates paid upon entry of the subject merchandise into the United States.

Department Position:

Because the Department has rescinded the administrative review as to Shenzhen CSG, based upon that company's request, the issue of liquidation instructions pertaining to Shenzhen CSG's entries is not relevant to these final results.

Comment 4: Proper Set of Sales as Basis for the Margin for PNA

PNA asserts that it only requested a review of imports from its four joint venture producers of ARG windshields in China, the Pilkington Joint Ventures ("Pilkington JVs") pursuant to 19 CFR 351.213(b)(3). PNA argues that 19 CFR 351.213(b)(3) only allows it to request an administrative review for assessment of duties on the subject merchandise that it imported during the POR.

PNA argues that 19 CFR 351.213(b)(3) was not intended to extend to any one importer the authority to request administrative reviews of entries of subject merchandise by other importers that also imported subject merchandise from the same foreign exporter or producer. Respondent argues that the intent of the law is to allow an importer to control its destiny by requesting its own review and not that of other importers.

PNA argues that the weighted-average margin for assessing dumping duties for its entries during the first POR and for making future cash deposits should be based solely on PNA's constructed-export-price ("CEP") sales. PNA states that, during the first POR, an unrelated importer purchased and imported subject merchandise from two of the four Pilkington JVs and, thus, its imports are export-price ("EP") sales. PNA asserts that these EP sales are easily distinguished from all imports made by PNA because PNA's purchases from the related Pilkington JVs are all CEP sales. PNA argues that the EP sales to the unaffiliated importer are not subject to any request for review and cannot be included in the calculation of the rate the Department assigns to PNA or even to PNA and the Pilkington JVs (collectively, "Pilkington"). PNA stated that, although it is related to the Pilkington JVs, it does not have unfettered control to dictate how or with whom the Pilkington JVs conduct business.

Additionally, PNA argues that, because no review was requested of entries other than its own, the entries of subject merchandise from the Pilkington JVs by the unaffiliated importer during the POR were no longer subject to the suspension of liquidation starting April 30, 2003. PNA argues that these entries should be deemed liquidated as a matter of law at the rates already paid at the time of entry pursuant to 19 USCA 1504(d), citing InternationalTrading Company v. Unites States, 281 F. 3d 1268 (March 1, 2002),

PNA argues that, if the Department determines that the EP sales to the unaffiliated importer are subject to review, the dumping margin attributable to the EP sales should not be combined with any dumping margin calculated on PNA's CEP sales in determining PNA's dumping margin. PNA objects to the inclusion of the EP sales made to an unrelated importer in calculating a single antidumping duty margin assigned for cash deposit purposes indiscriminately to a collective "Pilkington."

PNA contends that any margin calculated separately for the unaffiliated importer should be the assessment rate and cash deposit rate for that importer. Furthermore, PNA argues that the cash deposit rate for importers other than PNA or the unaffiliated importer in this review should remain the same as established in the original investigation for each of the Pilkington JVs.

Finally, PNA argues that, should the Department determine that the EP sales to the unaffiliated importer are subject to review and combines those sales with PNA's CEP sales into a single margin for future cash deposits on any imports from any of the four Pilkington JVs, then the liquidation instruction to the CBP should clarify that PNA is not responsible for payment of the antidumping duties attributable to the EP sales during the POR. PNA argues that this alternative is still unjust in that it subjects PNA to a cash deposit rate that combines the dumping on CEP sales with dumping on EP sales to an unrelated, unreviewed importer.

Department Position:

We disagree with the Respondent. 19 CFR 213(b)(3) provides that an "importer may request in writing that the Secretary conduct an administrative review of only an exporter or producer...of the subject merchandise imported by that importer"(emphasis added). The regulation limits an importer's ability to request an administrative review to its own producers or exporters. The purpose of this limitation is to allow only those companies with a stake in the outcome to request an administrative review of the producers relevant to them. Once the Department decides to conduct its review, however, any such review covers that producer's or exporter's sales to all importers. See Antidumping and Countervailing Duties; Administrative Reviews on Request; Transition Provisions, 50 FR 32556, 32557 (August 13, 1985). The Department has a long-established practice of reviewing all exports by an exporter for which it receives a request for administrative review.

With respect to PNA's cash deposit rate, it is the Department's long-held practice to calculate a single weighted-average margin for the cash deposit rate based on all imports of subject merchandise from the foreign producer. Consistent with 19 CFR 351.212(b)(1), we will instruct CBP to assess an importer- or customer-specific rate on entries during the POR.

Further, contrary to PNA's argument, entries of subject merchandise from the Pilkington JVs by the unaffiliated importer during the POR continued to be subject to the suspension of liquidation starting April 30, 2003. Congress established the "retrospective" assessment system under which final liability for antidumping and countervailing duties is determined after importation of subject merchandise. Upon initiation of a review, the Department instructs CBP to continue to suspend liquidation of all imports of all companies under review until completion of the final results of review in which it calculates specific assessment rates for each importer or customer. See 19 CFR 351.212(a). Accordingly, the Department instructed CBP to continue the suspension of entries of all imports of subject merchandise from the Pilkington JVs during the POR, including those entries imported by the unaffiliated purchaser.

The Department calculates separate assessment rates for each importer or customer, and instructs CBP accordingly. We have calculated assessment rates for each importer or customer for this POR based on their respective purchases from the Pilkington JVs. See 19 CFR 351.212(b). In accordance with our normal practice, we have calculated the assessment rate by dividing the total antidumping duties due

by the entered quantity of the merchandise since the Pilkington JVs did not report the entered value. See 19 CFR 351.212(b)(1); see also Final Analysis Memorandum.

Therefore, for the final results, the Department has calculated a single, weighted-average margin of all sales by the Pilkington JVs to the United States which will form the basis of the cash-deposit rate prospectively and it has calculated importer- or customer-specific assessment rates based on the sales to PNA and to the unaffiliated importer.

Comment 5: Rejection of Market Purchases from Indonesia, Thailand, and South Korea

PNA argues that the Department should revise its calculation of normal value for the final results of review by using the respondent's reported market-economy prices for float glass rather than using surrogate values. PNA states that there is no evidence on the record of this review that Indonesia, Thailand, or South Korea ("Korea") maintained or even had in place any export subsidies at all during the POR and this lack of information undermines the Department's rejection of the market-economy purchases by the Pilkington JVs during the POR. Finally, PNA asserts that speculation and citations to other investigations and other time periods is not a basis for establishing substantial record evidence in support of a factual determination during a particular review period, even where the standard is whether the Department has reason to believe or suspect that prices are (or may be) subsidized.

Department Position:

19 CFR 351.408(c)(1) provides that, "where a factor is purchased from a market-economy supplier and paid for in market-economy currency, the Secretary normally will use the price paid to the market-economy supplier" to value the factors of production. We have consistently recognized the congressional intent to avoid using prices that we have reason to believe or suspect may be dumped or subsidized. See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1, see also, Notice of Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts from the People's Republic of China, 68 FR 20372, and accompanying Issues and Decision Memorandum at Comment 2 (April 25, 2003) ("Fence Posts"), citing Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Conf. Rep. No. 100-576 at 590-91.

We have reason to believe or suspect that prices of inputs from Indonesia, Korea, and Thailand may have been subsidized. It is the Department's consistent practice that, "where the facts developed in U.S. or third-country countervailing duty ("CVD") findings include subsides that appear to be used generally (in particular, broadly available, non-industry specific export subsidies), it is reasonable to infer that all exports to all markets from the investigated country are subsidized…{p}rior CVD findings may provide the basis for the Department to also consider that it has particular and objective evidence

to support a reason to believe or suspect that prices of the inputs from that country are subsidized." See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of the 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part ("TRBs XII") and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part ("TRBs XIII").

The CIT has affirmed the Department's practice of disregarding market-economy purchase prices which the Department has a reason to believe or suspect may be subsidized. See China National Machinery Import & Export Corporation v. United States, 293 F. Supp. 2d 1334, 2003 CIT Lexis 151, slip. Op. 03-133, 8 (October 15, 2003) ("China National Remand"), and Peer Bearing Co. v. United States, 2003 Ct. Intl. Trade LEXIS 163, 26 slip. op. 03-160 at 13 (Dec. 12, 2003) ("Peer Bearing").

At the time of the original investigation of this proceeding, we supported our finding that prices paid by the Chinese producers to their suppliers of float glass from Korea, Thailand, and Indonesia may have been subsidized by referring to 40 determinations by the United States of specific countervailable export subsidy programs in Korea, Thailand, and Indonesia. There is additional evidence that these countries continue to provide such subsidies. See e.g., Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea 68 FR 37122, (June 23, 2003), Final Affirmative Countervailing Duty Determination: Certain Hot- Rolled Carbon Steel Flat Products From Thailand 66 FR 50410 (October 3, 2001), and Preliminary Negative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 69 FR 52862 (August 30, 2004). Currently, the United States has in effect 41 countervailing duty determinations demonstrating the existence of broadly available, non-industry specific countervailable export subsidy programs in Korea, Thailand, and Indonesia. See Import Administration's Subsidy Enforcement Electronic Library for Korea, Thailand, and Indonesia at http://ia.ita.doc.gov/esel/eselframes.html. Therefore, the Department continues to find that there is reason to believe or suspect that prices paid for inputs from Korea, Thailand, and Indonesia may be subsidized and are therefore unreliable. Accordingly, we have determined that disregarding market-economy input prices from Korea, Thailand, and Indonesia in favor of surrogate prices results in a more accurate dumping analysis.

Comment 6: Surrogate Profit Ratio

PNA contends that the Department should combine St. Gobain's profit experience with that of Asahi India Safety Glass Limited ("Asahi") to calculate the surrogate-value profit ratio. PNA asserts that the Department relied on the financial data of St. Gobain for calculating surrogate values for factory overhead and SG&A. Citing the Factors Valuation Memorandum at pages 6-7, PNA contends that

the Department determined that St. Gobain is "an Indian producer of laminated safety windshields" and its 2002 financial statement on the record is "public, audited, and is contemporaneous to the period of investigation."

Though recognizing that the Department preliminarily chose not to use the financial data of St. Gobain because it experienced a loss during the POR, PNA comments that, in past investigations and administrative reviews, the Department has found that the lack of profits of a potential surrogate producer does not render that producer's financial statements unrepresentative of the financial experience of the domestic industry in the surrogate country, citing among others, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 1953, (January 10, 2001), and accompanying Issues and Decision Memorandum, at Comment 8, (citing Freshwater Crawfish Tail Meat from the People's Republic of China 64 FR 27965 (May 24, 1999)).

In light of the Department's prior determinations, PNA argues that for the final results of review the Department should include St. Gobain's experience in the calculation of profit by restating its negative profit rate to zero.

Department Position:

The Department disagrees with PNA. The Department has consistently interpreted the term "profit" to only refer to a positive amount. See Statement of Administrative Action, accompanying the Uruguay Round Agreements Act, H.R.Rep. No. 103-826(I), at 839-40 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4175 ("SAA"); see also Rhodia Inc. v. United States, 240 F.Supp.2d 1247, 1254 (CIT, 2002).

PNA cites to several past instances in which the Department found it appropriate to include zero profits in its calculation of surrogate profit. Notwithstanding the cases cited by the respondent, the Department's current practice is to value profit by only considering the financial information of surrogate companies that have positive profits. See Final Determination in the Antidumping Investigation of Steel concrete Reinforcing Bars from the People's Republic of China, 66 FR at 33524 (June 22, 2001) ("Re-bar from China"), and accompanying Issues and Decision Memorandum at Comment 8. As recognized by the CIT, "Commerce has been excluding zero profits in market-economy cases since 1997...and slowly began to apply this methodology to non-market economies." Rhodia 240 F. Supp. 2d at 1253. The CIT has affirmed as reasonable the Department's interpretation of the term "profit" to refer only to positive amounts, and further concluded that Commerce was reasonable to only include positive profits in its calculation. See Fuyao Glass Industry Group Co., Ltd., et al. v. United States, 2003 Ct. Int'l Trade Lexis 171, Slip. Op. 2003-169, 33-34 (December 18, 2003). The only instance in which the Department considers negative or zero amounts in the calculation of constructed value ("CV") profit is where there are no positive profits realized by any of the producers in the industry. See

Floral Trade Council v. United States, 41 F.Supp.2d 319, 326-32 (CIT, 1999). In this instance, one surrogate Indian company, Asahi, realized a profit.

Therefore, for the final results, we have determined to exclude the profit experience of the one surrogate with a negative profit.

Comment 7: Allocation of Credit Expense, Inventory Carrying Cost, and Marine Insurance

PNA contends that the Department should calculate credit expense, inventory carrying costs, and marine insurance based on a net price and not the gross unit price as the Department used in the preliminary results of review. PNA asserts that the Department should subtract the other discount from the gross price to calculate the net U.S. price. PNA argues that using gross price alone does not reflect the economic reality of the invoice price and overstates these values because it represents the price set by the National Autoglass Standards ("NAGS") that is used as a fixed starting point in an industry that determines the final invoice by applying a discount to the NAGS listed price. In contrast, PNA states, the amount listed on the invoice reflects the gross price less the other discount and is the amount the customer paid. PNA cites Verification of Sales and Factors of Production of Pilkington North America ("PNA") in the Antidumping Duty Administrative Review of Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China ("PRC") at pages 5-6 as an example of how the NAGS price is substantially higher than the amount the customer actually pays.

Department Position:

The Department agrees with PNA. For the calculation of credit expense, inventory carrying costs, and marine insurance, the Department used the net price (i.e., gross price minus other discount) rather than gross price in order to base these adjustments on the amounts the customer actually paid. See Final Analysis Memo, dated October 14, 2004.

Comment 8: Market Price Value for Marine Insurance

PNA argues that the market-economy price for marine insurance that the Department used in the preliminary results of review is not correct. The respondent asserts that the correct market-economy price for marine insurance is one hundred times smaller than the value that the Department used in the preliminary results. To support this claim, PNA cites its August 4, 2003, response to the Department's questionnaire.

Department Position:

The Department agrees with PNA and has corrected its ministerial error. See Final Analysis Memo, dated October 14, 2004.

Comment 9: Surrogate Value for Metal Clips

PNA argues that the Department valued Metal Clips with the surrogate value for Labels. Respondent states that the Department established the correct surrogate value for Metal Clips on page 5 of the Factors Valuation Memorandum. PNA asserts that the Department should therefore revise the calculations to reflect the correct value.

Department Position:

The Department agrees with PNA and has corrected its ministerial error. See Final Analysis Memo, dated October 14, 2004.

Comment 10: Double Counting of Labor

PNA states that in calculating normal value, the Department included packing labor amounts in both the labor and packing amounts. Respondent argues that this error resulted in using these amounts twice. PNA requests that the Department correct its error.

Department Position:

The Department agrees with PNA and has corrected its calculations to ensure it does not include these amounts twice in its calculation of the margin for the Pilkington JVs. See Final Analysis Memo, dated October 14, 2004.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of the reviews and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree_____ Disagree_____

_____

James J. Jochum
Acting Assistant Secretary
for Import Adminstration

_____

Date