RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND
Thai Plastic Bags Industries Co., Ltd., Polyethylene Retail Carrier Bag Committee, Hilex Poly Co., LLC, and Superbag Corporation, v. United States
Consol. Court No. 11-00086, Slip Op. 12-86 (CIT June 18, 2012).

Summary

These results of redetermination pursuant to court remand are submitted in accordance with the order of the U.S. Court of International Trade (the "Court" or "CIT") in *Thai Plastic Bags Industries Co., Ltd., Polyethylene Retail Carrier Bag Committee, Hilex Poly Co., LLC, and Superbag Corporation v. United States*, Consol. Court No. 11-00086, Slip op. 12-86 (CIT June 18, 2012) ("*Remand Order*"). The litigation involves challenges to the determination of the U.S. Department of Commerce ("the Department") in the administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand, concerning the period of review from August 1, 2008, through July 31, 2009. *See Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 12700 (March 8, 2011) and accompanying Issues and Decision Memorandum ("*I&D Memo*") (collectively "*Final Results*").

In accordance with the Court's order, the Department has provided further explanation for its construction of section 771(35) of the Tariff Act of 1930, as amended (the "Act"), with respect to antidumping duty investigations and administrative reviews. Furthermore, as directed by the Court, the Department has reconsidered its position regarding the application of the transactions disregarded rule to Thai Plastic Bag Industries Co., Ltd. ("TPBI")'s purchases of linear-low-density resin from affiliated suppliers and has revised its treatment of those transactions as explained in further detail below.

We released our draft results of redetermination to interested parties on July 26, 2012 ("*Draft Remand*"). We received comments from TPBI on August 2, 2012. We received no

comments from the petitioners, the Polyethylene Retail Carrier Bag Committee, Hilex Poly Co., LLC and Superbag Corporation.

Discussion

I. Zeroing

In the *Final Results*, TPBI argued that the Department should calculate TPBI's final weighted-average dumping margin without zeroing because the World Trade Organization ("WTO") has found that zeroing in antidumping duty administrative reviews is not consistent with the WTO Antidumping Agreement and that those findings are dispositive to the instant review. *See I&D Memo* at Comment 4. As we explained in the *Final Results*, the Court of Appeals for the Federal Circuit ("CAFC") has squarely addressed the reasonableness of the Department's zeroing methodology in administrative reviews and unequivocally held that the Department reasonably interpreted the relevant statutory provision as permitting zeroing.[1] *Id*.

In its arguments before the CIT, TPBI contended, based on the CAFC's holdings in *Dongbu Steel Co. v. United States*, 635 F.3d 1363 (Fed. Cir. 2011) ("*Dongbu*") and *JTEKT Corp. v. United States*, 642 F.3d 1378 (Fed. Cir. 2011) ("*JTEKT*") that the Department had failed in the *Final Results* to explain the reasonableness of its different statutory interpretations of section 771(35) of the Act and application of zeroing depending on whether it was calculating a rate in an investigation or an administrative review. TPBI argued that the CIT should remand the issue to the Department to have it either explain its differing interpretations of section 771(35) of the Act or adopt the same interpretation for both investigations and reviews. *See Remand Order* at 21.

[1] *See, e.g., Koyo Seiko Co. v. United States*, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008); *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-1380 (Fed. Cir. 2007) ("*NSK*"); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) ("*Corus II*"); *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *cert. denied*; 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) ("*Corus I*"); *Timken Co. v. U.S.*, 354 F.3d 1334, 1341-45 (Fed. Cir. 2004) ("*Timken*").

The Department argued that the Court should reject TPBI's arguments but, in the alternative, requested a remand to further explain its differing treatment in light of the decisions in *Dongbu* and *JTEKT*. *Id*. at 22. The Court granted the Department's request for a remand redetermination. *Id*.

In accordance with the Court's *Remand Order*, the Department is supplementing its analysis from the *Final Results* and providing further explanation concerning its interpretation of the statute to allow zeroing with respect to average-to-transaction comparisons in the underlying administrative review, while also allowing the Department to not apply zeroing with respect to average-to-average comparisons in antidumping duty investigations.

A. Background To The Perceived Inconsistency Identified In *DONGBU* and *JTEKT*

Section 771(35)(A) of the Act, which authorizes the Department to apply zeroing in antidumping duty proceedings, states that "{t}he term 'dumping margin' means the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The CAFC repeatedly found section 771(35)(A) of the Act ambiguous as to whether the statute *requires* zeroing, stating that "Congress's use of the word 'exceeds' {in section 771(35) of the Act} does not unambiguously require that dumping margins be positive numbers."[2] In so doing, the Department interpreted section 771(35) of the Act to permit zeroing in both administrative reviews and antidumping duty investigations.[3] The CAFC upheld this

[2] *See Timken*, 354 F.3d at 1342; *see also United States Steel Corp. v. United States*, 621 F.3d 1351, 1361 (Fed. Cir. 2010) ("*U.S. Steel Corp.*") ("{T}he statute is silent as to what to do when the 'amount' calculated by Commerce pursuant to {section 771(35)(A) of the Act} is negative.").

[3] *See, e.g.*, *Timken*, 354 F.3d at 1340 (in a challenge to the Department's use of zeroing in administrative reviews, the United States argued that "the plain meaning of the antidumping statute calls for Commerce to zero negative margin transactions, and that the legislative history confirms this reading."); *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722, 77722 (December 27, 2006) ("*Final Modification for Investigations*") (wherein the Department modified its prior practice of zeroing in investigations using average-to-average comparisons).

interpretation separately in the context of both antidumping duty investigations and administrative reviews as a reasonable resolution of statutory ambiguity concerning the treatment of comparison results that show normal value does not exceed export price or constructed export price.[4]

In 2005, a panel of the WTO Dispute Settlement Body found that the United States did not act consistently with its obligations under Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 when it employed the zeroing methodology in average-to-average comparisons in certain challenged antidumping duty investigations.[5] In light of the adverse WTO Dispute Settlement Body decision and the ambiguity that the CAFC found inherent in the statutory text, the Department abandoned its prior litigation position – that no difference between antidumping duty investigations and administrative reviews exists for purposes of using zeroing in antidumping proceedings – and departed from its longstanding and consistent practice by ceasing the use of zeroing in the limited context of average-to-average comparisons in antidumping duty investigations.[6] The Department did not change its practice of zeroing in other types of comparisons, including average-to-transaction comparisons in administrative reviews.[7] The CAFC subsequently upheld the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations

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[4] *See, e.g.*, *SKF USA, Inc. v. United States*, 630 F.3d 1365, 1375 (Fed. Cir. 2011) (upholding use of zeroing in an administrative review for which final results issued after *Final Modification for Investigations* took effect); *Corus I*, 395 F.3d at 1347-49 (upholding use of zeroing in an investigation); *Timken* (upholding use of zeroing in an administrative review).

[5] An average-to-average comparison involves a comparison of "the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise." *See* section 777A(d)(1)(A)(i) of the Act; Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")*, WT/DS294/R (Oct. 31, 2005) ("*EC-Zeroing Panel*").

[6] *See generally Final Modification for Investigations*.

[7] An average-to-transaction comparison requires the Department to compare "export price{} (or constructed export price{}) of individual transactions to the weighted-average price of sales of the foreign like product." *See* section 777A(d)(2) of the Act. *See Final Modification for Investigations*, 71 FR at 77724.

while recognizing that the Department limited its change in practice to certain antidumping duty investigations and continued to use zeroing when making average-to-transaction comparisons in administrative reviews.[8] In upholding the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations, the CAFC accepted that the Department likely would have different zeroing practices between average-to-average and other types of comparisons in antidumping duty investigations.[9] The CAFC's reasoning in upholding the Department's decision relied in part on differences between various types of comparisons in antidumping duty investigations and the Department's limited decision to cease zeroing only with respect to one comparison type.[10] The CAFC acknowledged that section 777A(d) of the Act permits different types of comparisons in antidumping duty investigations, including average-to-transaction comparisons where certain patterns of significant price differences exist.[11] The CAFC also expressly recognized that the Department intended to continue to address targeted or masked dumping through continuing its use of average-to-transaction comparisons and zeroing in antidumping duty investigations.[12]

In summing up its understanding of the relationship between zeroing and the various comparison methodologies that the Department may use in antidumping duty investigations, the CAFC acceded to the possibility of disparate, yet equally reasonable interpretations of section 771(35) of the Act, stating that "{b}y enacting legislation that specifically addresses such

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[8] *See U.S. Steel Corp.*, 621 F.3d. at 1355 n.2, 1362-63.

[9] *See id.* at 1363 (stating that the Department indicated an intention to use zeroing in average-to-transaction comparisons in investigations to address concerns about masked dumping).

[10] *See id.* at 1361-63.

[11] *See id.* at 1362 (quoting sections 777A(d)(1)(A) and (B) of the Act, which enumerate various comparison methodologies that Department may use in investigations); *see also* section 777A(d)(1)(B) of the Act.

[12] *See U.S. Steel Corp.*, 621 F.3d at 1363.

situations, Congress may just as likely have been signaling to Commerce that it need not continue its zeroing methodology in situations where such significant price differences among the export prices do *not* exist."[13]

Therefore, to the extent that the Department interprets section 771(35)(A) of the Act differently for antidumping duty investigations using average-to-average comparisons than for investigations using other comparison methodologies and administrative reviews using average-to-transaction comparisons, the Department did not create an inconsistency in this administrative review, but rather adhered to its position adopted in the *Final Modification for Investigations* and continued to apply its pre-existing methodology.

B. The Department Reasonably Interprets Section 771(35) of the Act Differently Depending on the Comparison Methodology Being Applied

The Department's interpretations of section 771(35) of the Act reasonably resolve the ambiguity inherent in the statutory text for multiple reasons. First, the Department has, with one limited exception, maintained a long-standing, judicially-affirmed interpretation of section 771(35) of the Act in which the Department does not consider a sale to the United States as dumped if normal value does not exceed export price. Pursuant to this interpretation, the Department assigns such sale a dumping margin of zero, which reflects that no dumping has occurred, when calculating the aggregate, weighted-average, dumping margin. Second, the limited exception to this interpretation does not amount to an arbitrary departure from established practice because the Executive Branch adopted and implemented the approach in response to a specific international obligation pursuant to the procedures established by the Uruguay Round Agreements Act ("URAA") for such changes in practice with full notice, comment, consultations with the

[13] *Id.* (emphasis added).

Legislative Branch, and explanation. Third, the Department's interpretations reasonably resolve the ambiguity in section 771(35) of the Act in a way that accounts for the inherent differences between the result of an average-to-average comparison, on the one hand, and the result of an average-to-transaction comparison, on the other.

1. The Department Relies Upon a Reasonable and Judicially-Affirmed Interpretation of Section 771(35) of the Act

For decades, the Department, the CAFC and CIT have considered the use of zeroing a reasonable tool in calculating weighted-average dumping margins.[14] During that time, courts repeatedly held that the statute does not speak directly to the issue of zeroing.[15] In view of the statutory ambiguity, the CAFC and CIT consistently upheld as reasonable the Department's interpretation of the statute to permit the use of zeroing.[16] In so doing, the CAFC and CIT relied upon the rationale offered by the Department for the continued use of zeroing, *i.e.*, to address the potential for foreign companies to undermine the antidumping laws by masking dumped sales with higher priced sales: "Commerce has interpreted the statute in such a way as to prevent a foreign

[14] *See, e.g.*, *Timken*, 354 F.3d at 1341-45; *PAM, S.p.A. v. United States*, 265 F. Supp. 2d 1362, 1370 (CIT 2003) ("*PAM*") ("Commerce's zeroing methodology in its calculation of dumping margins is grounded in long-standing practice."); *Bowe Passat Reinigungs-Und Waschereitechnik GmbH v. United States*, 926 F. Supp. 1138, 1149-50 (CIT 1996) ("*Bowe Passat*"); *Serampore Indus. Pvt. Ltd. v. U.S. Dep't of Commerce*, 675 F. Supp. 1354, 1360-61 (CIT 1987) ("*Serampore*").

[15] *See PAM*, 265 F. Supp. 2d at 1371 ("{The} gap or ambiguity in the statute requires the application of the *Chevron* step-two analysis and compels this court to inquire whether Commerce's methodology of zeroing in calculating dumping margins is a reasonable interpretation of the statute."); *Bowe Passat*, 926 F. Supp. at 1150 ("The statute is silent on the question of zeroing negative margins."); *Serampore*, 675 F. Supp. at 1360 ("A plain reading of the statute discloses no provision for Commerce to offset sales made at {less than fair value} with sales made at fair value. . . . Commerce may treat sales to the United States market made at or above prices charged in the exporter's home market as having a zero percent dumping margin.").

[16] *See, e.g.*, *Timken*, 354 F.3d at 1341-45; *PAM*, 265 F. Supp. 2d at 1370; *Bowe Passat*, 926 F. Supp. at 1149-50; *Serampore*, 675 F. Supp. at 1360-61.

producer from masking its dumping with more profitable sales. Commerce's interpretation is reasonable and is in accordance with law."[17]

2. The Executive Branch's Limited Implementation of an Adverse Finding of the WTO Dispute Settlement Body Results in a Reasonable Interpretation of Section 771(35) of the Act

The initial WTO Dispute Settlement Body Panel Report was limited to the Department's use of zeroing in average-to-average comparisons in antidumping duty investigations.[18] The Executive Branch determined to implement this report pursuant to the authority provided in Section 123 of the URAA (19 U.S.C. § 3533(f), (g)) ("Section 123").[19] Notably, with respect to the use of zeroing, the Panel found that the United States acted inconsistently with its WTO obligations only in the context of average-to-average comparisons in antidumping duty investigations. The Panel did not find fault with the use of zeroing by the United States in any other context. In fact, the Panel rejected the European Communities' arguments that the use of zeroing in administrative reviews did not comport with the WTO Agreements.[20] Without an affirmative inconsistency finding by the Panel, the Department did not propose to alter its zeroing practice in other contexts, such as administrative reviews. As the CAFC recently held, the Department reasonably may decline, when implementing an adverse WTO report, to take any action beyond that necessary for compliance.[21]

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[17] *See Serampore*, 675 F. Supp. at 1361 (citing *Certain Welded Carbon Steel Standard Pipe and Tube From India; Final Determination of Sales at Less Than Fair Value*, 51 FR 9089, 9092 (March 17, 1986)); *see also Timken*, 354 F.3d at 1343; *PAM*, 265 F. Supp. 2d at 1371.

[18] *See generally EC-Zeroing Panel*, WT/DS294/R.

[19] *See generally Final Modification for Investigations*.

[20] *See, e.g.*, *EC-Zeroing Panel* at ¶¶ 7.284, 7.291.

[21] *See Thyssenkrupp Acciai Speciali Terni S.p.A. v. United States*, 603 F.3d 928, 934 (Fed. Cir. 2010).

The Department's *Final Modification for Investigations* to implement the WTO Panel's limited finding does not disturb the reasoning offered by the Department, and affirmed by the CAFC in several prior, precedential opinions upholding the use of zeroing in average-to-transaction comparisons in administrative reviews as a reasonable interpretation of section 771(35) of the Act.[22] That the Department altered its interpretation of the statute in one limited context to implement a similarly limited finding supports the conclusion that the Court should affirm the Department's alternative interpretation of an ambiguous statutory provision in that limited context as consistent with the *Charming Betsy* doctrine.[23] Even where the Department maintains a separate interpretation of the statute to permit the use of zeroing in certain weighted-average dumping margin calculations, the *Charming Betsy* doctrine bolsters the ability of the Department to apply an alternative interpretation of the statute in the narrow context of average-to-average comparisons in antidumping duty investigations so that the United States may comply with its international obligations. Neither Section 123, nor the *Charming Betsy* doctrine, require the Department to modify its interpretation of section 771(35) of the Act for all scenarios when a more limited modification will suffice to address the adverse WTO finding that the Executive Branch has determined to implement. Furthermore, the wisdom of the Department's legitimate policy choices in this case – *i.e.*, to abandon zeroing only with respect to

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[22] *See, e.g.*, *SKF USA, Inc. v. United States*, 537 F.3d 1373, 1382 (Fed. Cir. 2008); *NSK*, 510 F.3d at 1379-1380; *Corus II*, 502 F.3d at 1372-1375; *Timken*, 354 F.3d at 1343.

[23] According to *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804), "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country." The principle emanating from the quoted passage, known as the *Charming Betsy* doctrine, supports the reasonableness of the Department's interpretation of the statute in the limited context of average-to-average comparisons in antidumping duty investigations because the Department's interpretation of the domestic law accords with international obligations as understood in this country.

average-to-average comparisons in investigations – is not subject to judicial review.[24] These reasons alone sufficiently justify and explain why the Department reasonably interpreted section 771(35) of the Act differently in average-to-average comparisons in antidumping duty investigations relative to all other contexts.

3. The Department's Interpretations Reasonably Account for Inherent Differences Between The Results of Distinct Comparison Methodologies

Additional justifications exist that demonstrate the reasonableness of the Department's distinct interpretations of section 771(35) of the Act. As a result of the Department's *Final Modification for Investigations*, the Department currently interprets section 771(35) of the Act depending upon the type of comparison methodology applied in the particular proceeding. The Department posits that, among other effects, its interpretations reasonably account for the inherent differences between the result of an average-to-average comparison, on the one hand, and the result of an average-to-transaction comparison, on the other.

The use of the verb "exceeds" in section 771(35)(A) of the Act allows the Department to reasonably interpret the term in the context of the average-to-average comparisons made in antidumping duty investigations to permit negative comparison results to offset or reduce positive comparison results when calculating "aggregate dumping margins" within the meaning of section 771(35)(B) of the Act.[25] When using an average-to-average comparison methodology, the Department usually divides the export transactions into groups, by model and level of trade (averaging groups), and compares an average export price or constructed export price of transactions within one averaging group to an average normal value for the comparable model of

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[24] *See Suramerica de Aleaciones Laminadas, C.A. v. United States*, 966 F.2d 660, 665 (Fed. Cir. 1992).

[25] Section 771(35)(B) of the Act defines a weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer."

the foreign like product at the same or most similar level of trade. In calculating the average export price or constructed export price, the Department averages together all prices, both high and low, for each averaging group. The Department then compares the average export price or constructed export price for the averaging group with the average normal value for the comparable merchandise. This comparison yields an average amount of dumping for the particular averaging group because the high and low prices within the group have been averaged together prior to the comparison. Importantly, under this comparison methodology, the Department does not calculate the extent to which an exporter or producer dumped a particular sale into the United States because the Department does not determine dumping on the basis of individual, transaction-specific, U.S. prices, but rather makes the determination "on average" for the averaging group within which higher prices and lower prices offset each other. The Department then aggregates the comparison results from each of the averaging groups to determine the aggregate weighted-average dumping margin for a specific producer or exporter. At this aggregation stage, negative, averaging–group, comparison results offset positive, averaging–group, comparison results. This approach maintains consistency with the Department's average-to-average comparison methodology, which permits export prices above normal value to offset export prices below normal value within each averaging group. Thus, by permitting offsets in the aggregation stage, the Department determines an "on average" aggregate amount of dumping for the numerator of the weighted-average dumping margin ratio, consistent with the manner in which the Department determined the comparison results being aggregated.

In contrast, when applying an average-to-transaction comparison methodology, as the Department did in this administrative review, the Department determines the amount of dumping on the basis of individual, transaction-specific, U.S. sales prices. Under the

average-to-transaction comparison methodology, the Department compares the export price or constructed export price for a particular U.S. transaction with the average normal value for the comparable model of foreign like product at the same or most similar level of trade. This comparison methodology yields results specific to the selected individual export transactions. The result of such a comparison evinces the amount, if any, by which the exporter or producer sold the merchandise into the U.S. market at a price which is less than its normal value. The Department then aggregates the results of these comparison results – *i.e.*, the amount of dumping found for each individual transaction – to calculate the weighted-average dumping margin for the exporter or producer during the period of review. To the extent that the average normal value does not exceed the individual export price or constructed export price of a particular U.S. sale, the Department does not calculate a dumping margin for that comparison, or include an amount of dumping for that comparison result in its aggregation of transaction-specific dumping margins.[26] Thus, when the Department focuses on transaction-specific comparisons, as it did in this administrative review, the Department reasonably interprets the word "exceeds" in section 771(35)(A) of the Act as including only those comparisons that yield positive results. Consequently, in transaction-specific comparisons, the Department reasonably does not permit negative comparison results to offset or reduce other positive comparison results when determining the "aggregate dumping margin" within the meaning of section 771(35)(B) of the Act.

Put simply, following the Department's *Final Modification for Investigations*, the Department has interpreted the application of average-to-average comparisons to contemplate a dumping analysis that examines the overall pricing behavior of an exporter or producer with

[26] The Department does account, however, for the sale in its weighted-average dumping margin calculation. The value of any non-dumped sale is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped transactions is included in the numerator. Therefore, a greater amount of non-dumped transactions results in a lower weighted-average dumping margin.

respect to the subject merchandise, whereas under the average-to-transaction comparison methodology the Department continues to undertake a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the average-to-average comparison methodology allows for a reasonable examination of overall pricing behavior. However, the need to account for overall pricing behavior does not arise when the Department examines an exporter's or producer's U.S. sales on an individual export transaction basis.

In sum, on the issue of how to treat negative comparison results in the calculation of the weighted-average dumping margin pursuant to section 771(35)(B) of the Act, for the reasons explained, the Department reasonably may accord dissimilar treatment to negative comparison results depending on whether the comparison results in question flows from average-to-average comparisons or average-to-transaction comparisons. We note that neither the CIT nor the CAFC has rejected the above reasons. In fact, the CIT recently sustained the Department's explanation for using zeroing in administrative reviews while not using zeroing in certain types of investigations.[27] Accordingly, the Department's interpretations of section 771(35) of the Act to permit zeroing in average-to-transaction comparisons, as in the underlying administrative review, and to not permit zeroing in average-to-average comparisons, as the Department does in antidumping duty investigations, reasonably accounts for the differences inherent in distinct comparison methodologies.

[27] *See Union Steel v. United States*, 823 F. Supp. 2d 1346, 1359-1360 (CIT 2012); *Grobest & I-Mei Industrial (Vietnam) Co. Ltd. v. United States*, Consol. Court No. 10-00238, Slip Op. 2012-100 at 16-18 (CIT July 31, 2012)("*Grobest*"); *Far Eastern New Century Corp. v. United States*, Court No. 11-00415, Slip Op. 2012-110 at 6-7 (CIT Aug. 29, 2012)("*Far Eastern*").

II. Affiliated-Party Inputs and the Transactions Disregarded Rule

A. Background

Section 773(f)(2) of the Act, the transactions disregarded rule, provides that "{a} transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration" and "{i}f a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated."

During the period of review, TPBI purchased three types of resin from suppliers (both affiliated and unaffiliated). *See* TPBI's Supplemental Section D Response dated March 22, 2010, at Ex. S1D-3. In *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Administrative Review*, 75 FR 53953, 53955 (September 2, 2010) (*Preliminary Results*), the Department determined that TPBI purchased resin from an affiliated supplier. The Department stated that it applied the major-input rule[28] to adjust the cost of manufacturing ("COM") to reflect the market value of the resin. *Id*. The Department compared the affiliated party transfer prices to market prices for linear-low-density ("LLD") resin only. *See I&D Memo* at Comment 2. Thus, the Department compared purchases separately for a specific resin type.

[28] The Department's reference in the *Preliminary Results* to the major-input rule (section 773(f)(3) of the Act) was in error. The Department explained that "the major-input rule is applicable only in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise. Because the Supplier does not produce resin, the major-input rule is not applicable in this case. Therefore, we have applied the transactions-disregarded rule which relates to direct or indirect transactions between affiliated persons." *See I&D Memo* at Comment 2.

In the *Final Results*, the Department applied the transactions disregarded rule, comparing average transfer and market prices across all types of resin even though the parties did not argue for revising the level of specificity at which to apply the transactions disregarded rule.[29]

The petitioners challenged the Department's new treatment of the resin transactions at issue and argued that the CIT should remand this issue, stating that the Department changed its analysis for the *Final Results* without providing an avenue for comments by the interested parties or a chance for the Department to consider those comments in making its determination. The Department agreed that it should consider comments on its modified application of the transactions disregarded rule and requested a remand to invite comments from the parties and re-evaluate its application of the rule in this case.

The CIT found that "{a}s an agency may request a remand to reconsider its position" and held that it would "remand this issue so that Commerce can give the parties the proper opportunity to comment."[30]

In accordance with the Court's *Remand Order*, the Department has reconsidered its analysis from the *Final Results*; modifying its application of the transactions disregarded rule by analyzing the product involved and the types of inputs used in the production of the merchandise, consistent with agency practice.

In order to conduct this analysis, it was necessary for the Department to obtain further information from TPBI. We sent a supplemental questionnaire to TPBI on July 2, 2012. TPBI responded on July 9, 2012. On July 10, 2012, we sent a second supplemental questionnaire to TPBI to address deficiencies in TPBI's July 9, 2012, supplemental response. TPBI responded on

[29] *See I&D Memo* at Comment 2 and Memorandum to Neal M. Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Thai Plastic Bags Industries Co., Ltd." dated March 1, 2011.

[30] *See Remand Order* at 25-26.

July 12, 2012. Our analysis in these results of redetermination pursuant to remand incorporates the information TPBI submitted in its supplemental response dated July 12, 2012, in our revised calculation of TPBI's margin as explained below.

B. Analysis of TPBI's Resin Purchases

Generally, the Department analyzes transactions between affiliated parties on a supplier- and input-specific basis. When a respondent purchases many different inputs from the same affiliated supplier, the Department normally compares market prices to the transfer prices on an input by input basis. The Department then typically calculates a single transactions disregarded adjustment for each supplier based on the overall purchases from that affiliated supplier.[31] In *Refrigerators*, the Department performed the transactions disregarded analysis by comparing the transfer price of the affiliated purchases to market prices on an input-specific basis. The Department then calculated one overall adjustment on a supplier-specific basis because the individual inputs were, for the most part, all used to produce all products and because all were relatively minor.[32]

In instances when multiple significant inputs are purchased from the same affiliated supplier and not all of the inputs are used to produce all products, or the inputs are used in

[31] *See, e.g.*, Memorandum to Neal Halper from Gina K. Lee RE: Adjustments to the Cost of Production and Constructed Value Information Pursuant to Court Remand – Thai Plastic Bags Industries Co., Ltd., dated July 26, 2012 ("Remand Cost Memorandum") at Attachment 2 (the public version of the Memorandum to Neal Halper from LaVonne Clark RE: Antidumping Duty Investigation of Bottom Mount Combination Refrigerators-Freezers from the Republic of Korea, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. dated October 26, 2011). *See also* Remand Cost Memorandum at Attachment 3 (the public version of the Memorandum to Neal Halper from Heidi K. Schriefer RE: Antidumping Duty Investigation of Bottom Mount Combination Refrigerators-Freezers from the Republic of Korea, Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – LG Electronics Inc. and LG Electronics USA, Inc. dated March 16, 2012), issued in the context of *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413 (March 26, 2012) ("*Refrigerators*").

[32] *See also* Remand Cost Memorandum at Attachment 3 (explaining that the Department's analysis was based on a comparison of LGE's total transfer price paid to its affiliate, LG Chemical, to the aggregate of the extension of the affiliated party quantities at the associated per-unit market prices).

significantly disproportionate quantities, however, the Department does not consider it accurate to calculate a single adjustment factor for the affiliated supplier, to be applied to all products. Instead, under this fact pattern, the Department considers it appropriate to calculate and apply the transactions disregarded rule adjustment on a more detailed, input-specific and product-specific basis. For example, in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009) ("*SSSS from Mexico*"), the Department found that because hot-rolled stainless steel band is a major input into the production of stainless steel sheet and strip in coils, and because the types (*i.e.*, austenitic, ferritic, martensitic) of hot band are not used across all products, it was appropriate to calculate and apply the major-input rule adjustment on a more detailed, input-specific and product-specific basis. Specifically, the Department calculated the major-input adjustment by comparing the transfer prices to the COPs and market prices by grade, within each type of stainless steel band. The Department then applied the calculated aggregate type-specific adjustments to the same type of stainless steel band consumed for each CONNUM.[33]

The analysis described above, applies both to the major input rule, under section 773(f)(3) of the Act, as well as the transactions disregarded rule, under section 773(f)(2) of the Act. The major input rule and the transactions disregarded rule are evaluated in the same basic manner in testing the arm's length nature of the transactions, except that the major input rule also considers the affiliated party's cost of producing the input.

In this case, for the production of plastic bags, the main input into production is resin of which there are three main types: low density, LLD, and high density. This is reflected in the

[33] *See* Remand Cost Memorandum at Attachment 4 (the public version of the Memorandum to Neal Halper from LaVonne Clark RE: *SSSS from Mexico;* Cost of Production, Constructed Value, and Further Manufacturing Calculation Adjustments for the Preliminary Results - ThyssenKrupp Mexinox S.A. de C.V. and Ken-Mac Metals, dated July 30, 2008).

CONNUM characteristics (*i.e.*, the Department's model matching criteria) which identify important differentiating physical characteristics of the merchandise produced. These characteristics were established in the beginning of the case and have been used for all of the respondents in this case.[34]

The record shows that the consumption of the different resin types can vary significantly from product to product and CONNUM to CONNUM. Details of the variations are proprietary and are described more fully in the Remand Cost Memorandum at 1-2.

Based on the above facts and analysis, the Department finds that the different resin input ratios are directly related to the physical characteristics of the output products. Moreover, the data shows that the quantity of each resin type used to produce each end-product varied significantly between the different end products. Because the inputs in question are significant and because the inputs are used in significantly varying quantities between products, the Department believes that the approaches used in both the *Preliminary Results* (*i.e.*, calculating an adjustment percentage for the affiliated supplier on the basis of LLD resin only and applying it to all CONNUMs equally) and *Final Results* (*i.e.*, calculating an adjustment percentage for the affiliated supplier on the basis of all resin and applying it to all CONNUMs equally) were inconsistent with its practice and result in an inaccurate calculation. Instead, in accordance with its practice, the Department is calculating the transactions disregarded rule adjustment, pursuant to section 773(f)(2) of the Act, on a resin-specific basis for a given supplier to TPBI but applying it to each CONNUM based upon its LLD content. The Department has conducted this analysis by comparing resin-specific transfer prices to resin-specific market prices. For those resin types

[34] *See Preliminary Results*, 75 FR at 53956 (unchanged in the *Final Results).*

found to be acquired at less than market prices (*i.e.*, LLD), the Department adjusted each CONNUM's cost data based on its consumption of LLD resin.

Comments

***Comment 1*:** TPBI argues that the Department failed to provide a reasonable explanation regarding its inconsistent treatment of zeroing in investigations and in administrative reviews in the *Draft Remand*. Instead, TPBI asserts, the Department's cited reasons for its continuation of zeroing in this case are merely a recitation of arguments already rejected by the CAFC in *Dongbu* and *JTEKT*.

TPBI contends that the cases cited by the Department in support of its statement that the courts have consistently upheld as reasonable the Department's interpretation of section 771(35) of the Act were decided prior to the Department's February 2007 change in practice, when it stopped zeroing in investigations, but not administrative reviews. TPBI claims that, once the Department made that change, the prior court precedent no longer was applicable to the agency's practice. Citing *Dongbu Steel*, 635 F.3d at 1370-71, TPBI avers that the Department may not rely on this precedent to justify inapposite interpretations of the same statutory provision for investigations and administrative reviews.

TPBI further argues that the CAFC held in *Dongbu* that the government's decision to implement an adverse WTO report standing alone does not provide sufficient justification for the inconsistent statutory interpretations. TPBI contends that the Department's argument that the *Charming Betsy* doctrine permits it to adopt a more limited modification in interpreting section 771(35) of the Act in addressing the adverse WTO finding is unavailing. According to TPBI, the CAFC held in *Dongbu* that the Executive Branch's decision to implement an adverse WTO ruling

in accordance with its international obligations does not relieve the agency from complying with U.S. law.

Finally, TPBI asserts that the CAFC rejected the Department's argument that different methods of comparing U.S. price to normal value support a distinction between investigations and reviews with regard to zeroing in *Dongbu* and in *JTEKT*. According to TPBI, the transaction-specific absolute dumping margins in administrative reviews are only the first step in calculating the weighted average dumping margin and, once they are aggregated in the calculation of the weighted average, they are no longer used in the calculation; it is only at this final stage that zeroing occurs in administrative reviews, but not investigations. TPBI contends that the Department's stated justification is form over substance, and does not constitute a reasonable interpretation of section 771(35) of the Act.

Consequently, for the results of remand redetermination, TPBI requests that the Department adopt a consistent interpretation of section 771(35) of the Act as not providing for zeroing in this administrative review, and recalculate TPBI's dumping margin accordingly.

Department's Position: The Department disagrees with TPBI's arguments with respect to the Department's interpretation of section 771(35) of the Act. The Department has, in fact, provided sufficient explanation and justification to support its interpretation of section 771(35) of the Act as permitting the Department to apply zeroing when aggregating the results of the average-to-transaction comparisons at issue in this antidumping administrative review, while continuing to interpret the same provision as permitting offsets in the limited context of antidumping investigations when aggregating the results of average-to-average comparisons.

As an initial matter, we disagree with TPBI that the CAFC in *Dongbu* and *JTEKT* rejected the explanation set forth by the Department in this remand redetermination. In fact, in *JTEKT*

and *Dongbu*, the CAFC did not even invalidate the Department's different interpretations of section 771(35) of the Act in the agency determinations before it, but rather sought a further explanation as to why the differences between investigations and administrative reviews meaningfully affect the Department's interpretation of its statute. In *Dongbu*, the CAFC suggested that if the Department determined on remand that it could not justify its current interpretation, it was free to choose a single consistent interpretation of the statutory language, but came to no conclusion on the issue as a matter of law or fact. In *JTEKT*, the Court held only that it had never before considered the reasonableness of interpreting section 771(35) of the Act in different ways depending on whether the proceeding is an investigation or an administrative review, and on that basis remanded back to the agency to conduct an analysis similar to that ordered in *Dongbu*. In any case, the CAFC in *Dongbu* and *JTEKT* obviously did not review the explanation provided by the Department in this remand redetermination, so there is no validity to TPBI's argument in this regard.

We also disagree with TPBI's assessment that the Department has not adopted a reasonable interpretation of section 771(35) of the Act in the context of this remand redetermination. The Department's analysis in this remand redetermination is grounded in the text of the Act and is consistent with previous rulings by the CAFC that there are real differences between investigations and administrative reviews.[35] The Department's explanation connects the provisions of the Act that discuss the use of average-to-average and average-to-transaction comparison methods (section 777A(d) of the Act) with the statutory provision that defines dumping margin and weighted-average dumping margin (sections 771(35)(A) and (B) of the Act). The statute itself provides for these different comparison methodologies and the Department has demonstrated that

[35] *See JTEKT* at 1384-1385 (where the Department pointed to differences between investigations and administrative reviews).

it reasonably interprets section 771(35) of the Act differently as it applies to average-to-average comparisons in investigations from average-to-transactions comparisons in administrative reviews. Despite TPBI's claims, the CAFC has not rejected this interpretation of the Act.

Implicit in TPBI's arguments is that even if the CAFC might have permitted the use of zeroing in administrative reviews in the past, the *Dongbu* and *JTEKT* decisions stand for the proposition that the state of the law has changed and that this is no longer the case. The Department disagrees with this interpretation of the CAFC's recent decisions. As described above, the only thing that has "changed" in the history of zeroing for purposes of this remand redetermination is that in 2006, in the *Final Modification for Investigations*, the Department adopted a limited exception to its long-standing interpretation of section 771(35)(A) of the Act, which applies to investigations using average-to-average comparisons. In that situation, the Department will not apply zeroing. On the other hand, in all other proceedings the Department interprets the term "exceeds" in the statute in the manner found permissible by the CAFC in *Timken*, *Corus I*, and subsequent cases to permit the use of zeroing. The Department adopted this exception pursuant to the statutory process set forth in Section 123, and expressly limited the scope of its applicability.[36]

In *Advanced Technology & Materials Co., Ltd. v. United* States, 2011 Ct. Intl. Trade LEXIS 104; Slip Op. 2011-105, *20-24 (CIT 2011), the CIT affirmed that the effective date of implementation of the Department's change in its zeroing practice was January 16, 2007. This is significant because the administrative context in which the Department applies a statutory interpretation, *i.e.*, the type of proceeding and/or type of comparison methodology the Department used, serves no less a compelling basis for upholding concurrent, different interpretations than does the date upon which the Department made the statutory interpretation. This is particularly true,

[36] *See Final Modification for Investigations*, 71 FR at 77724.

where, as here, the limited exception was created in response to specific WTO findings through the Section 123 process.

This litigation pertains not to an investigation, but to an administrative review, and contrary to TPBI's assertions, the Department has demonstrated that in administrative reviews it reasonably may continue to aggregate average-to-transaction comparison results without offsets, while simultaneously, in the limited context of investigations using average-to-average comparisons, aggregate average-to-average comparison results with offsets.

When the Department aggregates comparison results, it reasonably may account for differences in the underlying comparisons in the aggregating process. An average-to-average comparison inherently permits transaction-specific export prices above the average normal value to offset transaction-specific export prices below the average normal value within the same averaging group because the Department averages all transaction-specific export prices prior to the comparison for each averaging group. Similarly, once the Department compares the average export price to the average normal value for each averaging group, the Department aggregates the results from all such comparisons, allowing offsets for comparisons where the average export price exceeds the average normal value between different averaging groups. Therefore, where the Department calculates the overall weighted-average dumping margin based upon average export prices, the "average" characteristic (1) implicitly includes offsets when calculating the average export prices and (2) explicitly includes offsets when aggregating averaging-group comparisons.

In contrast, an overall weighted-average dumping margin based upon transaction-specific export prices (*i.e.*, average-to-transactions comparisons) includes no implicit offsets. With average-to-transaction comparisons, no inherent offsets occur within an averaging group because the Department compares transaction-specific export prices, not an average export price, with the

average normal value. Consistent with the absence of implicit offsets, the Department's aggregation of the results of average-to-transaction comparisons excludes explicit offsets as well. When aggregating the results of the transaction-specific comparisons, the Department totals the amounts by which the average normal value exceeds (*i.e.*, is greater than) the transaction-specific export prices and divides that sum by the total value of all U.S. sales. Therefore, for an overall weighted-average dumping margin based upon the transaction-specific export prices, the Department does not grant offsets for sales where the transaction-specific export price exceeds (*i.e.*, is greater than) the comparable average normal value.

We therefore disagree with TPBI's suggestion that the Department's citations to binding CAFC precedent that held that zeroing is a reasonable interpretation of section 771(35) of the Act does not respond to the Court's request to explain the reasonableness of the agency's statutory interpretation. The central issue on remand concerns whether the Department's long-standing and judicially-affirmed interpretation remains reasonable after the Department has recently interpreted the same provision differently in one limited context involving antidumping investigations using average-to-average comparisons. In this regard, the Department has maintained a well-established interpretation of section 771(35) of the Act, and the only limited exception to that interpretation as determined in the *Final Modification for Investigations* does not apply in the instant case. In fact, in direct contrast to the arguments made by TPBI, the CIT recently upheld the Department on this issue,[37] finding that the Department properly exercised its discretion by ceasing zeroing only in the context of investigations using average-to-average

[37] *See Union Steel*, 823 F. Supp at 1359-1360; *Grobest*, Slip Op. 2012-100 at 16-18; and *Far Eastern*, Slip Op. 2012-110 at 6-7.

comparisons.[38]

Because the Department provides further reasonable explanation for its interpretation of the statute to support the Department's use of its zeroing methodology when applying an average-to-transaction comparison methodology in administrative reviews, such as it did in the instant review, while not using its zeroing methodology when applying an average-to-average comparison methodology in investigations, the Department has not altered its decision to use zeroing in this administrative review. Accordingly, the Department has not recalculated TPBI's overall weighted-average dumping margin without the use of zeroing.

***Comment 2*:** TPBI argues that the Department's decision to reconsider its analysis regarding the transactions disregarded rule as applied in the *Final Results* and to recalculate TPBI's weighted-average dumping margins in the *Draft Remand* is not in accordance with the *Remand Order*.

According to TPBI, the petitioners had argued before the court that parties had not had the opportunity to comment on the Department's application of the transactions disregarded rule to TPBI's purchases of linear low-density resin from affiliated suppliers in the *Final Results* and, in its response brief, the Department requested a voluntary remand of its transactions disregarded analysis. TPBI contends that the Department's brief identified no error in its *Final Results* analysis as the reason for requesting a remand; rather, the Department stated that it did not provide the parties with an opportunity to comment on the agency's practice and calculations used in the *Final Results*. TPBI asserts that neither the Department nor the petitioners argued to the Court that there was insufficient record evidence regarding the transactions disregarded issue and that a reopening of the record to collect additional information was required.

[38] *Id.*

TPBI argues that, instead of allowing parties the opportunity to comment on the *Final Results* pursuant to the court's order, the Department issued two supplemental remand questionnaires to TPBI requesting additional factual information regarding its resin usage. TPBI claims that it objected to the Department's remand questionnaire in both responses, stating that the *Remand Order* instructed the Department to solicit comments regarding its original *Final Results* analysis but that, without waiving said objections, it provided the requested information.

Over these objections, TPBI contends, the Department used the new record information, applied a different transactions disregarded methodology, and recalculated the weighted-average dumping margin for TPBI in the *Draft Remand*. Only after the Department arrived at this new analysis, a different result from the *Final Results*, is it now requesting comments from TPBI and the petitioners.

TPBI argues that, by reconsidering and recalculating the weighted-average dumping margin in the *Draft Remand*, the Department has deprived TPBI of a fair and reasonable opportunity to present its views on the Department's analysis in the *Final Results*. TPBI contends that, in unilaterally altering its decision in the *Draft Remand*, the Department failed to adhere to the Court's remand instructions. Citing *NSK Corp. v. United States*, 637 F. Supp. 2d 1311, 1318 (CIT 2009) ("*NSK*"), TPBI asserts that the failure of an agency to candidly comply with the instructions in a remand order not only shows disregard for the issuing court's authority, but it is also an act that is contrary to law. TPBI alleges that, as a result of its failure to follow the Court's remand instructions, the Department has unduly prejudiced TPBI by depriving it of an opportunity to comment on the original *Final Results* and requiring it to provide additional record information. TPBI argues that the Department should either reinstate its original analysis from

the *Final Results* or remove the record information submitted by TPBI in July and provide parties an opportunity to comment on its transactions disregarded analysis in the *Final Results*.

Department's Position: We disagree with TPBI that the Department's analysis is inconsistent with the *Remand Order*. The Court remanded to the Department to reconsider our methodology for applying the adjustment for affiliated-party inputs in the *Final Results* and to provide interested parties an opportunity to comment. This is the analysis which the Department has conducted.

In response to TPBI's argument that it has been unduly prejudiced by the Department's correction of its calculations in the *Draft Remand*, rather than through some other procedure, we disagree that any such prejudice exists in this case. Nothing prevented TPBI from commenting on the methodology used in the *Final Results* in its comments on the *Draft Remand*. TPBI elected to provide no such comments. In fact, TPBI provided no substantive argument as to why the methodology used in the *Final Results* is more accurate than the methodology used in the *Draft Remand*, but instead objected to the fact that the Department requested certain detailed information from TPBI and then revised its calculations consistent with its practice. We also disagree with TPBI's assertion that it was unduly prejudiced by the Department's request that TPBI provide additional record information. The Department inherently has the authority to place new information on the record of a remand proceeding unless the remanding court specifically prohibits it from doing so.[39] The Court remanded the matter back to the Department, placed no restrictions on the Department's ability to request supplemental information to complete the remand redetermination, and the Department requested nothing but data from TPBI that was necessary to

[39] *See Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States*, 625 F. Supp. 2d 1339, 1356 n.18 (Ct. Int'l Trade 2009) ("Although Commerce is not being expressly required to reopen the administrative record, the agency clearly has the discretion to do so if appropriate.").

conduct an accurate analysis, which TPBI was able to provide. Accordingly, TPBI was not prejudiced by either the Department's information request, or the procedures the Department took in seeking comments on the *Draft Remand*.

In response to TPBI's argument that the Department did not adequately explain the reason its analysis in the *Final Results* was less accurate than that provided in the *Draft Remand*, the Department believes that its explanation in the *Draft Remand* was adequately detailed. Nonetheless, further explanation is provided here.

Put simply, different resin inputs are directly related to the physical characteristics of the output products. In other words, different retail carrier bags can be comprised of vastly different types of inputs, or mixes of inputs, as is clear on the administrative record. For example, some bags may be composed of mostly the high density resin input, while others may contain a combination of several different resins. If a bag contains more of a certain type of resin, it may be stronger, for example, while if it contains more of another type of resin, it might be more pliant. The composition of the resin inputs therefore directly impacts the type of bag produced, and accordingly impacts the material input costs of the end production. In other words, the amount and type of inputs that are used to produce a bag have a direct impact on the ultimate cost to produce that bag, and the ultimate price paid to purchase that bag. Accordingly, the inputs in question are significant to the Department's analysis.

Because the three primary types of resin inputs in question in this case are significant to the agency's analysis, and because the inputs were used by TPBI in significantly varying quantities in producing different types of bags during the period of review, the Department believes that the agency's analyses in both the *Preliminary Results* and *Final Results* were inaccurate.

In the *Preliminary Results*, the Department determined that TPBI's affiliate only sold one of the three primary types of resin inputs, LLD resin, at rates below market value (*i.e.*, sales of LLD were not made at arm's length). Therefore, applying the transactions disregarded rule, the Department calculated a single adjustment percentage for the affiliated supplier, but on the basis of LLD resin purchases only. However, the Department then applied that adjustment to all CONNUMs equally. This analysis acknowledged that there was a different value for individual resin inputs, consistent with the Department's practice, but then failed to adjust for those differences accurately by applying the adjustment to all CONNUMs, without regard to the resin content in each CONNUM.

In the *Final Results*, the Department did not analyze each of the three primary resin inputs separately under the transactions disregarded rule, but calculated a single adjustment percentage for the affiliated supplier on the basis of *all* resin inputs from that supplier (not just LLD resin) and applied this adjustment to all CONNUMs equally. In other words, the Department ignored the differences in costs to produce bags that results from the use of different resin inputs altogether, and, as in the *Preliminary Results*, also failed to accurately assign different costs to different individual resin inputs in the Department's calculations. This analysis was inaccurate and, like the analysis in the *Preliminary Results*, inconsistent with the Department's practice.

Accordingly, in this results of remand redetermination, in accordance with our practice, the Department has applied the transactions disregarded rule pursuant to section 773(f)(2) of the Act, on a resin-specific basis for a given supplier to TPBI. The Department has applied this analysis to a portion of each CONNUM based upon the content of LLD in those particular bags at issue, because, of the three primary resin inputs, the only transactions between the affiliate and TPBI that

were disregarded (because they were not sold at arm's length during the period of review), were the purchases of LLD resin.

Specifically, the Department has conducted this analysis by comparing resin-specific transfer prices to resin-specific market prices. Because the only resin type found to have been acquired at less than market prices was LLD, the Department adjusted each CONNUM's cost data based only on its consumption of the LLD resin input.

This analysis is more accurate and specific than that applied in either the *Preliminary Results* or the *Final Results*, and is consistent with the Department's practice in applying the transactions disregarded rule to products with significant inputs where these significant inputs are consumed in disproportionate quantities in the production of the different products subject to review.

Thus, for the foregoing reasons, the Department has continued to use the methodology it used in the *Draft Remand*.

Results of Redetermination

In accordance with the CIT's *Remand Order*, the Department has further explained its interpretations of section 771(35) of the Act and reconsidered its application of the transactions disregarded rule in this case, consistent with its practice. The Department's analysis has resulted in a recalculation of the dumping margin for TPBI. No change in the calculation occurred after the *Draft Remand*. The recalculated weighted-average dumping margin for TPBI for the period August 1, 2008, through July 31, 2009, for polyethylene retail carrier bags from Thailand was 20.15 percent in the *Final Results*, and as a result of the Department's modified calculations, is now 21.29 percent.

Paul Piquado
Assistant Secretary
for Import Administration

14 SEPTEMBER 2012
Date