

Dupont Teijin Films v. United States
Court No. 12-00088, Slip Op. 13-111 (August 21, 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”) in Dupont Teijin Films v. United States, Court No. 12-00088, Slip Op. 13-111 (August 21, 2013) (“Dupont Teijin Films II”). This remand redetermination pertains to the final results of the second administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (“PET film”) from the People’s Republic of China (“PRC”),¹ as well as the Department’s First Remand Redetermination.²

In Dupont Teijin Films II, the Court remanded the single issue the Department addressed in the First Remand Redetermination, concerning the normal value calculation for all mandatory respondents. The Court ordered the Department to reconsider its surrogate country selection with the benefit of 2009 per-capita gross national income (“GNI”) data. The Court expressed no opinion on which country or countries the Department should select or how it should choose factors of production (“FOP”) data, adding that the Department could, at its discretion, reopen the administrative record. On September 17, 2013, the Department reopened the administrative

¹ See Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012), and accompanying Issues and Decision Memorandum (“Final Results”).

² See Final Results of Redetermination Pursuant to Court Order in Dupont Teijin Films v. United States Court No. 12-00088, Slip Op. 13-19 (February 7, 2013), dated May 8, 2013 (“First Remand Redetermination”).

record, and requested comments and surrogate value information from all interested parties, to reconsider its surrogate country selection.³ On September 27, 2013, the Department received comments and surrogate value information from DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively, “Petitioners”),⁴ and Tianjin Wanhua Co., Ltd. (“Wanhua”), Sichuan Dongfang Insulating Material Co., Ltd. (“Dongfang”), and Fuwei Films (Shandong) Co., Ltd. (“Fuwei Films”) (collectively, “Respondents”).⁵ On October 21, 2013, the Department received rebuttal comments and factual information from Petitioners⁶ and Respondents.⁷

Based upon all of the information on the administrative record and analysis of the comments received, the Department determined that South Africa is the appropriate surrogate country to use in this administrative review because: (1) it is at the same level of economic development as the PRC; (2) it is a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Tariff Act of 1930, as amended (“the Act”); and (3) we have reliable data from South Africa that we can use to value the FOPs.

On December 3, 2013, the Department provided a draft redetermination to the parties in which it respectfully disagreed with the Court, reconsidered its surrogate country selection, and under protest selected South Africa as the primary surrogate country for calculating normal

³ See Letter to All Interested Parties, “Re: Dupont Teijin Films v. United States, Court No. 12-00088, Slip Op. 13-111 (August 21, 2013): Redetermination Pursuant to Court Order Regarding the Second Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China,” dated September 17, 2013 (“Letter Requesting Comments”).

⁴ See Letter from Petitioners to The Honorable Penny Pritzker, “Re: Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Submission of Publicly Available Information to Value Factors of Production,” dated September 27, 2013 (“Petitioners Comments”).

⁵ See Letter from Respondents to Hon. Penny Pritzker, “Re: Polyethylene Terephthalate (PET) Film (A-570-924): Comments on Surrogate Country Selection and Proposed Surrogate Values,” dated September 27, 2013 (“Respondents Comments”).

⁶ See Letter from Petitioners to The Honorable Penny Pritzker, “Re: Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Rebuttal of Respondents' Surrogate Value Submission,” dated October 21, 2013 (“Petitioners Rebuttal Comments”).

⁷ See Letter from Respondents to Hon. Penny Pritzker, “Re: Polyethylene Terephthalate (PET) Film (A-570-924): Response to Petitioners' Comments on Surrogate Country Selection and Proposed Surrogate Values,” dated October 21, 2013 (“Respondents Rebuttal Comments”).

value. On December 16, 2013, the parties provided comments.⁸ In response to these comments and as described below the Department continues to respectfully disagree with the Court and, under protest, select South Africa as the primary surrogate country for calculating normal value.

II. REMANDED ISSUE

Surrogate Country Selection

A. Background

In Dupont Teijin Films II, the Court held that the Department “failed to provide a reasoned justification for disregarding the 2009 GNI data.” In summary, the Court stated: (1) because the Department declined to treat the 2009 per-capita GNI data as “untimely,” its attempts to characterize the 2009 per-capita GNI data as “late” are inapposite; (2) the Department abused its discretion to create its own rules of procedure related to the development of the record by depriving parties of a meaningful opportunity to comment on the Office of Policy’s (“OP’s”) list of economically comparable countries; (3) the Department’s reliance on the administrative burden of considering OP’s list of countries do not excuse it from its statutory obligations to determine accurate dumping margins at a point in the proceeding where issues of finality are not yet present; and (4) if administrative constraints prevent the Department from considering economic comparability after a certain point in the administrative process, the Department may create a reasonable deadline for the submission of per-capita GNI data pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(b) and (c). With respect to these concerns, the Court concluded that the Department accepted the 2009 per-capita GNI data as timely filed and part of the record, and thus the Department must justify its surrogate country selection based

⁸ See Letter from Petitioners to The Honorable Penny M. Pritzker, “Re: Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People’s Republic of China: Comments on Draft Remand Results,” dated December 16, 2013; See Letter from Respondents to Hon. Penny Pritzker, “Re: Polyethylene Terephthalate (PET) Film (A-570-924): Comments on Draft Remand Determination,” dated December 16, 2013.

on the record, including the 2009 per-capita GNI data. The Court remanded to the Department its surrogate country selection, adding that the Department could, at its discretion, reopen the administrative record.

The Department respectfully disagrees with the Court that administrative constraints did not provide an adequate reason to reject the 2009 per-capita GNI data filed 24 days before the preliminary results of this administrative review.⁹ However, in compliance with the Court's order, we present our analysis below.

B. Analysis

In accordance with section 773(c)(4) of the Act, the Department will value FOPs using “to the extent possible, the prices or costs of FOPs in one or more market economy countries that are – (A) at a level of economic development comparable to that of the nonmarket economy (“NME”) country, and (B) significant producers of comparable merchandise.” Further, pursuant to 19 CFR 351.408(c)(2), the Department normally will value all FOPs in a single country. For this remand redetermination, we considered all key surrogate values, including the PET chip surrogate value, in the surrogate country selection process. A review of the record indicates that, while the available Thai and South African surrogate values satisfy certain of the Department's selection criteria for surrogate values, there are no Thai financial statements on the record that the Department can use to calculate surrogate financial ratios, which are of key importance to the calculation of dumping margins. Consequently, in view of the totality of circumstances as described fully below, we selected South Africa as the primary surrogate country.

a. Economic Comparability

On September 16, 2013, the OP provided a new, non-exhaustive list of potential surrogate countries based upon 2009 per-capita GNI data as ordered by the Court in this

⁹ See Viraj Grp. Ltd. v. United States, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

remand.¹⁰ The list included Colombia, Indonesia, the Philippines, South Africa, Thailand, and Ukraine.¹¹ As explained in the Department’s Policy Bulletin 04.1, “[t]he surrogate countries on the list are not ranked.”¹² This lack of ranking reflects the Department’s long-standing practice that, for the purpose of surrogate country selection, the countries on the list “should be considered equivalent”¹³ from the standpoint of their level of economic development based on *per capita* GNI as compared to China’s level of economic development and recognition of the fact that the concept of “level” in an economic development context necessarily implies a range of *per capita* GNI, not a specific *per capita* GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country fulfills the statutory requirement to value factors of production using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country. . . .”¹⁴ In this regard, “countries that are at a level of economic development comparable to that of the nonmarket economy country” necessarily includes countries that are at the same level of economic development as the NME country. Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department also considers other countries at the same level of economic development that interested parties propose, as well as other countries that are not at the same level of economic development as the NME country, but nevertheless still at a level comparable to that of the NME country. The latter countries are considered when data or significant producer considerations

¹⁰ See Letter Requesting Comments, at Attachment 1 (“Policy Memorandum”).

¹¹ See Policy Memorandum at 2.

¹² See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin 04.1”).

¹³ See Policy Bulletin 04.1

¹⁴ See section 773(c)(4) of the Act.

potentially outweigh the fact that these countries are not at the same level of economic development as the NME country.

Respondents argue that the list of countries presented by the OP is moot because the countries with the greatest and smallest per-capita GNI listed represent the range of all possible surrogate countries and, thus, the Department provided inadequate time for Respondents to respond fully to the Department's Letter Requesting Comments. Further, Respondents argue that per-capita GNI should not be considered by the Department as the sole indicator of economic comparability and offer other statistical indicators of the economic comparability of India and China.

The Department agrees with Respondents that the initial list of surrogate country candidates is not exhaustive and is only a starting point for identifying a surrogate country. Interested parties are free to identify other countries at comparable level of economic development consistent with 19 CFR 351.408(b), which indicates that the Department will "place primary emphasis" on per-capita GNI when determining economic comparability. While the Department will examine whether countries identified by interested parties are at the same level of economic development as the NME at issue or at a different but still comparable level, as explained in the immediately preceding paragraph, the Department considers all countries on the initial list as being at the same level of economic development as the NME at issue. Thus, as a general rule, the Department selects the surrogate country from the candidate countries at the same level of economic development, unless it is determined that none of the countries are viable options because they either are not significant producers of comparable merchandise, or do not provide sufficient reliable sources of publicly available surrogate value data.¹⁵ These conditions

¹⁵ See, e.g., Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 4386 (January 22, 2013) and the accompanying Issues and Decision

reflect the fact that the two statutory requirements for a surrogate country must be satisfied only “to the extent possible.”¹⁶

In this remand proceeding, Respondents urged the Department to select India as the primary surrogate country, even though it is not one of the potential surrogate countries that the Department identified as being at the same level of economic development as China.¹⁷ However, India’s 2009 per-capita GNI of \$1,180, when compared to China’s per capita income of \$3,590, suggests that India is not at the same level of economic development as China. Additionally, the conditions under which we would consider selecting countries at a different level of economic development, such as India, do not apply in this review because, as discussed below, the Policy Memorandum provides at least one country that is a significant producer of comparable merchandise with available quality data for surrogate values. Therefore, we have not considered India as a potential surrogate country for this remand proceeding.

b. Production of Comparable Merchandise

To identify significant producers of comparable merchandise, interested parties sought evidence of production of PET film by the surrogate countries in the form of export data, as the Department has done in many prior proceedings, including the underlying administrative review.¹⁸ Respondents submitted export data from the Global Trade Atlas for Colombia,

Memorandum at Comment 2; Certain Steel Threaded Rod From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011, 77 FR 67332 (November 9, 2012) and the accompanying Issues and Decision Memorandum at Comment 1; Certain Steel Wheels From the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703, 67708 (November 2, 2011), unchanged in Certain Steel Wheels From the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances, 77 FR 17021 (March 23, 2012).

¹⁶ See section 773(c)(4) of the Act.

¹⁷ See Policy Memorandum.

¹⁸ See Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Jonathan Hill, International Trade Compliance Analyst, “Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Selection of a Surrogate Country,” dated October 27, 2011.

Indonesia, the Philippines, South Africa, Thailand, and Ukraine for the six-digit Harmonized Tariff Schedule (“HTS”) number listed in the description of the scope of this proceeding, *i.e.*, 3920.62.¹⁹ Because the Department obtained export data from each country for the same six-digit HTS number, which specifically covers PET film, all merchandise on which we base our comparison, using this methodology, covers comparable merchandise.²⁰ The export data show that all six potential surrogate countries were exporters of products under the relevant HTS number.

Respondents argue that the Department’s methodology for determining whether a potential surrogate country is a significant producer of comparable merchandise based upon export statistics is flawed because exported merchandise is not necessarily produced in the country of export. Notwithstanding this flaw, Respondents state that South Africa is a significant producer of comparable merchandise because it exported comparable merchandise.²¹ Further, Respondents note that Astrapak Limited’s (“Astrapak’s”) financial statements for fiscal year 2011 demonstrate that Astrapak manufactures comparable merchandise in South Africa, which is exported as packing materials for other goods. Petitioners argue that if there are many countries that produce comparable merchandise, a country is not a significant producer if it is not one of the top producers, citing the Department’s Policy Bulletin 04.1. Petitioners contend that when

¹⁹ See Respondents’ Comments at Exhibit SVF-2.

²⁰ The Department notes that HTS 3920.62 covers both in-scope merchandise and PET film that is excluded from the scope of the order, such as “metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick.” See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People’s Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates, 73 FR 66595 (November 10, 2008) (“Order FR”).

²¹ Respondents also argue that India is a substantial producer of comparable merchandise, and that this is supported by the Department’s dumping order on PET film from India. Respondents also state that Indian surrogate value data is the best data, noting that the Department used Indian data in many prior proceedings. However, as noted above, the Department determined not to consider India as a surrogate country because there are other countries at the same level of economic development that satisfy our selection criteria.

evaluated on the basis of export data for all countries, South Africa is not a significant producer of comparable merchandise, but that Thailand is.

We find that, based on record data, both South Africa and Thailand are significant producers of comparable merchandise. Despite Respondents' arguments to the contrary, the legislative history of the Act supports our use of export data as a means of identifying significant producers of comparable merchandise.²² Accordingly, we find that Thailand is a significant producer of comparable merchandise based on the 2010 export data submitted by Petitioners, which show that Thailand exported over 44 million kilograms of PET film. In addition, although Policy Bulletin 04.1 offers guidance on how the Department could potentially interpret the term "significant producer" within the context of a proceeding (*i.e.*, "if there are ten large producers and a variety of small producers, 'significant producer' could be interpreted to mean one of the top ten"), it also states that "{b}ecause the meaning of 'significant producer' can differ significantly from case to case, fixed standards... have not been adopted." Thus, as explained below, we find that South Africa's ranking among other producers of comparable merchandise based on export data does not preclude the Department from determining that it is a significant producer within the specific context of this proceeding because, as further discussed below, additional evidence in the form of financial statements of comparable producers exists that suggest significant production of comparable merchandise in South Africa. Further, with regard to Petitioners' argument that South Africa's production is insignificant when compared to other countries on the list, the Policy Bulletin negates such an analysis and states that "{t}he extent to which a country is a significant producer should not be judged against the NME country's

²² See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

production level or the comparative production of the five or six countries on OP's surrogate country list.”

To the extent that Policy Bulletin 04.1 suggests guidelines for identifying “significant” producers, it assumes the availability of world production data, which, as noted above, is not on the record. Policy Bulletin 04.1 further states that, “given that the decision as to what constitutes ‘significant production’ in a particular case depends on available (often scarce) data, the specific criteria and supporting factual information used to determine whether a potential surrogate country is a significant producer is left to the discretion of the operations team.” Absent production data, we find that it is also appropriate to look for other indications of South African production of comparable merchandise, such as the financial statements of Astrapak.²³

According to Astrapak's financial statements, its Flexibles Division manufactures high-density polyethylene films, low density single- and multi-layered films, plain and printed films, co-extruded film, blown film, film for pallet stretch wrap, and industrial pallet shrink shroud.²⁴ These products represented 44 percent of its turnover, or 1,359,563,000 South African Rand (R)²⁵ (USD 182,805,481.42),²⁶ in 2010. This value of product is greater than the value of the 2010 PET film exports for any potential surrogate country.²⁷ All of the films manufactured by its Flexibles Division are produced by melting and extruding plastics that are used for food packaging,²⁸ and are thus comparable to PET film. The various Astrapak subsidiaries which

²³ See Dorbest Ltd. v. United States, 30 C.I.T. 1671, 1683-1684 (Ct. Int'l Trade 2006), rev'd on other grounds, 604 F.3d 1363 (Fed. Cir. 2010) (“Dorbest 2006”) (upholding the Department's selection of India as a surrogate country using the financial statements of Indian companies).

²⁴ See Respondents' Comments at Exhibit SVF-9, page 93.

²⁵ Id. at page 112.

²⁶ See U.S. Dollar exchange rate, Respondents' Comments at Exhibit SVF-4.

²⁷ See Memorandum from Jonathan Hill to Abdelali Elouaradia, “Second Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Selection of a Surrogate Country,” dated October 27, 2011 (“Preliminary Results Surrogate Country Memorandum”), at Attachment II (showing 2010 export values of PET film exporters).

²⁸ See Respondents' Comments at Exhibit SVF-9, pages 10-11.

manufacture merchandise comparable to PET film in South Africa are: (1) Barrier Film Converters,²⁹ which manufactures multilayer barrier films, (2) City Pack,³⁰ which manufactures monolayer and co-extruded printed film, (3) East Rand Plastics,³¹ which manufactures high and low-density polyethylene films, (4) Packaging Consultants,³² which produces high-quality plain and printed film, (5) Pack-Line Holdings,³³ which manufactures shrink wrap film, (6) Peninsula Packaging,³⁴ which manufactures plain and printed polyethylene films, and (7) Ultrapak,³⁵ which extrudes specialty films. While there is no information in Astrapak's financial statements regarding the quantity of these films that these subsidiaries produce, Astrapak's total sales value for film products and the fact that there are seven producers support our determination that production of comparable merchandise occurs in South Africa and it is significant.

The Department notes that Respondents submitted to the record only South African export data for HTS number 3920.62, which covers PET film.³⁶ Because section 773(c)(4)(B) of the Act requires the Department's analysis to cover comparable merchandise, the Department could have considered a broader category of reasonably comparable merchandise, such as the extruded plastic films manufactured by Astrapak's subsidiaries. These data are not on the record of the proceeding, but even if they were, the export data would capture only a small portion of the production of a producer such as Astrapak because, for example, in 2010, 90 percent of Astrapak's Flexibles Division sales were to South African customers.³⁷

²⁹ Id. at 10.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id. at 11.

³⁴ Id.

³⁵ Id.

³⁶ See Respondents' Comments at Exhibit SVF-2.

³⁷ Id. at 112-113.

The Department has evaluated all of the information on the administrative record to determine whether any countries that are at the same level of economic development as the PRC can be considered significant producers of merchandise comparable to PET film. Based on reported annual export data, and also the annual reports of manufacturers that interested parties have submitted to the record, the Department finds that both Thailand and South Africa are significant producers of comparable merchandise. South Africa and Thailand are significant producers because, in quantity terms, they are exporters of goods comparable to the subject merchandise, and have production of comparable merchandise, as evidenced by the financial statements on the record.³⁸

c. Data considerations

Pursuant to section 773(c)(1) of the Act, the Department uses the best available information to derive the surrogate factor values. To do so, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information.³⁹ For this remand redetermination, we considered all key surrogate values, including the PET chip surrogate value, in the surrogate country selection process. Petitioners submitted surrogate value information from Thailand for valuing Respondents' FOPs. Respondents submitted South African surrogate value information for valuing Respondents' FOPs. The Department reviewed the key surrogate values from both countries, and all are equal in terms of contemporaneity.⁴⁰

³⁸ See Certain Activated Carbon From the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review, 77 FR 67337 (November 9, 2012) and the accompanying Issues and Decision Memorandum at Comment 1.

³⁹ See, e.g., 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) and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁰ Interested parties have not submitted complete surrogate values for any potential surrogate country, such that the Department could calculate normal value entirely with data from a single country. Because the Department has selected South Africa as the primary surrogate country, which lacks data for steam energy, brokerage and handling, and truck freight, the Department will rely upon the Thai surrogate values submitted by Petitioners for those FOPs. No parties submitted a surrogate value for domestic inland insurance for any country economically comparable to

Respondents contend that the Thai surrogate value data on the record is unusable due to the inconsistent application of the transaction valuation methodology used by Thailand's Customs Department. Although the reports cited by Respondents indicate concern over the practices of Thailand's Customs Department officials, the Department cannot conclude from the reports that the entirety of the Thai import data under consideration should be rejected as unreliable because those reports do not address the PET chip inputs at issue in this case.⁴¹ Respondent also state that the surrogate value for PET chips based on Thai data is aberrantly high based on information in Polyplex (Thailand) Public Company Limited's ("Polyplex Thailand's") financial statements. However, the Department is not considering Polyplex Thailand's financial statements due to evidence that they may be distorted by subsidies found by the Department to be countervailable, as discussed below.

In reference to the calculation of surrogate financial ratios, the Court recognized the Department's discretion to choose appropriate companies' financial statements.⁴² It is the Department's practice to reject the financial statements of a company that we have reason to believe or suspect may have benefited from countervailable subsidies, particularly when other sufficient, reliable, and representative data are available for calculating surrogate financial ratios.⁴³ Respondents contend Polyplex Thailand's financial statements put on the record by

the PRC, and thus the Department will not value this expense for this remand redetermination.

⁴¹ See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 3.

⁴² See, e.g., FMC Corp. v. United States, 27 C.I.T. 240 (Ct. Int'l Trade 2003) (holding that the Department can exercise discretion in choosing between reasonable alternatives); aff'd by FMC Corp. v. United States, 87 Fed. Appx. 753 (Fed. Cir. 2004).

⁴³ See 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) and accompanying Issues and Decision Memorandum at Comment 17A ("Tires from PRC"); see also Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative Review and New Shipper Reviews, 72 FR 52049 (September 12, 2007) ("PRC Shrimp 2007") and accompanying Issues and Decision Memorandum at Comment 2, citing Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174

Petitioners are unusable because the company is a heavily promoted company that received numerous benefits during the period of review (“POR”) and that these benefits have been previously found by the Department to be countervailable. After analyzing Polyplex Thailand’s financial statements, we agree and find that Polyplex Thailand received countervailable subsidies.

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department has a long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.⁴⁴ In the past, the Department had found that the Investment Promotion Act (“IPA”) program was not *per se* countervailable and was countervailable only when approval of promotional privileges was based upon an explicit export commitment, the company’s location in a regional investment zone, or an express government promotion of the industry.⁴⁵ Therefore, in order to determine whether a company that used IPA benefits received a countervailable subsidy, the Department required information regarding the basis upon which the IPA promotion privileges were approved.⁴⁶ However, in Warmwater Shrimp,⁴⁷ which coincides with the instant POR, the Department determined the IPA to be a *per se* countervailable subsidy under sections 771(5A)(A) and (B) of the Act. In the instant proceeding, based on record evidence, we find that Polyplex Thailand’s financial

(April 17, 2007) (“PRC Crawfish 2007”) and accompanying Issues and Decision Memorandum at Comment 1; see also H.R. Conf. Rep. No. 576, 2d Sess., Vol. 4, 590 (1988) (“Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices”).

⁴⁴ See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2d Sess. (1988) at 590; see also Kerr-McGee Chemical Corp. v. United States, 985 F. Supp. 1166, 1177 (CIT 1997) (“{I}n valuing such (nonmarket economy) factors, Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.”).

⁴⁵ See, e.g., Certain Stilbenic Optical Brightening Agents From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17436 (March 26, 2012) and the accompanying Issues and Decision Memorandum at Issue 2.

⁴⁶ Id.

⁴⁷ See Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination, 78 FR 50379 (August 19, 2013) and the accompanying Issues and Decision Memorandum at Comment 2 (“Warmwater Shrimp”).

statements contain evidence that it received such IPA subsidies.⁴⁸ Therefore, for this remand redetermination, we are disregarding Polyplex Thailand's financial statements.

Petitioners contend that Astrapak's financial statements do not contain evidence that Astrapak manufactured or sold comparable merchandise during the POR (citing public information from 2006 submitted to the record by Respondents⁴⁹), but that Astrapak consumed comparable merchandise during the fiscal year to manufacture other non-comparable products. However, as noted above, Astrapak's financial statements contain evidence that Astrapak had no fewer than seven subsidiaries that manufactured plastic films for food packaging during the 2011 fiscal year, and we find that this is evidence that Astrapak is a manufacturer of comparable merchandise. While Petitioners also contend Astrapak is actually an upstream producer of films, and a downstream seller of food packaging, information in the financial statements do not support this contention. As noted above, Astrapak has seven subsidiaries that manufacture and sell films. Further, in 2010, only 6.67 percent of the sales of the Flexibles Division were made inside the Astrapak group of companies, which would include the Astrapak subsidiaries that perform downstream packaging manufacturing.⁵⁰ Petitioners also argue that Astrapak's financial statements do not contain an itemized breakout for cost of sales, raw materials, manufacturing labor, manufacturing energy, consumables or any other manufacturing expenses, to provide the detail necessary for calculating accurate financial ratios. We disagree. Based on record evidence, the Department finds that Astrapak's financial statements are contemporaneous and

⁴⁸ See Petitioners' Comments at Exhibit 1 (Exhibit 13 of resubmitted surrogate value submission, Polyplex Thailand Financial Statements), page 21: "By virtue of the provisions of the Board of Investment Promotion Act B.E. 2520, the Company has been granted certain standard promotional privileges on the manufacturing and distributing the polyester film/resin/Thermal Lamination film/CPP film as per the following sections: 25, 26, 27, 28, 31, 34, 35(1), 35(2), 35(3), 36(1), 36(2) and 37, respectively. The Company must comply with certain conditions and restrictions provided for in the promotion certificate. Details of the privileges of each of the above sections are shown at www.boi.go.th."

⁴⁹ See Respondents' Comments at Exhibit SVF-1.

⁵⁰ See Respondents' Comments at Exhibit SVF-2, at page 112.

complete, and the company was profitable during the POR. Further, the financial statements contain no evidence of the receipt of countervailable subsidies.⁵¹ Thus, we determine that Astrapak's financial statements constitute the best available information on the record for the purposes of calculating the surrogate financial ratios.

Notwithstanding its argument that Astrapak's financial statements do not provide the detail necessary for calculating accurate financial ratios, Petitioners offer specific corrections to Respondents' selling, general and administrative ("SG&A") and overhead expense calculation based on Astrapak's financial statements. The Department analyzed Astrapak's financial statements, and recalculated these financial ratios.⁵²

III. INTERESTED PARTY COMMENTS

A. South African Production of Comparable Merchandise

Petitioners' Comments

- The Department assesses whether each potential surrogate country's level of exports of comparable merchandise is significant to determine whether the country is a significant producer. The Department took this approach with Thailand, but did not apply the same standard with respect to South Africa. If the Department had applied this standard to South Africa, the Department would have determined South Africa to be not a significant producers of comparable merchandise.
- The Department's Policy Bulletin 04.1 states that the Department should determine whether a country's production is "significant" by standards of "world production of, and trade in,

⁵¹ See, e.g., Respondents' Comments at Exhibit SVF-9 (Astrapak financial statements) page 104 (showing no specific subsidy revenue).

⁵² See Memorandum from Thomas Martin to The File, "Calculation Memorandum for the Second Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China Draft Remand Redetermination: Sichuan Dongfang Insulating Material Co., Ltd.," dated December 2, 2013; see also Memorandum from Thomas Martin to The File, "Calculation Memorandum for the Second Administrative Review of Polyethylene Terephthalate Film, Sheet and Strip from the People's Republic of China Draft Remand Redetermination: Tianjin Wanhua Co., Ltd.," dated December 2, 2013.

comparable merchandise.” Among world exporters, Thailand is the ninth largest, and South Africa is 52nd out of 80 countries, which is minimal by worldwide standards.

- Finding the fiscal year 2010 turnover of Astrapak’s Flexibles Division to be support for South Africa’s production level is unreasonable, fundamentally unfair, and prejudicial to Petitioners’ due process rights, as it deviates from the Department’s prior practice. The Department failed to explain why the lack of world production data does not also preclude it from making a significant determination for Thailand, India or Indonesia.
- Even if the fiscal year 2010 turnover of Astrapak’s Flexibles Division could be used to support South Africa’s production, the Department has misinterpreted the financial statement. Astrapak’s Flexibles Division does not exclusively produce comparable merchandise, and thus its turnover does not indicate Astrapak’s or South Africa’s level of production. Astrapak’s financial statement does not break out revenues within the Flexibles Division.

Respondents’ Comments

- South Africa falls within the range of per-capita GNI designated by the Department to be economically comparable to the PRC.
- South Africa is a significant producer of comparable merchandise as demonstrated by the existence of exports of PET film from South Africa.

Department’s Position: The Department disagrees with Petitioners’ contention that it applied different standards to Thailand and South Africa in determining whether each is a significant producer of comparable merchandise. The standard we applied is a single standard, specifically, that the record must contain evidence of significant production of comparable merchandise in the potential surrogate country. While Petitioners highlight the few products manufactured by

Astrapak's Flexibles Division that might not be comparable to PET film, the majority of the products of Astrapak's Flexibles Division are films for packaging that are similar to the products manufactured by the respondents.⁵³

As noted above, (1) Barrier Film Converters manufactures multilayer barrier films,⁵⁴ (2) City Pack manufactures monolayer and co-extruded printed shrink film,⁵⁵ (3) East Rand Plastics manufactures high and low-density polyethylene films,⁵⁶ (4) Packaging Consultants produces high-quality plain and printed film,⁵⁷ (5) Pack-Line Holdings manufactures shrink wrap film,⁵⁸ (6) Peninsula Packaging manufactures plain and printed polyethylene films,⁵⁹ and (7) Ultrapak produces highly decorated films.⁶⁰ Four of the five remaining subsidiaries, Alex White, Knilam Packaging, Safelite, and Tristart Plastics, manufacture coated or metallized film packaging that the Department has considered comparable merchandise in every segment of this proceeding.⁶¹

Moreover, Astrapak notes in its financial statement, in discussing the major risks to its financial outlook, that the cost of the plastics that make up its direct material inputs is a major

⁵³ See Letter from Wanhua to the Secretary of Commerce, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China; A-570-924; Response to Section A Questionnaire by Tianjin Wanhua Co., Ltd.," dated March 8, 2011, ("Wanhua Section A Response") at 17 (noting that Wanhua's products are for packaging food and medicine).

⁵⁴ See Respondents' Comments at Exhibit SVF-9, pages 10-11.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id. at 11.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id. Petitioners are correct that in prior administrative reviews, the Department has repeatedly examined world export data of HTS 3920.62, and in doing so has always included in its analysis films that have been coated or metallized. As stated above, the six-digit HTS number listed in the description of the scope of this proceeding, 3920.62, includes "(o)ther plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials." Identical merchandise, i.e., merchandise subject to the order, includes "all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded." Films that would otherwise be covered by the order, but which are specifically excluded, are "metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick." Because HTS 3920.62 does not exclude metallized films and other finished films with modified surfaces, Petitioners' contention that the packing materials manufactured by Astrapak are upstream products that are not comparable to PET film cannot be supported. The very same world export data that Petitioners agree that the Department can rely upon would include, for instance, the very same type of metallized gift wrapping that Petitioners contend is not comparable merchandise.

risk, stating that the “(p)olymer is the most significant input cost,” for all of its operations.⁶² Further, Astrapak anticipated polymer price increases and potential supply shortages, and increased its inventory levels to mitigate these risks, which impacted its working capital.⁶³ Astrapak also noted longer term optimism for its Rigids Division due to the continuing substitution of metal and glass by PET in packing.⁶⁴ The Department also notes that the only direct material in PET film is PET polymer,⁶⁵ and thus the polymer is clearly the most significant input cost for any respondent in this proceeding. Policy Bulletin 04.1 specifically instructs that under such circumstances, it is appropriate to identify “comparable merchandise” on the basis of the major input.⁶⁶ Therefore we consider any of Astrapak’s products with polymers as the major or only input, such as the flexible films described above or rigid container products that specifically require PET, to be comparable to PET Film. Pursuant to this analysis, the plastic rope manufactured by Astrapak’s Plusnet/Geotex subsidiary can be considered comparable merchandise, and the Department has already found PET yarn to be comparable merchandise in both this segment, and the prior segment, of the proceeding.⁶⁷ PET-based rigid products include the containers manufactured by Astrapak’s Cinqpet, Hilfort Plastics, Plas Tech, and Thermopac subsidiaries in its Rigids Division. These four subsidiaries consume the identical polymer used

⁶² See Respondents’ Comments at Exhibit SVF-9 (Astrapak financial statements) page 32.

⁶³ Id. at page 28.

⁶⁴ Id. at page 23.

⁶⁵ See Memorandum from Thomas Martin to The File, “Dupont Teiinn Films v. United States, Court No. 12-00088, Slip Op. 13-111 (August 21, 2013): Draft Remand Redetermination Pursuant to Court Order Regarding 2009-2010 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China- Surrogate Value Memorandum,” dated December 2, 2013, at 3.

⁶⁶ Policy Bulletin 04.1 notes that in cases “where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.”

⁶⁷ See Final Results at Issue 2; see also 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 (February 22, 2011) and the accompanying Issues and Decision Memorandum at Issue 1.

by the respondents in this proceeding, and on this basis the Department finds that they also make comparable products.⁶⁸

In their comments, Petitioners highlight several products manufactured by certain Astrapak subsidiaries, which they state are products not comparable to PET film. Petitioners quote the Astrapak financial statement that Peninsula Packaging makes “sheet, tubing and variety of bags,” but omit the beginning of the quoted statement, which states “Peninsula Packaging is widely acknowledged as one of the market leaders in the manufacture of plain and printed films. . . .”⁶⁹ Similarly, Petitioners quote the Astrapak financial statement that Packaging Consultants manufactures “heavy-duty sacks for agricultural, industrial, and chemical products,” but omit the opening sentence of the passage, which states, “Packaging Consultants produces high-quality plain and printed film, tubing and bags.”⁷⁰ Petitioners quote that East Rand Plastics makes “wicketed bags,” but omit the opening sentence of the passage, which states “East Rand Plastics produces a range of high- and low-density polyethylene films for a wide variety of products.”⁷¹ It is erroneous to suggest that the high- and low-density polyethylene films manufactured by East Rand Plastics are any more an “upstream product” because they are “for a wide variety of products,” than is subject merchandise. Subject merchandise is also manufactured for a wide variety of products. Wanhua states that its products are “professionally suitable for the packaging of food and medicine, as well as daily commodities, and it is also used . . . for the vacuum metalizing industry, and as the adhesive protection film in architectural decoration materials, printing basic materials, electronic products, electric insulation, magnetic

⁶⁸ See Respondents’ Comments at Exhibit SVF-9 (Astrapak financial statements) pages 12-13.

⁶⁹ *Id.* at 11.

⁷⁰ *Id.* at 10.

⁷¹ *Id.*

record materials for magcard, sensitization film and so on.”⁷² Just as subject merchandise can be used in many applications, Astrapak’s products can be used in many applications.

Petitioners correctly point out that the Astrapak subsidiary Alex White manufactures printed labels and phone cards, and the Astapak financial statement reflects that Alex White is a printer.⁷³ Also, another Astrapak subsidiary, Knilam Packaging, manufactures “specialized packaging systems.”⁷⁴ Thus, in these two instances, Astrapak subsidiaries manufacture product that is further manufactured from film. Nonetheless, based upon the entirety of the evidence in the Astrapak financial statement, the great majority of the products manufactured by Astrapak are comparable merchandise.

We disagree with Petitioners that the above analysis is inappropriate for surrogate country selection purposes because the Department has not limited itself to considering only one type of evidence when evaluating a country’s significant producer status.⁷⁵ In this case, when evaluating Thailand’s producer status, the Department has relied on export data as a proxy for production data, as the Department has done in many other proceedings.⁷⁶

However, the fact that export data alone are sufficient for demonstrating Thailand’s status as a significant producer of comparable merchandise does not mean that export data are the *only*

⁷² See Wanhua Section A Response at 17.

⁷³ See Respondents’ Comments at Exhibit SVF-9 (Astrapak financial statement at page 10).

⁷⁴ *Id.* (“Knilam manufactures very specialised packaging systems utilising Modified Atmosphere Packaging (“MAP”) technology. Applications are typically for shelf-life extension of perishable food products, such as fresh produce. In addition, the company processes and supplies peelable lidding film systems.”).

⁷⁵ See Dorbest 2006; see also Aluminum Extrusions From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12, 79 FR 96 (January 2, 2014) and the accompanying Issues and Decision Memorandum at Comment 1 (where the Department relied on both export quantities and financial statements in finding the Philippines to be a significant producer of comparable merchandise).

⁷⁶ See, e.g., Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 70533 (November 26, 2013) and the accompanying Issues and Decision Memorandum at Comment 9; Steel Wire Garment Hangers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011, 78 FR 28803 (May 16, 2013) and the accompanying Issues and Decision Memorandum at Comment 1.

valid basis for doing so. Accordingly, even though Petitioners are correct that the world export data do not demonstrate significant production of comparable merchandise in South Africa, that observation is not dispositive as to South Africa's status when there is other information on the record relevant to that issue.⁷⁷ The fiscal year 2010 Astrapak financial statement contains such evidence. As noted above, 90 percent of Astrapak's Flexibles Division sales were to South African customers,⁷⁸ and the fiscal year 2010 turnover of this division by itself is greater than the value of PET film exports from any potential surrogate country in 2010.⁷⁹ The Department further notes that over 90 percent of Astrapak's Rigids Division sales were to South African customers.⁸⁰ Thus, the Astrapak financial statement provides evidence of significant production of comparable merchandise in South Africa that would not have been captured by export data.

Thus, based upon the Department's analysis of the world export data submitted by Petitioners, as well as other information on the record of the proceeding, the Department finds that both South Africa and Thailand are significant producers of merchandise comparable to PET film.

B. Financial Statements of Polyplex and Argha Karya Prima Industry, Tbk

Petitioners' Comments

- Astrapak is an upstream producer of products not comparable to PET film. Astrapak's Rigids Division accounted for 56 percent of its turnover in 2010, and this Division does not manufacture merchandise comparable to PET film. Astrapak's Flexibles Division manufactures and sells products downstream from films. The seven subsidiaries noted by the

⁷⁷ See Dupont Teijin Films II (holding that the Department must review the entire record, including GNI data submitted by Petitioners, in selecting countries at level of comparability to the PRC); see also Atlantic Sugar, Ltd. v. United States, 744 F.2d 1556, 1562 (Fed. Cir. 1984) (holding that the agency must consider entire record as a whole).

⁷⁸ See Respondents' Comments at Exhibit SVF-9 (Astrapak financial statements) at page 113.

⁷⁹ See Preliminary Results Surrogate Country Memorandum, at Attachment II (showing 2010 export values of PET film exporters).

⁸⁰ See Respondents' Comments at Exhibit SVF-9 (Astrapak financial statements) at page 113.

Department do not sell films for commercial sale prior to converting them into packaging products, and thus the proportion of Flexible Division sales that are internal sales is irrelevant. The difference in levels of trade results in a different character for the manufacturing operations.

- Polyplex and Argya Karya sell PET film. With respect to the Polyplex financial statement, the Department's finding that it contains evidence of the receipt of countervailable subsidies is contradicted by the Department's own finding in the third administrative review of the Order.

Respondents' Comments

- Respondents did not comment on this issue.

Department's Position: The Department disagrees with Petitioners. The plain language of the Astrapak financial statement on the record states that the seven subsidiaries discussed above by the Department manufacture films, and not downstream packaging materials made of films.

While the Department acknowledges that Astrapak's films will be ultimately used to manufacture packaging and other further manufactured products, this is no different from the PET film manufactured by Respondents. Wanhua states that its products are "professionally suitable for the packaging of food and medicine, as well as daily commodities, and it is also used . . . for the vacuum metalizing industry, and as the adhesive protection film in architectural decoration materials, printing basic materials, electronic products, electric insulation, magnetic record materials for magcard, sensitization film and so on."⁸¹ Similarly, Astrapak makes products that can ultimately be used in a variety of industrial applications, primarily in packaging foods and beverages. As noted above, (1) Barrier Film Converters manufactures multilayer

⁸¹ See Wanhua Section A Response at 17.

barrier films for food products,⁸² (2) City Pack manufactures monolayer and co-extruded printed shrink film for foods, beverages and industrial products,⁸³ (3) East Rand Plastics manufactures high and low-density polyethylene films for industrial bags and other items,⁸⁴ (4) Packaging Consultants produces high-quality plain and printed film for poultry, pet food, frozen vegetables and other products,⁸⁵ (5) Pack-Line Holdings manufactures shrink wrap film for prepacked fruit and vegetables, clothing, linen and confectionary products,⁸⁶ (6) Peninsula Packaging manufactures plain and printed polyethylene films for packaging a variety of foods and beverages,⁸⁷ and (7) Ultrapak produces highly decorated films for the food and beverage sector.⁸⁸ If these subsidiaries manufactured finished food packaging, the Astrapak financial statement would state this. Rather, the Astrapak financial statement states that its film products can be used in a variety of packaging applications.

Moreover, as stated above, the products of Astrapak's Rigids Division are also merchandise comparable to PET film, particularly the merchandise manufactured out of PET, the same polymer from which the subject merchandise is manufactured.⁸⁹ It is noteworthy that the films made by the respondents in this proceeding, and the films and containers manufactured by Astrapak, are items made of single direct material plastic. As noted above, the price and availability of the plastics used by the respondents and Astrapak are the single biggest cost that these companies have, and thus the plastics these companies purchase and consume are determinative of their profitability in the short and long term. A company such as Astrapak is

⁸² See Respondents' Comments at Exhibit SVF-9, pages 10-11.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id. at 11.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ As noted above, Astrapak's Cinqpet, Hilfort Plastics, Plas Tech, and Thermopac subsidiaries manufacture products of PET.

thus appropriate to be considered as a surrogate for the respondents, for the purpose of calculating surrogate financial ratios.

The Department also disagrees with Petitioners' argument that the Department's statements in the third administrative review contradict its finding in this remand that the Polyplex financial statement contains evidence of the receipt of countervailable subsidies. In the third administrative review, the Department selected Indonesia as the surrogate country on grounds other than the financial statement used to calculate surrogate financial ratios and explicitly declined to address any issue regarding evidence of countervailable subsidies in the Polyplex financial statement.⁹⁰

C. Rejection of Thailand as the Surrogate Country

Petitioners' Comments

- Petitioners did not comment on this issue.

Respondents' Comments

- Should the Department reconsider using Thailand as the primary surrogate country, the Department should consider Respondents' previously submitted arguments that the Thai import data on the record is unrepresentative and aberrational.

Department's Position: This issue is moot, because the Department has selected South Africa as the primary surrogate country, and has not used any Thai import data to value any direct material or packing FOPs.

D. India as the Surrogate Country

Petitioners' Comments

- Petitioners did not comment on this issue.

⁹⁰ See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35245 (June 12, 2013) and the accompanying Issues and Decision Memorandum at Issue 2, fn 65.

Respondents' Comments

- Because the Department characterizes per-capita GNI as the “primary” basis for determining economic comparability, then other “secondary” statistical bases must also exist.
- When the Department rejected the economic comparability of India based upon per-capita GNI, the Department failed to address Respondents’ arguments of India’s economic comparability using secondary data such as unemployment rates, investment-to-Gross National Product ratios, industrial production growth rates, and household incomes by percentage share of the lowest ten percent.
- If India is found to be at a level of economic development comparable to the PRC, its data should be used to calculate normal value, because it is superior to the Thai data on the record.

Department’s Position: As stated above, India’s 2009 per-capita GNI places it at a level of economic development that is lower and, thus, at a less comparable level of economic development to the PRC than that represented by the six countries on the surrogate country candidate list. Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may make a determination of economic comparability to an NME. It is the Department’s long-standing practice to use per-capita GNI, contemporaneous with the period of review or investigation, to determine the range of countries at the economic level of the NME. Per-capita GNI is reported across almost all countries by the World Bank, which is an authoritative source, and per-capita GNI represents the single best measure of a country’s level of total income.⁹¹

⁹¹ See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006). See also, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the New Shipper Review, 77 FR 27435 (May 10, 2012) and accompanying I&D Memo at Comment 1.

Respondents do not reject the Department’s reliance on section 351.408 of the regulations instructing the Department to place primary emphasis on per capita GNI when determining which countries are at level of economic development comparable to the NME country. Respondents also do not reject the proposition that an examination of the average income of a country’s residents is the single best measure of a country’s overall level of economic development. Respondents, instead, seek to overcome the growing income disparity between China and India – as measured by per capita GNI – in referring to a number of *secondary* economic indicators (e.g., “unemployment rates, investment-to-Gross National Product ratios, industrial production growth rates, and household incomes by percentage share of the lowest 10%”). However, even assuming *arguendo* that there is a degree of similarity between China and India using these secondary indicators, this does not overcome the difference in incomes. Policy Bulletin 4.1 does not discount that the facts on a record may warrant a fact-specific departure from placing primary emphasis on per-capita GNI; however, such a departure is not warranted in this case. Respondents have not explained how these indicators are correlated with levels of economic development and why they do not merely reflect national socio-economic policies or priorities across countries, e.g. labor or industrial policies. In contrast, per-capita GNI is a consistent indicator that is clearly and strongly correlated and is frequently used as the basis for specifying broad development levels, e.g. low-, middle-, or high income. Finally, per-capita GNI is reported across almost all countries by an authoritative source (the World Bank) and the Department continues to find that the per capita GNI represents the single best measure of a country’s level of total income and, thus, level of economic development.⁹²

⁹² See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 73417 (December 10, 2012), and the accompanying Preliminary Results Decision Memorandum, “Economic Comparability.”

On the basis of per-capita GNI in 2009, the Department has not identified India as being at the same level of economic development as the PRC, nor has it included India in a surrogate country list since May 2011.⁹³ Further, “unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from the countries identified to be at the same level of economic development as the NME.”⁹⁴ Although “concerns about the valuation of special or unique FOPs can outweigh the economic development comparability requirement,”⁹⁵ such concerns do not exist here. In this instance, as there are countries at the same level of economic development as the PRC that are also significant producers of comparable merchandise and that have reliable, publicly available surrogate value information, we do not need to consider whether India is an appropriate surrogate country for this review.

Therefore, the Department’s selection of a range of countries that are at a level of economic comparability to the PRC using per-capita GNIs is reasonable and consistent with the requirements of section 773(c)(4)(A) of the Act that the Department use data from market economies that are “at a level of economic development comparable to that of the NME country.”

⁹³ See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) and accompanying I&D Memo at Comment 4.

⁹⁴ See Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 70267 (November 25, 2013).

⁹⁵ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 55676 (September 11, 2013).

E. Use of Astrapak's Financial Results for March 1, 2009 to February 28, 2010

Petitioners' Comments

- Petitioners did not comment on this issue.

Respondents' Comments

- The Department only used Astrapak's Financial Results for March 1, 2010 to February 28, 2011 for calculating financial ratios, and should also have used Astrapak's Financial Results for March 1, 2009 to February 28, 2010, because both overlap the POR. Using both sets of results makes the financial ratios more broadly based.

Department's Position: The financial statements used by the Department in its NME analyses often do not correspond precisely to the period of review, as is the case in this instance.

Astrapak's March 1, 2010 to February 28, 2011, financial results cover eight months of the POR, while its March 1, 2009 to February 28, 2010 financial results cover four months of the POR.

With respect to the financial results of a single company such as Astrapak, the Department selects the financial results that are the most contemporaneous with the review period.⁹⁶

Accordingly, the Department will not make the change requested by the Respondents for the final remand redetermination.

F. Adjustments to Astrapak Financial Ratios

Petitioners' Comments

- Petitioners did not comment on this issue.

Respondents' Comments

- The Department should exclude from the SG&A ratio the exceptional items, which are technology upgrades, because they do not relate to the ordinary operations of Astrapak.

⁹⁶ See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010) and the accompanying Issues and Decision Memorandum at Comment 3.C.

- The Department should exclude Respondents' indirect labor expenses, because this expense would be included in Astrapak's financial statement in the line for "Administrative and other Operating Expenses," in the SG&A ratio.
- The Department should subtract Astrapak's reported Customs duties, import surcharges and excise taxes, from Astrapak's financial statement in the line for "Administrative and other Operating Expenses," in the SG&A ratio, and added to the denominator of the ratio, because such expenses go directly in the cost of raw materials, and are reflected in the surrogate values.

Department's Position: The Department disagrees with Respondents, and has not made the adjustments to the margin calculation pursuant to these comments. In calculating surrogate values for overhead, SG&A, and profit, the Department examines the financial statements on the record of the proceeding and categorizes expenses as they relate to materials, labor and energy, factory overhead, SG&A and profit. Generally, the Department calculates the SG&A expense ratio using income and expenses relating to the general operations of the company,⁹⁷ and excludes certain expenses from SG&A consistent with the Department's practice of accounting for these latter expenses elsewhere in the normal value calculation.⁹⁸ Specifically, the Department excludes expenses related to production from SG&A so that these expenses are not double-counted by the FOP that are valued separately.

Respondents argue that Astrapak's asset impairments are exceptional, such that they are an extraordinary expense outside the production experience of a comparable merchandise

⁹⁷ See, e.g., Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7519 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 18.

⁹⁸ See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

producer in a hypothetical PRC market-economy, and should thus be excluded. Such extraordinary expenses are reviewed by the Department on a case-by-case basis.⁹⁹ The Department considers an expense to be extraordinary only if the event that gave rise to it is both unusual in nature and infrequent in occurrence.¹⁰⁰ However, it is a generally accepted accounting principle that impairment losses are regularly recognized by companies in the normal course of business upon the recognition by management that the historical value of an asset is no longer recoverable through future use.¹⁰¹ As such, impairment losses cannot be considered unusual or infrequent, and the Department therefore routinely includes these items in the G&A expense along with other commonly recognized period costs.¹⁰² As reflected in the Astrapak financial statement, asset impairments of property, plant and equipment involve a routine annual evaluation of a company's assets.¹⁰³ Because such adjustments are routinely made on an annual basis, we disagree with Respondents that these expenses should be excluded from SG&A. The adjustment to Astrapak's asset value of property, plant and equipment was an adjustment recognized during the fiscal year and directly relates to the company's general operations.

Regarding Respondents' assertion that Astrapak's line item for "Administrative and other Operating Expenses" must include indirect labor expenses, and that the Department is double-

⁹⁹ See, e.g., Chlorinated Isocyanurates From the People's Republic of China: Final Results of 2008-2009 Antidumping Duty Administrative Review, 75 FR 70212 (November 17, 2010) and the accompanying Issues and Decision Memorandum at Comment 7.

¹⁰⁰ See Floral Trade Council v. United States, 16 C.I.T. 1014, 1016 (Ct. Int'l Trade 1992)

¹⁰¹ See Statement of Financial Accounting Standards No. 144; see also Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review, 74 FR 50774 (October 1, 2009) and the accompanying Issues and Decision Memorandum at Comment 1; Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order, 73 FR 18259 (April 3, 2008) and the accompanying Issues and Decision Memorandum at Comment 8; Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review, 70 FR 46482 (August 10, 2005) and the accompanying Issues and Decision Memorandum at Comment 1.

¹⁰² Id.

¹⁰³ See e.g., Respondents' Comments at Exhibit SVF-9 (Astrapak financial statements) page 93. In their comments, Respondents include an extended quote, which they attribute to the 2011 Astrapak financial statement, that ties Astrapak's reported asset impairments to Astrapak's technology upgrades. However, the text of this quote is not contained in the 2011 Astrapak financial statement.

counting the expense within the SG&A ratio, we find that there is insufficient factual detail in the financial statement that would suggest that the indirect labor expenses reported by Respondents double-count this expense.

Regarding Respondents' assertion that Astrapak's line item for "Administrative and other Operating Expenses" includes Customs duties, import surcharges and excise taxes that are already reflected in the raw material surrogate values, the Department disagrees. The Department has stated in numerous NME cases that Global Trade Atlas ("GTA") import data are reliable information for valuation purposes because they consist of average import prices, are representative of prices within the POR, and are both product-specific and duty- and tax-exclusive.¹⁰⁴ As explained below, we are relying on GTA import data for South Africa to calculate certain surrogate values, and there is no evidence to suggest that those data are an exception to our previous findings regarding GTA data.¹⁰⁵ Furthermore, the WTO Agreements recognize that the customs values on which import prices are based should not include duties and taxes imposed by the country of importation.¹⁰⁶

¹⁰⁴ See, e.g., Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 94 (January 2, 2014) and the accompanying Issues and Decision Memorandum at Comment 2 (where the Department relied on "publicly available, non-export, tax-exclusive, and obtained from the preferred GTA data-source"); Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic of China, 78 FR 70918 (November 27, 2013) and the accompanying Issues and Decision Memorandum at Comment 5 (determining that GTA import data best met the Department's criteria, which includes tax and duty exclusivity); Certain Steel Threaded Rod From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012, 78 FR 66330 (November 5, 2013) and the accompanying Issues and Decision Memorandum at Comment 1 (stating that the Department has found in numerous NME cases that import data are reliable information for valuation purposes because they consist of average import prices, are representative of prices within the POR, and are both product-specific and tax-exclusive).

¹⁰⁵ See e.g., Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 70533 (November 26, 2013) and the accompanying Issues and Decision Memorandum at Comment 9 (finding that GTA import data for South Africa were tax and duty exclusive).

¹⁰⁶ Article 1.1 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, Part I ("Rules on Customs Valuation"), establishes "transaction value" as the primary means for customs valuation within signatory countries: "The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation . . ." In particular, the Rules on Customs Valuation provide for the mandatory exception of certain items from transaction value, and among these are "duties and taxes of the country of importation." See Annex I, paragraph 3.

G. Use of Respondents' Import Data

Petitioners' Comments

- Petitioners did not comment on this issue.

Respondents' Comments

The Department should use the South African import data submitted by Respondents to calculate surrogate values, and not Global Trade Atlas (“GTA”), because Respondents submitted data obtained directly from the South African government.

Department's Position: The Department agrees that import data obtained from GTA, published by Global Trade Information Services, Inc., is a secondary source. However, GTA is a published source of information that also obtains the data from the South African government. Because the Department does not know whether the data submitted by Respondents constitutes revised data in its final form, the Department will rely on the published data from GTA.¹⁰⁷ Thus, for the final remand redetermination, the Department will use the seven surrogate values calculated with import data obtained by GTA from the government of South Africa.

Conclusion


In accordance with the Court's remand instructions, the Department considered the 2009 per-capita GNI data, and, based upon these data, found Thailand and South Africa to be both economically-comparable to the PRC and significant producers of comparable merchandise. Further, the Department selected South Africa as the primary surrogate country because the record contains sufficient South African data to value the respondents' FOPs, and because the

¹⁰⁷ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941 (March 22, 2011) and the accompanying Issues and Decision Memorandum, “Whole Fish Input.” (where the Department stated that unpublished government data should be accompanied by a certification by the statistician that supplied the data that it is the finalized version).

record does not include useable Thailand financial statements for calculating surrogate financial ratios, which are a key component of normal value.

FINAL RESULTS OF REDETERMINATION

We implemented all changes discussed above and revised the margins for Dongfang and Wanhua. As a result of the redetermination, the weighted-average dumping margin for Dongfang is 14.25 percent and the weighted-average dumping margin for Wanhua is 19.49 percent. We continued to calculate the weighted-average dumping margin for companies qualifying for a separate rate using public, ranged sales quantities made public by Wanhua and Dongfang.¹⁰⁸ The resulting separate rate for Fuwei Films and Shaoxing Xiangyu Green Packing Co., Ltd. is 19.35 percent.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

7 FEBRUARY 2014
Date

¹⁰⁸ See Final Results at Comment 8 and Memorandum from Thomas Martin to the File, “Redetermination Pursuant to Court Order Regarding the Second Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Calculation of the Margin for Respondents Not Selected for Individual Examination,” dated December 2, 2013.