

DATE: March 10, 2008

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

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

RE: Issues and Decision Memorandum for the Final Results of
Polyethylene Retail Carrier Bags (“PRCBs”) from the People’s
Republic of China (“PRC”)

Summary

The mandatory respondents in this case are Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, “Nozawa”), and Rally Plastics Co., Ltd. (“Rally”). The period of review (“POR”) is August 1, 2005, through July 31, 2006. On September 10, 2007, the Department published Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 72 FR 51588 (“Preliminary Results”).

We gave interested parties an opportunity to comment on the Preliminary Results. We have analyzed the case and rebuttal briefs of interested parties and made certain changes to our margin calculation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues for which we received comments and rebuttal comments from interested parties.

Comments with Respect to Surrogate Financial Ratios

- Comment 1: Offset of Selling, General, and Administrative (“SG&A”) by Interest Income
- Comment 2: “Rates and Taxes” in the SG&A Calculation
- Comment 3: Adjustment to Material Costs by the Amount of Changes in Raw Material and Work-In-Progress Inventories

Comment 4: Correction to the Profit Amount

Comments with Respect to Nozawa

Comment 5: Cash Deposit and Liquidation Instructions

Comments with Respect to Rally

Comment 6: Appropriate Surrogate Value for Ink

Comment 7: Valuation of Recycled Scrap and Scrap By-Product

Comment 8: Revised Allocation Methodology

Administrative Determinations and Court Cases

1. Certain Preserved Mushrooms from the People's Republic of China: Notice of Final Results of the Eighth New Shipper Review, 70 FR 60789 (October 19, 2005).
2. Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 707039 (December 6, 2006) (“Wooden Bedroom Furniture from the PRC”).
3. Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 44827 (August 9, 2007).
4. Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 26589 (May 10, 2007) (“Pigment from the PRC”).
5. Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 12762 (March 19, 2007) (“PRCBs from the PRC”).
6. Certain Malleable Iron Pipe Fittings From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 70 FR 76234 (December 23, 2005).
7. Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 68 FR 62053 (October 31, 2003) (“Honey from the PRC”).
8. Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008). (“HSLW from

the PRC”).

9. Freshwater Crawfish Tail Meat from the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) (“Crawfish from the PRC”).
10. Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People’s Republic of China; 69 FR 34125 (June 18, 2004).
11. Polyethylene Retail Carrier Bag Comm. v. United States, 27 Int’l Trade Rep. (Ct. Int’l Trade 2005) (Slip Op. 2005-157) (“Polyethylene”).
12. Malleable Iron Pipe Fittings From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 37051 (June 29, 2006) (“Malleable Pipe Fittings from the PRC”).
13. Hontex Enterp., Inc. d/b/a Louisiana Packing Co. v. United States, 248 F. Supp. 1323 (CIT Feb. 13, 2003).
14. 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) (“Chlorinated Isos from the PRC”).
15. Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China, Final Results of the Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 62 FR 6189 (February 11, 1997) (“TRBs from the PRC”).
16. Steel Concrete Reinforcing Bars from the People’s Republic of China: Final Determination of Sales at Less than Fair Value, 66 FR 33522 (June 22, 2001) (“Rebar from the PRC”).
17. Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People’s Republic of China, 69 FR 34125 (June 18, 2004) (“PRCBs 2 from the PRC”).

Discussion of the Issues

Comment 1: Offset of SG&A by Interest Income

Hilex Poly Co., LLC, and Superbag Corporation (collectively, “the petitioners”), claim that the Department of Commerce (the “Department”) should not have offset the SG&A expense calculation with interest income because such income was not clearly defined in the surrogate financial statements as short-term interest income with regard to Smithab Intercon Ltd (“Smitabh”), Kuloday Technopack Pvt., Ltd. (“Kuloday”), and Sangeeta Poly Pack Pvt., Ltd

("Sangeeta"). The petitioners claim that, since the financial statements of these companies failed to clearly distinguish between long-term and short-term interest income, the Department should refrain from offsetting SG&A expenses with any of the interest income reported in the financial statements.

Nozawa claims that since the only interest-bearing assets in the financial statements used by the Department are listed under current assets, and none of the financial statements contain any long-term interest-bearing assets, there is no basis for the petitioners' allegation that the interest income is not necessarily short-term in nature. Consequently, Nozawa supports the Department's offsetting the SG&A expense with the interest income specified in the financial statements and claims that a similar approach was used by the Department in the prior review of PRCBs from the PRC.

Department's Position: It is the Department's practice to adjust SG&A expenses for interest income earned only on short-term instruments. We examined the financial statements of Smitabh, Kuloday, and Sangeeta and determined that, while all three companies received interest income, none of their respective balance sheets contained interest-bearing long-term assets. Further, we determined that all of the interest-bearing assets reported in these companies' balance sheets are recorded in the line item "loans and advances" within the category of "current assets, loans and advances." Consequently, any interest income earned by these companies constitutes short-term interest income. In Wooden Bedroom Furniture from the PRC, at Comment 3, and in PRCBs from the PRC, at Comment 3g, we stated that it was our standard methodology to offset SG&A expenses with short-term income. Thus, for the final results, we offset the SG&A expenses of Smitabh, Kuloday, and Sangeeta with the amount of interest recorded on their financial statements, respectively.

Comment 2: "Rates and Taxes" in the SG&A Calculation

The petitioners claim that the Department erroneously excluded "rates and taxes" from the SG&A expense calculation based on Smitabh's financial statements despite this item being classified under the "manufacturing expenses" category. Citing Pigment from the PRC, the petitioners claim that such an expense should be included within the SG&A expense as it most likely represents miscellaneous business taxes, rather than VAT, income or excise taxes that the Department normally excludes.

Nozawa disagrees with the petitioners' claims arguing that rates and taxes should be treated as other tax, such as income or VAT taxes, which are normally excluded from the Department's dumping calculations. Nozawa argues that the Department did exclude "rates and taxes" in Chlorinated Isos from the PRC. According to Nozawa, the Department's stated practice is to calculate dumping margins on a tax-neutral basis, thus the petitioners' argument, according to Nozawa, that certain type of taxes should be included while others excluded from the dumping calculations would create a practice that is arbitrary, inconsistent, and that should be rejected by the Department.

Department's Position: The Department's normal methodology is to exclude income taxes or VAT from the antidumping calculations. Our review of the rates and tax expenses recorded in

Smitabh's financial statements indicates that such expenses are part of the Smitabh's manufacturing expenses and are not a part of the income or VAT category because they are listed under the category of manufacturing expenses. As such, they are not a part of the income taxes or VAT, which the Department would normally exclude from the calculations. With regard to Nozawa's argument pointing to one instance where the Department excluded rates and taxes from SG&A, we note that our more recent practice is to include rates and taxes in SG&A. See Pigment from the PRC at Comment 2. We also note that in the past cases, the Department included rent and taxes in SG&A. See TRBs from the PRC at Comment 24.

Comment 3: Adjustment to Material Costs by the Amount of Changes in Raw Material and Work-In-Progress Inventories

The petitioners argue that the Department failed to reduce the cost of raw materials consumed by the change in raw materials inventory and work-in-progress when it calculated the materials cost for surrogate Indian company Carry Print (India) Pvt. Ltd ("Carry Print"). According to the petitioners, the Department's normal practice, when calculating raw material costs, is to adjust the material costs for changes in raw and work-in-progress inventories. Given that Carry Point's financial statements provide sufficient information regarding the changes in these inventories, the petitioners urge the Department to adhere to its stated practice and to reduce the material cost by net change in raw materials and work-in-progress inventories.

Nozawa rejects the petitioners' arguments on the grounds that the information regarding Carry Print's changes in inventories is derived solely from the balance sheet, rather than the income statement, where such information is normally reported, and because there is insufficient detail about what is covered in the figures cited by the petitioners. While Nozawa agrees with the petitioners that changes in inventories should be reflected in the material cost calculation, it notes that information used for the inventory adjustments should be only made when the income statement provides sufficiently detailed information. In the instant proceeding, Nozawa argues that Carry Print's income statement is not sufficiently detailed to account for changes in raw material and work-in-progress inventories, and urges the Department to reject the petitioners' argument as it will artificially inflate the cost of raw materials.

Department's Position: Our review of Carry Print's financial statements indicates that (1) the information included in Schedule VI of the balance sheet is sufficiently detailed to clearly identify changes of raw materials and work-in-progress inventories and, (2) that the net change of these inventories is recorded in the profit and loss statement. Specifically, we note that Schedule VI contains beginning and ending balances for raw material and work-in-progress inventories as well as the balances for the finished goods inventories. The schedule also derives a net change for all inventories listed above and that net change is then reflected in company's income statement. Carry Print's financial statements contain a clear link between the changes in inventories, which are recorded on the income statement, and the ending balances of these inventories, which are reflected in the balance sheet. Therefore, for the final results, and consistent with our standard methodology, we reduced the reported cost of raw materials purchased of 16,101,236 rupees by 1,081,626 rupees, an amount representing the net change in raw materials and work-in-progress inventories. See Print Carry's Financial Statements at Schedule VI.

Comment 4: Correction to the Profit Amount

The petitioners argue that in the surrogate financial ratios calculation, the Department incorrectly used profit from fiscal year 2005, rather than profit for fiscal year 2006, for the surrogate Indian company A.P. Polyplast Pvt. Ltd (“Polyplast”). The respondents did not comment on this issue.

Department’s Position: Our review of Polyplast’s financial statements indicates that we inadvertently transposed profit figures between fiscal years 2005 and 2006. For the final results, we are using the profit of 580,802 rupees, reported in in Polyplast’s financial statements for fiscal year 2006.

Comment 5: Cash Deposit and Liquidation Instructions

Nozawa urges the Department to include variations of its name in the cash deposit and assessment instructions, as it did in the previous administrative review. According to Nozawa, brokers do not always enter the name of the exporter accurately and occasionally will submit slight variations of the correct name to CBP. Nozawa is concerned that without specifying the various names used by brokers in entering its merchandise, not all entries may be covered by the customs instructions. The petitioners did not comment on this issue.

Department’s Position: The Department has examined the history of names used by Nozawa in the current and past segments of the proceeding. We note that the full name used by Nozawa in its request for the instant administrative review was Dongguan Nozawa Plastics Products Co., Ltd., and United Power Packaging, Ltd. Following Nozawa’s request for a review, the Department initiated the review using these names. We note that throughout the review, Nozawa used only these two names when it submitted information to the Department. At no point during the course of this review did Nozawa notify the Department, or provide evidence, that it uses variations of its name on a commercial basis. The record in this case indicates that sales invoices submitted to the Department by Nozawa refer only to one or both of the names under which the review was initiated. See Nozawa’s Section A Questionnaire Response at Exhibit 5 (March 16, 2007). Thus, the companies the Department reviewed are the same companies upon which it initiated the review. With regard to Nozawa’s claim that the Department accepted certain variations in Nozawa’s name in the prior segments of the proceeding, we note that the variations claimed by Nozawa changed between the investigation and the prior administrative review. For example, following the investigation, the resulting antidumping order referred to Nozawa as “Dongguan Huang Jiang United Wah Plastic Bag Factory, Dongwan Nozawa Plastics, or United Power Packaging Ltd.” For the final results of the first administrative review, in addition to the names used in the investigation, Nozawa provided additional names such as “Dongguan Nozawa Plastic Products Co., Ltd., Dongguan Nozawa Plastic, or Dong Guan (Dong Wan) Nozawa Plastic Co., Ltd.” Thus, given the history of change in Nozawa’s claimed name variations between the investigation and the prior review, it is possible that there have been further changes for the instant review. For example, the company’s name “Dongguan Huang Jiang United Wah Plastic Bag Factory,” used in the investigation is, according to the record of the

current review, no longer in business. Id. at Exhibit 2. By waiting until the briefing stage of the review to raise this issue, Nozawa has denied the Department the ability to review the claimed name variations and determine which were actually used by Nozawa on a commercial basis during this review period. Consequently, for the final results, the customs instructions will contain only those names under which the Department initiated the review, i.e., Dongguan Nozawa Plastic Products Co., Ltd., and United Power Packaging Ltd.

Comment 6: Appropriate Surrogate Value for Ink

Rally states that it used black and color flexographic and gravure ink to print subject merchandise during the POR. In the Preliminary Results, Rally notes that the Department valued Rally's reported factors of production ("FOPs") for black and color ink using the average unit value ("AUV") of Indian import statistics for two basket categories of black and color ink that included flexographic and gravure printing inks. Rally states that it provided alternate surrogate values based upon the color-specific average prices at which Hindustan Inks and Resins, Ltd. ("Hindustan"), an Indian ink producer of gravure and flexographic, sold these products to Indian polyethylene bag producers. Rally argues that there is a large difference between the surrogate values used by the Department in the Preliminary Results and the alternate surrogate values that it provided. Specifically, Rally asserts that although the flexographic and gravure printing inks it uses are inexpensive inks, they are classified within the same Indian HTS provisions as "all other" types of black and color ink, which include expensive specialty printing inks. Rally notes that it provided a substantial amount of additional information that supports the reasonableness of its claim that the Hindustan surrogate values better reflect the commercial prices of the ink it uses. See Rally's April 3, 2007, surrogate value submission. Rally argues that this supporting information demonstrates that the import statistics from the basket tariff provisions used by the Department as the basis for the black and color ink surrogate values were aberrational. Specifically, Rally contends that the inclusion of expensive specialty printing inks in the basket categories results in an aberrational AUVs for valuing inexpensive flexographic and gravure printing inks used by Rally to print subject merchandise.

In addition, Rally asserts that, in choosing the "most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the data." See Rally's case brief at page 13, citing Honey from the PRC at Comment 2. Rally argues that, because the Department prefers to use product-specific surrogate values, it is the Department's long standing practice to seek surrogates that are most comparable in terms of design or materials to the actual input consumed by the PRC respondents in the production of subject merchandise. See Rally's case brief at page 13. Because Rally provided surrogate values that are limited to flexographic and gravure printing inks, and do not include specialty inks, Rally contends that the Department should abide by its normal preference and use the surrogate values most specific to the inputs used to produce subject merchandise. Rally argues that previously, the Department has recognized that import statistics based on a basket tariff category provision are inappropriate if a more representative alternate surrogate value is available. See Rally's case brief at page 14. Moreover, Rally asserts that the Department prefers domestic market prices in the surrogate country over import statistics. Id. Therefore, for the final results, Rally argues that the Department should use the alternate surrogate values provided by Rally for

black and color flexographic and gravure printing inks.

The petitioners disagree with Rally. First, the petitioners note that arguments identical to Rally's were presented to and rejected by the Department in the investigation of this proceeding. In addition, the petitioners note that the Department's decision was upheld on appeal to the Court of International Trade. See Polyethylene. The petitioners assert that Rally has presented no new information to cause the Department to reconsider its decision. Second, the petitioners assert that the Hindustan price data are not contemporaneous with the instant review period and are not publicly available. Specifically, the petitioners note that Rally's surrogate value information is solely based on an affidavit by Mr. Vinay Pandya, an officer with Hindustan. See the petitioners' rebuttal brief at 3. The petitioners note that in this affidavit, Mr. Pandya states that the company does not publish its prices or issue general price lists. However, the petitioners note that Mr. Pandya states that he personally prepared a price summary at the request of Rally's counsel. Third, the petitioners note that the same law firm represents both Rally and the company that is the source of Rally's alternate surrogate value information. The petitioners assert that this impacts the integrity of Rally's information. Fourth, the petitioners contend that the Hindustan data are specific to only one company and reflect only a small portion of the Indian market. The petitioners assert that the Indian import statistics used in the Preliminary Results represent aggregate data for the entire country during the full review period, and are more representative than the Hindustan data. Fifth, the petitioners assert that the Hindustan data have little or no supporting documentation. Specifically, the petitioners note that the price summary prepared by Mr. Pandya is not supported by any official company data. Therefore, the petitioners urge the Department to continue to use Indian import statistics to value Rally's ink consumption.

Department's Position: In its April 3, 2007, surrogate value submission, Rally provided surrogate values for black and color flexographic and gravure printing inks based upon the average sales price of these inks as sold by Hindustan in India during the period April – September 2003. The only supporting documentation for the Hindustan list of average prices is an affidavit from the Financial Vice-President of Hindustan (Mr. Pandya), in which he attests to the company-specific data contained in the price list. As support for the reasonableness of these ink surrogate values, Rally provided the following support information: (1) Indian pricing information from the website of the All-India printing Ink Manufacturers' Association; (2) pages from Hindustan's public offering where the offering provides general pricing information for liquid printing inks; (3) a March 2004 price list for white, red, and blue gravure inks from a Malaysian Ink seller offered to a Vietnamese manufacturer of polyethylene bags; (4) October 2002 and March 2004 prices lists issued by CAI, a U.S. seller of gravure and flexographic inks; and (5) U.S. import data, where the tariff schedule separately breaks out flexographic and gravure printing inks from the "all other" provision.

In valuing FOP information, section 773(c)(1) of the Tariff Act of 1930, as amended (the "Act") directs the Department to use "the best available information" from the appropriate market-economy country. Moreover, in choosing the most appropriate surrogate value, the Department considers several factors, including the quality, specificity, and contemporaneity of the data. See HSLW from the PRC at Comment 2. Further, as explained in Honey, the Department prefers, whenever possible, to use countrywide data rather than company-specific

information. The Department also prefers to rely on publicly available data. See *Crawfish from the PRC* at Comment 2. Generally, when considering pricing data, the Department prefers to use a publicly available price that reflects numerous transactions between many buyers and sellers because the experience of a single producer is less representative of the cost of an input in a surrogate country. See *Rebar from the PRC* at Comment 5.

In the *Preliminary Results*, we valued black and color inks using Indian import statistics. In the final results of this administrative review, we are continuing to value black and color inks using Indian import statistics. 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. Specifically, the data are not contemporaneous and, because the data are based on an experience by a single Indian producer of ink, they are not completely representative of the cost of this input. In addition, aside from the affidavit of Mr. Pandya, the actual Hindustan pricing data have no supporting documentation.

In its April 3, 2007, surrogate value submission, Rally provided additional information to support the reasonableness of the Hindustan surrogate values. Regarding the Indian pricing information from the website of the All-India Printing Ink Manufacturers' Association, we find that Rally has provided no documentation to support its validity as support for the Hindustan pricing data. Specifically, Rally provided neither a description of the All-India Printing Ink Manufacturers' Association nor information to establish whether its pricing information is contemporaneous with the POR. Regarding pages from Hindustan's public offering, we find that this information simply provides data based on an experience by a single Indian producer of ink and are not completely representative of the cost of this input. Regarding the Malaysian price quote submitted by Rally (price list from a Malaysian ink supplier to a bags producer of PRCBs in Vietnam), we find that the Malaysian data are self-selected by Rally and have little or no supporting documentation. Because this information is based on the experience of a single Malaysian producer, it does not follow the Department's preference for publicly available data. Therefore, we find that these data do not support the use of Hindustan's surrogate values. For similar reasons, we find that the CAI price list submitted by Rally is also do not support the use of Hindustan's prices.

With regard to Rally's argument that U.S. import statistics, which separately classify expensive from inexpensive ink, demonstrate that the Indian import statistics provide distorted results, we disagree. While we have used U.S. import statistics as a benchmark in past cases to test the reliability of a particular surrogate value, 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. Although we recognize that the U.S. imports may be a useful tool to test the reliability

of a particular surrogate value, if we relied on it as an absolute benchmark, essentially we would be relying on U.S. import data for valuation purposes, rather than on data from a country at a similar level of economic development to the PRC.

Therefore, for all the reasons stated above, we have continued to value black and color ink using Indian import values for the final determination. Moreover, we note that this decision is consistent with the Department's previous finding on this identical issue. See PRCBs 2 from the PRC at Comment 9; see also Polyethylene 27 Int'l Trade Rep. at 30-32.

Comment 7: Valuation of Recycled Scrap and Scrap By-Product

Rally contends that in the Preliminary Results, the Department double counted the value of its recycled scrap resin inputs used in the production of subject merchandise. Rally states that it generates scrap in its production process. Some of the scrap is recycled into the production process and some is sold as scrap. Rally contends that it is the Department's normal practice not to value raw material inputs that are recycled into the production process. Rally maintains that because it reported all resin inputs, the resin contained in the scrap was fully accounted for and, thus, valuing the recycled resin FOP results in double counting.

In addition, Rally argues that the Department did not properly account for its reported sales of scrap. Rally states that it is the Department's practice to offset production costs with by-product income in those cases where the administrative record establishes that the by-product has been sold. Rally maintains that the administrative record in this case establishes that Rally sold the reported amounts of scrap to outside purchasers. For purposes of the final results, Rally contends that the Department should provide a by-product offset to its normal value.

The petitioners disagree with Rally. Specifically, the petitioners argue that Rally has provided no documentation to support its requested adjustments. The petitioners contend that Rally cites no record evidence either demonstrating that its resin costs are already fully captured or substantiating its claimed scrap sales. Citing 19 CFR 351.401(b), the petitioners argue that, as the party in possession of the relevant information, Rally bears the burden of establishing its entitlement to such normal value adjustments. The petitioners assert that because Rally has not met its burden, the Department should make no adjustments to normal value for the final results.

Department's Position: We disagree with Rally and continue to find that it is inappropriate to grant a by-product offset to Rally for either recycled or sold scrap. 19 CFR 351.401(b) states that the interested party that is in possession of the relevant information has the burden of establishing the amount and nature of a particular adjustment to normal value. In this instance, Rally has requested that the Department not value its consumption of recycled scrap and offset its normal value for its sales of scrap. However, in making an adjustment to normal value for recycled scrap consumed in the production process or scrap sold to outside purchasers, it is the Department's practice that a respondent must first provide and substantiate the quantity of by-product it produced from subject merchandise during the POR. See Malleable Pipe Fittings from the PRC at Comment 4. The reason for this practice is that the Department must determine whether the respondent's production process for subject merchandise actually generated the amount of scrap

claimed as a by-product offset. Id. Thus, in order to grant a by-product offset, it is the Department's practice to require respondents to provide sufficient documentation of the actual amount of by-product produced. Id. In this case, Rally stated that it keeps no records of the quantity of scrap generated during the POR from which the recycled scrap or sold scrap was sourced. See Rally's June 6, 2007, supplemental questionnaire response at 27. Given that Rally cannot substantiate the quantity of scrap generated during the POR, we examined Rally's reported data to determine whether there is an indication that Rally recycled and/or sold more scrap than it generated from the production of subject merchandise. Our analysis of Rally's reported quantity of recycled resin consumed and sold indicates that this total quantity is significantly greater than the quantity of scrap that Rally likely produced. In instances where the respondent cannot substantiate the quantities of scrap it produced during the POR, the Department has found that it cannot substantiate the scrap offset amount claimed. See, e.g., Malleable Pipe Fittings from the PRC at Comment 9; Hontex Enterp., Inc. d/b/a Louisiana Packing Co. v. United States, 248 F. Supp. 2d 1323, 1348 (CIT Feb. 13, 2003). In addition, we note that Rally sold a significant amount of scrap during the POR, thereby indicating that some of the recycled and/or sold scrap was generated from non-subject merchandise production. Therefore, pursuant to the Department's practice, we are not granting Rally the two scrap offsets it requested because Rally failed to substantiate the quantity of scrap it produced from subject merchandise during the POR. Id.

Comment 8: Revised Allocation Methodology

Rally notes that in the Preliminary Results, the Department adjusted Rally's FOP database to account for distortions caused by its allocation methodology, which allocated materials, labor, and energy ("ML&E") for resin-based attachments to all products, rather than just those products that have such attachments. Rally states that, in a post - Preliminary Results supplemental questionnaire, the Department instructed Rally to provide a revised allocation methodology that allocates the ML&E for resin-based attachments solely to those control numbers that actually incorporated such attachments. Rally states that it provided such a revised allocation methodology on October 5, 2007. Specifically, Rally noted that its revised methodology is weight-based and that it uses the actual weight of resin-based attachments and the actual weight of the bag body. Consequently, for purposes of the final results, Rally contends that the Department should use its revised FOPs.

The petitioners disagree with Rally and urge the Department to maintain the adjustments it made to Rally's FOP database in the Preliminary Results. The petitioners note that in the post - Preliminary Results supplemental questionnaire issued by the Department to Rally, the Department required Rally to provide "documentation to support the reported weight of its resin-based attachments." Notwithstanding these instructions, the petitioners note that Rally provided no supporting documentation for either the actual weight of each resin-based attachment or its standard formula for calculating the quantity of each type of resin in each attachment. The petitioners contend that supporting documentation for this information is especially critical because the new allocation methodology was submitted after the Preliminary Results, thereby preventing the Department from conducting a verification of the response within the applicable time limits. The petitioners argue that the Department should reject Rally's revised allocation

methodology and calculate Rally's FOPs in the same manner as the Preliminary Results because Rally failed to provide the requested support documentation. However, if the Department accepts Rally's revised FOP database, the petitioners argue that the Department should not allow Rally's unauthorized revision to its "total actual consumption quantity." In addition, the petitioners contend that the Department should make adjustments to Rally's allocation of labor and electricity.

Rally rebuts petitioners' arguments by stating that it did provide sufficient supporting documentation for its revised allocation methodology. Specifically, Rally states that it provided warehouse slips and inventory ledgers. While Rally does not rebut the petitioners' argument regarding adjustments to the allocation of labor and electricity in its revised allocation methodology, Rally does assert that the Department should not make adjustments to its "total actual consumption" quantity because it was simply correcting an error that its previous submissions failed to make.

Department's Position: We agree with the petitioners. As noted by both the petitioners and Rally, the Department, in the Preliminary Results, adjusted Rally's reported FOPs to account for a distortion caused by Rally's inability to allocate the materials consumed for subject merchandise containing resin-based attachments to the control numbers that actually have such attachments. See Preliminary Results, 72 FR at 51593. However, in the Preliminary Results, the Department stated that it was providing Rally with "one last opportunity to provide alternative methods of allocating its FOPs." Id. Consequently, the Department issued a supplemental questionnaire to Rally after the Preliminary Results, where it instructed Rally to "provide an allocation methodology that allocated ML&E for resin-based attachments, solely to those CONNUMs that actually incorporate these items." See the Department's September 4, 2007, supplemental questionnaire at 3. In addition, the Department informed Rally that "it is imperative that you provide detailed support documentation and calculation worksheets to support the responses given." Id. at 1. Moreover, the Department instructed Rally that if its "revised allocation methodology includes the weight of resin-based attachments, please ensure that you provide an explanation and support documentation to support the reported weight, i.e., calculation worksheets of average weight, weigh slips, etc." Id. at 3.

As noted by Rally, its revised allocation methodology is weight-based, where it relies upon the actual weight of the resin-based attachment and the actual weight of the bag body. See Rally's case brief at 5. Specifically, Rally states that it "actually weighed all resin-based attachments." See Rally's October 5, 2007, supplemental questionnaire response at 2. Further, after weighing the resin-based attachments, Rally used a formula to determine the quantity of each type of resin in each type of attachment. Id. Rally notes that weight, as well as its formula to calculate the quantity of each resin type, are the two components it used to calculate its total standard consumption. Id. A comparison of Rally's old allocation methodology and its revised allocation methodology demonstrates that the use of weight and the new resin formula to calculate total standard consumption are the only components of Rally's methodology that changed. See Rally's June 6, 2007, supplemental questionnaire response at Exhibit s-17 and Rally's October 5, 2007, supplemental questionnaire response at Exhibit S-5-2-2. However, despite explicit instructions from the Department that it was receiving "one last opportunity" to revise its

allocation methodology and that it was “imperative” for it to support items such as weight with support documentation, Rally failed to do so. In fact, Rally provided no explanation or documentation whatsoever to substantiate the only two items that changed between its old and new allocation methodology, i.e., the actual weight of attachments and bag bodies, and the formula to calculate the quantity of each resin type in each attachment type. For example, to substantiate the reported actual weight, Rally could have provided an affidavit from the employee that weighed the bags and attachments, weigh slips, photographs of the scale displaying the weight of each attachment type, etc. In addition, to substantiate the basis of its new formula to calculate the quantity of each resin type in the attachments, Rally could have explained whether the formula was based on a bill of materials and provided relevant support documentation. However, Rally failed to do so. As noted in Comment 7, 19 CFR 351.401(b) states that the interested party that is in possession of the relevant information has the burden of establishing the amount and nature of a particular adjustment to normal value. In this case, Rally is requesting that the Department accept its revised allocation methodology for purposes of calculating normal value. However, Rally, the party in possession of the relevant information requested by the Department, e.g., weigh slips, affidavits, etc., failed to substantiate the validity of its revised allocation methodology by not providing information requested by the Department. Therefore, the Department will continue to calculate Rally’s FOPs as was done in the Preliminary Results. Finally, the petitioners arguments regarding adjustments to Rally’s revised allocation methodology are moot because we have not accepted Rally’s revised methodology.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review and the final dumping margin for PRCBs in the Federal Register.

Agree

Disagree

David M. Spooner
Assistant Secretary
for Import Administration

Date