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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China for the Period of Review August 1, 2006, through July 31, 2007

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on polyethylene retail carrier bags from the People's Republic of China for the period August 1, 2006, through July 31, 2007. We recommend that you approve the positions described in this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments from parties:

1. Zeroing
2. Selection of Surrogate Financial Statements
3. Surrogate Financial-Ratio Calculations
4. Freight Revenue
5. Further-Manufacturing Cost Calculations
6. Inland-Freight Truck-Cost Calculation
7. Clerical Errors

The respondents in this review are Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa), and Rally Plastics Co., Ltd. (Rally).

Background

On September 9, 2008, the Department of Commerce (the Department) published Polyethylene Retail Carrier Bags From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 52282 (September 9, 2008) (Preliminary Results), in the Federal Register.

We invited interested parties to comment on the Preliminary Results. On October 14, 2008, we received case briefs from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners) and Nozawa. On October 20, 2008, we received rebuttal briefs from the petitioners and Nozawa.

Abbreviations

The Act – the Tariff Act of 1930, as amended
ADA – Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994)
CIT - U.S. Court of International Trade
CAFC - U.S. Court of Appeals for the Federal Circuit
FOP - Factors of Production
FOB – Free on Board
I&D Memo - Issues and Decision Memorandum adopted by a Federal Register notice of final determination of an investigation or final results of review
NME - Non-Market Economy
Polyplast – A.P. Polyplast Pvt. Ltd.
POR – Period of Review
SAA - Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (1994), reprinted in 1994 U.S.C.C.A.N. 4040
SG&A - Selling, General, and Administrative Expenses
Synthetic – Synthetic Packers Pvt. Ltd.
URAA - Uruguay Round Agreements Act
WTO – World Trade Organization

AFBs - Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 67 FR 55780 (August 30, 2002)

Lined Paper Products - Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006)

OJ Brazil - Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (August 11, 2008)

Persulfates - Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005)

SSWR (Final) - Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review, 73 FR 12950 (March 11, 2008)

SSWR (Prelim) - Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 51411 (September 7, 2007)

Tires - Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008)

US Zeroing (Japan) - United States – Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (January 9, 2007)

WBF - Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008)

Zeroing Notice - Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006)

Court Cases

Corus I - Corus Staal BV v. United States, 395 F.3d 1343 (Fed. Cir. 2005), cert. denied: 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006)

Corus II - Corus Staal BV v. United States, 502 F.3d 1370 (Fed. Cir. 2007)

Federal Mogul - Federal Mogul Corp. v. United States, 862 F. Supp. 384 (1994)

NSK - NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007)

NTN Bearing - NTN Bearing Corp. of Am. v. United States, 997 F.2d 1453 (Fed. Cir. 1993)

SKF - SKF - SKF v. United States, 537 F.3d 1373 (Fed. Cir. 2008)

Timken - Timken Co. v. United States, 354 F.3d 1334 (Fed. Cir. 2004)

Zenith - Zenith Electronics Corp. v. United States, 988 F.2d 1573 (Fed. Cir. 1993)

Discussion of the Issues

1. Zeroing

Comment 1: According to Nozawa, in the Preliminary Results, the Department disregarded price comparisons that resulted in negative margins, a methodology commonly referred to as "zeroing." Citing Timken, 354 F.3d at 1341, Nozawa argues that the courts have confirmed that the Act does not require zeroing. Citing Viraj Group Ltd. v. United States, 162 F. Supp. 2d 656, 662,663 (2001), Nozawa states that section 773(a) of the Act requires that the

Department make "fair comparisons" to "determine margins as accurately as possible." Citing Corus Staal BV v. United States, 259 F. Supp. 2d 1253, 1261 (CIT 2003), Nozawa argues that, while courts have recognized that the practice of zeroing is a reasonable interpretation of an ambiguous statute, the practice does distort margins. Nozawa argues that such distortions are contrary to the Department's obligations to calculate margins as accurately as possible.

Nozawa explains that section 777A(c)(1) of the Act defines the term "weighted average dumping margin" as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer."[1] Nozawa also argues that Webster's New World Dictionary defines the terms "aggregate" as "gathered into, or considered as, a whole" and "average" as "numerical results obtained by dividing the sum of two or more quantities by the number of quantities" respectively. Nozawa also argues that zeroing does not produce a weighted-average dumping margin for all subject merchandise as required by sections 771(35)(A) and (B) of the Act. Citing Floral Trade Council v. United States, 41 F. Supp. 2d 319, 332 (CIT 1999), Nozawa also argues that the CIT has recognized that the term "amount" as contained in sections 771(35)(A) and (B) of the Act and used to define the term dumping margin refers to both positive and negative values. Citing Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (December 13, 2000), and accompanying I&D Memo at Comment 26, Nozawa argues further that the Department has acknowledged that it should take both positive and negative net prices into account to calculate an accurate margin.

Nozawa argues that the United States's zeroing practice has been found to violate the United States's international obligations pursuant to the ADA. Specifically, citing US Zeroing (Japan), Nozawa states that the WTO Dispute Settlement Body has determined that the U.S. practice of zeroing in the context of investigations and administrative reviews violates the ADA. Citing "Press Release, U.S. Mission to the United Nations in Geneva, U.S. Statements to the WTO Dispute Settlement Body Meeting 3 (February 20, 2007)," Nozawa explains that the United States has stated its intention to comply with US Zeroing (Japan). Moreover, citing Zeroing Notice, Nozawa asserts that the Department has abandoned its practice of zeroing in investigations. Nozawa argues that, based on the response from the U.S. government to other Appellate Body decisions involving zeroing, the Department should revisit its use of zeroing in the final results of this review. Nozawa also argues that both the SAA and the legislative history of the URAA reflect the Executive and Congressional intention that U.S. antidumping law be brought into conformity with the ADA. Specifically, Nozawa explains, the URAA amended 19 USC 1673b to incorporate Article 2.4 of the ADA which provides that a "fair comparison shall be made between the export price or constructed export price and normal value." Finally, citing Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804), Nozawa argues that it has long been a legal doctrine that U.S. laws should be interpreted to avoid violations of

[1] In its case brief, Nozawa cites incorrectly to section 777A(c)(1) of the Act in defining "weighted average dumping margin." The applicable statutory definition of "weighted average dumping margin" is found in section 771(35)(B) of the Act. The Department has considered Nozawa's argument in light of the applicable statutory definition of "weighted average dumping margin."

international obligations and, as such, the Department should not use the zeroing methodology in the final results of this review.

The petitioners argue that the Department's application of the zeroing methodology is in accordance with the law and that the Department should continue to apply the methodology in the final results. Citing Timken, 354 F.3d at 1344-45, the petitioners argue that the CAFC held that the Department's zeroing methodology is a permissible interpretation of the Act. Citing WBF and accompanying I&D Memo at Comment 4, the petitioners also argue that the Department has repeatedly rejected arguments opposing the Department's use of its zeroing methodology in administrative reviews. Citing Persulfates and accompanying I&D Memo at Comment 10, the petitioners assert that the Department has rejected arguments that the zeroing methodology does not result in fair comparisons and thus does not calculate margins as accurately as possible. Finally, citing Allegheny Ludlum Corp. v. United States, 367 F.3d 1339, 1348 (Fed. Cir. 2004), the petitioners argue that the CAFC has determined that WTO reports do not bind U.S. courts in construing U.S. law.

Department's Position: We have not changed our calculation of the weighted-average dumping margin as suggested by Nozawa for these final results of review. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price and constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, we interpret this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department does not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See, e.g., Timken, 354 F.3d at 1342, Corus I, 395 F.3d at 1347-49, and SKF, 537 F.3d at 1381.

While we have modified our calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations, we have not adopted any other modifications concerning any other methodology or type of proceedings, such as administrative reviews. See Zeroing Notice, 71 FR at 77724.

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." We apply these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and dividing this amount by the value of all sales.

The use of the term "aggregate dumping margins" in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which export price or constructed export price exceeds the normal value permitted to offset or cancel the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to recognize that the weighted-average margin will reflect any non-dumped merchandise examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin while no dumping amount

for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to 'mask' sales at less than fair value." See Timken, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. See, e.g., Timken, 354 F.3d at 1343, Corus I, 395 F.3d 1343, Corus II, 502 F.3d at 1375, and NSK, 510 F.3d at 1381.

Nozawa argues that the WTO Appellate Body has ruled that "zeroing" is inconsistent with U.S. obligations under the ADA. The CAFC has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA. See 19 U.S.C. 3538. See also Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375, and NSK, 510 F.3d at 1379-80.

With reference to Nozawa's discussion of US-Zeroing (Japan), Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., 19 U.S.C. 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 USC 3533(g) and Zeroing Notice, 71 FR at 77722, 77724. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure. With regard to US – Zeroing (Japan), it is the position of the United States that appropriate steps have been taken in response to that report and those steps do not involve a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative review. Furthermore, in response to US – Zeroing (Japan), the CAFC has repeatedly affirmed the permissibility of denying offsets in administrative reviews. See Corus II, 502 F.3d at 1374-75, and NSK, 510 F.3d at 1379-80. Finally, in SKF, 537 F.3d at 1381, the CAFC rejected the argument that zeroing is a distortive misapplication of the antidumping laws and stated that "{w}e have addressed the practice of 'zeroing' numerous times . . . and have unequivocally upheld this practice."

For these reasons, the Department's denial of offsets in this administrative review is consistent with U.S. law. Accordingly and consistent with the Department's interpretation of the Act described above, the Department has continued to deny offsets to dumping based on export transactions that exceed normal value in this review and has not changed the methodology employed in calculating the respondents' weighted-average dumping margins for these final results.

2. Selection of Surrogate Financial Statements

Comment 2: Nozawa argues that the Department should use the 2006/2007 financial statements of an Indian company, Polyplast, for calculating surrogate financial ratios. Citing Amended Final Results of Antidumping Duty Administrative Review and New Shipper

Reviews: Wooden Bedroom Furniture From the People's Republic of China, 72 FR 46957 (August 22, 2007), and accompanying I&D Memo at Comment 17 and Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007), and accompanying I&D Memo at Comment 3C, Nozawa explains that the Department has stated its preference for using multiple sets of financial statements to calculate surrogate financial ratios and, as such, should use Polyplast's financial statements in the surrogate financial-ratio calculations.

Nozawa argues that, even though there was an inconsistency between the balance sheet and the fixed-asset schedule in the Polyplast financial statements it submitted prior to the Preliminary Results, the financial statements which it submitted after the Preliminary Results are internally consistent. Nozawa explains that Polyplast's 2006/2007 financial statements reconcile to Polyplast's 2005/2006 financial statements, which were used for the previous segment of this proceeding. Nozawa argues that not only is there no requirement that each page bear an auditor's stamp but the 2006/2007 financial statements of Synthetic, which the Department used in the Preliminary Results, are not stamped on each page. Moreover, Nozawa asserts, the Department has used financial statements in previous reviews of this order that did not have an auditor's stamp on each page. Nozawa explains that, as in the previous administrative review, the fixed-asset schedule has been printed on larger paper so that all details could be included. Nozawa also argues that the test is not whether the financial statements have a stamp on every page but whether the statements include the auditor's notes and are internally consistent. Nozawa argues that a reference to the costs of raw materials in Polyplast's Director's Report indicates that Polyplast is a producer of identical or comparable merchandise.

The petitioners question the authenticity and accuracy of the 2006/2007 Polyplast financial statements which Nozawa submitted after the Preliminary Results. Citing, among others, Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 40293 (July 14, 2008), and accompanying I&D Memo at Comment 3, the petitioners assert that it is the Department's practice to use financial statements only if "the surrogate data are not distorted or otherwise unreliable" and that the "Department also selects surrogate financial statements that are publicly available, comparable to the respondent's {production} experience, and contemporaneous." Citing Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003), and accompanying I&D Memo at Comment 14.A, the petitioners explain that the Department has found financial statements to be unreliable when "accounting irregularities . . . cast reasonable doubt upon the reliability and accuracy of the overall {financial} report."

The petitioners state that the Polyplast financial statements which the Department used in previous reviews appear to include auditor's stamps. They also explain that, of the unstamped financial statements used in previous administrative reviews, several were documents obtained from electronic filings with local authorities and that electronic filings usually do not bear marks placed on paper copies such as signatures and auditor stamps. The petitioners also state that, due to poor photocopying, it is difficult to determine whether one of the depreciation schedules in financial statements used by the Department previously contained an auditor's stamp.

The petitioners also argue that the Department should be vigilant in ensuring that any information that is not subject to verification is either self-authenticated or the submission is

supported by substantial corroborating evidence. The petitioners argue that, even though Nozawa claims to have received the depreciation schedule directly from Polyplast, it is implausible that Polyplast would have transmitted electronic copies of the depreciation schedule without a transmittal letter or e-mail message. The petitioners state that Polyplast would have included an explanation for the revision and that it is likely that the revision would have included a restatement of its accounts. The petitioners also argue that, because Nozawa was on notice about the Department's concerns, it is inconceivable that Nozawa would not have submitted such corroborating documentation. Finally, citing Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006), and accompanying I&D Memo at Comment 1, the petitioners argue that, because Nozawa obtained the Polyplast financial statements from the company directly, the financial statements violate the Department's policy of relying only on information that is publicly available to value FOP information.

Citing, among others, Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (December 5, 2003), and accompanying I&D Memo at Comment 1, the petitioners state that the Department prefers "to rely upon the data of a producer of identical merchandise in the primary surrogate country, as long as the resultant financial data is not distorted or otherwise unreliable." The petitioners argue that, while record evidence supports the Department's determination that Synthetic produces identical merchandise, the record of this review is devoid of any evidence concerning Polyplast's manufacturing process or products. The petitioners also argue that, while the Department has determined in prior reviews that Polyplast produced comparable merchandise, the record of this review is devoid of any evidence that Polyplast continues to produce the same products. Accordingly, the petitioners argue, there is very little basis for determining that Polyplast even produced comparable merchandise during the reporting period.

The petitioners argue that information in Polyplast's financial statements indicates that the manufacturing aspect of operations has become insignificant in comparison to its reselling operations. Specifically, the petitioners assert, the terms "stores consumed" and "stock in trade" are commonly used by companies which sell products manufactured by other companies. The petitioners comment that the terminology in the Polyplast financial statements differs from the terminology used in every other proposed financial statement that has been placed on the record of this review. Citing, among others, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2004-2005 Administrative Review and Partial Rescission of Review, 71 FR 75936 (December 19, 2006), and accompanying I&D Memo at Comment 2, the petitioners argue that the Department's practice is to exclude "traded goods" from the calculation of the surrogate producer's total cost of manufacturing.

Department's Position: We have not used Polyplast's 2006/2007 financial statements to calculate surrogate financial ratios for the final results because the financial statements are incomplete. In valuing FOP information, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market-economy country. Section 351.408(c)(4) of the Department's regulations provides that, "{f}or manufacturing, overhead,

general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise."

In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data." See Lined Paper Products and accompanying I&D Memo at Comment 1. We have explained previously that we have a "clear preference for selecting surrogate value sources that are producers of identical merchandise, provided that the surrogate data is not distorted or otherwise unreliable." Id. Moreover, we have a long-standing practice of not using the financial statements of surrogate producers whose financial statements are incomplete. See Lined Paper Products and accompanying I&D Memo at Comment 1.[2]

The Polyplast 2006/2007 financial statements that Nozawa submitted after the Preliminary Results are missing one or more pages from Schedule L to the financial statements. We have compared Polyplast's 2006/2007 financial statements to Polyplast's 2005/2006 and 2004/2005 financial statements which Nozawa submitted as well as Polyplast's 2006/2007 financial statements after the Preliminary Results. This comparison indicates that the missing page(s) likely summarize Polyplast's polyethylene-bag production, work in progress, waste generation, and plastic consumption. Such information is critical for determining not only whether Polyplast's income comes primarily from its manufacturing operations but also for determining whether Polyplast is a producer of identical merchandise.

For the foregoing reasons, we have determined not to use the Polyplast financial statements for calculating surrogate financial ratios in the final results. Because we have decided not to use the 2006/2007 Polyplast financial statements as a result of the incompleteness of the statements, we have not addressed the parties' other comments on this issue.

3. Surrogate Financial-Ratio Calculations

Comment 3: The petitioners argue that the Department misclassified Synthetic's reported expenses relating to losses on sales of fixed assets and factory electrical maintenance.[3] Citing Brake Rotors From the People's Republic of China: Final Results of 2006-2007 Administrative and New Shipper Reviews and Partial Rescission of 2006-2007 Administrative Review, 73 FR 32678 (June 10, 2008), and accompanying I&D Memo at Comment 3, the petitioners assert that the Department should classify losses on sales of fixed assets as part of SG&A. Citing Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004), and accompanying I&D Memo at

[2] See also Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 71355 (December 17, 2007), and accompanying I&D Memo at Comment 1; Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying I&D Memo at Comment 10; Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003), and accompanying I&D Memo at Comment 9; Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan, 67 FR 15535 (April 2, 2002), and accompanying I&D Memo at Comment 3; Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus, 66 FR 33528 (June 22, 2001), and accompanying I&D Memo at Comment 2.

[3] In the Preliminary Results, the Department used Synthetic's 2006/2007 financial statements to calculate surrogate financial ratios.

Comment 3, the petitioners assert that the Department should classify electricity maintenance as factory overhead.

Nozawa states that it does not disagree with the petitioners concerning the classification of electricity maintenance and loss on sales of fixed assets.

Department's Position: We have corrected our classification of "Loss on Sale of Fixed Assets" and "Factory Electrical Maintenance" so that the line items are classified as SG&A and overhead, respectively.

Comment 4: The petitioners argue that the Department misclassified Synthetic's reported expenses relating to "chit" dividends and losses and should not have excluded these expenses from its surrogate financial-ratio calculations. The petitioners explain that the Department classified this line item as part of SG&A in the first administrative review of the order and assert that it represents Synthetic's involvement in a "chit fund." The petitioners assert that companies engage in "chit" transactions to gain earlier access to cash resources. The petitioners argue that, because these expenses relate to cash-flow management, they are similar to interest expenses, foreign-exchange losses, or miscellaneous revenues and expenses. Accordingly, citing Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada, 69 FR 75921 (December 20, 2004), and accompanying I&D Memo at Comment 24 ("{t}he management of a company's balance of foreign exchange gains and losses into its overall cash management and ultimately is an inevitable part of a company's cost of doing business when operating in foreign markets") and Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008), and accompanying I&D Memo at Comment 3 ("{i}t is the Department's practice to include miscellaneous revenues as an offset to SG&A when we cannot determine that the revenues are related to specific manufacturing or selling activities"), the petitioners argue that the expenses associated with the "chit" activities should be classified as SG&A.

Nozawa argues that the Department should not classify "chit" dividends/losses as SG&A. Nozawa asserts that, while the petitioners are correct that Indian companies engage in "chit" financial transactions as a method of cash management, the petitioners ignored record evidence which demonstrated that Nozawa used and reported a similar expense for its sales of subject merchandise. Nozawa argues that, because comparable expenses have been captured in Nozawa's reporting, it would be inappropriate to include "chit" dividends/losses in SG&A because to do so would result in double counting.

Department's Position: Although both parties agree that "chit funds" are used as a cash-management scheme to enable participants to gain earlier access to cash resources, Nozawa has not demonstrated how the inclusion of "chit" dividends and losses in the surrogate financial-ratio calculations results in double counting when viewed in light of its reported U.S. selling expenses. Section 351.401(b)(1) of the Department's regulations provides that "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." Further, the CAFC has explained that the burden of evidentiary production belongs "to the party in possession of the necessary information." See Zenith, 988 F.2d at 1583. See also NTN Bearing, 997 F.2d at 1458

("{e}ven though Commerce specifically did not ask for the {information} that would have enabled it to make such an exclusion determination for {respondent's merchandise}, it was {the respondent's} burden to supply the information in the first instance along with its request for a substantial value-added exclusion"). Accordingly, we have included "Chit Dividends/Losses" in the surrogate financial-ratio calculations in the final results.

Comment 5: Citing Tires and accompanying I&D Memo at Comment 18.F, the petitioners indicate that the Department classified "Processing Charges" as an overhead expense correctly because Synthetic identified labor and energy costs in its financial statements separately. Moreover, the petitioners comment, the Department classified "Unloading Charges" as SG&A correctly because that is how Synthetic classifies this expense.

Nozawa disagrees with the petitioners' statement that the Department treated processing charges and unloading charges correctly. Nozawa argues that Synthetic treats processing charges as an expense directly related to the overall expense of manufacturing products. Nozawa argues that Synthetic classifies these charges in the same category as wages, bonuses, and electricity and these are items already captured in Nozawa's reported FOP and the Department's normal-value calculation. Nozawa argues that the Department classified processing charges as a material cost in previous reviews of this order and that neither Nozawa's reported FOPs nor the facts regarding Synthetic have changed.

Concerning the petitioners' claim that the Department classified unloading charges as SG&A correctly, Nozawa argues that its reported FOP and the Department's normal-value calculation already capture those expenses because they represent the expense of unloading raw materials delivered to the factory. Nozawa explains that, for market-economy purchases, the Department used a market-economy freight charge for transporting the purchases from Hong Kong to the factory and that this charge included both loading and unloading. Similarily, Nozawa argues, the surrogate value for inland freight covers any unloading charges. Finally, Nozawa argues, to the extent which unloading was performed by Nozawa's workers, such costs are captured by Nozawa's FOP which include all laborers.

Department's Position: Our practice is to treat outside services as manufacturing overhead if energy and labor costs are identified separately in the financial statements. See WBF and accompanying I&D Memo at Comment 11 and Tires and accompanying I&D Memo at Comment 18.F. Accordingly, we have continued to classify Synthetic's "processing charges" as a part of overhead in the surrogate financial-ratio calculations because Synthetic identifies the charges as a separate line item related to the overall manufacturing of products.

We have excluded "Unloading Charges" from the surrogate financial-ratio calculations. We have explained that it is "longstanding practice to avoid double-counting costs where the requisite data are available to do so." See WBF and accompanying I&D Memo at Comment 11. See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2007), and accompanying I&D Memo at Comment 2. This expense category is likely to include charges that we have included in our normal-value calculations. Specifically, we agree with Nozawa that, to the extent they are not included in inland-freight truck costs, such charges are included in Nozawa's reported FOPs which included all laborers.

4. Freight Revenue

Comment 6: Nozawa argues that the Department should not treat the amount of freight revenue as an offset to movement expenses. Citing Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 72 FR 51588, 51592 (September 10, 2007), unchanged in Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008), Nozawa argues that the Department's treatment of freight revenue as an offset to movement expenses is a departure from the Department's treatment of freight revenue in either the investigation or the two previous administrative reviews of this order in which the Department treated the full amount of freight revenue as an upward adjustment to U.S. price.

Nozawa acknowledges that the Department cited OJ Brazil and accompanying I&D Memo at Comment 7 for the proposition that it treats freight-related revenue as an offset to movement expenses. Nozawa argues that, even though the Department's analysis in OJ Brazil refers to section 772(c)(1) of the Act, 19 CFR 351.401(c), and previous cases in which the Department treated freight revenue as an offset, none of the cases cited in OJ Brazil identifies the statutory or regulatory language that requires the treatment of freight revenue only as an offset to movement expenses. Further, citing Purified Carboxymethylcellulose from Sweden: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 45703, 45705 (August 6, 2008), Nozawa argues that the Department has added the full amount of freight revenue to the U.S. price recently. Moreover, citing AFBs and accompanying I&D Memo at Comment 45, Nozawa also argues that the Department has corrected preliminary results when it had "inadvertently limited the addition of other revenue to the U.S. price so the increase would not exceed the amount reported for inland freight to the customer." Citing Federal Mogul, 862 F. Supp. at 412, Nozawa explains that the CIT has upheld the Department's allowance of an upward adjustment to U.S. price for freight revenue even if the amount exceeded the corresponding expense.

Nozawa argues that, assuming arguendo that the Department continues to treat freight revenue as an offset to movement expenses, the Department should calculate the amount of the offset correctly. Citing the Preliminary Results, 73 FR at 52285, Nozawa explains that, even though the Department stated that it "incorporated freight-related revenues as offsets to movement expenses because they relate to movement and transportation of subject merchandise," the Department limited the amount of the offset to the sum of inland-freight expenses and U.S. brokerage and handling.

The petitioners state that, pursuant to the express limitations in section 772(c)(1) of the Act and the definition of "price adjustments" in 19 CFR 351.401(c), the Department did not increase the U.S. price for amounts attributable for freight revenue. Citing OJ Brazil and accompanying I&D Memo at Comment 7, the petitioners assert that the Department has explained the statutory and regulatory limitations applicable to upward adjustments to U.S. price. The petitioners also argue that, pursuant to section 772(c)(2) of the Act, freight revenue

associated with the provision of transportation services can only be used to offset inland-freight expenses.

Citing SSWR (Prelim), 72 FR at 51414, unchanged in SSWR (Final), the petitioners argue that the Department's offset policy is limited to situations where the respondent incurred expenses and realized revenues for the same type of activity. Citing Purified Carboxymethylcellulose From Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review, 73 FR 45948, 45950 (August 7, 2008), the petitioners contend that the Department has explained that "{w}e also reduced movement expenses, where appropriate, by the amount of certain freight revenue (i.e., revenue received from customers for invoice items covering transportation expenses) paid by the customer." Concerning other determinations cited by Nozawa, the petitioners explain that it is often unclear whether an offset was applied in that case or whether there are factual differences between those decisions and the present situation. The petitioners also argue that Federal Mogul is inapplicable not only because of different factual circumstances but also because the court did not address the reasoning in OJ Brazil and other recent determinations by the Department. Finally, the petitioners assert that these recent decisions represent the Department's current practice concerning freight revenue whereas AFBs is an outdated and superseded precedent.

Concerning Nozawa's claim that the Department should revise its offset calculation, the petitioners state that Nozawa's questionnaire responses belie the notion that its reported freight revenues are intended to compensate for all movement expenses. Specifically, the petitioners argue that Nozawa's submissions indicate that freight revenue is earned in connection with deliveries from its affiliates' regional warehouses to the customer. Finally, the petitioners contend that the Department's inclusion of U.S. brokerage and handling charges in the freight-offset cap was generous.

Department's Position: Section 772(c)(1) of the Act provides that the Department shall increase the price used to establish either export price or constructed export price in only the following three instances:

> (A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States,
>
> (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and
>
> (C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy.

Further, section 351.401(c) of the Department's regulations directs the Department to use a price in the calculation of U.S. price which is net of any price adjustment that is reasonably attributable to the subject merchandise. The term "price adjustments" is defined under 19 CFR 351.102(b) as a "change in the price charged for subject merchandise or the foreign like product,

such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay."

In past cases, we have declined to treat freight-related revenues as additions to U.S. price under section 772(c) of the Act or as price adjustments under 19 CFR 351.102(b). Rather, we have incorporated freight-related revenues as offsets to movement expenses because they all relate to the movement and transportation of subject merchandise. See SSWR (Prelim), 72 FR at 51411, unchanged in SSWR (Final), and Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review, 67 FR 21634, 21637 (May 1, 2002), unchanged in Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 66110, 66112 (October 30, 2002). Therefore, we have continued to treat freight revenue as an offset to the corresponding movement expenses that are associated with the same type of activity in our calculations for the final results of this review.

We disagree with Nozawa's argument that we should revise the calculation of the offset cap to include all movement expenses in the pool of expenses we use to determine the offset cap. Nozawa's questionnaire responses indicate that freight revenue is earned in connection with deliveries from regional warehouses to the customer. See, e.g., Nozawa's Response to Section C of the Department's Questionnaire, dated January 7, 2008, at 26, 29, and 43-44. Our offset practice limits the granting of an offset to situations where a respondent incurs expenses and realizes revenue for the same type of activity. See, e.g., SSWR (Prelim), 72 FR at 51415 (limiting the freight-revenue offset to the corresponding inland-freight expenses), unchanged in SSWR (Final). Accordingly, because Nozawa's questionnaire responses indicate that freight revenue is associated with the expense of transporting goods from the warehouses to the customers, we have changed our calculations so that the offset cap does not include U.S. brokerage and handling charges and is limited to only the corresponding inland-freight expense.

5. Further-Manufacturing Cost Calculations

Comment 7: Nozawa argues that the Department applied further-manufacturing costs to sales which did not involve further manufacturing. Nozawa submits proposed computer-programming language which it claims the Department has used in previous reviews.

The petitioners argue that Nozawa is mistaken and that the Department only applied further-manufacturing costs to sales of merchandise that had undergone further-manufacturing. The petitioners also explain that, because the Department applied further-manufacturing costs on a transaction-specific basis as opposed to a CONNUM-specific basis as in the previous administrative review, Nozawa's proposed computer-programming language would cause an error in the Department's calculations.

Department's Position: For the Preliminary Results, we calculated Nozawa's further-manufacturing costs on a transaction-specific basis. See Memorandum entitled "Administrative Review of Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results Analysis Memorandum for Dongguan Nozawa Plastic Products Co., Ltd. and United Power Packaging Ltd.," dated September 2, 2008, at 2. Therefore, we have not changed our calculation of Nozawa's further-manufacturing costs.

6. Inland-Freight Truck-Cost Calculation

Comment 8: Nozawa argues that the Department should correct its calculation of the per-kilogram inland-freight trucking cost which it added to market-economy inputs that were purchased on an FOB Hong Kong basis. Specifically, Nozawa explains, while the Department used the correct amount of total POR freight-in costs, the Department assumed incorrectly that the total POR freight costs were only for the transport of market-economy purchases made on an FOB Hong Kong basis. Nozawa states that the Department should include its NME purchases that were made on an FOB Hong Kong basis in its calculation as well. Nozawa explains that a list of its NME purchases that were made on an FOB Hong Kong basis is included in its questionnaire and supplemental questionnaire responses.

The petitioners argue that there is no record evidence supporting Nozawa's claim that its purchases of NME inputs were made on an FOB Hong Kong basis. The petitioners also argue that none of the invoices to which Nozawa refers indicate that the purchases were made on an FOB Hong Kong basis.

Department's Position: We have examined the record evidence and determined that, while Nozawa did report that some of its NME purchases were sourced from suppliers in Hong Kong, the record evidence does not demonstrate that the purchases were made on an FOB Hong Kong basis. Section 351.401(b)(1) of the Department's regulations provides that "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." Further, the CAFC has explained that the burden of evidentiary production belongs "to the party in possession of the necessary information." See Zenith, 988 F.2d at 1583, and NTN Bearing, 997 F.2d at 1458. Accordingly, because the record evidence does not support Nozawa's proposed adjustment, we have not changed our calculation of the inland-freight trucking cost for the final results of this review.

7. Clerical Errors

Comment 9: The petitioners request that the Department correct ministerial errors in the Department's calculations of surrogate-financial ratios relating to "Profit Before Tax" and "Vehicle Maintenance." Nozawa states that it does not disagree with the petitioner.

Department's Position: The Department has examined the surrogate financial-ratio calculations and determined that it is appropriate to correct the undisputed ministerial errors.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margins for all of the reviewed companies in the Federal Register.

Agree _____ Disagree _____

_____
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____
Date