

MEMORANDUM TO: Ronald K. Lorentzen
Deputy 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
Investigation of Polyethylene Retail Carrier Bags from Taiwan

Summary

We have analyzed the case and rebuttal briefs of interested parties in the antidumping investigation of polyethylene retail carrier bags from Taiwan. As a result of our analysis, we have made changes, including a correction of a certain ministerial error in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments and rebuttal comments by parties:

1. Targeted Dumping
2. Sales Outside the Ordinary Course of Trade
3. Home-Market Warranty Expenses
4. Direct Material Costs
5. Variable Overhead Costs for Outside Processing Services
6. Unreconciled Costs
7. Financial Expense
8. U.S. Indirect Selling Expenses
9. Miscellaneous Issues

Background

On October 27, 2009, the Department published in the *Federal Register* its preliminary determination in the antidumping duty investigation of polyethylene retail carrier bags from Taiwan. See *Polyethylene Retail Carrier Bags from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 55183 (October 27, 2009) (*Preliminary Determination*). The period covered by the investigation is January 1, 2008, through December 31, 2008. We invited interested parties to comment on the *Preliminary Determination*. We received case briefs submitted by Hilex Poly Co., LLC, and Superbag Corporation (hereinafter, the petitioners) and TCI Plastic Co., Ltd. (TCI), on January 21, 2010. The petitioners and TCI submitted rebuttal comments on January 26, 2010. Although a hearing was requested, the request was withdrawn and we did not hold a hearing.

Discussion of the Issues

1. Targeted Dumping

Comment 1: The petitioners argue that the Department should apply the average-to-transaction methodology to all of TCI's sales. The petitioners state that, in its *Preliminary Determination*, once it made an affirmative finding of targeted dumping and consistent with its practice, the Department limited the application of the average-to-transaction methodology solely to targeted sales and applied the average-to-average methodology to all non-targeted sales. The petitioners assert that, because this practice was based on now-withdrawn regulations, the Department announced in the *Preliminary Determination* that it would consider alternative approaches. The petitioners argue that this alternative approach should take the form of applying the average-to-transaction methodology to all of TCI's sales, given the requirements and the purpose of the underlying antidumping statute.

The petitioners assert that there is no basis to interpret section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the Act), as permitting the application of different margin-calculation methodologies to different subsets of export prices (or constructed export prices). Specifically, the petitioners argue, there is nothing in the language of the statute that suggests that for one part of the identified pattern in export prices (*i.e.*, targeted sales) an average-to-transaction comparison methodology is warranted while for the other part (*i.e.*, non-targeted sales) an average-to-average comparison methodology is appropriate. The petitioners assert that such a treatment is arbitrary and is contrary to the intent of Congress.

The petitioners argue that the United States has taken a position before the World Trade Organization (WTO) Appellate Body that Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) (Antidumping Agreement), which mirrors the language in the statute, prohibits the calculation of a dumping margin using different methods for different subsets of sales. The petitioners argue that, as in the Antidumping Agreement, the statute requires that, where a pattern in export prices (or constructed export prices) exists, the average-to-transaction methodology must be applied to all sales and not just to targeted sales. The petitioners dismiss one of the Department's alternatives, announced in the *Preliminary Determination*, of broadening the application of the average-to-transaction methodology to all sales to targeted customers, regions, or time periods instead of specific sales found affirmatively to be targeted. The petitioners assert that such an approach also does not address the intent of the statute.

The petitioners assert that the application of the average-to-average method to the non-targeted subset of sales contravenes the purpose of the statute. Citing the Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 842-843, the petitioners argue that section 777A(d)(1)(B) of the Act is intended to limit the problem of "masking" that occurs under the average-to-average methodology where, through averaging, higher-priced sales of a product would conceal dumping margins attributable to lower-priced sales. The petitioners argue that the now-withdrawn regulation, 19 CFR 351.414(f), limited the application of the average-to-transaction methodology in a way that permitted the concealment of targeted dumping. First, the petitioners argue, the Department assumed arbitrarily that the targeted sales encompass only the low-priced portion of the pattern of prices; high-priced sales are also part of the requisite pattern and, thus, could also be considered targeted. In order to avoid the masking of dumping margins, the petitioners argue that the

average-to-transaction methodology should have been applied to sales with prices on the high-end of the pattern. According to the petitioners, the Department's current practice of applying the average-to-transaction methodology only to the lowest-priced sales, which typically do not have negative margins, does little to prevent the masking problem identified in the SAA. Second, the petitioners argue, the strictures of the Department's current targeted-dumping test ensure that only a limited number of sales can be found to have been targeted; positive dumping margins even on most low-priced sales, considered targeted under the Department's current test, are permitted to be offset, through averaging, by application of the now-withdrawn regulation at 19 CFR 351.414(f).

Citing *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27375 (May 19, 1997), the petitioners comment that, when the Department promulgated 19 CFR 351.414(f), it sought to limit the application of the average-to-transaction methodology because it reasoned that section 777A(d)(1) of the Act establishes a preference for average-to-average price comparisons in investigations. The petitioners argue that there is no expressed statutory preference for the use of this methodology in investigations such as this one where patterns of significant price differences may conceal dumping. To the contrary, the petitioners argue, the SAA expresses a reluctance to use an average-to-average methodology where patterns of pricing might conceal dumping.

The petitioners argue that at the time 19 CFR 351.414(f) was adopted the Department had not yet abandoned the practice of zeroing under the average-to-average methodology in investigations. With the elimination of zeroing,¹ the petitioners argue, the masking problem which the targeted-dumping methodology was designed to address is exacerbated. As such, the petitioners assert, the need for an effective average-to-transaction methodology that unmask dumping margins is now more acute given the current practice of offsetting positive margins with negative ones in investigations. The petitioners argue that the Department's withdrawal of the former regulation at 19 CFR 351.412(f) now enables the Department to fulfill the Congressional intent of unmasking dumping by applying the average-to-transaction method to all sales and allows the Department to bring its interpretation of the statute into agreement with the position of the United States regarding the meaning of Article 2.4.2 of the Antidumping Agreement.

Alternatively, the petitioners assert, if the Department applies the average-to-average methodology to any portion of TCI's sales, it should reverse the current practice of permitting offsets under such methodology and should reinstate the prior practice of zeroing. The petitioners argue that, although the court has recently upheld the Department's practice in *U.S. Steel Corp. v. United States*, 637 F. Supp. 2d 1199 (CIT 2009), the issue is pending on appeal.

TCI asserts that, given the unusual way it has reported its U.S. sales, the application of the average-to-transaction methodology for all sales is not possible. Specifically, TCI argues, it reported that it could not identify and segregate constructed export-price sales of the products that were manufactured in Taiwan from the same products that were manufactured in countries other than Taiwan, including product manufactured by TCI's U.S. affiliate in the United States. Accordingly, TCI explains, it reported commingled U.S. sales of those products which it identified were produced in Taiwan without regard to the origin. TCI claims that, given these circumstances, in order to remedy this abnormality, the Department calculated a "weighted-average CEP {constructed export price} price" by calculating a ratio, for each control number

¹ The petitioners cite *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006).

(CONNUM), of Taiwan-sourced purchases to all purchases from all sources and applied these ratios to “the CEP prices for the CONNUMs to calculate the relative weighting allocated to the CEP sales...” As such, TCI argues, “there are no individual prices to begin with.”

Department’s Position: First, we address TCI’s argument. TCI argues that an average-to-transaction methodology for all sales is not possible because there are no transaction-specific U.S. prices for TCI. TCI attributes this phenomenon to the way we calculated “weighted-average CEP prices,” given the unique situation of TCI’s inability to identify and segregate Taiwan-origin sales. We find TCI’s argument both factually inaccurate and, as a result, moot.

Contrary to TCI’s assertion, we did not calculate “weighted-average CEP prices” for each CONNUM. Instead, in the Memorandum to File entitled “Preliminary Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Taiwan - Analysis Memorandum for TCI Plastic Co., Ltd.,” dated October 19, 2009, we stated that, “in order to approximate the quantity of CEP sales associated with Taiwanese-origin product only, we weighted the reported quantities of CEP sales of products in question using quantities associated with TCI’s purchases of these products from Taiwan, based on the information TCI provided in Exhibit C-2 of its July 20, 2009, questionnaire response.” Nothing in this statement suggests that we calculated “weighted-average CEP prices” or that there are no “individual {CEP} prices to begin with.” In fact, we did not adjust TCI’s reported CEP prices in any way in order to remedy TCI’s reporting of commingled sales. Therefore, transaction-specific U.S. prices exist should we decide to use them.

With regard to our targeted-dumping methodology, our practice in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008), and *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (collectively, *Nails*), limited the application of the average-to-transaction comparison methodology solely to targeted sales. Because this practice was based on now-withdrawn regulations, we announced in the *Preliminary Determination* that we would consider alternative approaches.

With regard to the petitioners’ argument that the U.S. government has taken a position that the WTO agreements dictate either an application of the average-to-average or an average-to-transaction comparison methodology for all sales, we disagree. The U.S. government’s position in that dispute was that, if offsets are required, mathematical equivalence was obtained regardless of whether the average-to-average methodology was applied to a subset of sales in addition to the average-to-transaction methodology or the average-to-transaction methodology was applied to all sales.

We have re-examined the language in section 777A(d)(1)(B) of the Act in order to discern whether the application of the average-to-transaction comparison methodology to all U.S. sales made by TCI is warranted, as the petitioners have argued. Section 777A(d)(1)(B) of the Act states:

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if

- (i) there is a pattern of export prices (or constructed export prices) for comparable

- merchandise that differ significantly among purchasers, regions, or periods of time, and
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

Unless the criteria of 777A(d)(1)(B) of the Act are satisfied, the Department is not permitted to use average-to-transaction comparisons to determine dumping margins. In the absence of satisfying the criteria of section 777A(d)(1)(B) of the Act, section 777A(d)(1)(A) of the Act requires the Department to use either average-to-average or transaction-to-transaction comparisons. The Department has established criteria for determining whether average-to-average or transaction-to-transaction is the more appropriate methodology; the Department generally uses average-to-average comparisons except under relatively rare circumstances that make use of the transaction-to-transaction method more appropriate. See *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007), and the *Matter of Sales at Less Than Fair Value of Certain Softwood Lumber from Canada, Remand Redetermination*, Secretariat File No. USA-CDA-2002-1904-02 (July 11, 2005), at 11. The Department does not have a practice of using transaction-to-transaction comparisons for certain transactions and average-to-average comparisons for other transactions in calculating the weighted-average dumping margin. Rather, the Department chooses the appropriate comparison method and applies it uniformly for all comparisons of normal value and export price (or constructed export price).

The Department finds that the language of section 777A(d)(1)(B) of the Act does not preclude adopting a similarly uniform application of average-to-transaction comparisons for all transactions when satisfaction of the statutory criteria suggests that application of the average-to-transaction method is the appropriate method. The only limitations the statute places on the application of the average-to-transaction method are the satisfaction of the two criteria set forth in the provision. When the criteria for application of the average-to-transaction method are satisfied, section 777A(d)(1)(B) of the Act does not limit application of the average-to-transaction comparison methodology to certain transactions. Instead, the provision expressly permits the Department to determine dumping margins by comparing weighted-average normal values to the export prices (or constructed export prices) of individual transactions. While the Department does not find that the language of section 777A(d)(1)(B) of the Act mandates application of the average-to-transaction method to all sales, it does find that this interpretation is a reasonable one and is more consistent with the Department's approach to selection of the appropriate comparison method under section 777A(d)(1) of the Act more generally. Accordingly, the Department is departing from the practice adopted under the now-withdrawn regulation of applying average-to-transaction comparisons to only a subset of sales. Instead, if the criteria of section 777A(d)(1)(B) of the Act are satisfied, the Department will apply average-to-transaction comparisons for all sales in calculating the weighted-average dumping margin.

Similar to our finding in the *Preliminary Determination*, we continue to find that, with respect to sales by TCI, there was a pattern of prices that differ significantly by customer, region, or time period. In the *Preliminary Determination* we stated that "we find that these differences cannot be taken into account using the average-to-average methodology because the average-to-average methodology conceals differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the

non-targeted group.” See *Preliminary Determination*, 74 FR at 55188. We continue to find in the final determination, pursuant to section 777A(d)(1)(B) of the Act, that application of the average-to-average comparison method does not account for such price differences and results in the masking of dumping that would be unmasked by application of the average-to-transaction comparison method to all sales.

2. Sales Outside the Ordinary Course of Trade

Comment 2: The petitioners assert that certain sales (two sales of product A and two sales of product B contained in the same invoice) to a certain customer should be disregarded as outside the ordinary course of trade within the meaning of sections 771(15) and 773(a)(1)(B)(i) of the Act. The petitioners argue that, while certain of these sales were disregarded as below-cost sales in the *Preliminary Determination*, if the Department accepts corrections to inland freight and warranty expenses that TCI presented at the beginning of verification, such sales would become a match to a majority of TCI’s U.S. sales. Using the terms defined in section 771(15) of the Act, the petitioners assert that the “conditions” and “practices” applicable to the sales in question are not “normal in the trade under consideration.” Citing 19 CFR 351.102(b)(35), the petitioners argue that the Department considers sales to be outside the ordinary course of trade when, based on an evaluation of all the circumstances particular to the sales in question, they have characteristics that are extraordinary for the market in question. Referring to *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part*, 73 FR 66218 (November 7, 2008), where the Department stated that sales that are outside the ordinary course of trade necessarily possess unique or unusual characteristics that make them unrepresentative, the petitioners argue that such is precisely the case with respect to the sales in question.

Specifically, the petitioners argue, the two products sold to the customer in question were not sold to other customers, were physically identical to each other with the exception of minor dimensional difference, have nearly the same cost of production and, yet, one of the products was sold at a per-unit price that was two-and-a-half times higher than the other product. The petitioners assert that this is evidence that the pricing for the sales in question is aberrational. The petitioners assert that TCI did not provide a rational explanation of this apparent and artificial shift in the price from one product to another, nearly identical product. Further, the petitioners assert, TCI does not make any claim that the pricing of the products in question is representative of its normal pricing behavior; on the contrary, the petitioners assert, TCI admitted that it made the sales in question without regard to price in order to attract the business of a new customer which dictated its pricing preferences to TCI. In sum, the petitioners conclude, the sales in question are not representative because they are “one-time” sales made to obtain a new customer, involve products not sold to other customers, involve an unusual payment term, and the pricing is aberrational as evident from the shifting of price in the invoice from one similar product to the other.

Citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, 64 FR 17324 (April 9, 1999) (*Wire from Canada*), the petitioners argue that the Department recognized that “one-time” sales made to new customers are not necessarily, for that reason alone, outside the ordinary course of trade. Nevertheless, the petitioners argue, the Department in that case stated that this reason in conjunction with other circumstances, such as aberrational pricing, may lead the Department to conclude that a sale is

outside the ordinary course of trade. The petitioners assert that, because the sales in question are unusual for reasons they described, the Department should disregard the sales as being outside the ordinary course of trade. If the Department does not reach this conclusion, the petitioners argue, it should eliminate the distortion caused by the unexplained price shifting between two nearly identical products by assigning to each sale in question the weighted-average price.

TCI asserts that it reported its sales based on the information contained in its records and that the petitioners' argument is speculative and unsupported by record evidence. Citing *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 69 FR 77989 (December 29, 2004) (*Cement from Mexico*), and accompanying Issues and Decision Memorandum at Comment 7, TCI argues that the Department has anchored its determination of whether sales are within the ordinary course of trade on an analysis comparing the sales in question with sales of merchandise of the same class or kind made in the home market. TCI asserts that the petitioners did not present such an analysis. Instead, TCI contends, in claiming the presence of aberrational pricing, the petitioners merely compared the sale price of one product with that for the other found in the same invoice. TCI argues that the petitioners' allegation of aberrational pricing should be rejected because the petitioners did not provide any analysis comparing the sales in question with sales outside the invoice in question to other customers of the same class or kind made in the home market. TCI cites *Wire from Canada* (64 FR at 17324, 17328) in support of its argument that, in certain cases, the Department even applies certain thresholds in determining the aberrational prices.

TCI challenges the petitioners' argument of price-shifting on the invoice in question. TCI argues that, as in this case, companies routinely make promotional sales to attract new customers. TCI argues that this fact is no reason to justify the exclusion of the sales in question from the margin calculation.

TCI challenges the petitioners' assertion that the payment term it offered to the customer in question was not representative of the home market. TCI asserts that it reported certain sales to other customers with the same payment term. TCI argues that the particular payment term is used in sales with new customers and, on this basis alone, is not a reason to find the sales in question outside the ordinary course of trade.

TCI challenges the petitioners' argument that the sales are unrepresentative of others in the home market because TCI made no other sales of the products in question. Given that the merchandise subject to the investigation is highly customer-oriented and the products sold are tailor-made pursuant to customers' orders, TCI asserts that the petitioners' product comparison for the ordinary-course-of-trade analysis in this case is unreasonable.

Department's Position: Section 771(15) of the Act states that we shall consider the following sales and transactions, among others, to be outside the ordinary course of trade: sales disregarded under section 773(b)(1) of the Act (sales at less than cost of production) and transactions disregarded under section 773(f)(2) of the Act (transactions among affiliated parties). The regulations at 19 CFR 351.102(b)(35) state:

The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving

off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

Based on the plain reading of the relevant statutory and regulatory provisions, it is clear that Congress intended to invoke a narrow interpretation of the definition of a sale “outside the ordinary course of trade.” In fact, in *Wire from Canada*, a case which both the petitioners and TCI cite, we stated that “the standard for determining whether a sale is outside of the ordinary course of trade needs to be high in order to prevent a potential manipulation of a sales database that would result in excluding sales not outside the ordinary course of trade.” See *Wire from Canada*, 64 FR at 17324, 17328. This is so because a party has a self-serving incentive to argue, as the petitioners have done here, that any heavily matched sale that causes the dumping margin to fluctuate drastically must necessarily be suspect as being outside the ordinary course of trade.

In *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1343 (CIT 2006), citing *Nachi-Fujikoshi Corp. v. United States*, 798 F. Supp. 716, 718 (CIT 1992), the Court opined that “the party requesting a price adjustment bears the evidentiary burden ‘of proving whether sales used in Commerce’s calculations are outside the ordinary course of trade . . .’”; citing *Torrington Co. v. United States*, 127 F.3d 1077, 1081 (CAFC 1997), the Court also stated that “absent adequate evidence to the contrary, Commerce will treat sales as within the ordinary course of trade.” We find that the petitioners did not provide sufficient evidence lending credence to their argument that the sales in question possess characteristics that are “extraordinary” for the home market as described in 19 CFR 351.102(b)(35).

The petitioners argue that the sales in question are not representative of the market under consideration because they are “one-time” sales made to obtain a new customer, involve products not sold to other customers, involve an unusual payment term, and the pricing is aberrational as evident from the shifting of price in the invoice from one similar product to the other. In *Murata Mfg. Co., Ltd. v. United States*, 820 F. Supp. 603 (CIT 1993), the Court stated that the Department must evaluate not just one factor taken in isolation but rather all the circumstances particular to the sales in question. We do not find that the evidence for any of these elements is sufficiently compelling to determine conclusively that the sales in question are outside the ordinary course of trade.

The fact that the sales in question were “one-time” sales made to a new customer is not a characteristic that renders the sales extraordinary for the market under consideration. On the contrary, it is quite ordinary and routine for a company to seek out new clients and expand its business – such activities are normal for any company that wishes to stay competitive. Further, the record shows that TCI reported a number of apparent “one-time” sales which the petitioners do not claim as outside the ordinary course of trade.

The petitioners argue that the sales in question were made on an unusual payment term. TCI explained that it uses a particular payment term to guarantee itself payment from new customers or customers with a doubtful credit history. The record evidence shows that TCI offers a myriad of payment terms. Further, the record shows that TCI reported a number of sales to other customers, aside from the sales alleged as being outside the ordinary course of trade, for which it offered the same payment term. As such, given TCI’s explanation for the use of the payment term in specific situations and the variety of payment terms it offers to its customers, it

is not clear why this payment term is a characteristic that renders the sales in question extraordinary for the market under consideration.

The petitioners argue that the product for the sales in question was not sold to other customers. The record evidence makes it clear that PRCBs are not fungible products in that they are made to a customer's orders dictated by its packaging requirements. As such, given the nature of this industry, we do not find that it is appropriate to consider differences between the products underlying the sales in question versus other sales. Of significance here is that the petitioners made no argument that the product for the sales in question was either off-quality merchandise or merchandise produced according to unusual product specifications, as contemplated in 19 CFR 351.102(b)(35). See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731 (November 19, 1997). On the contrary, on the merits of the nature of the products for the sales in question, the record evidence indicates that the products are of prime quality, produced to product specifications similar to other t-shirt medium- and large-type bags that TCI reported. As such, we do not find that the expected difference in products is a characteristic that renders the sales in question extraordinary for the market under consideration.

With respect to the petitioners' claim of aberrational pricing applicable to the sales in question, it has been our practice, when analyzing this element, to compare the prices for the sales in question with those for sales of merchandise of the same class or kind made in the home market. In *Cement from Mexico* (at Comment 7), citing *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553 (June 5, 1995), *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404 (April 15, 1997), and *Murata Mfg. Co., Ltd v. United States*, 820 F. Supp. at 606, we stated that "...the more appropriate way of comparing sales {in question} to the sales or transactions generally made in the same market is to look at all the sales prices for similar merchandise sold in the home market. We have followed this methodology in several other cases and this methodology has been upheld by the {Court of International Trade}." In this case, as TCI points out correctly, the petitioners simply compared the prices among the products underlying the sales in question. The petitioners did not provide any analysis comparing the prices for the sales in question with the price for sales of merchandise of the same class or kind made in the home market in the ordinary course of trade. See, also, *Wire from Canada*, 64 FR at 17324, 17328. As such, there is no record evidence supporting the petitioners' allegation of aberrational pricing with respect to the sales in question.

Our evaluation of all circumstances brought forth by the petitioners in support of their allegation that certain sales are outside the ordinary course of trade leads us to find that the record evidence is not compelling to make an affirmative finding that certain sales are outside the ordinary course of trade. As such, in the final determination we did not exclude the sales in question from the margin calculation for TCI.

3. Home-Market Warranty Expenses

Comment 3: TCI argues that the Department should use the recalculated warranty expenses that TCI presented in its pre-verification corrections. TCI argues that warranty expenses were calculated on a customer- and product-specific basis. TCI asserts that it calculated warranty expenses in the manner similar to that accepted by the Department in *Brass Sheet and Strip From Canada: Final Results of Antidumping Duty Administrative Review and*

Notice of Intent Not To Revoke Order in Part, 64 FR 46344 (August 25, 1999), and *Grain-Oriented Electrical Steel From Italy: Final Results of Antidumping Administrative Review*, 66 FR 14887 (March 14, 2001). TCI argues that, because it calculated warranty expenses in a manner acceptable to and verified by the Department, it should use the recalculated warranty expenses in the final determination.

The petitioners argue that the Department found at verification that TCI erroneously assigned the same value to the defective returned merchandise as it did to the prime-quality replacement merchandise. The petitioners challenge TCI's assertion that its allocation was done on a product-specific basis. The petitioners assert that, with respect to a certain invoice which reflects the two sales that have the possibility of matching repeatedly to the majority of U.S. sales, the recalculated warranty expenses were not allocated on a product-specific basis, contrary to TCI's assertion. Finally, the petitioners argue that they had requested previously that the Department reject TCI's pre-verification corrections on the basis that they constitute untimely filed new factual information. The petitioners reiterate their request on this issue. In sum, for these reasons, the petitioners argue that the Department should reject the revised warranty and inland-freight expenses TCI presented at the onset of verification.

Department's Position: We find that it is not appropriate to use the recalculated warranty expenses that TCI presented in its pre-verification corrections. At verification, we found that "TCI did not value the returned quantity of the defective merchandise using a value different from the one it assigned to the replacement merchandise. In essence, {TCI's affiliate} did not value the returned quantity using a value for scrap or some other value that distinguishes the economic cost associated with a saleable product (*i.e.*, replacement for the defective merchandise) from the economic cost associated with a non-saleable product (*i.e.*, defective merchandise)." See Memorandum to the File entitled "Verification of the Home-Market and Export-Price Sales Responses of TCI Plastic Co., Ltd., in the Antidumping Investigation of Polyethylene Retail Carrier Bags from Taiwan," dated December 23, 2009 (HM/EP Verification Report).

We find that the methodology TCI used to recalculate warranty expenses has significant flaws because, in essence, it equates the economic cost of a "good" bag with the economic cost of a defective bag. As such, we find that the methodology TCI used to recalculate warranty expenses results in a significant overvaluation of returned defective merchandise. In fact, for a number of transactions, the recalculated warranty expense resulted in a significant reduction in the per-unit value of warranty expenses originally reported because the value assigned to the returned quantity of defective merchandise offsets, dollar-for-dollar, the value associated with the replacement quantity; if a customer returned all of the defective merchandise for which it received the replacement, the recalculated per-unit warranty expenses would be zero even though TCI incurred expenses to replace the defective merchandise. Therefore, we find that TCI's recalculation of warranty expenses contains significant distortions.

The regulations at 19 CFR 351.401(g)(2) state that "{a}ny party seeking to report an expense or a price adjustment on an allocated basis...must explain why the allocation methodology used does not cause inaccuracies or distortions." TCI explained that its recalculation of warranty expenses was performed on a customer- and product-specific basis. See HM/EP Verification Report. At no point during the verification or in its case brief did TCI attempt to demonstrate why its calculation of warranty expenses does not cause inaccuracies or distortions. Accordingly, in light of our finding that TCI's recalculation of warranty expenses contains significant distortions and absent any record evidence to the

contrary, we find that TCI did not satisfy the requirements of 19 CFR 351.401(g)(2). Thus, we have not used the re-calculated warranty expenses in the final determination.

Upon further review of TCI's original warranty claim, we have reallocated TCI's reported warranty expenses over all home-market sales. There are two aspects to how we treat warranty expenses: the warranty policy and the nature of the product. Where the warranty policy is general and applies to all products and all sales, our practice has generally been to allocate warranty expenses on a product-specific basis. Where the warranty policy is limited to certain products, customers, or types of transactions, we may consider a narrower allocation. See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission*, 74 FR 11082 (March 16, 2009), and accompanying Issues and Decision Memorandum at Comment 13, citing *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 25 and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part*, 65 FR 11767 (March 6, 2000), and accompanying Issues and Decision Memorandum at Comment 4.

There is no information on the record to suggest that TCI's warranty program was limited to certain products, customers, or types of transactions. Further, our practice indicates that, depending on the nature of the product, we may deviate from the product-specific allocation and use an overall allocation. See *Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006) (*Honey*). In this case, as in *Honey*, we find that there are no significant differences between product lines and warranty terms between customers and, therefore, due to the nature of the product, there is no basis to justify an allocation on a product-specific level. Therefore, consistent with our practice, we have reallocated warranty expenses over all sales. See Memorandum to the File entitled "Final Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Taiwan - Analysis Memorandum for TCI Plastic Co., Ltd.," dated March 18, 2010 (TCI Analysis Memorandum), for additional information.

4. Direct Material Costs

Comment 4: The petitioners argue that TCI's direct material costs should be recalculated. They maintain that TCI's reported costs are distorted because products that are chemically identical (*i.e.*, products that have identical model-match characteristics with respect to the inputs of high-density (HD) resin, low-density (LD) resin, and low-linear density (LLD) resin) were allocated different direct material costs based solely upon the source of the resin. According to the petitioners, groups of models identified by CONNUMs that are chemically identical were allocated different costs because some of these CONNUMs were produced primarily using virgin resin whereas other CONNUMs were produced primarily using recycled resin and/or calcium carbonate. Because these three inputs were assigned different values although they are used interchangeably to produce identical products (*e.g.*, the internally produced recycled resin value was based on the actual conversion costs associated with the recycling process), the petitioners point out that the cost differences between these CONNUMs were a result of the source of the

input (*i.e.*, virgin resin, recycled resin, and calcium carbonate), not the physical differences among the products as defined by the Department in the model-match characteristics.

The petitioners assert that the Department's practice is to require respondents to report a weighted-average cost, including virgin resins, recycled resins, and calcium carbonate for each type of resin consumed (*i.e.*, HD, LD, and LLD). In support of their position, the petitioners cite two cases: *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 5, and *Polyethylene Retail Carrier Bags From Malaysia: Final Results of Antidumping Duty Administrative Review*, 74 FR 58947 (November 16, 2009), and accompanying Issues and Decision Memorandum at Comment 1 (*PRCBs from Malaysia*). The petitioners add that the facts in this investigation are substantially the same as in *PRCBs from Malaysia*. In the instant case, TCI does not maintain product-specific costs in the normal course of business, recycled resin is used interchangeably with virgin resin, and calcium carbonate is used as a low-cost substitute for resin. Therefore, the petitioners conclude, the Department should adjust TCI's reported material costs to reflect a single average cost for each resin type consumed (*i.e.*, HD, LD, and LLD) during the period of investigation (POI).

Further, the petitioners provided a revised calculation for direct materials for each CONNUM using the methodology employed by the Department in *PRCBs from Malaysia*. According to the petitioners, this methodology involves a detailed re-allocation of the direct material costs using a single average cost for each resin type consumed and the reported recipes for each product within a CONNUM. Consequently, the petitioners emphasize, using this methodology eliminates cost differences that are unrelated to differences in physical characteristics as established by the model-match criteria and they suggest that the Department use the recalculated direct material costs for the final determination. Moreover, the petitioners urge the Department not to correct the distortion by simply averaging material costs for CONNUMs of the same resin content (*e.g.*, one direct materials cost for products with HD, LD, and LLD resin characteristics "08-01-02," one for products with "08-01-03," *etc.*). While this methodology would force all CONNUMs with the same resin characteristics to have the same material costs, the petitioners contend that the cost differences between CONNUMs with different resin characteristics would still be attributable to factors unrelated to the physical characteristics defined by the model-match methodology. The petitioners demonstrated this fact using proprietary data in their case brief at 10.

TCI did not comment on this issue.

Department's Position: We have determined that it is appropriate to revise TCI's direct material costs to eliminate the distortive results that occur based on the allocation methodology it used for reporting the resin costs. In the instant case, analogous with *PRCBs from Malaysia*, TCI used, in addition to the virgin resin types defined in our physical characteristics, certain substitutes for the virgin resin such as recycled resin and calcium carbonate not defined in our physical characteristics. The record of this proceeding shows that these substitutes are interchangeable with the virgin resin and the cost of these resin substitutes is different from the cost of the virgin resin. The mix of virgin resin, recycled resin, and calcium carbonate used for any given product is open to management's discretion. Consequently, products with identical resin characteristics for model-matching purposes that use different percentages of calcium carbonate or recycled resin input will have a different material cost. As a result, the reporting methodology results in cost differences that are extraneous to the differences in the physical

characteristics in our model-match methodology.

In addition, we find that simply averaging the material costs for CONNUMs of the same resin content would not correct the distortion because, as they demonstrated in their case brief, using that methodology would continue to result in significant cost differences between CONNUMs with only slightly different resin characteristics. As a result, the cost differences would still be attributable to factors unrelated to the physical characteristics defined by the model-match methodology. Therefore, for the final determination, to limit the effect of extraneous material cost differences that are unrelated to differences in the physical characteristics identified in our model-match methodology, we have adjusted TCI's costs to reflect a single average cost for each resin type consumed (*i.e.*, HD, LD, and LLD) during the POI using the reported recipes for each product, not simply weight-averaging the CONNUM-specific reported costs.

5. Variable Overhead Costs for Outside Processing Services

At the cost verification TCI presented a minor correction that related to its reported variable overhead (VOH) costs. TCI revised the VOH costs with regard to the cost for cutting, sealing, and printing services performed by outside processors by identifying the specific products that were processed by the outside service providers and allocating those costs only to those specific products. During verification we requested that TCI provide an additional worksheet that demonstrated an allocation methodology where, consistent with TCI's original reporting methodology, all cutting and sealing costs (both those incurred internally and those from outside processors) were allocated to all products based on production quantities, and the printing costs remained the same as that reflected in the minor corrections presented (*i.e.*, identifying the outside service provider that processed the specific products and allocating those costs only to those specific products). See Memorandum to the File entitled "Verification of the Cost Response of Tis Dis International Co. Ltd. in the Antidumping Investigation of Polyethylene Retail Carrier Bags from Taiwan," dated January 11, 2010 (cost verification report) at 7-8 and Exhibit 1.

Comment 5: The petitioners argue that either the minor correction should be rejected in total or the VOH costs for outside processing services should be adjusted as proposed in the cost verification report. With respect to rejecting the minor correction in its entirety, the petitioners assert that the revised VOH costs are not "corrections" at all; rather, they reflect a new methodology for allocating processing costs based on the identity of the processor. Therefore, because the minor correction is significant, pervasive, and methodological in nature, the petitioners assert that the Department should not accept it.

Alternatively, the petitioners assert, if the Department does not reject the minor correction, it should revise the correction to reflect the allocation methodology used by TCI in its original response for cutting and sealing and the Department should adjust the printing costs to reflect one average cost for each product characteristic (*i.e.*, number of colors and number of sides printed) rather than accept an outside processor's specific cost. The petitioners state that TCI's proposed revisions result in an allocation of outsourced processing-services costs that is not based on differences in physical characteristics but on the entity that performed the processing services. In other words, the petitioners contend, products having virtually the same dimensions could result in having very different costs simply because of what a particular processor charged TCI, not because the products are physically very different. Consequently,

according to the petitioners, the disparities are driven by factors that are unrelated to differences in physical characteristics among the products such as which outside processor happened to have been assigned to finish a particular product or the size of a production run.

Further, the petitioners assert, although the cutting and sealing services performed for each product do not vary measurably based on the physical characteristics of the products, the allocation presented in TCI's proposed revision could result in measurable differences between products that are not attributable to the physical characteristics. To support their position, the petitioners cite *Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 11, 2009), and accompanying Issues and Decision Memorandum at Comment 1 (*PRCBs from Thailand*). The petitioners maintain that, contrary to TCI's assertions, there is no record evidence to support TCI's assertion that differences in printing and dimensional characteristics can affect costs through their effect on machine times.

TCI argues that the Department should use the VOH costs as it presented in the minor corrections at the start of the cost verification. TCI asserts that these corrections reallocate the costs of outsourced processing services, on a CONNUM-specific basis, only to the products that underwent the processing whereas in previous submissions these costs were allocated over all merchandise regardless of whether the processing had taken place at Tis Dis International Co. Ltd. (Tis Dis), TCI's affiliate, or outsourced to unaffiliated vendors.

According to TCI, reporting the outsourced costs based on actual costs incurred on a CONNUM-specific basis is accurate because outsourced processing is charged on a product-specific basis. TCI states that, at the time of cutting and printing, the plastic rolls have already been extruded into rolls of a certain thickness and width. Accordingly, it contends, the thickness and width affect the output rate, which was used to allocate VOH costs, of the cutting and printing machines as does the eventual length. Further, TCI asserts, the outside processors do not charge the same cost based only on the number of sides or number of colors. TCI claims its costs are also dependent on the thickness, width, length, and ink coverage area because these elements affect the machine hours/output rate, the quantity of ink used, the type of ink used, and the labor involved, among other factors. In other words, TCI explains, both the outsourced processors and in-house processing result in different conversion costs associated with different products, with the products being delineated by the characteristic established for CONNUM-reporting purposes.

TCI asserts that the minor corrections were submitted in a timely manner and that the revisions can be considered minor because VOH costs comprise a small percentage of total COM. Thus, TCI urges the Department to use the VOH costs submitted at verification in the minor corrections for the final determination.

Department's Position: We find it inappropriate to use the minor correction as presented at verification by TCI and the revised minor correction requested at verification because both create significant cost differences among the products that are extraneous to the differences in the physical characteristics in our model-match methodology. TCI argues that the VOH costs in the minor corrections allocates processing costs more accurately to each CONNUM and reflects the differences in processing costs associated with the physical characteristics of the product. As the record evidence shows and the petitioners demonstrated in their rebuttal briefs,² however, the

² See the petitioners' Rebuttal Brief dated January 26, 2010, at 3, notes 16 and 17.

VOH costs in question do not support this argument because the reported VOH costs for certain products differ although the product characteristics are identical with respect to dimension and/or number of colors and sides printed.

First, with respect to cutting and sealing costs, we examined evidence on the record and found instances where CONNUMs with identical product characteristics with respect to thickness, width, length, and gusset had large differences in VOH costs. These cost differences were attributable to the fact that TCI used multiple outside service providers which charged different rates for providing similar services. This type of cost difference is extraneous to the differences in the physical characteristics we have established for our model-match methodology. Further, contrary to TCI's argument with respect to capturing cost differences for cutting through differing output rates, in its submissions to the Department TCI stated that the cutting and sealing process does not have very much variation in processing time by product. This is supported by TCI's original allocation of its total VOH costs associated with cutting and sealing to all products based on production quantity and its consistent claim that its in-house cutting and sealing costs should be allocated to all products based on production quantity. Because the record evidence does not show that there is a measureable variation in processing time by product for cutting and sealing and to limit the effects of extraneous VOH cost differences that are unrelated to differences in the physical characteristics we use in the model-match methodology, for the final determination we have combined both the in-house and outside service cutting and sealing VOH costs and allocated the total cost to all products based on production quantity.

Second, with respect to the printing costs, we find that there are certain measureable differences in costs between two products when one is printed with multiple colors on one side and the other is printed with multiple colors on two sides. The method TCI presented in its minor corrections to allocate its printing cost, which allocated the costs of outsourced processing services on a CONNUM-specific basis only to the products that underwent the processing, results in cost differences that are extraneous to the differences in the physical characteristics in our model-match methodology. Analogous to the cutting and sealing costs, we examined the record and found instances where CONNUMs with identical product characteristics with respect to printing had large differences in costs. These cost differences were also attributable to the fact that TCI used multiple outside service providers which charged different rates for providing similar services. This type of cost difference is also extraneous to the differences in the physical characteristics in our model-match methodology. Therefore, for the final determination, we have adjusted the reported printing costs to limit the distortive effect of conversion-cost differences that are unrelated to differences in physical characteristics. Unlike cutting and sealing costs, however, we find that the outside service charges that relate to printing costs should only be allocated to the products that received this type of processing (*i.e.*, either three colors on one side or two colors on two sides) because there is a measurable cost difference in the product characteristics associated with printing. Accordingly, we have calculated one average per-unit cost for products that were printed with multiple colors on two sides and another for products that were printed with multiple colors on one side (see cost verification report at 4).

6. Unreconciled Costs

Comment 6: TCI argues that the Department's adjustment to its costs for the *Preliminary Determination* for an unreconciled difference between the reported costs and the costs recorded

in the financial statements is no longer necessary and should not be repeated for the final determination. TCI asserts that, because the Department collapsed the two Taiwanese companies into a single entity, the costs reported in the cost databases will be lower than the costs recorded in the financial statements (*i.e.*, the profit between the collapsed entities will be eliminated). According to TCI, the costs recorded in the financial statements of Tis Dis and TCI reflect the price paid to affiliates for the services provided (*i.e.*, transfer price which includes a markup) and the costs reported in the cost databases reflect the actual costs incurred by the affiliates to provide those services. Thus, it contends that the unreconciled difference reflects the elimination of intercompany profits and should not be adjusted for the final determination.

The petitioners argue that the Department should continue to make an adjustment for TCI's unreconciled costs. They argue that TCI did not demonstrate that the elimination of intercompany profits accounts for the unreconciled difference for which the Department made an adjustment in the *Preliminary Determination*. The petitioners state that, although TCI refers to the cost verification report which shows an "adjustment to actual cost" as a reconciling item, because the Department conducted the cost verification for Tis Dis only, the cost verification report does not show a similar reconciling item for TCI. According to the petitioners, even though TCI submitted a revised cost database, including additional cost items, the amount added to the cost database does not account for the amount of the unreconciled difference.

Department's Position: We find that an unreconciled difference adjustment is not necessary for the final determination. The intercompany profits and the additional cost items TCI added to its cost database do not account for the total amount of the unreconciled difference. In examining record evidence, we found that TCI also provided additional reconciling items that make up the difference between the reported costs and the costs recorded in the financial statements. These items include an adjustment for the cost of polyethylene film rolls in ending inventory, the exclusion of the cost of the processing done for others because it is already reported in the cost database of a collapsed affiliate, and the cost of the recycled resin produced which is already included in the figures for direct material costs. When we include these reconciling items, the resulting amount reconciles with the reported costs. Accordingly, for the final determination we have not made an adjustment to TCI's cost for an unreconciled difference. Due to the proprietary nature of this issue, see the Memorandum from Angie Sepulveda to Neal M. Halper Re: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – TCI Plastic Co., Ltd. and Tis Dis International Co. Ltd., dated March 18, 2010, for a detailed discussion of the facts and our findings.

7. Financial Expense

Comment 7: The petitioners argue that TCI's rental income should not be allowed as an offset to financial expense. The petitioners add that it is the Department's practice to allow a respondent to offset financial expenses with short-term interest income generated from current assets and working capital accounts, not short-term income from activities such as rental, citing *PRCBs from Thailand* and accompanying Issues and Decision Memorandum at Comment 5 and *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, 9168 (February 28, 1997), and accompanying Issues and Decision Memorandum at Comment 6 (*Brake Drums and Brake Rotors*).

The petitioners conclude that, for the final determination, the Department should

recalculate the financial-expense ratio for Tis Dis by disallowing the offset for rental income. If the rental income is disallowed, the petitioners add, the Department should also reduce total VOH costs by the amount of rental payments that are included in both fixed overhead (FOH) and VOH costs to avoid double-counting. The petitioners assert further that the Department should not reduce FOH costs for the actual costs incurred (*e.g.*, depreciation, maintenance, *etc.*) on the items in question because these costs relate to rented space and machinery which are fixed costs.

TCI did not comment on this issue.

Department's Position: For the final determination, we have disallowed the use of rental income as an offset to financial expense. In calculating a respondent's cost of production and constructed value, it is our well-established practice to allow a respondent to offset financial expenses with short-term interest income generated from the company's current assets and working-capital accounts. See *PRCBs from Thailand* and accompanying Issues and Decision Memorandum at Comment 5 and *Certain Frozen Warmwater Shrimp From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009), and accompanying Issues and Decision Memorandum at Comment 7. We do not include in the offset short-term income from activities such as rental expenses. See *Brake Drums and Brake Rotors* and accompanying Issues and Decision Memorandum at Comment 6.

Further, we would not allow this offset to the general and administrative expenses because the total rental income in question was paid from one entity in this investigation to another for the rental of building space and machinery and we have collapsed these two parties into one entity. As such, the actual cost incurred by TCI for the space and machinery is included in the FOH amount TCI reported. Thus, because these are collapsed entities, it is our practice to include the actual cost incurred, not the inter-company transactions. See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006), and accompanying Issues and Decision Memorandum at Comment 27 (where the Department determined it is inappropriate to value certain transactions at their transfer price because the Department's practice is to value transactions between collapsed affiliates at cost); see also *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18429 (April 15, 1997). Therefore, for the final determination, we have excluded the rental income and reduced the total VOH costs by the amount of the rental payments made from one collapsed entity in this proceeding to another to eliminate intercompany transactions.

8. U.S. Indirect Selling Expenses

Comment 8: The petitioners assert that TCI's U.S. indirect selling expenses should be recalculated to include certain other selling expenses that TCI excluded from its calculation. The petitioners argue that the Department found at verification that the excluded expenses relate to subject merchandise.

TCI argues that one of these expenses, patent-settlement fees, should not be included as part of TCI's indirect selling expenses. TCI claims that, during the verification of its U.S. sales, the officials of TCI's U.S. affiliate, Inteplast Group, Ltd. (Inteplast), explained that the bags subject to the patent dispute were not sourced from Taiwan. As such, TCI argues, the patent-settlement fees do not relate to sales of subject merchandise and should not be part of TCI's

indirect selling expenses.

The petitioners argue that no record evidence supports TCI's assertion that the patent-settlement fees do not relate to subject merchandise. The petitioners argue that the Department found at verification that the expenses in question relate to t-shirt bags and that it concluded that the expenses relate to subject merchandise. The petitioners assert that TCI cites no record evidence to the contrary.

Department's Position: At our verification of Inteplast, TCI's U.S. affiliate, we found that it excluded certain expenses related to subject merchandise. Specifically, we found that Inteplast excluded the following types of expenses: 1) expenses related to the purchasing department which manages the procurement of raw materials and finished products (including subject merchandise) from foreign and U.S. vendors; 2) expenses related to the administration of rebate and commission agreements as well as the processing of rebate and commission payments; 3) expenses related to the patent-settlement dispute regarding a certain design feature of t-shirt bags. See Memorandum to the File entitled "Verification of the U.S. Sales Response of Interplast Group in the Antidumping Investigation of Polyethylene Retail Carrier Bags from Taiwan," dated December 22, 2009 (CEP Verification Report).

TCI disputes our verification finding with respect to the last category of expenses, patent-settlement fees. TCI argues that the bags subject to the patent dispute were not sourced from Taiwan. We find that there is no record evidence that supports TCI's assertion. In any case, TCI's assertion is not relevant. The record evidence is clear that, because of its demonstrated inability to identify and segregate Taiwan-origin U.S. sales from other sales, TCI reported all U.S. sales of commingled countries of origin. As such, TCI reported sales of t-shirt bags with the patented design feature in question that were not made solely in Taiwan but also in the Republic of Vietnam and in the United States. Because the expenses in question relate to the sales TCI reported and it allocated total U.S. indirect selling expenses to all POI sales of t-shirt bags, we find that it is necessary to include them in the calculation of U.S. indirect selling expenses. Accordingly, we have recalculated TCI's indirect selling expenses to include expenses related to the purchasing department, expenses related to the administration and payment of rebates and commissions, and expenses related to the patent-settlement dispute involving t-shirt bags.

9. Miscellaneous Issues

Comment 9: TCI asserts that the Department should use the correct per-unit value for warehousing expenses for one warehousing location for which the Department found at verification TCI reported information incorrectly.

The petitioners did not comment on this issue.

Department's Position: During the verification of TCI's U.S. sales information, we found that TCI transposed the per-unit warehousing value in the sales file for a certain warehouse location when it made a conversion from a per-pound to a per-kilogram basis. See CEP Verification Report at 13-14. This error resulted in the overstatement of the per-kilogram value for warehousing expenses for the warehouse location in question. We have used the correct value in the final determination.

Comment 10: The petitioners allege that the Department's margin calculations for the *Preliminary Determination* contained a ministerial error which set the profit for constructed export-price sales to zero. The petitioners argue that the Department should correct this error for the final determination.

TCI did not comment on this issue.

Department's Position: We agree and have corrected this error in our calculations for the final determination. See TCI Analysis Memorandum to the file dated March 18, 2010.

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 determination and the final dumping margins for this investigation in the *Federal Register*.

Agree _____

Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)