UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-520-803
POR: 11/01/2012-10/31/2013
Administrative Review
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DATE: April 7, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Issues and Decision Memorandum for the Final Results

I. Summary

We analyzed the comments of the interested parties in the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from the United Arab Emirates (UAE) covering the period of review (POR), November 1, 2012, through October 31, 2013. As a result, we made changes to the margin calculation for the respondent, JBF RAK LLC (JBF). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. Background

On December 8, 2014, the Department published the preliminary results of the administrative review of the antidumping duty order on PET Film from the UAE.[1] The Department received timely filed case briefs from JBF, and DuPont Teijin Films, Mitsubishi Polyester Film, and SKC Inc. (collectively, Petitioners), on January 14, 2015 and January 15, 2015, respectively. JBF filed a timely rebuttal brief on January 20, 2015.

Based on our analysis of all the comments received, the weighted average dumping margin for JBF has changed from the rate calculated in the Preliminary Results. The revised weighted average dumping margin is published in the accompanying Federal Register notice.

[1] See Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 72624 (December 8, 2014) (Preliminary Results).

III. <u>Discussion of the Issues</u>

Comment 1: Adjustments for Commissions in U.S. Dollars Rather than Local Currency

JBF's Comments

- JBF reported all home market commissions in Emirati Dirham (AED) and, in a separate field, in U.S. dollars.
- The Department incorrectly used the commissions field reported in U.S. dollars, rather than local currency, in calculating the CM Net Price for JBF's home market sales.

Petitioners did not comment on this issue.

Department Position:

The Department agrees with JBF. JBF reported home market commissions in both the currency in which they were incurred, Emirati Dirham (AED), and then, in a separate field, it reported these same expenses again after converting them to U.S. dollars. Because all other revenues and expenses used to calculate CM Net Price were in AED, the Department should have relied on the home market commissions reported in AED when making a deduction from gross unit price (reported in AED) for home market commissions. The Department incorrectly used commissions reported in U.S. dollars, however, rather than AED, in calculating the CM Net Price. The Department will make an adjustment in the home market program, using commissions paid in AED, for the final results.

Comment 2: Financing Expense Ratio is Not Supported by Information on the Record

Petitioners' Comments

- JBF did not provide support on the record for its financing expense ratio, and therefore the Department cannot rely on JBF's reported financing expense ratio in the final results.[2]
- The Department should rely on information JBF has placed on the record, the unconsolidated financial statements of JBF's parent company JBF Industries (JII), to calculate JBF's financing expense ratio.

JBF's Rebuttal

- JBF claims the data to support the financing expense ratio appears in JII's "consolidated financials;" however, it claims, these pages were "inadvertently omitted" from information placed on the record due to a "clerical error."[3]
- The Department should reject Petitioners' request to recalculate the financing expense ratio.

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[2] <u>See</u> <u>WelCom Prods. Inc. v. United States</u>, 865 F. Supp. 2d 1340, 1344 (Ct Int'l Trade 2012) (<u>WelCom</u>).
[3] <u>See</u> "Rebuttal Brief of JBF RAK, LLC," dated January 20, 2015 at 2 and 3.

Department Position

The Department agrees with Petitioners that the financing expense ratio must be supported by information on the record. Petitioners cite to WelCom for the proposition that the Department must base its decisions on factual findings supported by "substantial evidence."[4] In this case, the information on the record provided by JBF does not support the financing expense ratio it reported. In its case brief, JBF claims that it has information that would support the ratio it reported – JII's consolidated financial statement – but that it "inadvertently omitted" such information in its original submissions. Whether the information was inadvertently omitted from its questionnaire responses or not is immaterial. JII's consolidated financial statement is not on the record of this proceeding. The time to submit new factual information has passed and JBF has not requested an extension to submit the information and explained that extraordinary circumstances exist.[5] Therefore, the Department cannot consider JII's consolidated financial statement, which allegedly supports JBF's reported financing expense ratio, at this time. Consequently, the Department cannot use JBF's reported financing expense ratio because it is unsupported by record evidence. We will, therefore, recalculate JBF's financing expense ratio using the only financial data JBF placed on the record, JII's unconsolidated financial statements.[6]

Comment 3: The Financing Expense Ratio Does Not Include All Elements of Financing

Petitioners' Comments

- The financing expense ratio used in the calculation of cost of production in the preliminary results is significantly understated because it does not include costs related to foreign exchange gains and losses (including interest rate swaps).
- The Department's methodology is to classify interest rate swaps and foreign exchange gains and losses as financing cost because these activities are connected to the borrowing activities of the company.[7]
- The Department should adjust the financing expense ratio to include these additional financing expenses.

JBF's Rebuttal

- JBF's financial statement was prepared by an independent auditor pursuant to Generally Accepted Accounting Principles.

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[4] Id.
[5] See 19 CFR § 351.302(c).
[6] See "Polyethylene Terephthalate (PET) Film, Sheet and Strip from the United Arab Emirates (A-520-803); Response to the Section D of the Questionnaire by JBF RAK LLC.," dated April 9, 2014 at Exhibit D-9.
[7] See, e.g., Nucor Corp. v. United States, 33 C.I.T. 365, Slip Op. 09-30 at 2 (Ct. Int'l Trade 2009); Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Individually Quick Frozen Red Raspberries from Chile, 71 FR 45000, 45004 (Aug. 8, 2006); and Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Administrative Review, 68 FR 11045, 11048 (Mar. 7, 2003) (Indian Mushrooms).

- Foreign exchange gains and losses were properly identified and segregated as "Other Expenses" and must be distinguished from "Applicable" finance expenses already included in the interest and finance costs.
- The Department is required to use only those costs "that reasonably reflect the costs associate with the production and sale of the merchandise."[8]
- Finance costs directly related to cost of producing merchandise were identified in the financial statement as financial cost and distinguished from losses due to currency transactions that cannot be attributed to production of merchandise. Therefore, according to JBF, Petitioners' request should be rejected.

Department Position:

We agree with Petitioners that costs related to foreign exchange gains and losses, whether resulting from interest rate swaps or other transactions, should be included in the calculation of the financing expense ratio. The Department's practice is to include net foreign exchange losses in the calculation of a company's financing expense ratio. This approach considers how well an entity is able to manage its foreign currency exposure, not what generated the foreign exchange gain or loss.[9] Therefore, the Department will adjust JBF's financing expense ratio to include foreign exchange gains and losses for these final results.

Comment 4: Differences in Prices Paid to Affiliated and Unaffiliated Suppliers in Material Cost Adjustments

Petitioners' Comments

- The Department failed to make an adjustment for the difference in the price paid for chips JBF purchased from affiliated party, its parent, JII, and chips purchased from unaffiliated parties.
- If the purchased quantities meet the definition of a major input under Section 773(f)(3) of the Act, the Department should use the highest of the available costs of producing the input, either the transfer price paid to the affiliated supplier or the price paid to the unaffiliated supplier.
- If the purchased quantities do not meet the definition of a major input the Department must determine whether transactions with the affiliated party are at market value and apply the "transactions disregarded" test under section 773(f)(2) of the Act, making an adjustment for the price paid to affiliated parties compared to the price paid to unaffiliated parties.

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[8] See 19 U.S.C. § 1677b(f)(1)(A).
[9] See, e.g., Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 63291 (October 16, 2012) and accompanying Issues and Decision Memorandum at Comment 10, and Indian Mushrooms at 11045, 11048-11049.

JBF's Rebuttal

- A comparison of information on the record shows contemporaneous transactions between JBF and its parent company, JII, were at market prices and unaffected by the relationship between the two companies.
- The average difference between prices paid to affiliated parties and prices paid to unaffiliated parties is so small that it shows that the prices were unaffected by the relationship between JBF and JII.

Department Position:

Based upon our examination, the information on the record does not indicate the input in question constitutes a major input in this case. However, the transactions disregarded rule under section 773(f)(2) of the Act is applicable. The Department has explained previously that, for the purposes of section 773(f)(2) of the Act, the Department's established practice is to value the input at the higher of the transfer price or market price when the respondent purchases inputs from an affiliated supplier.[10] Therefore, the Department will follow its practice, and based the comparison of the transfer price and market price, make an adjustment under the transaction disregarded rule pursuant to section 773(f)(2) of the Act. The Department will value the price of chips JBF received from JII at the higher market price JBF paid to unaffiliated suppliers.

Comment 5: Commissions to Offset Normal Value

Petitioners' Comments

- JBF reported its paid commissions on some domestic and U.S. sales during the POR.
- The Department failed to deduct U.S. commissions from U.S. price.
- The Department failed to include all appropriate U.S. expenses in its calculation of offsets to U.S. sales matched to normal values inclusive of home market commissions.

JBF did not comment on this issue.

Department Position:

The Department agrees with Petitioners. Section 772(c)(2)(A) of the Act requires the Department to reduce U.S. price by all "costs, charges, or expenses . . . incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States." JBF reported paying commission for some of its sales to the United States. Therefore the Department erred in failing to subtract these commissions from U.S. price.

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[10] See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea, 77 FR 75988 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 21; Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Mexico, 77 FR 17422 (March 26, 2012).

The Department also agrees with Petitioners that it failed to accurately offset commissions JBF paid on home market sales. 19 CFR 351.410(e) requires the Department to "make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under considerations, and no commission is paid in the other market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less."

As discussed above under Comment 1, the Department is making a deduction for home market commissions paid on some home market sales. In those instances where normal value reflects home market commissions and comparison U.S. sales prices do not, 19 CFR 351.410(e) requires the Department to offset those home market commissions with selling expenses incurred on U.S. sales. In the Preliminary Results, while the Department calculated an offset for home market commissions, it failed to include U.S. indirect selling expenses in the offset amount; instead, the Department included only U.S. inventory carrying costs. For these final results, we have included all U.S. selling expenses (not already included elsewhere in the calculation of U.S. price) in the offset. We have also capped the amount in accordance with 19 CFR 351.410(e).

IV. Recommendation

We recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margin for the reviewed companies in the Federal Register.

Agree ✓ ________ Disagree________

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 7, 2015

Date