

70 FR 13454, March 21, 2005

A-583-840
Investigation
Public Document
Office 1: AB/DCO

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

DATE: March 14, 2005

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Investigation of Bottle-Grade Polyethylene Terephthalate
(PET) Resin from Taiwan

Summary

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the investigation of PET resin from Taiwan. As a result of our analysis, we have made the appropriate changes in the margin calculation. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this investigation for which we have received comments from the parties.

Background

On October 28, 2004, the Department of Commerce (the Department) issued the Preliminary Determination Notice in the investigation of PET Resin from Taiwan.¹ The period of investigation (POI) is January 1, 2003, through December 31, 2003. On January 24, 2005, we received case briefs from the petitioner² and the respondent, Far Eastern Textile Ltd. (Far Eastern). On January 31, 2005, we received rebuttal briefs from the petitioner and Far Eastern.

List of Comments

Comment 1: Re-Allocation of Additive Costs

Comment 2: Unreported U.S. Sale

¹ See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Taiwan, 69 FR 62868 (October 28, 2004) (Preliminary Determination Notice).

² The petitioner in this investigation is the United States PET Resin Producers Coalition.

Comment 3: Home Market Rebates

Comment 4: Domestic Inland Freight

Comment 5: Indirect Selling Expense

Comment 6: U.S. Packing Expenses

Comment 7: General and Administrative and Financial Expense Ratios

Comment 8: Major Input Valuation

Comment 9: Nitrogen Gas from an Affiliate

Comment 10: Sales Reconciliation

Discussion of Issues

Comment 1: Re-Allocation of Additive Costs

The petitioner argues that Far Eastern allocated fast reheat additive costs to all control numbers when the reheat additive applies only to one control number. According to the petitioner, the Department should increase the cost of that product as calculated in the cost verification report. The petitioner also contends that Far Eastern's case brief included new, unsolicited factual information on reheat additive calculation methodologies, submitted after the Department's deadline for submission of new factual information for this investigation.

Far Eastern argues that the reheat additive allocation issue arose because its cost accounting system only captures one average cost for all polymer chips. Far Eastern states that the Department can fix the error by allocating the self-produced reheat additive costs only to the fast reheat chip production. This revision, Far Eastern says, would slightly overstate the costs for both the non-reheat and reheat resin products. Far Eastern also states that an alternative allocation method would be to deduct the reheat additive from non-reheat chips and allocate those costs to the fast reheat product. Far Eastern also suggests using public data from South Asia Petrochem Ltd. (a respondent in the Indian case) to calculate a reheat additive cost.

Department's Position: First, we agree with the petitioner that the fast reheat additive cost was erroneously allocated to all control numbers. However, information on the record supports Far Eastern's claim that the adjustment outlined in the cost verification report overstated the reheat cost. Therefore, for the final determination, we have allocated the fast reheat additive cost to the control number which contains the fast reheat characteristic.

Second, we disagree with the petitioner that information contained in Far Eastern's case and rebuttal briefs is new, unsolicited factual information. Far Eastern detailed the production process for the fast reheat additive product and the finished PET resin cost for the product in its supplemental section D response. We have increased the reheat control number by the total cost

of the reheat additive consumed by Far Eastern during the POI. In addition, we did not adjust downward the cost of the other control numbers because the exact amount of fast reheat additive costs included in each control number is not clear from the record.

Comment 2: Unreported U.S. Sale

The petitioner contends that “in its sales verification report, the Department noted that Far Eastern had failed to include in the U.S. sales file, the free sample that it provided to a U.S. customer.”³ According to the petitioner, this free sample represents an unreported U.S. sale. Further, in addition to not reporting the sample, the petitioner contends that Far Eastern allocated its expenses over the total transaction amount on the invoice which included the sample, thereby under-reporting the expenses associated with the subject merchandise on the invoice. The petitioner believes that the Department should include the free sample in the database and, as facts available, apply the petition margin to this transaction.

Far Eastern rebuts that the free sample does not constitute a sale of merchandise and thus should not be reported. Far Eastern notes that the free sample was acknowledged in its questionnaire responses and it was never asked to report the sample in its U.S. sales file.

Department’s Position: We agree with Far Eastern that the free sample does not constitute a sale and is properly omitted from the U.S. sales file. See NSK Ltd. and NSK Corporation v. United States, 115 F.3d 965, 974-975 (Fed Cir. 1997).⁴ As the petitioner has acknowledged, the Department did verify, and stated in its verification report that, the free sample was in fact a free sample with no commercial value.⁵ In addition, we verified that the inventory value of the sample was booked into the sample expense account, which was included in indirect selling expenses, and is treated as such in the margin calculation program. Contrary to the petitioner’s claim, the verification report did not indicate that the sample should have been included in the U.S. sales database. With regard to the allocation of expenses incurred in delivering the sale, we note that the international freight, which is the most significant expense, was allocated over only the quantity sold.⁶ Therefore, 100 percent of the international freight expense was reported in the database, and deducted from the starting price of the reported U.S. sales, meaning that there was no international freight to attributable to the free sample.

Comment 3: Home Market Rebates

In its case brief, the petitioner notes that at verification, rebate documentation could not be located for a particular invoice number. The petitioner argues that the Department should disallow the rebate for the calculation of normal value (NV) for the specific transaction.

³ See petitioner’s case brief at 1.

⁴ In NSK Ltd. and NSK Corporation vs. United States, the court determined that free samples do not constitute sales, and thus are not to be used for margin calculations.

⁵ See Verification of the Sales Response of Far Eastern Textile Ltd. in the Investigation of Polyethylene Terephthalate from Taiwan, to Susan Kuhbach, from Ashleigh Batton, through Constance Handley. (Sales Verification Report)

⁶ See Far Eastern’s Section C response dated July 28, 2004, at Exhibit C-13.

Far Eastern did not comment.

Department's Position: We disagree with the petitioner's request to disallow the rebate. Despite being unable to produce any underlying documentation that explained a reason for granting the rebate, the respondent did in fact provide documentation demonstrating that the rebate was granted. This documentation was included in Verification Exhibit 20. Therefore, we have continued to deduct the rebate in the calculation of NV for the sale in question.

Comment 4: Domestic Inland Freight

In its case brief, the petitioner contends that because the Department did not find domestic inland freight supplied by an affiliate to be at an arm's-length rate, the Department should disallow the inland freight expense in the calculation of NV, but continue to deduct it for purposes of the cost test.

Far Eastern did not comment.

Department's Position: We agree with the petitioner in part. Pursuant to section 773(f)(2) of the Tariff Act of 1930 (the Act), it is the Department's policy to ensure that all expenses between affiliates represent arm's-length transactions, and adjust them if they do not. See e.g. Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 69 FR 64731 (November 8, 2004). Because the domestic inland freight charges do not accurately reflect market rates, they should be adjusted. However, the information provided by Far Eastern is neither untimely, unverifiable, nor so incomplete that it cannot be used. Therefore, the situation does not warrant the use of facts available. We have adjusted Far Eastern's reported freight expenses to reflect arm's-length transactions.

Comment 5: Indirect Selling Expenses

In its case brief, the petitioner identifies a one-time advertising expense, which it believes is indirect in nature and should be included in the indirect selling expense rate calculation. The petitioner argues that for the final determination, the Department should recalculate the indirect selling expenses, including the advertising cost in the indirect selling expense rate calculation.

In its rebuttal brief, Far Eastern states that it did not incur any direct advertising expenses for its home market or U.S. PET resin sales. The respondent further states that the advertising expense was incurred as a result of Far Eastern's bottle sales.

Department's Position: We agree with the respondent on the facts. The evidence on the record pertaining to these advertising expenses demonstrates that they were, in fact, direct in nature, as they were assumed expenses related to non-subject merchandise, finished bottles.⁷ Accordingly,

⁷ See Sales Verification Report at page 15.

as a direct expense for a non-subject product, we have not included this expense as an indirect selling expense in the dumping margin calculation.

Comment 6: U.S. Packing Expenses

In its case brief, the petitioner notes two packing expenses, “Bulk PE Bags in container (including iron bar)” and “Remove and joint rotary for bulk container loading” which were not included in the U.S. packing calculation, as found at verification. The petitioner argues that the Department should recalculate Far Eastern’s U.S. packing expenses to include these charges.

In its rebuttal brief, Far Eastern argues that its U.S. packing expenses were correctly reported. Far Eastern states that Verification Exhibit 13 has a translation error with regard to the expense for loading bulk PE bags into the container. The Exhibit states ‘per ton’ where it should state ‘per container.’ According to Far Eastern, when the expense is properly calculated on a per-container basis the fee for this service is minimal. With regard to the expense for removing and jointing the rotary, Far Eastern asserts that the fee is only incurred when the level of chips is low in the silo. In its arguments in rebuttal to the petitioner’s arguments, Far Eastern has estimated how often this occurred.

Department’s Position: We agree with the petitioner that the packing expense field should be recalculated to reflect all packing-related charges. At verification, Far Eastern company officials stated that the charge for loading the PE bags into the container was incurred for every bulk shipment, which indicates that the charge was made on a per-shipment basis.⁸ In addition, although Far Eastern’s new translation is belated, it is clear from the verification exhibit⁹ that the Chinese character next to this expense is not the same as the one next to the other expenses which were, logically, made on a per-ton basis, and we have verified this translation. Therefore, we have allocated this expense over the quantity of PET resin in a container-load and added it to the U.S. packing expense.

Where the “removal and joint rotary arm” fees are concerned, Far Eastern did not provide any documented evidence at verification related to how often this charge is actually incurred. The estimate in Far Eastern’s rebuttal brief is unverified and not supported by evidence on the record.

Given the nature of the charge, we do not believe that it is reasonable to assign it to every shipment. Furthermore, we have determined that even if we were to assume that the fee was incurred for every shipment, for which there is no evidence, such an adjustment would have no impact on the outcome of the margin calculated in this investigation. Because we have no concrete information on how often the charge was incurred, and have tested that the charge is not significant enough to impact our result, we have decided not to make an adjustment for this cost.

⁸ See Sales Verification Report at 16.

⁹ See Verification Exhibit 13.

Comment 7: General and Administrative and Financial Expense Ratios

The petitioner argues that because the total cost of manufacture (TCOM) includes a deduction for scrap recovery and packing costs, the cost of goods sold (COGS) denominator used for the calculation of general and administrative (G&A) and the financial expense ratios must also be net of scrap recovery and packing costs to prevent a distorted calculation.

Far Eastern argues that scrap recovery is a deduction when calculating COGS in its normal accounting system. As a result, the calculation of the COGS denominator used by the Department is already net of scrap recovery. Therefore, scrap should not be deducted again. With regards to packing, Far Eastern makes no argument not to deduct packing, but contends that if the Department deducts packing from the COGS denominator, we should use its calculation of packing costs in its financial statements in determining COGS.

Department's Position: We agree with Far Eastern that scrap recovery was already deducted from COGS. Therefore, it is not necessary to deduct any scrap recovery from COGS. We agree with the petitioner that packing cost should be deducted from COGS used as the denominator of the G&A and financial expense ratios. Because the G&A and financial expense ratios are calculated using COGS as the denominator, we are deducting the packing costs which were included in COGS in the financial statements as suggested by the respondent.

Comment 8: Major Input Valuation

The petitioner states that the average cost of production (COP) of purified terephthalic acid (PTA) which Far Eastern obtained from its affiliated supplier, Dupont Far Eastern Petrochemicals Ltd. (DFEP), was higher than Far Eastern's average purchase price of PTA from unaffiliated suppliers. Additionally, the petitioner claims that the Department's calculation of DFEP's COP failed to account for changes in finished goods inventory. The petitioner concludes that the Department must value this input using the affiliated suppliers' COP revised for the inventory adjustments.

In addition, the petitioner asserts that Far Eastern should have provided the affiliate's purchases of PTA and mono-ethylene glycol (MEG) from unaffiliated suppliers to demonstrate a market value. The petitioner concludes that because Far Eastern failed to provide this information, the Department should use the actual COP or alternatively the highest per-unit PTA and MEG cost for any of the products reported.

Far Eastern argues that its affiliate's purchases from third parties had nothing to do with the affiliate's self-produced PTA and that those purchases were re-exported to China, and therefore should not be added to the cost of manufacture (COM).

Department's Position: Because of the significance of these inputs, the Department has examined them closely. We agree with the petitioner that a re-valuation of these major inputs is appropriate. In accordance with the section 773(f)(3) of the Act (i.e., the major input rule), we are treating the PTA and MEG as major inputs obtained from affiliated parties. As explained in

19 CFR 351.407(b), the major input rule states that we may use the higher of the COP of the affiliated producer of a major input, the transfer price between the affiliates, or the market price. We compared the purchase values of PTA and MEG obtained from the affiliated supplier to the purchase values from unaffiliated suppliers (*i.e.*, market prices) and to the affiliated supplier's COP. We found that the cost to produce the PTA was higher than the market price and the transfer price. We also found that the market price of MEG was above the transfer price and the affiliate's COP. Therefore, in accordance with section 773(f)(3) of the Act we adjusted the reported costs to reflect the affiliate's COP of PTA and the market price of MEG.

We disagree with the petitioner that the COP of the major inputs must include the change in finished goods inventory. If we were to follow the petitioner's proposed methodology, we would be calculating a COGS and not the COP as directed by the Act. The Department's methodology of not including the change in finished goods inventory results in a cost of producing the major input as required by section 773(f)(3) of the Act.

Further, we disagree with the petitioner that Far Eastern failed to report information. We note that the Department's standard questionnaire only requires that the respondent report the affiliated party's sales to unaffiliated customers when the respondent does not purchase directly from unaffiliated suppliers. Because Far Eastern purchases MEG and PTA from both affiliated and unaffiliated suppliers, we were able to determine a market price for these inputs without having to request that Far Eastern report the affiliate's sales to unaffiliated customers.

Comment 9: Nitrogen Gas from an Affiliate

The petitioner argues that because Far Eastern failed to identify its supplier of nitrogen gas as an affiliated party, the Department should increase the reported nitrogen gas cost in the COM by the approximate percentage of COM accounted for by nitrogen gas, as estimated by company officials.¹⁰

Far Eastern argues that the Department's section D questionnaire only asks for data for major inputs obtained from affiliates.

Department's Position: The Department's questionnaire requires the respondent to report all affiliated parties and the transactions with those parties. Far Eastern failed to identify its transactions with its affiliated nitrogen supplier in its responses, which the Department discovered at verification. However, in this case we were able to verify that the nitrogen gas accounted for a negligible percentage of the total cost. Even if we were to make an adverse assumption that the transfer price understated the real value of the input by a factor of ten, it would have no impact the outcome of the margin calculated in this investigation. Pursuant to 19 CFR 351.413, which allows the Department to disregard insignificant adjustments,¹¹ we have not made any adjustment to the cost of nitrogen gas in this final determination.

¹⁰ See Verification Report on the Cost of Production and Constructed Value Data Submitted by Far Eastern Textile, Ltd, to Neal M. Halper, from Christopher Zimpo, through Theresa Caherty (Cost Verification Report).

¹¹ See *e.g.*, Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part, 68 FR 6880 (February 11, 2003)

Comment 10: Sales Reconciliation

The petitioner argues that by failing to submit a sales reconciliation by the date of the preliminary determination, as requested in the questionnaire, Far Eastern hampered the petitioner's ability to provide meaningful comment before verification. Therefore, because Far Eastern failed to provide information in a timely manner, the petitioner argues that Far Eastern should be subject to facts available pursuant to section 776(a)(2) of the Act.

Far Eastern points out that the petitioner found nothing wrong with the reconciliation, and argues that the petitioner did have an opportunity to comment. Further, Far Eastern points out that the reconciliation was verified, leaving no grounds for the use of facts available.

Department's Position: We agree with Far Eastern that use of facts available is not necessary. Although Far Eastern did submit its reconciliation after the deadline in the questionnaire, the Department has the discretion to accept late submissions, although it is not obliged to do so. In this case, as all of Far Eastern's other submissions were timely, we accepted the late reconciliation on the first day of verification, which was then thoroughly verified and found to be accurate. Therefore, we have continued to use Far Eastern's submitted data for this final determination.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins for all firms investigated in the Federal Register.

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date