

June 16, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Antidumping Duty Investigation of Laminated Woven Sacks from
the People's Republic of China: Issues and Decision
Memorandum

SUMMARY:

We have analyzed the comments submitted in the investigation of laminated woven sacks ("LWS") from the People's Republic of China ("PRC"). As a result of our analysis, we have made changes from the preliminary determination. See Laminated Woven Sacks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination, 73 FR 5801 (January 31, 2008) ("Preliminary Determination"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty investigation for which we received comments on the Preliminary Determination:

ISSUES:

- Comment 1: Printing Cylinders**
- Comment 2: Ink Surrogate Value**
- Comment 3: BOPP Film Surrogate Value**
- Comment 4: Labor Surrogate Value**
- Comment 5: Cartons Surrogate Value**
- Comment 6: Surrogate Financial Ratios**
- Comment 7: Total Adverse facts Available for SSJ**
- Comment 8: Billing Adjustments**
- Comment 9: Conversion Factors for Certain Inputs**

BACKGROUND:

The merchandise covered by this investigation is LWS from the PRC as described in the “Scope of the Investigation” section in the Final Determination. The period of investigation (“POI”) is October 1, 2006, through March 31, 2007. Between March 31, 2008, and April 2, 2008, the Department conducted a U.S. constructed export price (“CEP”) sales verification of EXCEL Packaging (“EXCEL”) and AMS Associates Inc./Shapiro Packaging (“AMS”). Between April 6, 2008, and April 11, 2008, the Department conducted the factors of production verification of Zibo Aifudi Plastic Packaging Co., Ltd. (“Aifudi”). See Memorandum to the File from Javier Barrientos, Senior Case Analyst, through Alex Villanueva, Program Manager, Verification of Sales and Factors of Production of AMS, EXCEL and Aifudi, dated May 7, 2008 (“Aifudi Verification Report”).

In accordance with section 351.309(c)(i) of the Department’s regulations, we invited parties to comment on our Preliminary Determination. On May 14, 2008, Aifudi and Petitioners¹ filed case briefs. On May 19, 2008, Aifudi and Petitioners filed rebuttal briefs.

The specific calculation changes for Aifudi can be found in the Memorandum to the File from Javier Barrientos, Senior Case Analyst: Program Analysis for the Final Determination of Antidumping Duty Investigation of Laminated Woven Sacks from the People’s Republic of China: Aifudi, dated June 16, 2008 (“Aifudi Final Analysis Memo”).

Comment 1: Printing Cylinders

In the Preliminary Determination the Department treated printing cylinders as a direct material input.

Aifudi argues that it was inappropriate for the Department to treat the printing cylinders as direct materials because: (1) in prior cases,² the Department has treated printing cylinders or stamps as factory overhead (“FOH”); (2) printing cylinders have a long useful life, are infrequently replaced, and are reused in separate production runs similar to the steel molds used in the production of Diamond Sawblades;³ (3) printing cylinders should be treated as part of FOH

¹ Laminated Woven Sacks Committee and its individual members, Bancroft Bag, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytex Fibers (“Petitioners”).

² See Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People’s Republic of China (“Brake Drums and Rotors”) 62 FR 9160 (February 28, 1997), Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review: Polyethylene Retail Carrier Bags from the People’s Republic of China (“Retail Bags”) 73 FR 14216 (March 17, 2006), Notice of Final Results and Final Rescission, In Part, of Administrative Review: Certain Tissue Paper Products from the People’s Republic of China (“Tissue Paper”) 72 FR 58642 (October 16, 2007), Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper from the People’s Republic of China (“Lined Paper”) 71 FR 53079 (September 8, 2006), Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift boxes from the People’s Republic of China (“Gift Boxes”) 56 FR 58115 (November 20, 2001), Notice of Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China (“Diamond Sawblades”) 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 8.

³ See Diamond Sawblades at Comment 8.

because Aifudi claims they are being accounted for by the overhead ratio of the surrogate company used in the Preliminary Determination; and (4) treating printing cylinders as direct material inputs is contrary to U.S. and Indian generally accepted accounting principles (“GAAP”) because of the long useful life, where GAAP treats assets lasting longer than a year as FOH. See Aifudi’s May 14, 2008, Case Brief at 16-22.

Petitioners argue that printing cylinders should continue to be considered material inputs because: (1) unlike the facts on the record of this investigation, the cases cited by Aifudi did not involve unique, usually copy-protected, products for a single customer; (2) Aifudi’s printing cylinders are similar to the short-lived, regularly replaced graphite molds in Diamond Sawblades, which were deemed a direct material because, with each new unique product, Aifudi must replace the entire set of print cylinders; in addition, the life of the printing cylinders is no greater than the size of a particular order, plus any possible reorders; (3) there would be no double-counting with the surrogate FOH ratio and moreover the Department is not required to perfectly match surrogate producers’ production and accounting methods to the respondent; and (4) the useful life cannot be accurately defined for purposes of capitalizing or amortizing the costs because the cylinders are unique to a given product’s printing design and have no value outside the production of the original order and any possible, unpredictable, re-orders. In addition, Petitioners contend, because Aifudi/AMS expense cylinder costs in the year incurred, rather than capitalizing or amortizing these costs, they should be treated as a direct material. See Petitioners’ May 19, 2008, Rebuttal Brief at 4-16.

Department’s Position:

In the Preliminary Determination, the Department had insufficient evidence to conclude that printing cylinders should be considered FOH and therefore, printing cylinders were treated as direct material inputs. See Preliminary Determination at 5801, 5807.⁴ Since the Preliminary Determination, the Department received additional information from Aifudi regarding its printing cylinders. See Aifudi’s February 29, 2008, Questionnaire Response. Additionally, as noted above, the Department verified Aifudi’s sales and factors of production questionnaire responses.

At verification, the Department found documentation corroborating Aifudi’s statements that its printing cylinder sets had been used to produce millions of LWS. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Senior Case Analyst: Verification of the Sales of AMS Associates, Inc./EXCEL Packaging and Factors Response of Zibo Aifudi Plastic Packaging Co., Ltd. in the Antidumping Investigation of Laminated Woven Sacks from the People’s Republic of China, dated May 7, 2008 (“Aifudi Verification Report”) at Exhibits 4 and 5. Additionally, we found that Aifudi’s printing cylinders were warehoused after use for future production runs. See Aifudi Verification Report at 15. Moreover, we observed that certain cylinder sets were used before, during and after the POI to produce LWS. Id.

In Diamond Sawblades, both graphite molds and steel molds were used to shape diamond infused powders into cutting edge segment shapes. In that case, the Department stated that:

⁴ In the Preliminary Determination we also noted that we were unable to take into account the January 16, 2008, questionnaire response for Aifudi which addressed the treatment of printing cylinders in the calculation of the dumping margin. Id.

due to the relatively long usage life of a steel mold, we do not find it should be valued as a direct input. However, given the short usage life of a graphite mold, we determined that it is replaced so regularly as to constitute a direct input that is consumed in the production process. Moreover, because a portion of the graphite is absorbed into the finished segment,....we have determined to value graphite molds as a factor of production.

See Diamond Sawblades at Comment 2.

In this case, we have evidence that Aifudi's printing cylinders are similar to the steel molds in Diamond Sawblades because: (1) they are warehoused after use, which indicates that they have a long usage life, (2) they can be reused and are not replaced regularly, and (3) the printing cylinders are not absorbed into the finished product.

We disagree with Petitioners that simply because the printing cylinders in the cases cited by Aifudi did not involve unique copy-protected products for a single customer, that this necessarily supports treating them as a material input. On the contrary, we find that it is possible to print millions of LWS over a significant amount of time, albeit for a particular customer. See Aifudi Verification Report at 15. Petitioners also argue that the printing cylinders have no value outside the production of the original order and any possible reorders. However, in this case, it is clear that Aifudi has used the majority of the printing cylinders before, during, and after the POI. Id. Therefore, the value of the printing cylinders is sufficiently long such that it is more appropriate to consider them as part of FOH. Moreover, if the Department were to consider these printing cylinders as direct materials in this proceeding and any future proceedings, it may result in double-counting particular printing cylinder sets.

Finally, we also disagree with Petitioners' arguments that because Aifudi expensed the printing cylinder costs in the year incurred they should be treated as a direct material. In essence, Petitioners appear to be arguing that simply because an item is not amortized, it should be classified as a direct material. However, other financial statement line items that are properly considered as part of FOH may also be expensed in the year in which they were incurred by companies, rather than capitalized or amortized. One such example is the stores and spares line item, which typically includes general production and maintenance items and is included in the Department's FOH calculation for the surrogate financial ratios, and which companies expense in the year incurred. As a result, we do not agree that how Aifudi records the costs of printing cylinders supports treating them as direct inputs. Therefore, for the final determination, we will consider Aifudi's printing cylinders as FOH and not value them as material inputs.

Comment 2: Ink Surrogate Value

In the Preliminary Determination, the Department valued Aifudi's black printing ink using the WTA import data from HTS 3215.11.90 "OTHER BLACK PRINTING INK." For color printing inks we used the WTA import data from HTS 3215.19.90 "OTHR PRTNG INK & PRINTRS COLRS."

Aifudi disagrees with the Department's preliminary use of WTA data as the basis for the black and color printing ink surrogate values. Specifically, Aifudi argues that: (1) the average unit

values (“AUV”) from the WTA import data are distorted because they are basket categories that include higher priced inks which are not suitable for producing the LWS; (2) the Department should use the product-specific price lists and quotes proposed by Aifudi because they represent prices for inks that are more similar to printing inks used by Aifudi, and are, therefore, not distorted by non-comparable product prices; Aifudi also observes that its suggested prices are similar to one another and, therefore, are not aberrant; and (3) analyzing Infodrive India (“*Infodrive*”) data by individual entries reveals that the majority of entries under the WTA import data are not exclusively the inks Aifudi used. Aifudi claims that when it used Infodrive to examine the WTA basket category for prices for gravure inks, it found their AUV is consistent with its proposed price lists. See Aifudi’s May 14, 2008, Case Brief at 5-14.

Petitioners disagree with Aifudi and argue that: (1) the Department has rejected the overly broad basket category argument in prior cases that also involved high-speed printing of extruded polymer films; (2) the Department has a longstanding preference against using price lists and quotes whenever the record also contains import statistics; and (3) the *Infodrive* data represent only a tiny fraction of total imports; and (4) the parameters used to collect the *Infodrive* data are suspect and the service uses uncorrected data as the reporting is done on a voluntary basis. See Petitioners’ May 19, 2008, Rebuttal Brief at 17-27.

Department’s Position:

We agree with Petitioners. In valuing the FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market economy country. The Department’s criteria for selecting surrogate value information are normally based on the use of publicly available information (“PAI”), and the Department considers several factors when choosing the most appropriate PAI, including the quality, specificity, and contemporaneity of the data. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079 (September 8, 2006) (“CLPP”), and accompanying Issues and Decision Memorandum at Comment 3.

Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis. See Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (“Mushrooms”); see also Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2. As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” available SV is for each input. See Mushrooms.

Apart from the WTA import data, the record of this investigation contains two AUVs from surrogate Indian company financial statements, two price lists from two additional surrogate Indian companies, and an AUV from *Infodrive* data. See Aifudi’s December 19, 2007, and May 2, 2008, Surrogate Value Submissions.

First, we note that Aifudi has not suggested that the AUV from *Infodrive* be relied upon as a surrogate value. Therefore, we have not considered it as a potential source in this final determination. In addition, we note that Aifudi has not called into question the reliability of WTA data for black ink, but only for color ink. Aifudi has argued that an analysis of the *Infodrive* data by individual entries demonstrates that the majority of entries under the WTA import data are not comparable to the color inks Aifudi used. However, because the *Infodrive* data accounts for only 0.2% of the WTA data, we do not find them to be a useful tool for analyzing individual entries within the WTA data. In addition, the Department has rejected *Infodrive* data in recent cases for lack of completeness and unreliability:

As explained in prior cases, the Department prefers not to use Infodrive data to derive surrogate values or to use as a benchmark to evaluate other potential surrogate values because it does not account for all of the imports which fall under a particular HTS subheading. See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum (“Chlorinated Isos Decision Memorandum”), at Comment 1 and Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum, (“Bedroom Furniture Decision Memorandum”), at Comment 10. The Department has also determined that Infodrive India is unreliable because a majority of the HTS categories do not report the specific import items in a uniformly comparative manner (i.e., cans, bottles, pieces, sets, or numbers) from which we can calculate a reliable or accurate surrogate value. See Bedroom Furniture Decision Memorandum, at Comment 10. We note that this is not a problem with the WTA data because every HTS category is reported using a single uniform measurement (e.g., rupees per kilogram).

See Diamond Sawblades at Comment 11D.

Therefore, we find that the AUV information from *Infodrive* is not sufficient to call into question the reliability of the WTA data. The remaining values are either price lists or AUVs from surrogate company financial statements.

In a recent case, the Department was also faced with selecting surrogate values for printing inks. See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 10, 2008) (“Retail Bags 2008”) at Comment 6. The sources there were also WTA import data, price lists and AUVs from the financial statements of surrogate Indian companies. In that case, the Department selected the WTA import data because:

We find that Indian import statistics present the best available surrogate value because they are publicly available, product-specific, contemporaneous, and representative of prices of black and color inks. We find that the Hindustan surrogate values offered by Rally do not provide a more accurate or more representative alternative than Indian import statistics. As stated above, the

Department considers the quality, specificity, and contemporaneity of the data in selecting the most appropriate surrogate value. While we recognize that Hindustan's pricing data are more specific to black and color inks, the data are less preferable in terms of the other factors we consider.

Id.

Faced with virtually identical facts in this case, we find that the WTA import data represent the best surrogate value because they are publicly available, product-specific, contemporaneous, tax exclusive, representative of black and color ink prices. Most importantly, we note that the WTA data is a broad market average, and is, therefore, a better indicator of Indian prices as a whole, whereas the alternative data reflects the experience of individual companies. Although we recognize that the price lists and the data from the surrogate financial statements are more specific to black and color inks, this factor alone does not make the WTA data less preferable when considering the other surrogate value selection criteria.

We note that Aifudi has stated that its inks would enter under the WTA HTS article code for printing inks that we used in the Preliminary Determination. See Aifudi's January 2, 2008, submission at 11. Moreover, because it is our preference to value factors of production using import statistics, we are not using Aifudi's proposed AUVs or price lists for various reasons, including:

Micro Inks Ltd. (price list): source is not dated; no quantity units on price list; some inks not suitable for BOPP; some inks need hardeners whereas Aifudi's ink does not use hardeners; and incomplete literature as only excerpts are provided.

Spico Printing Inks Private Ltd. (price list): not contemporaneous (dated 11.15.2007); prices depend on concentration and viscosity, and thus not standard; lack of compatibility as an additive needs to be applied to the BOPP before applying ink whereas Aifudi's product does not require an additive; and it is not clear whether it is an export price.

Uflex Ltd. (AUV from financial statement): ink type not specified; not clear whether these are intercompany prices as the company states it has intercompany sales; and the price is an average price of all inks including black and color.

Paper Products, Ltd. (AUV from financial statement): the AUV is for "Inks, Adhesives, and Solvents," thus includes items that are not even inks.

More importantly, the data for these alternative sources is based on the experience of a single producer and thus do not represent a broad market average.

Finally, we disagree with Aifudi that the Department should rely on alternate sources of surrogate values other than import statistics as was done in a recent case. See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2008) at Comment 1. In that case, the Department used alternate sources of surrogate value information as we found that there was a five-fold increase in the weighted-average per-unit price of the WTA data from the LTFV

investigation period to the review period, and also because of the scarcity of surrogate value information available for the input during the administrative review. Id. In the instant investigation, Aifudi has neither shown that there has been an aberrant increase in price, nor does the Department face a scarcity of information as in Carbazole Violet Pigment 23.

Finally, with regard to Aifudi's argument that WTA data is distorted by the inclusion of other types of inks, the Department recently stated that:

we find that the burden is on the respondents to demonstrate that the Indian import statistics are in fact aberrational. Rally has not met that burden. The fact that the Indian import statistics do not segregate ink by specific types, and have values different from U.S. import statistics, does not indicate that the Indian values are necessarily distorted.

See Retail Bags 2008 at Comment 6. Here, as in Retail Bags 2008, Aifudi has not met that burden of establishing that the WTA data are not an appropriate source to value its ink FOPs. In particular, and as determined in Retail Bags 2008, we find that the fact that the Indian import statistics do not segregate inks by specific types (i.e., that they cover a broad category of inks, including those used by Aifudi) does not indicate that the Indian WTA values are not representative and therefore distort the calculation of normal value.

Comment 3: BOPP Film Surrogate Value

In the Preliminary Determination, the Department valued Aifudi's BOPP films using the WTA import data from HTS 3920.20.20 "PLTES SHTS ETC. OF POLYMRS OF PROPYLN FLEXIBLE, PL".

Aifudi disagrees with the Department's use of WTA data as the basis for the BOPP film surrogate value. Aifudi argues that although the WTA import data encompass BOPP film, it is an overly broad category that includes other film types. Therefore, Aifudi argues that the Department should use the product-specific surrogate values based on surrogate Indian company financial statements or the price quote from another Indian supplier of plastic films. See Aifudi's May 14, 2008, Case Brief at 14-16.

Petitioners argue that the Department should continue to use WTA HTS subheading 3920.20.20 to value BOPP film. Petitioners argue that Aifudi's four alternative pricing information sources (price lists and unit values developed from surrogate financial statements) should be rejected based on the Department's longstanding practice against using company specific information when publicly available information is on the record. Furthermore, Petitioners argue that two of Aifudi's alternative prices do not even relate to BOPP film. See Petitioners' May 19, 2008, Rebuttal Brief at 31-35.

Department's Position:

Similar to the black and color printing inks in Comment 3 above, we find that WTA import statistics represent the best surrogate value because they are publicly available, product-specific,

contemporaneous, and representative of prices of BOPP film. Moreover, the fact that Indian import statistics do not segregate film by specific types does not indicate that the Indian values are necessarily distorted or somehow unrepresentative of Aifudi's BOPP film FOP. See Retail Bags 2008 at comment 6. Aifudi stated that its BOPP film would enter under this HTS article code. See Aifudi's January 2, 2008, submission at 3-4. Finally, because it is our preference to value FOPs using import statistics, we are not using Aifudi's proposed AUVs or price lists for the following reasons, including:

Max India Ltd. (AUV from financial statement): incomplete literature as only excerpts from the financial statement are provided; not clear whether these are export sales and/or sales to affiliates.

The Paper Products Ltd. (AUV from financial statement): partially contemporaneous as prices are for the calendar year 2006; incompatibility as the prices are for polyethylene film; and the company reports captive consumption, thus not clear whether these are sales to affiliates.

Uflex Ltd. (AUV from financial statement): incompatibility as the price is for "Plastic Films" in general.

Shah Exports: price quote is to Aifudi's U.S. affiliate, thus questioning the quotes bias; not contemporaneous as the quote is dated December 2007; price is an export sale price.

More importantly, the data for these alternative sources is based on the experience of a single producer and thus do not represent a broad market average.

Finally, Aifudi has not demonstrated that the inclusion of other types of polymers and types of film distorts the WTA data. Therefore for the reasons outlined above, we will continue to use WTA import data from HTS 3920.20.20 to value Aifudi's BOPP film for the final determination.

Comment 4: Labor Surrogate Value

In the Preliminary Determination, the Department used a PRC labor wage rate of USD 0.83/Hour to value Aifudi's labor.

Petitioners argue that the updated 2007 expected wage rate of USD 1.04/hour (for the PRC) should be used in the final calculations in place of the USD 0.83/Hour rate used in the Preliminary Determination. See Corrected 2007 Calculation of Expected Non-Market Economy Wages, 73 FR 27795 (May 14, 2008) ("2007 NME Wage Rate"). See Petitioners' May 14, 2008, Case Brief at 7.

Aifudi did not address this issue in its case or rebuttal briefs.

Department's Position:

Since the Preliminary Determination, the Department published its 2007 NME Wage Rate where the Department articulated that the "expected NME wage rates are finalized on the date of publication of this notice in the Federal Register and will be in effect for all antidumping proceedings for which the Department's final decision is due after the publication of this notice."

Id. Given that the final decision for this instant investigation is June 16, 2008, we are using the revised wage rate of \$1.04 for China. Id.

Comment 5: Cartons Surrogate Value

In the Preliminary Determination, the Department valued Aifudi's boxes using WTA import data from HTS 4819.10.10 "BOXES OF CORRUGATED PAPER & PAPER BOARD" to value Aifudi's packing boxes.

Petitioners argue that the Department should value Aifudi's packing factor of production using import statistics based on HTS subheading 4819.10.90 ("Other") rather than 4819.10.10, ("Boxes"), as used in the Preliminary Determination. Petitioners argue that Aifudi reported consumption of "cartons" as a packing FOP, as opposed to "boxes," therefore the type consumed by Aifudi are captured in HTS subheading 4819.10.90. See Petitioners' May 14, 2008, Case Brief at 5.

Aifudi argues that the Department should continue to value the packing FOP using import statistics based on HTS subheading 4819.10.10 ("boxes") because the Department has previously held that the Indian HTS item 4819.10.10 applies to both boxes and cartons made of corrugated paper.⁵ See Aifudi's May 19, 2008, Rebuttal Brief at 5-7.

Department's Position:

We agree with Aifudi. Aifudi reported using corrugated carton boxes to pack the merchandise. See Aifudi's October 12, 2007, Questionnaire Response at 11-12. At verification, the Department found no discrepancies. See Aifudi Verification Report at 21. Because Aifudi reported using corrugated boxes and the description of HTS 4819.10.10 is virtually identical to Aifudi's boxes, we will continue to value Aifudi's corrugated boxes using import data from HTS 4819.10.10.

Comment 6: Surrogate Financial Ratios

In the Preliminary Determination, the Department based its calculation of Aifudi's FOH, selling and administrative expenses ("SGA"), and profit based upon the 2006-2007 financial statements of Indian producer Mody Plastic Industries Limited ("Mody"). No party has challenged the use of Mody's financial statements for the final determination. Since the Preliminary Determination, we received four additional Indian financial statements:

⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China; 67 FR 20090 at Comment 27 (April 24, 2002).

Deccan Polypacks Limited (“Deccan”):

Aifudi argues that the Department should calculate the surrogate financial ratios using the 2006-2007 financial statements of Deccan, which Aifudi claims is a manufacturer of laminated woven sacks. See Aifudi’s May 14, 2008, Case Brief at 23-24. Petitioners oppose use of this company’s data, arguing that even though Deccan produces laminated and unlaminated woven sacks, there is no evidence it prints sacks or that it laminates printed substrates to the woven fabric. In addition, Petitioners submitted information from six Indian trade websites indicating Deccan does not have any printing capability. Finally, Petitioners argue that Deccan received countervailable capital investment subsidies and interest free loans from the Government of Andhra Pradesh. See Petitioners’ May 19, 2008, Rebuttal Brief at 35-40.

Shree Tirupati Balajee Agro Trading Co. Pvt. Ltd. (“Shree Trading”):

Aifudi argues that the Department should calculate the surrogate financial ratios using the 2006-2007 financial statements of Shree Trading, which Aifudi claims is a manufacturer of laminated woven sacks. See Aifudi’s May 14, 2008, Case Brief at 24. Petitioners oppose use of this company’s data, arguing that although Shree Trading has printing capability, it only prints unlaminated woven sacks. Moreover, Petitioners argue that the company does not print any laminated sacks or BOPP film that is laminated onto the woven fabric. See Petitioners’ May 19, 2008, Rebuttal Case Brief at 41-42.

KG Petrochem Ltd. (“KG Petrochem”):

Petitioners argue that the Department should rely on the contemporaneous audited financial statements of KG Petrochem, which Petitioners claim is a producer of identical merchandise. See Petitioners’ May 14, 2008, Case Brief at 3-5. Aifudi opposes use of this company’s data, arguing that KG Petrochem’s principal product is bulk bags for cement, sugar, and fertilizer, and there is no mention of lamination, BOPP film, or LWS anywhere in the annual report. Aifudi argues that while KG Petrochem’s opening raw material stocks mention bags, fabric, polymer extrusion etc., there is no mention of BOPP film, a critical component of LWS. See Aifudi’s May 19, 2008, Rebuttal Brief at 2-4.

Flexituff International Ltd. (“Flexituff”):

Petitioners argue that the Department should rely on the contemporaneous audited financial statements of Flexituff, which Petitioners claims is a producer of identical merchandise. See Petitioners’ May 14, 2008, Case Brief at 3-5. Aifudi opposes use of this company’s data, arguing that there is no evidence that the company produced LWS in the 06-07 period and that the Director’s report (the only place LWS is mentioned) suggests it is the company’s intention to produce LWS in the future. Aifudi argues that the raw materials listing neither includes BOPP film nor makes reference to lamination. Aifudi states that its schedules refer to “Woven Sacks,” but not LWS. Finally, Aifudi argues that Flexituff describes the company’s business as “principally engaged in the business of Manufacturing of HD/PP Woven Sacks and FIBC/Bags.” See Aifudi’s May 19, 2008, Rebuttal Brief at 2-4.

Department’s Position:

The Department agrees with both Aifudi and Petitioners, in part. Subsequent to the issuance of the Preliminary Determination, the Department received financial statements from four

additional Indian companies. Upon closer inspection of all sources, (i.e. financial statements and internet research submitted by the parties), it is not clear that any of the Indian companies on the record are producers of identical merchandise, (i.e. woven sacks that have been laminated using BOPP film that was reverse printed using at least three colors). Absent an identical producer of LWS, we find the financial data from all five Indian companies (Mody, Deccan, Shree Trading, KG Petrochem and Flexituff) is appropriate as the basis for calculating the financial ratios because all five companies are producers of comparable merchandise, i.e., woven sacks. Finally, although KG Petrochem, Flexituff, and Deccan identify receiving certain Government of India subsidies in their financial statements, the Department has insufficient information to determine whether the programs listed in these financial statements have been countervailed. As a result, the Department has not disqualified any of these financial statements. Therefore, for the final determination, we have used the average of all five companies' financial statements to calculate the surrogate financial ratios.

Comment 7: Total Adverse facts Available for SSJ

Petitioners argue that the Department should apply total adverse facts available to SSJ because SSJ refused to respond to a comprehensive supplemental questionnaire, refused to schedule verification, has made no submission since, and, thereby, has withdrawn from the investigation. Petitioners also argue that because the export data submitted by SSJ has not been verified, it cannot be relied upon in the final critical circumstances determination and consequently, an adverse inference should also be applied. See Petitioners' May 14, 2008, Case Brief at 8-10.

SSJ did not submit comments on this issue.

Department's Position:

We agree with Petitioners, in part. Section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(d) further states that if the party submits further information that is unsatisfactory or untimely, the administering authority may, subject to subsection (e), disregard all or part of the original and subsequent responses. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to

the determination but does not meet all the applicable requirements established by the administering authority if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority with respect to the information, and (5) the information can be used without undue difficulties.

In this case, we find that the application of facts available is warranted. In accordance with sections 776(a)(2)(A) through (D), we find that SSJ withheld information requested, failed to produce the requested information in a timely manner, significantly impeded the proceeding, and did not allow for verification, as it had ceased cooperating with the Department. In a post-preliminary determination questionnaire issued to SSJ on January 31, 2008, the Department requested information from SSJ on issues such as affiliations, sales and factors of production. On February 15, 2008, SSJ submitted a letter stating that it was not responding to the questionnaire. The data requested in the January 31, 2008, supplemental questionnaire was essential to the calculation of the antidumping duty margin and the establishment of SSJ's separate rate status.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of the respondent if it determines that the respondent has failed to cooperate to the best of its ability. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. In making its determination the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability, and explain why the missing information is significant to the review. The Federal Circuit has explained that "acting to the best of its ability" means that a respondent must "do the maximum it is able to do." See Nippon Steel Corp. v. United States, 337 F. 3d. 1373, at 1382-1393 (Fed. Cir. 2003).

In this case, the Department's request for information was unambiguous and SSJ was provided an ample amount of time to submit a response. At no point did SSJ seek clarification from the Department on the specific requests for information. Therefore, pursuant to section 776(b), the Department finds that SSJ failed to cooperate to the best of its ability by not providing a questionnaire response that was essential to the calculation of the antidumping duty margin and its separate rate status. Because SSJ failed to cooperate with the Department in this matter, we find it appropriate to use an inference that is adverse to the interests of SSJ in selecting from among the facts otherwise available. See section 776(b) of the Act. By doing so, we will ensure that SSJ will not obtain a more favorable result by failing to cooperate had it cooperated fully in this investigation. See SAA at 870. Section 776(c)(1) of the Act provides that, such adverse inferences may include reliance on information derived from the petition. As the Department cannot rely upon information contained in SSJ's questionnaire responses, we can no longer find that SSJ operates free of government control and that it is entitled to a separate rate. For this reason, we have denied SSJ a separate rate, and find that SSJ is part of the PRC-wide entity. As part of the PRC-wide entity, the Department's application of facts available to SSJ contributes to the application of facts available applied against the PRC-wide entity, as described in the accompanying Federal Register notice.

Section 776(c) provide that, when secondary information such as the petition rate is relied upon for an adverse inference, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

Pursuant to section 776(c) of the Act, we corroborated the petition rate of 91.73 percent by comparing the petition margin to the individual CONNUM margins for Aifudi. See Aifudi Final Analysis Memorandum at Attachment I. Because the petition margin of 91.73 percent was within the range of CONNUM margins, we find that the margin of 91.73 percent has probative value. Accordingly, we find that the rate of 91.73 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act.

Finally, we disagree with Petitioners and will not extend the adverse inference applied to SSJ to a critical circumstances determination because as SSJ lost its eligibility for separate rate status by not responding to the Department's January 31, 2008, questionnaire, it is now properly considered part of the PRC-wide entity. As such, SSJ will be considered part of the PRC-wide entity for critical circumstances purposes. For the final determination we continue to find that critical circumstance do not exist for the PRC-wide entity, which now includes SSJ.

Comment 8: Billing Adjustments

Petitioners argue that the Department erred in adding Aifudi's billing adjustment to the gross unit price. Petitioners argue that the billing adjustment values represent credits and therefore, should have been subtracted from the reported gross unit price. See Petitioners' May 14, 2008, Case Brief at 7-8.

Aifudi did not address this issue in their case and rebuttal briefs.

Department's Position:

We agree with Petitioners that the Department incorrectly added the billing adjustment when it should have been subtracted, and we have corrected this error in the final determination.

Comment 9: Conversion Factors for Certain Inputs

In the Preliminary Determination the Department converted the unit of measure for certain factors of production from a "per one thousand LWS" basis to a "per kilogram" basis using certain U.S. sales volume data.

Petitioners state that Aifudi added a column titled "WT 1000" for the weight of one thousand LWS in kilograms to its FOP database as requested, but that the Department inadvertently did not use the conversion factor. See Petitioners' May 14, 2008, Case Brief at 8.

Aifudi argues that the Department's antidumping margin program shows that in instances where the required conversion (of pieces to kilograms) was needed, the Department utilized a piece to weight conversion based on information in the FOP database. See Aifudi's May 19, 2008, Rebuttal Brief at 2.

Department's Position:

In the Preliminary Determination, the Department used the pieces and weight of U.S. sales by CONNUM as a proxy to convert the factors of production from a one thousand LWS basis to a per kilogram basis. However, we agree with Petitioners that a proxy is not necessary in this case because Aifudi submitted the exact weight of one thousand LWS by CONNUM. Therefore, for the final determination we will convert the factors of production using the conversion factor reported by Aifudi in its December 12, 2007 submission.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

David Spooner
Assistant Secretary
for Import Administration

Date