70 FR 13456, March 21, 2005

A-560-817
Investigation
Public Document
Office 1: A. McAllister x1174

DATE: March 14, 2005

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

FROM: Barbara Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Bottle Grade Polyethylene Terephthalate (PET) Resin from Indonesia

---

SUMMARY

We have analyzed the comments in the case briefs and rebuttal briefs submitted by the United States PET Resin Producers Coalition ("the petitioner") and PT Indorama Synthetics Tbk ("Indorama") in the antidumping duty investigation of bottle-grade polyethylene terephthalate ("PET") resin from Indonesia. As a result of our analysis, we have made changes to the preliminary determination. We recommend that you approve the positions we have developed in the "Discussion of Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from the parties:

Comment 1: Date of Sale for U.S. DDP Sales
Comment 2: Classification of U.S. Sales
Comment 3: Calculation of CEP Profit
Comment 4: Allocation of Indirect Selling Expenses for Home Market and Export Sales
Comment 5: Indirect Selling Expenses Incurred by Indorama's Billing Entity
Comment 6: Indirect Selling Expenses Incurred in the United States by Indorama and its Billing Entity
Comment 7: Inclusion of Bank Charges as a Direct Selling Expense
Comment 8: Treatment of Sample Sales
Comment 9: Inclusion of Negative Imputed Credit Expenses

Comment 10: Untimely Sales Reconciliation Submission
Comment 11: Home Market Viability Test
Comment 12: Affiliated Input Purchases
Comment 13: Gains on Sale of Assets and Miscellaneous Revenue
Comment 14: Scrap Revenue Offset
Comment 15: Divisional G&A and Net Interest Expense
Comment 16: Short-Term Interest Income

BACKGROUND

On October 28, 2004, the Department of Commerce ("the Department") published, in the Federal Register, the preliminary determination in its investigation of PET resin from Indonesia. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia, 69 FR 62861 (October 28, 2004) ("Preliminary Determination"). The period of investigation ("POI") is January 1, 2003 through December 31, 2003. We invited parties to comment on our preliminary determination. We received case and rebuttal briefs from the petitioner and Indorama.

DISCUSSION OF ISSUES

Comment 1: Date of Sale for U.S. DDP Sales

In the Preliminary Determination, for U.S. delivered duties paid ("DDP") sales, the Department used the date of the sales contract as the date of sale. Pursuant to 19 CFR 351.401(i), the Department preliminarily determined that price and quantity (i.e., the material terms of sale) were established at the time of the sales contract.

The petitioner contends that the Department's decision is without basis, lacks sufficient supporting information, and does not provide clarification as to the specific DDP transactions for which the contract date was used as the date of sale. See Memorandum to File, "*Business Proprietary Information for the Final Determination*," dated March 14, 2005 ("*BPI Memo")*, Petitioner's BPI 1. The petitioner argues that, according to 19 CFR 351.401(i), the Department "normally will use the date of invoice as the date of sale, as recorded in the exporter or producer's records kept in the ordinary course of business." The Department will use an alternative date if that "date better reflects the date in which the exporter or producer establishes the material terms of sale." In citing Antidumping Duties; Countervailing Duties; Final Rules, 62 FR 27296, 27349 (May 19, 1997) ("Preamble"), the petitioner argues that the regulations direct the use of invoice date as date of sale where the respondent records the date of sale using invoice date in its books and records. See *BPI Memo*, Petitioner's BPI 2.

The petitioner argues that Indorama has not provided sufficient evidence to support the preliminary finding that the contract date is appropriate for certain DDP sales. The petitioner contends that the record supports invoice date as the appropriate date of sale for all of Indorama's

U.S. sales, including DDP sales. See *BPI Memo*, Petitioner's BPI 3; see also 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), and accompanying Issues and Decision Memorandum at Comment 5.

The petitioner points to two sales selected at verification to support its argument. See *BPI Memo*, Petitioner's BPI 4. The petitioner notes that, at verification, Indorama claimed certain U.S. sales were misclassified as export price ("EP") sales and should be reclassified as constructed export price ("CEP") sales. See Memorandum to File, "*Verification of the Sales Responses of Indorama in the Antidumping Duty Investigation of Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia*," dated January 6, 2005 ("*Indorama SVR*") at page 2. According to the petitioner, these errors call into question not only Indorama's classification of EP and CEP sales, but also the reliability and consistency of its date of sale methodology. The petitioner contends that Indorama's claim of the date of the sales contract as the date of sale for certain DDP sales excludes a significant portion of these sales from Indorama's reporting obligation. See *BPI Memo*, Petitioner's BPI 5. In the absence of appropriate documentation, Indorama should include these omitted DDP sales in its U.S. sales listing.

The petitioner notes that, in note 1 of Indorama's 2003 financial statements, it states that revenue for export sales is recognized when goods are shipped. Therefore, it appears to the petitioner that, for certain DDP sales, Indorama has used contract date as the date of sale, in contrast to its normal accounting practice. The petitioner argues that the *Indorama SVR* exhibits demonstrate that the date of invoice is the date when Indorama and its billing entity recognize that the sale is made. See *BPI Memo*, Petitioner's BPI 6. The petitioner contends that the Department cannot allow Indorama to exclude U.S. sales invoiced in 2003 from the U.S. sales listing. The petitioner asserts that the Department should apply, as adverse facts available ("AFA"), the dumping margin rate in the petition of 27.61 percent to the sales value of the U.S. sales that were excluded by virtue of the use of contract date as the date of sale. The sales specified are U.S. DDP sales with a sales contract date in 2002 but a sales invoice and shipment date in 2003.

In rebuttal to Indorama's arguments in defense of the reported date of sale for U.S. DDP sales, the petitioner counters that the Preliminary Determination does not clearly indicate the specific DDP sales for which the contract date was accepted as the date of sale. The petitioner argues that Indorama's contention that the DDP sales should use the contract date as the date of sale is refuted by an examination of the two CEP sales preselected for verification. See *Indorama SVR* at Exhibit 8A. The petitioner contends that the verification report gives no indication as to why Indorama diverged from using its own methodology for classifying the date of sale for the preselected sales. The petitioner argues that the facts serve to underscore Indorama's inconsistencies in its sales reporting methodology and its description of the sales process.

The petitioner asserts that Indorama did not provide information regarding the status and magnitude of inventory of subject merchandise (contracted in 2002) that it held in storage in warehouses in the United States and later resold to U.S. customers in 2003, nor has there been an

accounting of these CEP transactions from these warehoused inventories or a reconciliation to the U.S. sales listing. The petitioner points to a transaction that was wrongfully not reported by Indorama, despite the fact that the merchandise was warehoused and sold in the United States in 2003. The petitioner notes the discrepancies identified at verification regarding the volume and value of subject merchandise sales from Indorama to its billing entity. See *BPI Memo*, Petitioner's BPI 7.

The petitioner contends that the Department should reject Indorama's U.S. sales listing on the basis that Indorama has failed to reconcile its U.S. sales listing. As AFA with respect to this discrepancy, the petitioner submits that the Department should apply the petition dumping margin rate of 27.61 percent to the sales value that has not been accounted for by Indorama on the record of this investigation. The petitioner notes that Indorama requested that the Department reclassify certain U.S. sales from EP to CEP and explained that these U.S. shipments were stored in a U.S. warehouse until they were resold to a different customer. As facts available, due to Indorama's failure to properly report all charges and expenses, the Department should apply the petition dumping margin rate of 27.61 percent to the sales value of these sales.

In summary, the petitioner contends that there are substantial sales missing from Indorama's accounting and reporting in this investigation. Accordingly, the petition rate should be applied for all of Indorama's U.S. sales. See Notice of Final Results and Partial Recission of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China, 65 FR 43290 (July 13, 2000), and accompanying Issues and Decision Memorandum at Comment 1. The petitioner argues, however, should the Department choose to utilize an alternative approach, at a minimum, it should apply the 27.61 percent margin in the petition as the facts available margin rate 1) for the excluded sales with contract dates in 2002; 2) to the sales for which U.S. customers were changed and additional warehousing and other charges were incurred; 3) for U.S. sales that are not accounted for at all; and 4) to 10 percent of the reported value of Indorama's U.S. sales to account for the actual extent of excluded reportable POI sales to the United States.

Indorama contends that, in the Preliminary Determination, the Department's use of contract date as date of sale for U.S. DDP sales is consistent with 19 CFR 351.401(i). Indorama's choice of date of sale is supported by the Department's regulations because, according to Indorama, "the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." Indorama notes that this provision was addressed in the Preamble where it was stated that, "{I}f the Department is presented with satisfactory evidence that the material terms of sale are firmly established on a date other than the date of invoice, the Department will use that alternative date as the date of sale." Indorama used the contract date as the date of sale for DDP sales because of the time lag between the date of shipment of merchandise from Indonesia for these sales and the date of delivery to the final customers when the merchandise is invoiced.

Indorama argues that, at verification, the date of sale was verified by the Department through its examination of DDP sales contracts and invoices pertaining to those contracts. Specifically, the Department reviewed a DDP sale between Indorama's billing entity and an unaffiliated customer detailing the material terms of sale, including quantity and price. See *Indorama SVR* at Exhibit 5 page 83; see also *BPI Memo*, Indorama BPI 1.

At verification, Indorama contends that the Department confirmed that all U.S. sales were invoiced through Indorama's billing entity, and were properly reported in, or excluded from the U.S. sales listing. The Department reviewed ledger pages showing all account activity for Indorama's billing entity for November-December 2002, and January-February 2004, and confirmed that these sales were properly excluded from the sales listing. Indorama argues that the Department noted that no DDP sales invoiced by Indorama's billing entity in 2004 were contracted in 2003. See *Indorama SVR* pages 10-11.

Indorama asserts that the Department has recognized that, where the material terms of sale are established in a contract, the date of contract is a more appropriate date of sale than the invoice date, even though in some instances the essential terms of some sales are later modified (see Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal, 67 FR 60219 (September 25, 2002) ("Sulfanilic Acid")). The Department has stated that, "{I}f the invoice date does not reasonably approximate the date on which the material terms of sale were made ... then its blanket use as the date of sale ... is untenable." See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32835-6 (June 16, 1998) ("1995/1996 Korean Pipe"). Indorama argues that this is particularly the case where unit prices do not change between contract date and invoice date (see Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation, 68 FR 6885 (February 11, 2003). Also, in 1995/1996 Korean Pipe, the Department acknowledged that time lags between order date and invoice date may be part of its analysis of the appropriateness of invoice date as date of sale. See 1995/1996 Korean Pipe at 32855. Indorama supports the Department's Preliminary Determination use of date of contract as date of sale for Indorama's DDP sales.

Indorama rebuts the petitioner's claim that contract and invoice quantities do not match for EP DDP sales. In particular, Indorama points to documentation highlighted by the petitioner in Indorama's September 20, 2004, submission at Annexure C-13.c. See *BPI Memo*, Indorama BPI 2.

Indorama contends that the petitioner ignores the U.S. sales listing which shows multiple invoices with the same sales date to the same customer and destination with a combined quantity precisely the same as the quantity set forth in the contract. See *BPI Memo*, Indorama BPI 3.

Indorama responds to the petitioner's claim that Indorama's DDP contracts do not fix the essential terms of sales, and that Indorama improperly omitted shipments invoiced in 2003 under 2002 contracts. See *BPI Memo*, Indorama BPI 4. Indorama states that the Department verified

that multiple invoices were made under this contract. Contrary to the petitioner's claim that quantity and price are not fixed in these contracts (see *BPI Memo*, Indorama BPI 5), Indorama contends that its contracts reflect normal commercial practice that the sum of the orders to be shipped is likely to be close to, but not exactly, the weight set forth in the contract. See *BPI Memo*, Indorama BPI 6. Indorama asserts that, for DDP sales, Indorama handles pre-delivery warehousing in the United States, and that all subject merchandise invoiced in 2003 under 2002 contracts was shipped in 2002.

Even assuming the petitioner's argument that one or more of Indorama's DDP contracts were not signed, Indorama contends that, under 19 CFR 351.401(i), the Department was correct in using contract date because the record demonstrates that there was a "meeting of the minds" between Indorama and its customers. See Sulfanilic Acid at Comment 1. Indorama asserts that the petitioner's argument that Indorama's financial statements recognize revenue on export sales when goods are shipped, precluding the use of date of contract, is without merit. Indorama rebuts by stating that the recognition of export sales on the shipment date further supports the use of contract date as the date of sale since omitted transactions under 2002 contracts all were shipped during 2002, even though they were invoiced as late as April 2004.

Indorama asserts that the petitioner's claim that Indorama's reclassification of EP sales at verification calls into question the reliability and consistency of Indorama's classification of sales and consistency of reporting methodology is without basis. Indorama contends that the petitioner's suggestion to assess AFA is not warranted because Indorama has cooperated with the Department and explained its methodology for determining the date of sale for EP DDP sales. Indorama stresses that it provided a sales reconciliation of Indorama's billing entity to unaffiliated customers showing the quantity of subject merchandise delivered to unaffiliated customers in 2003 under 2002 contracts. Indorama points out that it cooperated fully with the Department's supplemental questionnaires and verification, and consequently, there is no reason to apply AFA in the final determination.

Department's Position: We agree with Indorama that it has properly identified the date of sale and reported all POI sales. In determining date of sale, the key element to consider is which date best reflects the date on which the exporter or producer establishes the material terms of sale. See Sulfanilic Acid at Comment 1. The Department considers a sale as made when the material terms of sale (i.e., price and quantity) are firmly established. In some instances, evidence may indicate that the material terms of sale were established on some date other than invoice date. See Preamble at 27349.

Indorama reported the invoice date as the date of sale for all U.S. sales, with the exception of EP DDP sales. Upon review of agreements made by Indorama's billing entity with its customers, we determine that the contract date firmly establishes the material terms of sale in EP DDP sales, and therefore, best represents the date of sale. See Indorama's September 20, 2004, questionnaire response, at Annexure C-13.c; see also *Indorama SVR*, Exhibit 8B at page 14. We reviewed the sales contracts of Indorama's billing entity and its invoices for those contracts and

found that the sales terms did not change significantly between the contract date and invoice date. For a discussion, see *BPI Memo*, Department's BPI 1.

Consistent with the Preliminary Determination, we continue to exclude EP DDP sales contracted in 2002 and invoiced in 2003 from our consideration. See *BPI Memo*, Department's BPI 2. Further, we acknowledge that, at the sales verification, Indorama reclassified certain EP sales as CEP sales. We reviewed documentation regarding the affected transactions and verified all changes by Indorama. We did not note any methodological errors by Indorama and considered all corrections to be minor and specific to the affected transactions. Because Indorama has cooperated with the Department's requests and we have not noted any discrepancies that call into question Indorama's methodology, we find that AFA is not warranted for any portion of Indorama's U.S. sales.

Comment 2: Classification of U.S. Sales

In the Preliminary Determination, the Department accepted of Indorama's classification of its U.S. sales as either EP or CEP sales. For the final determination, Indorama urges the Department to continue using Indorama's sales classification. According to Indorama, the Department classified certain sales as EP sales because they were made outside the United States by Indorama's billing entity to unaffiliated customers in the United States prior to the date of importation. The Department also found that Indorama's billing entity made other sales that were properly classified as CEP sales because these sales were made to unaffiliated customers after importation into the United States. Indorama argues that the Department verified that, for both EP and CEP sales, unaffiliated customers made inquiries to Indorama regarding product availability, and upon agreement of sales terms, a sales contract was generated by Indorama's billing entity. For cost, insurance, and freight ("CIF") and free on board ("FOB") sales, the Department verified the use of the sales invoice date (i.e., date of dispatch) as the date of sale. For DDP sales, the Department verified that at some point between the time the merchandise leaves Indonesia and the time it arrived at the unaffiliated customer in the United States an invoice was generated by Indorama's billing entity. Indorama contends that, for certain DDP sales, upon arrival in the United States the merchandise was stored in a warehouse until it was resold to a different customer. See *BPI Memo*, Indorama BPI 7. These sales were classified as CEP sales because the final sale to an unaffiliated customer was made after importation.

According to Indorama, the Department's classification of U.S. sales as EP or CEP is consistent with section 772(a) and (b) of the Tariff Act of 1930, as amended ("the Act"). The determination of whether a U.S. sale was EP or CEP was properly based upon whether the sale to the unaffiliated purchaser was made before or after importation in the United States. Indorama contends that the Department verified that Indorama's FOB, CIF, and DDP U.S. sales were properly classified as EP sales, with the exception of certain merchandise sold on a DDP basis after importation, which were properly classified as CEP sales. Indorama agrees with the decision to base the Preliminary Determination on Indorama's classification of its U.S. sales as EP or CEP.

The petitioner argues that, for the final determination, the Department should reclassify, as CEP sales, certain U.S. transactions that were incorrectly classified as EP transactions in the U.S. sales file. The petitioner points to the minor corrections presented at the sales verification where Indorama stated that it had misclassified certain U.S. transactions that should have been reported as CEP sales. See *Indorama SVR* page 2 and Exhibit VE-1 page 1.

Department's Position: For the final determination, consistent with the minor corrections presented at the sales verification, we have reclassified certain U.S. sales as CEP sales. We agree with Indorama's assertion that we have properly classified U.S. sales as EP or CEP in accordance with sections 772(a) and (b) of the Act. We continue to determine that U.S. sales made to the unaffiliated purchaser before importation are EP sales, while U.S. sales made to the unaffiliated purchaser after importation are CEP sales.

Comment 3: Calculation of CEP Profit

Indorama contends that section 772 of the Act requires that, for CEP sales, the CEP price be reduced by an amount for profit allocated to expenses incurred in the United States in selling the subject merchandise. The Department miscalculated the CEP profit ratio, apparently as a result of currency conversion miscalculations that significantly overstated revenues and profits. Indorama argues that the Department should use Indorama's corrected calculation of the CEP profit ratio for the final determination.

The petitioner did not comment on this issue.

Department's Position: We agree with Indorama that there was an error in the preliminary calculation of CEP profit due to currency conversion miscalculations. For the final determination, we have made currency conversion corrections to the calculation of the CEP profit ratio in the margin program. See Memorandum to File, "*Final Determination Calculation Memorandum for P.T. Indorama Synthetics Tbk*," dated March 14, 2005 ("*Indorama Final Sales Calculation Memorandum*").

Comment 4: Allocation of Indirect Selling Expenses for Home Market and Export Sales

The petitioner asserts that Indorama improperly calculated the indirect selling expenses ("ISE") of the PET resin division for domestic and export sales on the basis of sales value. The allocated expenses were then divided by the total sales quantity of the subject merchandise to arrive at a per unit amount. The petitioner states that record evidence shows that the ISE for home market and export sales are incurred at the PET resin division level. Accordingly, the ISE rates should be calculated on the basis of the respective domestic and export sales values of the PET resin division. For the final determination, the petitioner contends that the Department should recalculate the ISE for home market and export sales on the basis of the PET resin division level by dividing the total ISE by the respective sales values for domestic and export sales of the PET

resin division. The petitioner argues that the resultant ISE rates should then be applied to the gross unit price in each market.

Indorama counters that the Department, consistent with 19 CFR 351.401(g)(i), has accepted a company's allocation of indirect selling expenses based upon volume of sales. See Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand, 67 FR 76718 (December 13, 2002). As the petitioner has provided no evidence that Indorama's methodology is distortive, the Department should continue to accept Indorama's reported ISE.

Department's Position: Indorama's PET resin division makes sales of both merchandise under investigation and non-subject merchandise (i.e., amorphous products). See *Indorama SVR*, Exhibit 5 pages 2-6 and Exhibit 6 pages 1-9. Accordingly, Indorama first allocated the ISE incurred by the PET resin division between merchandise under investigation and amorphous products. This allocation was based on sales value. Then, Indorama allocated the ISE attributed to the merchandise under investigation between home market, third-country, and the United States, on the basis of sales value. Finally, Indorama calculated a per transaction amount by dividing the ISE allocated to a market by the quantity sold in that market.

We agree with the petitioner that the ISE should be allocated by value. Therefore, we have recalculated Indorama's ISE to obtain a ratio of ISE over sales value. We have applied this ratio to the respective gross unit prices (i.e., GRSUPRH and GRSUPRU). See *Indorama Final Sales Calculation Memorandum*; see also *Indorama SVR* at Exhibit 5 page 4, Exhibit 12 page 3, and Exhibit 6 page 9.

Comment 5: Indirect Selling Expenses Incurred by Indorama's Billing Entity

The petitioner argues that the Department failed to adjust CEP for ISE incurred by Indorama's billing entity. Despite repeated requests, Indorama failed to report the ISE for its affiliated reseller (i.e., billing entity). The petitioner contends that the ISE data can be derived from the 2003 Profit and Loss Account for Indorama's billing entity and that all of the selling, general, and administrative ("SG&A") expenses reported in the Profit and Loss Account should be considered selling expenses. The ISE ratio can be calculated by removing from the total SG&A expenses the amount reported as a direct selling expense in the U.S. sales listing and dividing the remaining expenses by the total sales value of Indorama's billing entity. According to the petitioner, this ISE rate should be applied to the gross unit price in order to calculate the per unit ISE and this resulting expense should be deducted in the calculation of the net U.S. price for CEP sales.

Indorama counters that it reported its billing entity's credit insurance premium and bank charges as direct selling expenses. Indorama contends that the Department verified these reported amounts and confirmed that Indorama's billing entity incurred no other expenses that should be

deducted, and that the remaining expenses, classified as "administrative fees," were not related to sales. See *Indorama SVR,* page 12. As explained in Comment 6, Indorama argues that any indirect selling expenses incurred by its billing entity should not be deducted from CEP. If the Department decides otherwise, however, there is no need to deduct them given the small amount.

Department's Position: As explained in response to Comment 6, we agree with Indorama that the ISE incurred by Indorama and its billing entity should not be deducted from U.S. price. Indorama has reported, as direct selling expenses or adjustments to price, bank charges, credit insurance, and rebates. These amounts have been treated as direct selling expenses. Indorama's billing entity incurred exchange rate gains or losses not related to sales to the United States. See *Indorama SVR*, page 7. The remaining expenses (i.e., administrative fees) are appropriately treated as ISE. See *Indorama Final Sales Calculation Memorandum*.

Comment 6: Indirect Selling Expenses Incurred in the United States by Indorama and its Billing Entity

The petitioner asserts that, under 19 CFR 351.402(b), an additional adjustment to CEP is warranted "for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid." Indorama and its billing entity are physically located outside the United States, but they incur ISE on behalf of sales to unrelated purchasers in the United States. According to the petitioner, all of the selling functions are performed by these entities and they serve as the U.S. selling arm to unrelated customers. Therefore, the petitioner contends that, in accordance with 19 CFR 351.402(b), for the final determination, the Department should deduct these ISE that have been incurred for CEP sales from the calculation of net price for U.S. CEP sales.

Indorama rebuts this argument by citing the Department's interpretation of 19 CFR 351.402(b), which it distinguishes between "commercial activities in the United States" and sales to unaffiliated customers in the United States. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997); see also Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers From Malaysia, 69 FR 20592 (April 16, 2004). Indorama asserts that, because Indorama and its billing entity are located outside of the United States, they incur no ISE in the United States and the Department should continue to not deduct ISE from net U.S. price for CEP sales.

Department's Position: Under 19 CFR 351.402(b), the Department must adjust CEP "for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid." We have closely examined the indirect selling expenses incurred by Indorama and its billing entity outside the United States, and there is

no evidence to indicate that these expenses are associated with commercial activities in the United States. Therefore, we have not deducted these amounts from CEP.

Comment 7: Inclusion of Bank Charges as a Direct Selling Expense

The petitioner argues that Indorama failed to report bank charges incurred on export sales as a direct expense or ISE. According to the petitioner, Indorama only reported in its U.S. sales listing the bank charges for its billing entity responsible for sales of the subject merchandise in the United States. See *Indorama SVR* page 21. For the final determination, the petitioner urges the Department to re-calculate the direct selling expense rate by including the bank charges incurred by Indorama, and to deduct them from the of U.S. price, consistent with its treatment for Indorama's billing entity.

Indorama did not comment on this issue.

Department's Position: We disagree with the petitioner. At the sales verification, we verified the bank charges incurred by Indorama's billing entity that could be traced to specific sales of the subject merchandise in the United States. See *Indorama SVR*, page 21. We acknowledge that the PET resin division of Indorama incurs separate bank charges, and for accounting purposes, records them separately. Indorama officials explained at the cost verification that, because these bank charges could not be traced to specific sales of the subject merchandise to the United States, they included these expenses in a revised calculation of general and administrative ("G&A") expenses. The total amount of the bank charges and the revised calculation were verified and we found no discrepancies. See Memorandum to Neal Halper, "*Verification Report on the Cost of Production and Constructed Value Data Submitted by P.T. Synthetics, Tbk*," dated January 7, 2005 ("*Indorama CVR*"), pages 21-22. Therefore, because we could not directly tie the bank charges to specific sales of PET resin to the United States, we find that Indorama has properly classified these expenses, and we have continued to include these bank charges in our calculation of G&A expenses for the final determination.

Comment 8: Treatment of Sample Sales

The petitioner contends that in the Preliminary Determination the Department failed to consider the sales of samples made by Indorama and its billing entity to the United States that were reported in Indorama's July 7, 2004, original section A and in the August 30, 2004, supplemental questionnaire responses. The petitioner contends that it is the Department's normal practice to include sales of samples in its dumping margin calculations, unless the respondent can provide sufficient supporting documentation proving the sample sales did not constitute commercial transactions. See Notice of Final Results of Antidumping Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke in Part of Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, 69 FR 55574 (September 15, 2004), and accompanying Issues and Decision Memorandum ("AFBs") at Comment 18. However, according to the petitioner, Indorama failed to provide the

required supporting documentation showing the ultimate disposition of the sample merchandise (i.e., the merchandise was used for testing purposes) and failed to include the sample sales in its sales listings.

Therefore, the petitioner asserts that, because the burden of proof is placed on Indorama to report detailed information regarding the sample sales and, Indorama did not meet the standard, the Department should apply AFA to the sales value based on the average price of the subject merchandise reported in Indorama's U.S. sales listing. The petitioner notes that, in the companion antidumping duty investigation PET Resin from Thailand, the Department instructed the respondent to report sales of samples in its U.S. sales listing.

Indorama did not comment on this issue.

Department's position: We are not including in our margin calculations the sample sales of merchandise under investigation made by Indorama. Our practice is to exclude transactions from the margin calculation if we determine such transactions did not receive consideration, based on our evaluation of all the circumstances particular to the sales in question. See AFBs; and, NSK Ltd. v. United States, 115 F.3d 965 (Fed. Cir. 1997).

We disagree with the petitioner that the evidence submitted by Indorama does not support the company's claim. As requested, Indorama submitted a detailed listing of the free samples provided during the POI, by customer and quantity. See Indorama's August 30, 2004, response at Annexure 5.f. This data shows that the quantity of the samples was negligible when compared to the average sales quantity in Indorama's U.S. sales listing. We note further that a certain number of these samples were provided to home market customers and others could not be tied to U.S. customers reported by Indorama in its U.S. sales listing. Consequently, these could have been provided to third-country customers. Thus, the total volume of sample sales to reported U.S. sales is minuscule. Finally, we note that Indorama included the costs associated with sample sales in the company's calculation of ISE and the Department thoroughly verified this amount. See *Indorama SVR*, Exhibit 12 at page 1.

With regard to the petitioner's AFA request, section 776(a) of the Act requires the Department to use facts otherwise available when: 1) necessary information is not available for the record; 2) an interested party withholds information requested by the Department; 3) a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department; 4) a party significantly impedes a proceeding or 5) provides information that cannot be verified by the Department. In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002). Contrary to the petitioner's argument, Indorama timely-filed all information requested by the Department with

regard to the sample sales and acted to the best of its ability to comply with the Department's requests. Therefore, the application of AFA is not warranted.

Comment 9: Inclusion of Negative Imputed Credit Expenses

The petitioner asserts that the Department miscalculated Indorama's credit expenses incurred in the United States for the Preliminary Determination. According to the petitioner, when the Department calculated Indorama's credit expenses using the Federal Reserve Board ("FRB") prime rate, the Department erroneously allowed negative imputed credit expenses for certain U.S. sales transactions. See Memorandum to the File, "*Preliminary Determination Calculation Memorandum for P.T. Indorama Tbk*," dated October 20, 2004 ("*Indorama Preliminary Sales Calculation Memorandum*"), at page 3 and Attachment 2. Accordingly, the petitioner contends that the Department should revise its margin calculations by setting negative U.S. imputed credit expenses to zero.

Indorama did not comment on this issue.

Department's position: We are not revising our margin calculations by setting negative U.S. imputed credit expenses to zero. For the Preliminary Determination, we applied our standard credit calculation formula, accurately reflecting the estimated opportunity cost incurred between the time of shipment and the receipt of payment from the customer. If the customer pays before the time of shipment, the seller receives the benefit of the time value of money. Accordingly, setting negative credit expenses to zero would not accurately reflect normal business practice and would in fact, distort the final margin calculations. Furthermore, the Department has allowed negative credit expenses in the antidumping duty calculations. See e.g., Certain Polyester Staple Fiber From Korea: Final Results of Antidumping Duty Administrative Review and Final Determination To Revoke the Order in Part, 69 FR 61341 (October 18, 2004), and accompanying "*Final Results Calculation Memorandum for Huvis Corporation*," dated October 8, 2004; see also Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 69 FR 32492 (June 10, 2004), "*Final Results Calculation Memorandum for Hyundai HYSCO*," dated June 2, 2004. The memoranda are on file in the Central Records Unit, Room B-099 of the main Department building.

Comment 10: Untimely Sales Reconciliation Submission

The petitioner argues that, the Department should reject, as untimely filed, Indorama's October 25, 2004, sales reconciliation. According to the petitioner, Indorama failed to meet the Department's requirement, as stated in section A of its questionnaire, that companies must submit a complete sales reconciliation by the date of the preliminary determination. By submitting its sales reconciliation five days after the preliminary determination, and two days after the initiation of the Department's sales verification in Thailand, the petitioner asserts that, Indorama deprived both the Department and the petitioner the opportunity to properly analyze the

completeness and accuracy of the universe of sales. Thus both parties were denied the ability to question the data.

Accordingly, the petitioner contends that the Department should apply AFA to address Indorama's failure to comply with the Department's requirement for critical and essential information, as required in its questionnaire. The petitioner notes that, as provided in 19 CFR 351.308(a), the Department may make determinations based on facts available whenever necessary information is not placed on the record, an interested party fails to provide information requested in a timely manner, and in the form required, or significantly impedes a proceeding. Moreover, the petitioner argues that it is the Department's practice to reject untimely submissions of questionnaire responses where an interested party fails to submit its response on time and fails to request an extension on a timely basis, therein providing appropriate justification for the inability to comply with the due date for the response submission. See e.g., Stainless Steel Bar from India: Final Results of Antidumping Administrative Review, 68 FR 47543 (August 11, 2003) ("SSB India").

Indorama did not comment on this issue.

Department's Position: We disagree with the petitioner. On October 22, 2004, the Department notified Indorama that we had not received its sales reconciliation by the required deadline and instructed Indorama to file the sales reconciliation by October 25, 2004, the first day of the sales verification in Bangkok, Thailand. See Memorandum to the File, "*Indorama's Sales Reconciliation*," dated October 22, 2004. Accordingly, Indorama filed the sales reconciliation with the Department, and provided Department officials the sales reconciliation at the commencement of the sales verification on October 25, 2004. During the course of the sales verification, we analyzed the completeness and accuracy of Indorama's reconciliation and noted no discrepancies. See *Indorama SVR*. Furthermore, the sales reconciliation was placed on the record in sufficient time to afford the Department an opportunity to request additional documents on-site, and to respond to any additional inquiries regarding reported and unreported sales; and in time to afford parties an opportunity to comment on the sales reconciliation.

Moreover, we find that the facts in SSB India are not analogous to those in the present investigation. In SSB India, the respondent failed to respond to the Department's questionnaire after numerous requests over several months of that proceeding and failed to request an extension, thereby severely impeding the Department's ability to sufficiently analyze the company's responses before the preliminary results. In contrast, Indorama filed its sales reconciliation in accordance with the Department's instructions after being notified of the missed deadline and the submission was verified without discrepancies. Therefore, in contrast to SSB India, we find no basis to conclude that Indorama impeded this proceeding as the petitioner contends, and the application of AFA under 19 CFR 351.308(a) is not warranted.

Comment 11: Home Market Viability Test

The petitioner argues that, as a matter of policy, the Department should reconsider the market viability test after it completes its analysis of the comments received in this proceeding.

Indorama did not comment on this issue.

Department's position: We disagree with the petitioner that the Department should revisit its market viability determination, as a matter of policy, after completing its analysis of the comments received. at the time of the final determination. The decision of which comparison market to use is normally made at an early stage in an investigation in order "that respondents can provide the necessary sales information and the Department can meet its statutory deadlines." Antidumping Duties; Countervailing Duties; Proposed Rule, 61 FR 7307, 7334 (February 27, 1996). If issues decided in the course of the case e.g., date of sale, cause the viability of the comparison market to change, it is simply too late to request, analyze and verify another database. See also 19 C.F.R 351.404(b)(2).

Comment 12: Affiliated Input Purchases

The petitioner argues that the Department failed to adjust the raw material input purchased from an affiliated supplier to the higher of transfer price, cost of production, or market price, in accordance with the Department's practice and regulations. The petitioner adds that Indorama failed to provide the cost of production ("COP") from its affiliated supplier despite requests from the Department. As facts available, the petitioner urges the Department to adjust the average price for the major raw material input purchased from its affiliated supplier to reflect the highest monthly average price for any purchase of the input during the POI from unaffiliated suppliers.

In response to Indorama's affirmative argument, the petitioner states that the average purchase price of the raw material in question is not the same for both the affiliated supplier and the unaffiliated suppliers. The petitioner urges the Department to include the affiliated supplier's SG&A and interest expenses in the transfer price used for the comparison between affiliated and unaffiliated suppliers. The petitioner also contends that Indorama did not demonstrate that the purchases from its affiliate were negotiated at arm's length and that the transfer prices did not reflect the market price for the raw material purchased. The petitioner concludes that, for the final determination, the Department should use as facts available the highest monthly average price from unaffiliated suppliers during the POI.

Indorama argues that petitioner has ignored the Department's verification and states that the transactions with the affiliate were at arm's length as demonstrated by findings reviewed at verification. Indorama refutes the petitioner's affirmative arguments by stating that the transfer price of the raw material input purchased from the affiliate reflects a market price in accordance with section 773(f)(2) of the Act. Indorama argues that during the cost verification, the Department reviewed invoices showing the per metric ton price and compared invoices from

affiliated and unaffiliated suppliers, which resulted in no differences. Indorama contends that the Department was correct in using the transfer prices for the affiliated input purchases and should continue to do so for the final determination.

Department's Position: Indorama purchased a raw material input from an affiliated reseller. The affiliate purchased the input from an unaffiliated supplier. See Indorama's September 14, 2004, response at page D-5. Since the affiliate is not a producer of the raw material, but merely a reseller, we disagree with the petitioner that the affiliated input purchases at issue are subject to the major input rule as defined in section 773(f)(3) of the Act. Section 773(f)(3) of the Act specifically refers to affiliated producers of the input. However, section 773(f)(2) of the Act allows the Department to disregard transactions between affiliates if the transfer price does not fairly reflect the value in the market under consideration. The Department's practice in conducting this analysis has been to compare the transfer price for the inputs charged by the affiliate to the market price for the same input. See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Bar from Germany, 67 FR 3159 (January 23, 2002), and accompanying Issues and Decision Memorandum at Comment 35. We compared the average POI transfer price for the input to the market price and used the higher of the two, in accordance with section 773(f)(2) of the Act, to value purchases from the affiliate.

We agree with the petitioner that the raw material price should include the affiliated supplier's SG&A. The affiliated supplier provided both the raw materials as well as the administrative services related to acquiring the raw materials. As there is an administrative cost associated with the purchasing of raw materials and with coordinating their delivery, we disagree that it is appropriate for Indorama to exclude any SG&A expenses associated with the services provided by its affiliate. Therefore, for the final determination, we compared the transfer price to the market price. See Memorandum to Neal Halper, "*Cost of Production and Constructed Value Calculation Adjustments for the Final Determination- P.T. Indorama Synthetics, Tbk*," dated March 14, 2004; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Belgium, 67 FR 62130 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 15.

Finally, we disagree with petitioner that it is necessary to add interest expense to the market price. The affiliated supplier's financial results are incorporated in the consolidated financial statements used to calculate the interest expense applied to COP. Adding an additional component of interest expense to the market price, when the interest expense is already reflected in the COP of the subject merchandise, would result in double counting. Therefore, for the final determination, we have not included an amount for interest expense in calculating the market price.

Comment 13: Gains on Sale of Assets and Miscellaneous Revenue

The petitioner points out that, in the Preliminary Determination, the Department allowed offsets for the gain on the sale of assets and miscellaneous revenue which resulted in a decreased G&A

expense. Citing Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (February 10, 2004) ("Italian Pasta"), the petitioner claims that the Department should disallow the offset for gains on the sale of assets because the offset is not a routine sale of productive machinery or equipment, but a sale of office assets; thus, not related to the general operations of the company. The petitioner also points out that the miscellaneous revenue should be disallowed because it is related to expenses incurred in a period prior to the POI.

Indorama refutes the petitioner's argument stating that, according to Italian Pasta, gains or losses on the sale of assets should be included in the G&A expenses because they were related to the company's general operations. As for the miscellaneous revenue, Indorama argues that the revenue should be included in the G&A expense calculation because the revenue was recognized during the POI in the normal course of business in Indorama's books and records.

Department's Position: We agree with Indorama that the gains on the sales of office assets should be included in the calculation of G&A expenses. We deem it appropriate to include the gain on the sale of office assets because companies routinely dispose of office assets that have reached the end of their useful lives and replace them. We consider the disposition of fixed assets to be a normal part of a company's operations. As such, any gain or loss realized on the routine disposition of production assets related to the general operations of the company as a whole, should be included in the G&A expense rate calculation. See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon Quality Steel Products from Japan, 64 FR 24329 (May 6, 1999).[1] Therefore, for the final determination, we have continued to include the gains on the sale of fixed assets in the G&A expense rate calculation. Because we have determined that the gains are related to the company's general operations, our decision is consistent with Italian Pasta.

Lastly, we agree with Indorama that the item referred to as miscellaneous revenue is an income item that should be included as an offset in the G&A expense rate calculation. In accordance with Indonesian Generally Accepted Accounting Principles ("GAAP"), payment for the services were recognized in the current year, although the service was performed in a prior year. As the amount due for these services was not known until the current year, there was no accrual booked for these services in the prior year. This is evident in Indorama's normal books and records. As such, we have included the revenue in the G&A rate calculation for this final determination.

Comment 14: Scrap Revenue Offset

The petitioner argues that the cost of goods sold ("COGS") denominators for the G&A and net interest expense ratio calculations used by the Department in the Preliminary Determination are

[1] See also Notice of Final Determination of Sales At Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

incorrect because they should be offset by scrap revenue. According to the petitioner, Indorama reported the total cost of manufacture net of scrap revenue, and therefore, the COGS denominator used in the calculation of G&A and net interest expense ratios should also be net of the scrap revenue offset. The petitioner maintains that the Department should recalculate the G&A and net interest expense ratios using the COGS denominator net of the scrap revenue offset for the final determination.

The respondent argues that the scrap revenue offset is diminutive in nature and does not warrant an adjustment by the Department.

Department's Position: We agree with the petitioner that the COGS denominators used in the G&A and interest expense ratio calculations should be offset by the scrap revenue. The G&A and interest expense ratios should have a COGS denominator that is calculated in the same manner as the COM to which it is applied. Indorama reported direct material costs in the COM, net of the scrap revenue offset; thus, the COGS used in the denominator of the G&A and interest expense ratios must also be net of the offset. See Italian Pasta at Comment 23. Therefore, for the final determination, we included the scrap revenue as an offset to the COGS in the denominators used in the G&A and interest expense ratio calculations.

Comment 15: Divisional G&A and Net Interest Expense

Indorama states that the divisional methodology used to report G&A expenses and net financing expenses is consistent with the statutory directive at section 773(e)(2)(A) of the Act. Indorama contends that it reported the actual expenses incurred for Indorama's PET resin division, as reported in the PET resin division's financial records, in addition to an amount for company-wide G&A and net financing expenses. Indorama contends that, although the Department's practice is to not rely on divisional expenses in the calculation of G&A or interest expense, section 773(f)(1)(A) of the Act allows for the use of divisional G&A and interest expense because Indorama's records are maintained on a divisional level.

The petitioner counters that, in the Preliminary Determination, the Department correctly calculated Indorama's G&A expense based on Indorama's unconsolidated 2003 income statement, in accordance with the Department's practice of using company-wide financial statements for the calculation of G&A expense. Therefore, for the final determination, the Department should use the same methodology in calculating the G&A expenses.

Department's Position: Indorama deviated from the Department's normal methodology and calculated its G&A expenses using an internal accounting methodology, under which the company charged some G&A expenses directly to each of its divisions. However, Indorama's divisions are not separate entities that require consolidation but merely separate business units that make up a single corporation. Thus, we have based Indorama's G&A expense rate calculation for the final determination on Indorama's company-wide income statement. This approach is consistent with Indonesian GAAP's treatment of such period costs and recognizes

the general nature of these expenses and the fact that they relate to the activities of the company as a whole rather than to a particular production process. The Department's method also avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally between divisions. Relying on division specific costs is inconsistent with the very nature of the G&A expenses which are by definition company-wide expenses. See Notice of Final Determination of Sales at Less Than Fair Value: Expandable Polystyrene Resins from the Republic of Korea, 65 FR 69284, 69285 (November 16, 2000), and accompanying Issues and Decision Memorandum ("EPRs from Korea") at Comment 7. See also Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 67 FR 15531, 15533 (April 2, 2002), and accompanying Issues and Decision Memorandum at Comment 24. Therefore, for the final determination, we will continue to utilize Indorama's December 31, 2003, unconsolidated financial statements to calculate G&A expenses.

We also disagree with Indorama that the interest expense rate should be calculated on a divisional level since the PET resin division is not a separate company but a separate division within Indorama. Although Indorama maintains separate profit and loss statements for each division, the controlling entity, Indorama, has the ultimate power to determine the capital structure and financial costs of each unit within the consolidated corporation. Since the board of directors establishes policy and strategic direction, it is reasonable to conclude that the overall capital structure including financing decisions are guided by the board of directors of the consolidated corporation. The Department's longstanding practice with regard to financing expenses is to base net financing expenses on the full-year interest expense from the audited financial statements at the highest level of consolidation that corresponds most closely to the POI. This practice recognizes the fungible nature of invested capital resources (i.e., debt and equity) within a consolidated group of companies. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut -to-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73152 (December 29, 1999) at Comment 14. See also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 7. Therefore, for the final determination, we are relying on Indorama's December 31, 2003 consolidated financial statements to calculate the financing expenses.

Comment 16: Short-Term Interest Income

Indorama points out that the Department did not reduce its consolidated interest expense by short-term interest income in the Preliminary Determination. Indorama contends that the Department confirmed the amount of investment income during the cost verification. See *Indorama CVR* at page 25. Therefore, the Department should reduce the net financing expenses by the verified short-term investment income in Indorama's consolidated 2003 audited financial statements.

The petitioner did not comment.

Department's Position: We agree with Indorama that the short-term interest income should be included in the calculation of net financing expenses. At the cost verification, we confirmed that Indorama has interest income from short-term deposits of working capital. Therefore, for the final determination, we are including the short-term interest income as an offset to the interest expenses.

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 reviewed in the Federal Register.

AGREE _____ DISAGREE _____

_____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____

Date