

TIANJIN WANHUA CO., LTD. v. UNITED STATES

Ct. No. 11-00070

Order (April 29, 2013)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT ORDER**

I. SUMMARY

The U.S. Department of Commerce (the “Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the “Court” or “CIT”) in Tianjin Wanhua Co., Ltd. v. United States, Ct. No. 11-00070, dated April 29, 2013, which was issued in response to the Department’s motion for voluntary remand filed with the Court on April 24, 2013. This remand pertains to one issue in the first administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (“PET film”) from the People’s Republic of China (“PRC”), in which the Department calculated a separate rate using a simple average of the margins of the two mandatory respondents, Fuwei Films (Shandong) Co., Ltd. (“Fuwei Films”) and Shaoxing Xiangyu Green Packing Co., Ltd. (“Green Packing”).¹

Subsequent to the Final Results of Review, the two mandatory respondents and Tianjin Wanhua Co., Ltd. (“Wanhua”) challenged our methodology for calculating a surrogate value for PET chip (the primary raw material input), the labor rate calculation, and the treatment of Green Packing’s electricity and water consumption. However, the CIT stayed the litigation for the separate rate respondent (i.e., Wanhua) pending the outcome of the mandatory respondents’

¹ See Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753, 9754 (February 22, 2011) (“Final Results of Review”).

litigation. Pursuant to Fuwei Films (Shandong) Co., Ltd. v. United States (2012),² the Department revised its normal value calculation in our final results of redetermination.³ As a result, Fuwei Films and Green Packing received recalculated margins of 0.27 percent (de minimis) and zero percent, respectively.⁴ The CIT sustained those remand results.⁵

The CIT lifted the stay for Wanhua's litigation on March 29, 2013, and, on April 25, 2013, the Department requested a voluntary remand to reconsider our separate rate methodology as applied to Wanhua. The CIT granted the Department's motion for voluntary remand on April 29, 2013. On June 20, 2013, the Department released the draft results of redetermination pursuant to the Court remand ("Draft Results").⁶ The Department invited interested parties to comment on the Draft Results until June 26, 2013.⁷ On June 24, 2013, Wanhua requested a one week extension to file comments on the Draft Results, until July 3, 2013,⁸ which was granted by the Department.⁹ Both Wanhua and Petitioners¹⁰ notified the Department that neither intended to file comments on the Department's Draft Results.¹¹

² See Fuwei Films (Shandong) Co., Ltd. v. United States, 837 F. Supp. 2d 1347 (Ct. Int'l Trade 2012) ("Fuwei Films (Shandong) Co., Ltd. v. United States (2012)").

³ Id., and Final Results of Redetermination Pursuant to Court Remand (October 15, 2012).

⁴ See Final Results of Redetermination Pursuant to Court Remand, at 41.

⁵ See Fuwei Films (Shandong) Co., Ltd. v. United States, 895 F. Supp. 2d 1332 (Ct. Int'l Trade 2013) ("Fuwei Films (Shandong) Co., Ltd. v. United States (2013)"); Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision, 78 FR 9363, 9364 (February 8, 2013) ("Timken Notice").

⁶ See Draft Results of Redetermination Pursuant to Court Order, dated June 20, 2013 ("Draft Results").

⁷ Id., at 6-7.

⁸ See Letter from Wanhua to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Request for Extension of Time to Submit Comments on Remand Redetermination," dated June 24, 2013.

⁹ See Letter to Interested Parties from Charles Riggle, Program Manager, AD/CVD Operations, Office 4, "2008-2009 Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Draft Remand Redetermination," dated June 25, 2013.

¹⁰ Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.

¹¹ See Submission of Wanhua, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Notification on Filing of Comments," dated June 28, 2013; Submission of Petitioners, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip From the People's Republic of China: Response to Respondent Wanhua's Notification on Filing of Comments," dated July 2, 2013.

II. REMAND ISSUE

a. Calculation of Wanhua's separate rate

Background

In the Final Results of Review, the Department calculated a separate rate for Wanhua, a separate rate respondent, of 36.93 percent, based on a simple average of the dumping margins of Fuwei Films and Green Packing, the two mandatory respondents in this administrative review.¹² However, because the margins assigned to Fuwei Films and Green Packing have both changed as a result of the Court's judgment in Fuwei Films (Shandong) Co., Ltd. v. United States (2013),¹³ the Department requested a voluntary remand to reconsider its calculation of Wanhua's separate rate.¹⁴

Analysis

In accordance with the Court's remand order, the Department has revisited its separate rate methodology with regard to Wanhua. The governing statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended ("the Act").¹⁵ Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the "all others" rate in a market economy investigation, for guidance when calculating the rate

¹² See Final Results of Review, 76 FR at 9754.

¹³ See Fuwei Films (Shandong) Co., Ltd. v. United States (2013); Timken Notice, 78 FR at 9364.

¹⁴ See SKF USA Inc. v. United States, 254 F.3d 1022, 1029 (Fed. Cir. 2001) ("the agency may request a remand (without confessing error) in order to reconsider its previous position").

¹⁵ See Longkou Haimeng Mach. Co. v. United States, 581 F. Supp. 2d 1344, 1359 (Ct. Int'l Trade 2008) (explaining that the Act is "silent as to the method for establishing the rate for non-selected respondents").

for respondents which we did not examine in an administrative review involving a non-market economy.¹⁶

Section 735(c)(5)(A) of the Act articulates a preference that the Department not calculate an “all others” rate using rates which are zero, de minimis or based entirely on facts available. Accordingly, the Department’s usual practice has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, de minimis, or based entirely on facts available, in accordance with section 735(c)(5)(A) of the Act.¹⁷ Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, de minimis, or based entirely on facts available, we may use “any reasonable method” for assigning the all-others rate, including, but not limited to, “averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.”

The Department has previously determined that, in administrative reviews of an antidumping order, another “reasonable method” to use when the rates for the respondents selected for individual examination are zero, de minimis, or based entirely on facts available, is to apply to those respondents not selected for individual examination, the average of the most recently-determined weighted-average dumping margins that are not zero, de minimis, or based entirely on facts available. These rates may be from the investigation,¹⁸ a prior administrative

¹⁶ Id., at 1354, 1359-1360.

¹⁷ See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350, 17352 (March 21, 2013).

¹⁸ For cases where the Department applied a rate from an investigation as a separate rate, see, e.g., Narrow Woven Ribbons With Woven Selvage From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 10130, 10131-10132 (February 13, 2013); Certain Steel Threaded Rod From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 68400, 68402-68403 (November 4, 2011); Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part, 76 FR 69702 (November 9, 2011).

review¹⁹ or a new shipper review.²⁰ If any such non-selected respondent had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, then the Department has applied such individual rate to the non-selected respondent in the review in question, including when that rate is zero or de minimis.²¹

In this administrative review, mandatory respondents Fuwei Films and Green Packing received rates of 0.27 percent (de minimis) and zero percent, respectively.²² Therefore, because all rates in this proceeding are de minimis, we must look to other reasonable means to assign a separate-rate margin to non-reviewed companies eligible for a separate rate in this review. As we have stated previously in such instances, the Department's practice is first to apply the most recently calculated margin from a prior segment for any of the current separate-rate

¹⁹ For cases where the Department applied a rate from a previous review as a separate rate, see, e.g., Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 76 FR 70957, 70959 (November 16, 2011); Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review, 76 FR 67134 (October 31, 2011), and accompanying Issues and Decision Memorandum at Comment 1; Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8342 (February 14, 2011), unchanged in Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011).

²⁰ For cases where the Department applied a rate from a new shipper review as a separate rate, see, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission; 2010-2011, 78 FR 22228 (April 15, 2013), and accompanying Issues and Decision Memorandum, "Separate Rate for a Non-Selected Company" and Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part, 76 FR 66036 (October 25, 2011), and accompanying Issues and Decision Memorandum at Comment 5.

²¹ See, e.g., Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

²² See Fuwei Films (Shandong) Co., Ltd. v. United States (2012), Final Results of Redetermination Pursuant to Court Remand, at 41; see also Fuwei Films (Shandong) Co., Ltd. v. United States (2013).

respondents.²³ Thus, in accordance with this remand and the Department's practice, the Department went back to the immediately preceding completed segment of this proceeding (i.e., the original investigation) to select a rate that was not zero, de minimis or based entirely on facts available. In the underlying investigation, Wanhua received a separate rate based on the calculated rate for the sole cooperating mandatory respondent, DuPont Teijin Films China Limited, DuPont TeiJin Hongji Films Ningbo Co., Ltd., and DuPont-Hongji Films Foshan Co., Ltd. (collectively the "DuPont Group"), i.e., 3.49 percent.²⁴

The Department finds that pulling forward the separate rate from the underlying investigation as Wanhua's assigned separate rate for this first administrative review is reasonable and consistent with section 735(c)(5)(B) of the Act. The Department notes that Wanhua's pricing data for the period of review is not on the record of this review. However, the Department also notes that Wanhua itself argued in this segment of the proceeding that the key direct material input in producing PET film that the DuPont Group used during the period of investigation is essentially the same as that used in its own production in regard to its properties and costs.²⁵ Following the preliminary results of this review, Wanhua submitted the responses of the DuPont Group regarding this input's properties and costs from the investigation in support of

²³ See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, and Intent To Revoke Order in Part, 76 FR 40329 (July 8, 2011) ("As a result of there being no other non- de minimis or non-{adverse facts available}-based margins available, the Department has used the weighted-average margin from the investigation to apply to the separate-rate respondents in this case. Pursuant to this method, we are assigning the rate of 4.44 percent, the most recent positive rate (from the less-than-fair-value ("LTFV") investigation) calculated for cooperative separate-rate respondents."), unchanged in Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part, 76 FR 69702 (November 9, 2011).

²⁴ See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039, 55041 (September 24, 2008).

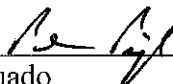
²⁵ See Submission of Wanhua, Green Packing, and Fuwei Films, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Case Brief Submitted by TianJin WanHua Co., Ltd., Shaoxing Xiangyu Green Packing Co., Ltd., and Fuwei Films (Shangdong) Co., Ltd.," dated September 28, 2010, at 7.

this argument.²⁶ Therefore, we find this information and argument put forth by Wanhua as indicative that the investigation rate calculated for the DuPont Group, from which Wanhua's separate rate was calculated in the investigation, is relevant to Wanhua regarding the determination of its separate rate in this review. Accordingly, the Department finds that Wanhua's 3.49 percent rate from the investigation is also reasonably reflective of Wanhua's current dumping margin in this review. The Department also notes that the separate rate derived from the investigation rate was based on our thorough examination of the cooperative mandatory respondent (i.e., the DuPont Group) sharing the same key input as Wanhua, and the DuPont Group accounted for a large share of exports during a very recent period of time. Thus, the Department has pulled forward Wanhua's separate rate of 3.49 percent as Wanhua's separate rate in this administrative review.

²⁶ See Submission of Wanhua, Green Packing, and Fuwei Films, "Polyethylene Terephthalate (PET) Film from the People's Republic of China; A-570-924; Post-Preliminary Surrogate Value Information by TianJin WanHua Co., Ltd., Shaoxing Xiangyu Green Packing Co., Ltd., and Fuwei Films (Shandong) Co., Ltd.," dated September 8, 2010, at Exhibit PSV-8.

III. FINAL RESULTS OF REDETERMINATION

We have examined the record of this administrative review and, upon full examination of the record evidence, the Department has implemented all changes discussed above and revised the margin for Wanhua. As a result of this redetermination, the antidumping duty margin for Wanhua is 3.49 percent.



Paul Piquado
Assistant Secretary
for Import Administration

18 July 2013

(Date)