

Final Results of Redetermination Pursuant to Court Remand
Zhaoqing Tifo New Fibre Co., Ltd. v. United States
Court No. 13-00044, Slip Op. 17-118
(August 30, 2017)

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 (CIT or Court) in *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13-00044, Slip Op. 17-118 (CIT August 30, 2017) (*Zhaoqing Tifo II*). These final remand results concern the final results of the fourth antidumping administrative review of certain polyester staple fiber (PSF) from the People's Republic of China (PRC),¹ as well as the First Remand Redetermination² submitted pursuant to the Court's previous remand order.³

In the underlying administrative review, the Department relied on the financial statements of P.T. Tifico Fiber Indonesia Tbk. (P.T. Tifico) to calculate surrogate financial ratios for the *Final Results*.⁴ P.T. Tifico's financial statements do not include separate line items for energy expenses. To prevent double counting, the Department inferred that all electricity and water costs were included in the numerator of the overhead expense ratio and excluded them from the factors of production (FOP) database.⁵ However, the Department did not exclude coal expenses

¹ See *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011*, 78 FR 2366 (January 11, 2013) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

² See Final Results of Redetermination Pursuant to *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13-00044, Slip Op. 15-31 (April 9, 2015), dated July 9, 2015 (First Remand Redetermination).

³ See *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13-00044, Slip Op. 15-31 (CIT April 9, 2015) (*Zhaoqing Tifo I*).

⁴ See *Final Results*, 78 FR at 2366, at Comment 2.

⁵ *Id.*

from the FOP database.⁶ In *Zhaoqing Tifo I*, the CIT remanded the *Final Results* to the Department to reconsider the inclusion of coal in the FOP database and expressly to consider any associated potential for double counting of energy inputs.⁷ In First Remand Redetermination, the Department found, upon reexamination of the record, that the Department erred in finding that there is a meaningful difference in the level of integration between P.T. Tifico and P.T. Asia Pacific Fibers Tbk. (P.T. Asia) such that the level of integration should be the deciding factor in determining which financial statement represents the best available information.⁸ Accordingly, the Department relied upon the financial statements of P.T. Asia, which were more detailed and allowed the Department to calculate surrogate financial ratios more accurately, while also addressing the concern of potential double counting of energy inputs.⁹

In *Zhaoqing Tifo II*, the Court held that the selection of financial statements was not timely challenged by any party and was, thus, beyond the scope of the remand in *Zhaoqing Tifo I*. Therefore, the Court remanded this issue to the Department again, to reconsider how the surrogate financial ratios, derived from P.T. Tifico's financial statements, account for energy sources and whether the inclusion of coal in the FOP database results in double counting.¹⁰

In accordance with the Court's instructions, and as discussed further below, the Department has reexamined the financial statements of P.T. Tifico and the inclusion of energy inputs in Zhaoqing Tifo's dumping margin calculation. The Department, under protest,¹¹ is relying on the financial statements of P.T. Tifico for these final remand results, as instructed by

⁶ *Id.* at Comments 1 and 2.

⁷ See *Zhaoqing Tifo I*, at 58.

⁸ See First Remand Redetermination, at 8-10.

⁹ *Id.* at 10.

¹⁰ See *Zhaoqing Tifo New Fibre Co., Ltd. v. United States*, Court No. 13-00044, Slip Op. 17-118 (CIT August 30, 2017) (*Zhaoqing Tifo II*), at 41.

¹¹ See *Viraj Grp, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

the Court, and has removed coal as an input to address the Court's concern regarding the potential double counting of energy inputs.

II. ANALYSIS

Background

As noted in *Zhaoqing Tifo I*, the Department initiated the fourth administrative review of the antidumping duty order on PSF from the PRC and selected Zhaoqing Tifo as one of the mandatory respondents.¹² In the *Preliminary Results*, the Department selected Indonesia as the surrogate country, and to derive surrogate financial ratios, the Department relied on the financial statements of P.T. Asia, an Indonesian producer of PSF.¹³ P.T. Asia's financial statements are relatively detailed, and include separate line items for the company's energy inputs. The Department excluded energy costs from the surrogate financial ratios and separately valued the energy costs in Zhaoqing Tifo's FOP database.¹⁴

For the *Final Results*, the Department derived the surrogate financial ratios using the financial statements of P.T. Tifico, not P.T. Asia.¹⁵ The Department used P.T. Tifico's financial statements because it determined that P.T. Tifico's production operations were more comparable to Zhaoqing Tifo's than P.T. Asia's.¹⁶ However, due to the lack of detail in P.T. Tifico's financial statements (*i.e.*, P.T. Tifico's financial statements not including separate line items for energy costs), the Department inferred that all electricity and water costs were included in the surrogate financial ratios, and removed electricity and water from the FOP database.¹⁷

¹² *Id.*, at 6-7; see also *Certain Polyester Staple Fiber from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review*, 77 FR 39990, 39991 (July 6, 2010) (*Preliminary Results*).

¹³ See *Preliminary Results*, 77 FR, at 39992-93.

¹⁴ *Id.*, 77 FR, at 39995.

¹⁵ See *Final Results*, 78 FR at 2368, at Comment 2.

¹⁶ *Id.*

¹⁷ *Id.*

Zhaoqing Tifo challenged the Department's inclusion of coal in the FOP database while excluding water and electricity, as well as the Department's selection and calculations of other surrogate values, before the CIT. In *Zhaoqing Tifo I*, the CIT held that the Department failed to explain why the concerns about the double counting of electricity and water do not also extend to coal.¹⁸ The Court remanded the decision to the Department to reconsider the determination to include coal in the FOP database and expressly to consider any associated potential for double counting of energy inputs, explaining the reasoning fully and with reference to the record evidence.¹⁹

In First Remand Redetermination, the Department found that it erred in the *Final Results*, in analyzing the similarities between Zhaoqing Tifo and P.T. Tifico on the one hand, and the dissimilarity between P.T. Tifico and P.T. Asia on the other hand, when comparing the companies' level of integration.²⁰ Specifically, the Department made a factual error in finding that P.T. Tifico *purchases* polyester chips from third parties which go into the production of PSF. According to P.T. Tifico's financial statements, the company is "primarily engaged in the *manufacture* of polyester chips, staple fiber and filament and filament yard and export/import of various fiber and other products" (emphasis added).²¹ During the less-than-fair-value investigation of PSF from China, the Department recognized the difference in operations between PSF producers that manufacture fresh polyester chips made from a chemical process versus PSF producers that purchase recycled polyester chips from used plastic bottles.²² As

¹⁸ See *Zhaoqing Tifo I*, at 58.

¹⁹ *Id.*

²⁰ See *Final Results*, 78 FR at 2368, and accompanying IDM at Comment 2.

²¹ See Petitioner's surrogate value submission, dated January 19, 2012, Exhibit 2 (P.T. Tifico's financial statements), at 7.

²² See *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007), and accompanying IDM at Comment 12.

such, and contrary to our finding in the *Final Results*, P.T. Tifico’s level of integration does not match that of Zhaoqing Tifo. In First Remand Redetermination, the Department sought to address the Court’s concern of the double counting of energy costs and to correct the error that occurred in the *Final Results* by relying on the financial statements of P.T. Asia to derive the surrogate financial ratios.

Surrogate Financial Ratios and Double Counting of Energy Inputs

In calculating dumping margins for respondents in non-market economies (NMEs), the Department determines the normal value of the subject merchandise on the basis of the value of the FOPs in the relevant surrogate country, and includes an amount for general expenses and profit, and other expenses.²³ FOPs to be valued “include, but are not limited to – (A) hours of labor required, (B) quantities of raw materials employed, (C) amounts of energy and other utilities consumed, and (D) representative capital cost, including depreciation.”²⁴ The Department requests that respondents report the FOPs for production inputs consumed in the production of subject merchandise, but the reported FOPs do not capture certain items such as (1) manufacturing/factory overhead, (2) selling, general, and administrative expenses (SG&A), and (3) profit. To account for these expenses and calculate profit, the Department calculates surrogate financial ratios that are derived from the financial statements of one or more companies that produce identical or comparable merchandise in the relevant surrogate country.

In valuing FOPs, 19 U.S.C. § 1677b(c)(1) instructs the Department to use “the best available information” from an appropriate market economy (ME) country. The Department’s criteria for choosing financial statements for the calculation of the surrogate financial ratios are based upon the availability of contemporaneous financial statements, comparability to the

²³ See 19 U.S.C. 1677b(c)(1), (4).

²⁴ See 19 U.S.C. 1677b(c)(3).

respondent's production experience, and publicly available information.²⁵ Moreover, for valuing overhead, SG&A expenses, and profit, the Department uses public information gathered from producers of identical or comparable merchandise in the surrogate country.²⁶ However, the Department is not required to "duplicate the exact production experience" of an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."²⁷ Further, the courts have recognized the Department's discretion when choosing an appropriate company's or companies' financial statements to calculate the surrogate financial ratios.²⁸

As an initial matter, the Department continues to find that P.T. Asia and P.T. Tifico meet the Department's selection criteria for surrogate financial statements. Nevertheless, given the Department's and the Court's concern for double counting of energy inputs, and the Department's preference to value all reported energy inputs in the FOP database, the Department finds that P.T. Asia has more complete and detailed information to calculate accurate surrogate financial ratios and normal value. Relying on P.T. Tifico's financial statements to derive surrogate financial ratios requires the Department to assume that all potential energy costs are included in the factory/manufacturing overhead figure and to exclude company-specific energy consumption figures that are normally valued in the FOP database to prevent double counting. This would result in a less accurate antidumping duty margin calculation. However, given the Court's instructions in *Zhaoqing Tifo II*, under protest, the Department has relied upon the financial statements of P.T. Tifico for these final remand results.

²⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005) and accompanying IDM at Comment 3.

²⁶ See 19 CFR 351.408(c)(4).

²⁷ See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also *Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

²⁸ See, e.g., *FMC Corp. v. United States*, 27 CIT 240, 251 (2003) (stating that the Department "has wide discretion in choosing among various surrogate sources"), aff'd *FMC Corp. v. United States*, 87 Fed. Appx. 753 (Fed. Cir. 2004).

With respect to the inclusion of coal as an FOP in the margin calculation, the Department reexamined the record and found that there is no information available to treat coal differently from electricity and water as energy inputs. Accordingly, as directed by the Court to use the financial statements of P.T. Tifico, the Department has removed coal from the FOP database in margin calculation in order to avoid double counting energy costs.

III. COMMENTS FROM INTERESTED PARTIES

Zhaoqing Tifo's Comments

- Although Zhaoqing Tifo agrees with the draft remand results, Zhaoqing Tifo disagrees with the Department's analysis that P.T. Asia provides more suitable financial statements because P.T. Asia is the only integrated producer of PSF in Indonesia.

The petitioner's Comments

- The Department should not rely on the less detailed financial statements of P.T. Tifico that will result in a less accurate dumping margin and, instead, should rely on the statements of P.T. Asia.
- By relying on the financial statements of P.T. Tifico and removing coal from the FOP database, the Department's dumping calculation would not capture all energy inputs.

Department's Position:

As explained above and discussed in the remand results for *Zhaoqing Tifo I*, Zhaoqing Tifo continues to obscure the fact that both P.T. Asia and P.T. Tifico are integrated chemical producers of virgin PSF (*i.e.*, subject merchandise). In the *Final Results*, the Department found that the companies' level of integration should be a deciding factor in determining which financial statement represents the best available information. However, the Department erred when it determined that P.T. Tifico was not an integrated producer of PSF like Zhaoqing Tifo.

Therefore, the Department continues to find that its analysis of the two surrogate companies in the remand results for *Zhaoqing Tifo I* is correct. Nevertheless, as the Court has ruled in *Zhaoqing Tifo II*, the selection of surrogate financial statements is beyond the scope of this remand and relying on the statements of P.T. Tifico, as argued by the petitioner, is inconsistent with the Court's Orders.

With respect to the petitioner's assertion that removing coal from the FOP database would not capture all energy inputs in the dumping margin calculation, the Department disagrees. When selecting financial statements for the calculation of the surrogate financial ratios, the Department uses public information gathered from producers of identical or comparable merchandise in the surrogate country. The Department is not required to duplicate the exact production experience of an NME producer. The Department's practice, which the petitioner noted in the underlying review, is that energy costs are captured in the manufacturing overhead unless the surrogate financial statements provide a detailed breakout of specific line items.²⁹ Although we prefer to calculate financial ratios based on detailed financial statements and to value FOPs individually, the remand results fully account for all energy costs and are appropriate absent a better option.

IV. FINAL RESULTS OF REDETERMINATION

Although the Department respectfully disagrees with the Court's opinion,³⁰ pursuant to the Court's Orders and based on our analysis of the information available on the record, the Department is using the financial statements of P.T. Tifico to calculate surrogate financial ratios,

²⁹ See, e.g., *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) and accompanying IDM at Comment 3. See also the petitioner's October 19, 2012 rebuttal brief for the final results of the underlying administrative review at 14.

³⁰ See *Viraj Grp, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

and removed coal as an FOP from the dumping margin calculation to address the Court's concern over potential double counting of energy inputs. Accordingly, the Department has revised the margin calculation for Zhaoqing Tifo for these final results of redetermination from 9.98% to zero.

11/6/2017

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Signed by: GARY TAVERMAN

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