

November 6, 2009

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Polyethylene Retail Carrier Bags from
Malaysia

Summary

We have analyzed the comments in the case briefs and rebuttal briefs of Euro Plastics Malaysia Sdn. Bhd. (Euro Plastics), and the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners) in the administrative review of the antidumping duty order on polyethylene retail carrier bags from Malaysia. As a result of our analysis, we have made changes, including corrections of certain inadvertent programming and ministerial errors, in the final margin calculation. We recommend that you approve the positions we have developed in the Discussion of Comments section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments by parties:

1. Product-Specific Resin Cost
2. G&A and Financial Expenses
3. Product-Specific Yield Losses
4. Home-Market Sales Tax and Import Duties
5. Home-Market Freight Expenses
6. Home-Market Credit Expense
7. Standard Weight versus Actual Weight
8. U.S. Indirect Selling Expenses
9. U.S. Discounts

Background

On July 9, 2009, the Department of Commerce (the Department) published in the *Federal Register* the preliminary results of the administrative review of the antidumping duty order on polyethylene retail carrier bags from Malaysia. See *Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 32880 (July 9, 2009) (*Preliminary Results*).

The period of review (POR) is August 1, 2007, through July 31, 2008. The review covers one respondent, Euro Plastics. We invited interested parties to submit comments on the *Preliminary Results*. Euro Plastics and the petitioners filed their case briefs with the Department on August 10, 2009, and rebuttal briefs on August 17, 2009.

Discussion of Comments

1. Product-Specific Resin Cost

Comment 1: Euro Plastics argues that the Department erred in adjusting Euro Plastics's reported resin cost to reflect a single average cost for each resin type as defined by the Department's physical characteristics, *i.e.*, high-density polyethylene resin, low-density polyethylene resin, and low linear-density polyethylene resin. According to Euro Plastics, the Department's questionnaire requires the company to report its costs based on its normal books. Euro Plastics claims that its accounts distinguish and apply different costs to different resin types. Euro Plastics contends that the Department's revision of the resin costs ignores differences in products as recognized by the market and Euro Plastics's normal accounting. Euro Plastics claims that the Department accepted the same methodology that it used in the previous administrative review.

Euro Plastics maintains that the Department's adjustment distorts the product characteristics and their uses in this administrative review. Euro Plastics states that, in its calculation of the average resin cost, the Department added master batch to high-density polyethylene resin even though master batch is a separate product characteristic from polyethylene resin and should not be included in the costs for high-density polyethylene resin. Euro Plastics also contends that the additive, which the Department also included as part of the high-density polyethylene resin cost, is used solely for producing the foreign like product and that the additive should not be allocated to all high-density polyethylene resin in all markets.

Euro Plastics states that the Department included the cost for calcium carbonate only in the cost for high-density polyethylene resin despite the fact that this chemical ingredient may also be used as a replacement for other resin types, such as low linear-density polyethylene resin. Thus, Euro Plastics argues, the Department should have allocated the cost for this chemical ingredient to low linear-density polyethylene resin and high-density polyethylene resin proportionally.

Euro Plastics argues further that valuing recycled and virgin resin at the same cost for purposes of this administrative review disregards its own experience and the Department's treatment of recycled resin cost in a previous segment of this proceeding. Euro Plastics explains that, according to *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128 (June 18, 2004), and the accompanying Issues and Decision Memorandum (I&D Memo) at Comment 5 (*Final Determination*), a Malaysian respondent named Bee Lian valued recycled resin only at the additional processing costs. Thus, according to Euro Plastics, the Department recalculated Bee Lian's resin costs by averaging recycled and virgin costs, but only for purposes of the difference-in-merchandise adjustment,

while using Bee Lian's reported cost of recycled resin for the sales-below-cost test. Euro Plastics argues that, unlike Bee Lian, it values recycled resin based on its market price and, as such, the reported costs reflect differences in production costs associated with the different markets. Therefore, Euro Plastics argues, the Department can use Euro Plastics's reported costs both for purposes of determining sales below cost and for the difference-in-merchandise adjustments or, at the minimum, the Department should use Euro Plastics's reported costs for the sales-below-cost test.

The petitioners argue that Euro Plastics's proposed cost-allocation methodology is inconsistent with the established model-match methodology and that the Department should continue to apply the cost adjustments it made for the *Preliminary Results*. According to the petitioners, under Euro Plastics's approach, products with identical resin characteristics are assigned different resin costs based upon extraneous characteristics not captured by the model-match methodology such as the different inputs applicable to each of the Department's physical characteristics.

The petitioners refute Euro Plastics's claim that the Department should use the company's reported resin cost because it is based on the costs recorded in the company's normal books. The petitioners argue that, because Euro Plastics does not normally track costs on a product-specific basis, the Department's revision does not depart from Euro Plastics's cost or financial accounting system.

The petitioners explain that, in the less-than-fair-value investigation, the Department determined that it is inappropriate to grant a difference-in-merchandise adjustment for cost differences arising from characteristics that are not captured by the model-match methodology. The petitioners suggest that, because the facts in this administrative review are similar, the Department's adjustment is consistent with the approach from the less-than-fair-value investigation. The petitioners argue that Euro Plastics's attempt to distinguish the less-than-fair-value investigation is not persuasive. They assert that, in the less-than-fair-value investigation, the Department revised Bee Lian's cost not because the company valued recycled resin improperly but because Bee Lian's methodology assigned different costs to products improperly which, for model-match purposes, have identical physical characteristics.

The petitioners point out that Euro Plastics's assertion that the Department accepted the same methodology it used in the previous administrative review cannot be confirmed or rebutted because there was no discussion of Euro Plastics's cost methodology in *Polyethylene Retail Carrier Bags from Malaysia: Final Results of Antidumping Duty Administrative Review*, 72 FR 44825 (August 9, 2007) (*Final Results 2005-06*). The petitioners claim that, even if Euro Plastics did use such a methodology in a previous administrative review, the company did not disclose it at the same level of detail and the Department did not have any occasion to address the appropriateness of the methodology. The petitioners support the Department's cost adjustments in the *Preliminary Results* because these adjustments do not contradict any established practice. The petitioners argue that the Department should continue to use the cost database that it revised for the test of below-cost sales and the difference-in-merchandise adjustments in the final results.

Department's Position: We agree with the petitioners that Euro Plastics's cost-calculation methodology assigns different costs improperly to products which have identical physical characteristics as identified in our model match-methodology. We disagree with Euro Plastics's claim that, because Euro Plastics's valuation of recycled resin in this administrative review is different from Bee Lian's valuation of recycled resin in the less-than-fair-value investigation, we should use Euro Plastics's reported costs for the cost test and the difference-in-merchandise adjustments or, at least, use Euro Plastics's reported costs for the cost test. Normally, the product costs a respondent reports should reflect cost differences attributable to the different physical characteristics we defined to ensure that the product-specific costs we use for the below-cost test reflect the corresponding product's physical characteristics accurately without hiding extraneous factors that may affect differences in costs. In addition, section 773(a)(6)(C)(ii) of the Tariff Act of 1930, as amended (the Act), requires that we account for and adjust for any differences attributable to physical differences between subject merchandise and foreign like product if similar products are compared. For this purpose, 19 CFR 351.411(b) directs us to consider differences in variable costs associated with the physical differences in the merchandise, *i.e.*, the difference-in-merchandise adjustment. Normally, we use a respondent's product-specific costs (that reflect cost differences attributable to our defined physical characteristics as described above) for the below-cost test. See section 773(b)(1) of the Act. Similarly, the product-specific costs should incorporate differences in variable costs associated with the physical differences in the merchandise in accordance with 19 CFR 351.411(b) and be used for the difference-in-merchandise adjustment. In contrast, where a respondent's reporting methodology results in cost differences extraneous to our identified physical characteristics, we may not rely on a respondent's reported methodology.

In this administrative review, Euro Plastics used, in addition to the virgin resin types defined in our physical characteristics, certain substitutes for the virgin resin such as recycled resin and calcium carbonate not defined in our physical characteristics. While the record indicates that these substitutes are interchangeable with the virgin resin, the cost of these resin substitutes is different from the cost of the virgin resin. Consequently, products with identical resin characteristics for model-matching purposes that use different percentages of calcium carbonate or recycled resin input will have a different material cost. Thus, Euro Plastics's reporting methodology results in cost differences that are extraneous to the differences in the physical characteristics in our model-match methodology. Therefore, for the final results, to limit the effect of extraneous material-cost differences that are unrelated to differences in the physical characteristics identified in our model-match methodology, we have continued to adjust Euro Plastics's direct material cost to reflect a single average cost for each resin type consumed, *i.e.*, high-density polyethylene resin, low-density polyethylene resin, and low linear-density polyethylene resin, during the POR and we have continued to use the adjusted cost for the below-cost test and the difference-in-merchandise adjustment for Euro Plastics.

In the less-than-fair-value investigation, we calculated different costs for Bee Lian to use for the below-cost test and the difference-in-merchandise adjustment. See *Final Determination* and the

accompanying I&D Memo at Comment 5. We do not consider our decision in the less-than-fair-value investigation to be consistent with our normal practice of calculating one cost used for the sales-below-cost test and the difference-in-merchandise adjustment even in cases in which we revised material costs to neutralize the cost differences resulting from extraneous factors other than differences in the physical characteristics. See, e.g., *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007), and the accompanying I&D Memo at Comment 1.

We disagree with Euro Plastics that our adjustment constitutes a deviation from the company's normal books and records. We agree with the petitioners that Euro Plastics does not calculate product-specific costs in the normal course of business and that the reported costs were developed by the company solely for purposes of preparing its antidumping response, as stated by the respondent. See Euro Plastics's December 16, 2008, response at 18 and 19. Therefore, our adjustment is not a departure from the costs Euro Plastics recorded in its books and records. We also agree with the petitioners that Euro Plastics's cost-reporting methodology was not an issue we discussed in the previous administrative review and, as such, we did not explicitly accept this cost-reporting methodology in the prior review. See *Final Results 2005-06*.

With respect to Euro Plastics's assertion regarding our inclusion of master batch and calcium carbonate in the calculation of the average resin cost, the record of the review indicates that Euro Plastics treats master batch and calcium carbonate as interchangeable substitutes for high-density polyethylene resin. See Euro Plastics's April 29, 2009, supplemental response at 7, in which Euro Plastics stated that master batch and calcium carbonate are high-density polyethylene resin's substitutes. Moreover, Euro Plastics's reported blending formulas and assignment of control numbers to internal products indicate that Euro Plastics classifies calcium carbonate as part of the high-density polyethylene resin input. *Id.* at Exhibits D-2 and D-3. Euro Plastics stated that "calcium carbonate . . . is used as a substitute of polyethylene resin and as such, it is appropriate to treat the input as part of polyethylene resin." *Id.* at 2. Euro Plastics confirmed further that it treats calcium carbonate and master batch as interchangeable inputs. Euro Plastics stated that, in its accounting system, "calcium carbonate is classified with other non-polyethylene inputs in the mixing process, e.g., it is classified as part of Master Batch, or M/Batch. This is because in addition to being a replacement for polyethylene, calcium carbonate it also serves the function of master batch . . ." *Id.* Therefore, we find it reasonable to include the cost of calcium carbonate and master batch as part of the high-density polyethylene resin cost.

Contrary to Euro Plastics's assertion, the record of this review indicates that Euro Plastics used additives not only for the foreign like product but also for the subject merchandise during the POR. *Id.* at Exhibits D-2 and D-3. As such, we have continued to allocate the cost of the additives to all high-density polyethylene resins for home-market and U.S. sales.

2. G&A and Financial Expenses

Comment 2: The petitioners argue that the Department should recalculate Euro Plastics's reported general and administrative (G&A) and financial-expense ratios using partial adverse facts available. The petitioners claim that, despite repeated requests from the Department and Euro Plastics's own explicit commitment to submit its audited 2008 financial statements as soon as they become available, the company has not provided its audited 2008 financial statements and its parent company's audited 2008 financial statements. According to the petitioners, Euro Plastics has not submitted the G&A and financial-expense ratios for the 2008 period either. The petitioners assert that, based upon past experience, Euro Plastics's audited 2008 financial statements should have been finalized already. Consequently, the petitioners maintain, Euro Plastics did not act to the best of its ability to comply with a request for information and the Department should apply partial adverse facts available in calculating the G&A and financial-expense ratios. The petitioners suggest that the Department recalculate Euro Plastics's G&A and financial-expense ratios based upon the highest ratio calculated from the company's 2005, 2006, and 2007 financial statements for the final results. The petitioners state further that the 2007 financial statements of the parent company EPL Acquisitions (Sub) BV comprise the only financial statement on the record for purposes of recalculating the financial-expense ratio. The petitioners argue that, regardless whether the Department applies partial adverse facts available, the Department should adjust Euro Plastics's reported financial-expense ratio to include certain items that represent financial expenses.

The petitioners request that the Department remove from the record the draft 2008 financial statements of Euro Plastics, EPL Acquisitions (Sub) NV, and EP USA Ltd. and the corresponding calculation of the G&A and financial expenses based on these statements, all of which Euro Plastics submitted to the Department on the same day on which Euro Plastics filed its rebuttal brief with the Department. The petitioners argue that the due date the Department established has expired. The petitioners argue further that, although the Department has requested that Euro Plastics provide its audited 2008 financial statements as soon as they become available, the current submission contains no such audited financial statements, but rather unaudited draft financial statements, which do not fall within the narrow scope of the Department's request for audited financial information. Thus, the petitioners suggest, the draft financial statements should be excluded from the record pursuant to 19 CFR 351.302(d).

The petitioners also claim that Euro Plastics's assertions regarding the current unavailability of its audited 2008 financial statements due to its outside auditors' delay in completing the audit for the 2008 financial statements are new factual information that should be removed from the record of this administrative review. The petitioners request that the Department return to Euro Plastics the rebuttal brief and request that Euro Plastics resubmit its rebuttal brief without new factual information. In the alternative, the petitioners request that the Department provide the petitioners with an opportunity to file a reply brief addressing the reliability of the new information as well as Euro Plastics's proposed methodology for recalculating its G&A and financial expense ratios.

Euro Plastics states that, even though it is aware of its obligation to submit the audited 2008 financial statements once they are issued, its 2008 audited financial statements are not available yet because the independent auditors have not issued their opinion on the financial statements. Euro Plastics argues that penalizing the company for not submitting non-existent documents that are not within its control would be completely unfair. Euro Plastics opposes the use of partial adverse facts available as the petitioners proposed for the final results.

Euro Plastics argues that, because it submitted the draft 2008 financial statements of Euro Plastics, EPL Acquisitions (Sub) NV, and EP USA Ltd. on the day it submitted its rebuttal brief, it did respond to the Department's supplemental questionnaire in which the Department requested the submission of these financial statements. Euro Plastics states that it also provided the calculation of the G&A and financial-expense ratios based on these draft 2008 financial statements.

Euro Plastics did not comment on the petitioners' argument that the Department should adjust Euro Plastics's reported financial expense ratio to include certain items that represent financial expenses.

Department's Position: We have decided that the use of partial adverse facts available in the calculation of the G&A and financial-expense ratios is not warranted for Euro Plastics. In its March 19, 2009, supplemental response, Euro Plastics stated that "the final audited financial statements for year 2008 should become available in July." Accordingly, in the *Preliminary Results*, we stated our intent to use the audited 2008 financial statements for the calculation of the G&A and financial-expense ratios because the POR covers more months in 2008 than in 2007. We requested that Euro Plastics recalculate its G&A and financial-expense ratios using the audited 2008 financial statements. See *Preliminary Results*, 74 FR at 32882.

Euro Plastics did not have the audited 2008 financial statements by July 2009 and the company provided in its rebuttal brief the draft 2008 financial statements for Euro Plastics, EPL Acquisitions (Sub) NV, and EP USA Ltd., as well as the calculation of the G&A and financial expense ratios based on these draft 2008 financial statements. Because we requested that Euro Plastics provide the audited 2008 financial statements, not the draft 2008 financial statements, we rejected Euro Plastics's submission of the draft 2008 financial statements as untimely filed new factual information and returned them to the company. See the Department's September 15, 2009, letter to Euro Plastics.

We did not find Euro Plastics's assertions regarding the current unavailability of its audited 2008 financial statements due to its outside auditors' delay in completing the audit to be new factual information that should also be removed from the record. Euro Plastics stated in its supplemental response that it will provide the audited 2008 financial statements once the audits of these financial statements are completed and become available. See Euro Plastics's March 19, 2009, supplemental response at 7, in which Euro Plastics stated, "The 2008 accounts . . . have not been audited as this moment. The companies expect the auditing will start in April or May and complete in June. The final audited financial statements for year 2008 should become

available in July.” Therefore, Euro Plastics’s statement in its rebuttal brief that the audited 2008 financial statements are not available yet “because the auditors have not issued their opinion on these companies” is not new factual information. This statement indicates reasonably that, once the auditing started, the resulting audited 2008 financial statements would be available only when the auditors issue their opinion on the financial statements. Therefore, we did not remove Euro Plastics’s rebuttal brief from the record of this administrative review.

We find that, because the company’s auditors have not issued their opinions on the 2008 financial statements, there are no audited 2008 financial statements in existence and application of partial adverse facts available is not appropriate. The record of the review does not support the petitioners’ claim that Euro Plastics could have produced those statements as it had intended. Therefore, for the final results, we have continued to use the 2007 financial statements to calculate Euro Plastics’s G&A and financial-expense ratios.

We also have decided that certain items recorded on EPL Acquisitions (Sub) BV’s 2007 financial statements should not be included in the calculation of the financial-expense ratio. Due to the proprietary nature of this issue, see the Cost Calculation Memorandum, dated November 6, 2009, for a detailed discussion of the facts and our findings.

3. Product-Specific Yield Losses

Comment 3: The petitioners argue that Euro Plastics calculated its product-specific yield losses incorrectly. The petitioners explain that Euro Plastics reported the punch-out percentage (the resin yield loss that occurs when a portion of the bag is punched out to make a handle in a bag) for each model in its cost buildup. According to the petitioners, while Euro Plastics used the punch-out percentage to calculate the recovery of the product-specific resin, Euro Plastics did not use this percentage to adjust the amount of resin that must go into the product to account for this yield loss. The petitioners claim that this incorrect methodology Euro Plastics used results in the models with higher punch-out percentages (yield losses) having lower per-kilogram costs. The petitioners request that the Department adjust Euro Plastics’s resin cost for the final results by calculating the weighted-average punch-out percentage for all products and then determining a punch-out adjustment factor for each product (as that product’s punch-out percentage minus the weighted-average punch-out percentage) and applying that adjustment factor to the product-specific cost of resin.

Euro Plastics did not comment on this issue.

Department’s Position: In its calculation of the resin costs, Euro Plastics used net production quantities rather than gross quantities to allocate the resin cost to products. Euro Plastics then applied the product-specific yield loss to the resulting resin cost to calculate the recycled resin offset. Thus, while Euro Plastics reported material costs which reflect the offset due to the product-specific scrap recovery correctly, it did not use the same product-specific yields to calculate the resin input cost to reflect the product-specific yield losses.

By making the petitioners' proposed adjustment, we have revised Euro Plastics's calculation of the material cost by using the gross production quantities for the material cost calculation and, as a result, the revised resin input cost reflects the product-specific yield losses. Therefore, for the final results, we have adjusted Euro Plastics's material cost as calculated for the *Preliminary Results* to account for the product-specific yield losses. See the Cost Calculation Memorandum for details.

4. Home-Market Sales Tax and Import Duties

Comment 4: Euro Plastics argues that, pursuant to section 773(a)(6)(B)(iii) of the Act, the Department should deduct from the home-market gross unit price the sum of import duties, sales taxes, and transporter charges which Euro Plastics reported under the field variable TAXH in its home-market sales database. Euro Plastics explains that, because it is located in a "Licensed Manufacturing Warehouse," which is outside the Malaysian customs territory, it did not pay import duties on raw materials that it imported for manufacturing the products for export sales. According to Euro Plastics, it paid import duties and sales taxes only on the finished products that entered the Malaysian customs territory. Citing *Polyethylene Retail Carrier Bags from Malaysia: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 26600 (May 10, 2007), *Final Results 2005-06*, and *Extruded Rubber Thread From Malaysia: Final Results of Antidumping Duty Administrative Review*, 66 FR 11254 (February 23, 2001),¹ Euro Plastics contends that the Department has always deducted the import duties and sales taxes from the home-market gross unit price when Malaysian companies claimed deductions of the import duties and sales taxes from the home-market gross unit price. Euro Plastics also reiterates its claim for the deduction of the transporter charges as a movement expense incurred in the delivery of the foreign like product.

Euro Plastics argues that it provided sufficient information for the Department to deduct the import duties and sales taxes from the home-market gross unit price because the amounts equal five percent and ten percent of the home-market gross unit price, respectively, on a consistent basis. Euro Plastics reiterates that, whether the import duties, sales tax, and transporter charges were reported as a single charge or as separate items, the Department should deduct these items from the home-market gross unit price to account for differences in either taxation or movement expenses.

The petitioners argue that Euro Plastics's arguments on this issue are invalid. The petitioners contend that the *Federal Register* notices Euro Plastics cites concerning this issue do not discuss this issue and therefore do not support Euro Plastics's position. The petitioners explain that the statute requires only the deduction of taxes, not import duties, from the home-market gross unit price as the Department stated in the *Preliminary Results*. Citing section 772(c)(2) of the Act, which distinguishes between tax and import duties and requires the Department to deduct both

¹ Euro Plastics cited this notice incorrectly. See Euro Plastics's August 10, 2009, case brief at 5. A *Federal Register* notice published on February 23, 2001, with the citation 66 FR 11269 is *Certain Pasta From Italy: Final Results of the Third Countervailing Duty Administrative Review*, 66 FR 11269 (February 23, 2001).

taxes and duties in the calculation of U.S. price, the petitioners assert that taxes and import duties are distinct and separate terms and that import duties should be deducted only from U.S. gross unit price, not home-market gross unit price. The petitioners explain that presumably Congress intended not to require statutorily the deduction of duties from the home-market gross unit price.

The petitioners state that section 773(a)(6)(B)(iii) of the Act permits the deduction of taxes only when they have been remitted by the respondent to the foreign government or not collected in the first place by the respondent and only to the extent that such taxes are included in the home-market gross unit price. The petitioners claim that Euro Plastics did not satisfy its burden to produce evidence to justify the deduction of the import duties, sales taxes, and transporter charges from the home-market gross unit price. According to the petitioners, Euro Plastics has not demonstrated that the home-market gross unit prices include the import duties, sales taxes, and transporter charges and that deduction of these amounts from the home-market gross unit price is appropriate. The petitioners explain that Euro Plastics did not collect the sales taxes or that it rebated the taxes collected to the Malaysian government.

The petitioners state that, despite the request from the Department, Euro Plastics did not segregate the import duties, sales taxes, and transporter charges from one combined amount to three individual amounts in its home-market sales database. According to the petitioners, Euro Plastics explained in its March 19, 2009, supplemental response at Exhibit 14 only that the sales taxes are charged at ten percent in general and import duties range from zero percent to five percent. The petitioners argue that Euro Plastics provided only vague, non-specific information that does not allow the Department to disaggregate the reported amounts under the field variable TAXH in a transaction-specific basis for each home-market sales transaction.

Department's Position: For the final results we have continued to deny Euro Plastics's claim for the deduction of the sum of import duties, sales taxes, and transporter charges which Euro Plastics reported under the field variable TAXH in its home-market sales database. A respondent seeking our decision in its favor has the burden to produce and present information to support its claim. The burden of evidentiary production belongs to "the party in possession of the necessary information." See, e.g., *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (CAFC 1993). A respondent has the burden to present the information in the first instance with its request for a decision in its favor. See *NTN Bearing Corp. of Am. v. United States*, 997 F.2d 1453, 1458 (CAFC 1993).

Despite our request to report import duties and sales taxes separately in the home-market sales database, Euro Plastics continued to report the sum of import duties, sales taxes, and transporter charges. Euro Plastics did not even provide the description for transporter charges. In addition, we do not have sufficient narrative documents and source documentation to find the accurate percentages of import duties, sales taxes, and transporter charges from the home-market gross unit price. Although Euro Plastics provided Malaysian customs documents in its March 19, 2009, supplemental response at Exhibit 13, they do not support the company's claims that the import duties and sales taxes are five percent and ten percent of the home-market gross unit price, respectively. In fact, these documents do not support the gross unit prices, import duties, sales

taxes, and transporter charges for the specific home-market sales transactions Euro Plastics claimed that these documents support. The evidence on the record indicates only vague, non-specific information on the percentages of import duties and sales taxes for each home-market sales transaction for which Euro Plastics provided just the sum of import duties, sales taxes, and transporter charges.

For the above reasons, we have continued to deny Euro Plastics's claim for deduction of the sum of import duties, sales taxes, and transporter charges from the home-market gross unit price.

5. Home-Market Freight Expenses

Comment 5: Citing section 773(a)(6)(B)(ii) of the Act, Euro Plastics asserts that the Department should have deducted inland-freight expenses from the home-market gross unit price. Euro Plastics argues that it satisfied the statutory requirement by allocating home-market inland-freight expenses in a reasonably accurate manner based on the information available to it because the trucks the freight company used vary in size and the information on the volume of each shipment was not available.

Euro Plastics argues further that reporting inland-freight expenses based on a shipment-specific basis would not be more accurate than the methodology it used based on the weighted-average expense for the POR. Euro Plastics states that, although it could have reported the inland-freight expenses on a shipment-specific basis, the allocation of such expenses to the individual invoices involved in the shipment would have required an allocation based on weight. Euro Plastics doubts that allocating these expenses on a shipment-specific basis would have resulted in a level of accuracy any greater than the allocation methodology it used because some shipments involved multiple stops at different destinations. As a result, Euro Plastics asserts, the Department's decision not to deduct the inland-freight costs is based on an erroneous assumption that reporting inland-freight expenses on a shipment-specific basis would have been more accurate than the weighted-average basis that it used.

The petitioners support the Department's decision in the *Preliminary Results* not to deduct Euro Plastics's home-market inland-freight expenses from the home-market gross unit price based on the fact that Euro Plastics's reported source documentation indicates that it could have reported these expenses in a more specific basis upon the Department's request. Citing 19 CFR 351.401(g), the petitioners argue that the central issue is not whether the inland-freight expenses Euro Plastics reported are "based on the information available to" Euro Plastics or "reasonably accurate" but whether Euro Plastics complied with its obligation to report its inland-freight expenses on the most specific basis permitted by its records. The petitioners assert that, because Euro Plastics is able to report home-market inland-freight expenses on a shipment-specific basis but it chose not to do so even after the Department instructed it explicitly to allocate the expense on a more specific basis, it is appropriate for the Department to deny Euro Plastics's claim for deduction of inland-freight expenses.

The petitioners argue that the allocation of these expenses on a shipment-specific basis would

have been more accurate because it would have been far more specific to the individual transactions involved in that shipment than the allocation methodology Euro Plastics used. The petitioners argue further that, even if Euro Plastics believed that shipment-specific, weight-based allocations would not be sufficiently accurate for those shipments involving multiple stops, it could have developed reasonable methodologies for allocating shipment-specific expenses among products shipped to the different destinations by using adjustment factors based on relative distances or based on the company's own standard cost accounting system which estimates destination-specific rates for inland-freight expense. The petitioners state that several allocation methodologies could have been envisioned because Euro Plastics maintains highly detailed records of its freight rates.

Department's Position: For the final results, as adverse facts available, we did not deduct Euro Plastics's home-market inland-freight expenses from its home-market gross unit price because the source documentation Euro Plastics provided indicates that the company could have reported inland-freight expenses on a more specific basis in response to our request. A respondent seeking our decision in its favor has the burden to produce and present information to support its claim. The burden of evidentiary production belongs to "the party in possession of the necessary information." See, e.g., *Zenith Elecs. Corp*, 988 F.2d at 1583. A respondent has the burden to present the information in the first instance with its request for a decision in its favor. See *NTN Bearing Corp. of Am.*, 997 F.2d at 1458.

Record evidence indicates that Euro Plastics could have reported transaction-specific inland-freight expenses or allocated inland-freight expenses on a more specific basis, but the company did not do so. For example, Euro Plastics provided documents showing freight charges to certain destinations but it did not use such information to report its inland-freight expenses on a more specific basis. Also, Euro Plastics provided inland-freight documents for certain home-market sales transactions but it did not use such documents to report transaction-specific inland-freight expenses. Moreover, Euro Plastics did not explain in sufficient detail why these documents are not useful in reporting more specific inland-freight expenses. We find that evidence on the record does not support Euro Plastics's claim that it cannot report its home-market inland-freight expenses in a more specific manner.

Moreover, we do not agree with Euro Plastics's claim that a more specific allocation methodology would not have resulted in more accurate freight expenses. Record evidence indicates that a more specific destination-based allocation methodology would have resulted in a more accurate calculation of freight expenses for delivering the product to a specified destination in each sales transaction. The methodology Euro Plastics used to calculate its freight expenses does not reflect the freight expenses the company incurred to deliver the product to the destination specified in each sales transaction. See preliminary analysis memorandum dated July 2, 2009, for more details which contain Euro Plastics's business-proprietary information.

6. Home-Market Credit Expense

Comment 6: The petitioners disagree with the Department's decision not to calculate credit expenses in the *Preliminary Results* for the home-market sales transactions for which Euro Plastics did not receive payment from its customers and did not report the date of receipt of payment. For these home-market sales transactions, the petitioners request that the Department calculate the credit expenses using the date of Euro Plastics's initial response to the original questionnaire, dated December 9, 2008, as the date of receipt of payment. Euro Plastics requests that the Department use the date of the *Preliminary Results* as the date of receipt of payment.

Department's Position: For Euro Plastics's home-market sales transactions for which Euro Plastics did not receive payments from its customers, we have used June 25, 2009, which was the due date for Euro Plastics's last supplemental response, as the date of receipt of payment to calculate the credit expenses in the final results. See, e.g., *Chlorinated Isocyanurates From Spain: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 69 FR 75902, 75905 (December 20, 2004), unchanged in *Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24506 (May 10, 2005). See the Euro Plastics Final Analysis Memorandum, dated November 6, 2009, for details which contain Euro Plastics's business-proprietary information.

7. Standard Weight versus Actual Weight

Comment 7: Euro Plastics argues that the Department should use standard weight, not actual weight, for the calculation of the antidumping duty margin in the final results. Euro Plastics claims that it uses standard weight, not actual weight, in its internal and external documents such as invoices and in its usual accounting practices. Euro Plastics explains that it measures the weight of bags manually at the end of production process to confirm the production quantity. Euro Plastics asserts that its manual weighing is subject to human error "as confirmed by the Department during this proceeding."

Euro Plastics claims that its standard weight allows for tolerance and human error. Euro Plastics asserts that it has demonstrated in its responses that its standard weight is accurate. Citing *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007), Euro Plastics states that the Department has required respondents to follow the methodology normally used in the ordinary course of business.

Euro Plastics claims that its situation with respect to standard and actual weights is similar to the situation Bee Lian faced in the *Final Determination* and the accompanying I&D Memo at Comment 3. According to Euro Plastics, the Department used the number of pieces based on a standard weight to calculate prices and costs for Bee Lian for the *Final Determination* because Bee Lian reported a production weight that included the die cuts. Euro Plastics argues that it has reported similar data, e.g., standard weight of bags, which the Department can use to resolve a

similar issue regarding the use of standard and actual weights.

The petitioners claim that Euro Plastics's standard weights are incorrect and distortive. The petitioners contend that the use of Euro Plastics's standard weights would mask dumping artificially by understating U.S. sales quantities and overstating home-market sales quantities on an overall weighted-average basis. The petitioners assert that this distortion appears to result from the fact that, as Euro Plastics acknowledges, its standard weights are not product-specific but determined on a product-category basis.

The petitioners do not agree with Euro Plastics's suggestion that its actual weight might also be distortive because it measures actual weights manually and thus its actual weights are subject to human error. The petitioners assert that there is no reason to believe that any of Euro Plastics's reported actual weights, which Euro Plastics collected and maintained for every sale in the normal course of business, are incorrect. The petitioners also point out that Euro Plastics has not identified any specific transaction for which its actual quantity is aberrational or inaccurate.

The petitioners state that the substantial differences between actual and standard weights that they identified in earlier comments are not due to human errors. The petitioners reiterate that the actual weights are correct and the standard weights are incorrect because standard weights do not account for product-specific densities. The petitioners explain that, because Euro Plastics measures actual weights in its normal course of trade for container loading and shipping documentation, Euro Plastics's assertion that it uses standard weight in the ordinary course of business in its internal and external documents is irrelevant for margin-calculation purposes.

The petitioners explain that Euro Plastics's citation to the *Final Determination* for the Department's treatment of Bee Lian is inapposite because in the *Final Determination* the Department did not have Bee Lian's actual weight on the record. According to the petitioners, Bee Lian's only reported weights were stated "gross of the die cuts," which indicated that they included the weight of the handle punch-outs. Therefore, the petitioners explain, the Department had to calculate Bee Lian's margin on an alternative basis. The petitioners argue that, because Euro Plastics reported correct actual weights, there is no reason to resort to some alternative methodology to calculate the antidumping duty margin for the final results.

The petitioners state that the Department calculated Euro Plastics's antidumping duty margin in the most recently completed administrative review based on the actual weight. The petitioners assert that there is no reason to use the inaccurate and distortive standard weight.

Department's Position: In calculating an antidumping duty margin, we normally rely on the most accurate information available on the record. As such, the Department normally prefers data based on actual recording by the company, rather than standard measurements. See *Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009), and accompanying I&D Memo at Comment 13. Euro Plastics has not provided convincing evidence to demonstrate that its standard weight is more accurate than its

actual weight. Accordingly, for the final results, we consider the actual weights to be more accurate than the standard weights. As such, we have continued to use the actual weights in calculating the per-unit sales prices and costs.

8. U.S. Indirect Selling Expenses

Comment 8: According to the petitioners, Euro Plastics reported that its U.S. indirect selling expenses should be based on expenses incurred in 2008 because all U.S. sales were made in 2008. The petitioners argue that, because Euro Plastics has not provided the audited 2008 financial statements of EP USA Ltd., its affiliated U.S. reseller, despite the Department's repeated requests, Euro Plastics cannot reconcile reported U.S. indirect selling expenses with the expenses reported in EP USA Ltd.'s 2008 financial statements to ensure that EP USA Ltd.'s expenses have been captured fully and allocated appropriately to the subject merchandise.

The petitioners call for an application of partial adverse facts available in calculating Euro Plastics's U.S. indirect selling expenses because Euro Plastics did not act to the best of its ability to comply with the Department's request for information. The petitioners suggest that, for the calculation of partial adverse facts available for Euro Plastics's U.S. indirect selling expenses, the Department use Euro Plastics's 2007 financial statements with the presumption that all expenses other than movement expenses supported the company's sales operations.

Euro Plastics did not comment on this issue.

Department's Position: We find that EP USA Ltd.'s 2007 audited financial statements are the most appropriate information to base our calculation of Euro Plastics's U.S. indirect selling expenses. Because Euro Plastics's independent auditors have not issued their opinion on EP USA Ltd.'s audited 2008 financial statements, we do not find that partial adverse facts available is appropriate to calculate Euro Plastics's U.S. indirect selling expenses. Therefore, we recalculated Euro Plastics's U.S. indirect selling expenses based on EP USA Ltd.'s 2007 audited financial statements without a presumption that all expenses other than movement expenses supported the company's sales operations. Instead, to recalculate Euro Plastics's U.S. indirect selling expenses based on EP USA Ltd.'s audited 2007 financial statements, we used the values under the expense categories that Euro Plastics reported as those that supported sales operations. For further information on our calculations, see Euro Plastics Final Analysis Memorandum, dated November 6, 2009, for details which contain Euro Plastics's business-proprietary information.

9. U.S. Discounts

Comment 9: The petitioners claim that the Department added Euro Plastics's U.S. discounts to the U.S. gross unit price inadvertently in the calculation of the antidumping duty margin for the *Preliminary Results*. The petitioners request that the Department subtract the U.S. discounts from the U.S. gross unit prices for the final results.

Euro Plastics did not comment on this issue.

Department's Position: We agree with the petitioners. For the final results, we subtracted the U.S. discounts from the U.S. gross unit price.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margin in the *Federal Register*.

Agree _____

Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

(Date)