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DATE: November 30, 2012

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

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

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

Summary

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order of polyethylene terephthalate film (PET Film) from the United Arab Emirates (UAE). This review covers two producer/exporters of the subject merchandise, JBF RAK LLC (JBF) and FLEX Middle East FZE (FLEX) (collectively, respondents). The period of review (POR) is November 1, 2010, through October 31, 2011. The Department preliminarily determines that sales of subject merchandise have been made below normal value (NV) by JBF and that FLEX did not make sales of subject merchandise below NV.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

Background

On November 10, 2008, the Department published in the Federal Register the antidumping duty order on PET Film from the UAE.¹ On November 1, 2011, the Department published a notice of opportunity to request an administrative review of the Order.² In response, on November 30,

¹ See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates, 73 FR 66595 (November 10, 2008) (Order).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review, 76 FR 67413 (November 1, 2011).



2011, Dupont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America) Inc. (collectively, the petitioners) requested administrative reviews of JBF and FLEX, and JBF requested a review of itself.³ As a consequence, we initiated this review of JBF and FLEX on December 30, 2011.⁴

Between February 21, 2012, and November 6, 2012, both JBF and FLEX submitted timely responses to our questionnaires.

On April 30, 2012, the petitioners filed an allegation that FLEX has made home market sales below the cost of production (COP).⁵ Based on this allegation, we initiated an investigation to determine whether Flex's sales of PET film products were made at prices below the COP during the POR.⁶

On July 6, 2012, we extended the deadline for these preliminary results by 120 days, to November 29, 2012.⁷ As explained in the Memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012.⁸ Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now December 3, 2012.⁹

On November 16, 2012, the petitioners submitted pre-preliminary results comments and an allegation of targeted dumping, alleging that JBF engaged in targeting dumping during the period of review.¹⁰

Scope of the Order

The products covered by the order are all gauges of raw, pre-treated, or primed polyethylene terephthalate film, whether extruded or co-extruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also

³ See the November 30, 2011 Letters to the Secretary of Commerce from the petitioners and from JBF.

⁴ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 76 FR 82268 (December 30, 2011).

⁵ See the April 30, 2012 Letter to the Secretary from the petitioners, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the United Arab Emirates: Allegation of Sales Below Cost."

⁶ See the June 15, 2012 Memorandum from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Import Administration, "Petitioners' Allegation of Sales Below the Cost of Production for Flex Middle East FZE."

⁷ See the July 6, 2012 Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Extension of Deadline for Preliminary Results of the Antidumping Duty Administrative Review."

⁸ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012.

⁹ As the extended date of December 1, 2012, falls on a Saturday, the preliminary results are due the next business day of December 3, 2012. See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

¹⁰ See the petitioners' November 16, 2012 Letter to the Department, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the United Arab Emirates: Pre-Preliminary Comments and Allegations of Targeted Dumping" (Pre-Preliminary Comments).

excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. Polyethylene terephthalate film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Targeted Dumping

The petitioners alleged that JBF engaged in targeted dumping during the POR, and submitted that the Department should calculate dumping margins for JBF in the above-captioned review by comparing weighted average normal values to individual U.S. transaction prices.¹¹ Although the petitioners' allegations were timely, the Department did not have sufficient time to fully analyze them for purposes of these preliminary results. Therefore, we will address the petitioners' targeted dumping allegation at a later date.

Discussion of the Methodology

Comparisons to Normal Value

To determine whether sales of PET Film to the United States by the respondents were made at less than NV, we compared the respondents' export prices (EP) or constructed export prices (CEP) to NV, as described in the "Normal Value" sections, below.

In calculating the preliminary weighted-average dumping margins for JBF and FLEX, the Department applied the calculation methodology adopted in the Final Modification for Reviews.¹² In particular, the Department compared monthly, weighted-average U.S. prices with monthly, weighted-average NVs, and granted offsets for negative comparison results in the calculation of the weighted-average dumping margins.¹³

Product Comparisons

Pursuant to section 771(16) of the Act, we determined that products sold by the respondents, as described in the "Scope of the Order" section, above, in the UAE during the POR, are foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on five criteria to match U.S. sales of subject merchandise to comparison-market sales: grade, specification, thickness, thickness category, and surface treatment. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product based on the characteristics listed above.

¹¹ See Pre-Preliminary Comments at 2.

¹² See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) (Final Modification for Reviews).

¹³ See *id.* at 8102.

JBF has proposed changing the ranking of “surface treatment” values (i.e., one of the five model matching criteria) that were used in the last review.¹⁴ JBF suggests ranking PET Film in the following order: (1) both sides plain; (2) one side plain, one side corona; (3) one side coated, one side either plain or corona; and (4) both sides coated. Within each of these four general categories, JBF’s proposal would have us rank the surface treatments by cost. Based on our analysis of JBF’s proposal, we have adopted this proposed ranking of surface treatment for these preliminary results.

JBF also has reported a surface treatment (“O” – one side polyurethane, one side plain) that was not included in the last review and suggested this treatment be ranked between two existing categories (“D” – one side acrylic, one side corona; and “E” – one side copolymer, one side plain) with which it is more similar based on cost and physical characteristics. Based on our analysis of JBF’s proposal, we also have incorporated this additional surface treatment into our analysis for the preliminary results.

A more detailed discussion of our analysis can be found in the December 3, 2012 Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Import Administration, “Preliminary Analysis for JBF RAK” (JBF Calculations Memorandum).

Arm’s-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the prices at which sales are made to parties not affiliated with the exporter or producer; i.e., sales to home market affiliates must be at arm’s-length.¹⁵ In this proceeding, neither FLEX nor JBF reported sales to affiliates in the home market. Therefore, it was not necessary to determine whether any home market sales were made at arm’s length.

Level of Trade

To determine whether NV sales are at a different level of trade (LOT) than U.S. sales, we examine selling functions along the chain of distribution between the respondent and the unaffiliated customer for EP sales, and between the respondent and the affiliated U.S. importer for CEP sales. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act.

In implementing these principles, we examined information provided by JBF and FLEX regarding the selling functions involved in their home market and U.S. sales, including a description of these selling functions, listed in FLEX’s October 12, 2012 submission at 12-14, and in JBF’s February 21, 2012 submission at Exhibit A-5. Our analysis revealed that there were not any significant differences in selling functions between the different channels of distribution

¹⁴ See the September 12, 2012 Letter to the Secretary of Commerce, “Response to the Second Supplemental questionnaire by JBF RAK LLC.”

¹⁵ See 19 CFR 351.403(c).

or customer types in either the home or U.S. markets. Therefore, we preliminarily determine that FLEX and JBF each made all home-market sales at one LOT. Moreover, we preliminarily determine that all home-market sales by FLEX and JBF were made at the same LOT as their U.S. sales. Accordingly, a LOT adjustment is not warranted.

Date of Sale

The Department will normally use invoice date, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but we may use a date other than the invoice date if it better reflects the date on which the material terms of sale are established.¹⁶ For both JBF and FLEX, we preliminarily determine that no departure from our standard practice is warranted. Both companies reported invoice date as date of sale, and the record does not indicate that material terms of sale are established at a later or earlier date in the sales process. In instances where shipment took place prior to the invoice date, we have used shipment date to the customer as date of sale rather than invoice date, consistent with Department practice that assumes terms of sale are fixed at the time of shipment.¹⁷

JBF's Margin Calculation

Export Price

The Department based the price of all U.S. sales of subject merchandise by JBF on EP as defined in section 772(a) of the Act because the merchandise was sold by JBF to an unaffiliated purchaser in the United States before importation. We calculated EP based on the packed price to unaffiliated purchasers in the United States, as appropriate.¹⁸ We made adjustments to price for billing adjustments, where applicable, and deducted all movement expenses reported by JBF. Details regarding calculation of JBF's EP, as well as other calculation detail can be found in the JBF Calculations Memorandum, and in the preliminary calculation SAS programs.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales of PET Film in the home market to serve as a viable basis for calculating NV, we compared the volume of JBF's home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. In accordance with section 773(a)(1)(B) of the Act, and 19 CFR 351.404(b), because JBF's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the

¹⁶ See 19 CFR 351.401(i).

¹⁷ See Light-Walled Rectangular Pipe and Tube From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 55352, at 55354 (September 7, 2011), unchanged in Light-Walled Rectangular Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review, 77 FR 1915 (January 12, 2012).

¹⁸ See section 772(c) of the Act.

subject merchandise, we have determined that the home market was viable for comparison purposes.

B. Cost of Production Analysis

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of JBF's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses, interest expenses, and home market packing costs. We have examined JBF's reported cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on reported cost data, adjusted as follows:

- We revised the reported costs to treat the non-recyclable film lumps generated during the POR as scrap.
- We adjusted the transfer price for super bright chips transferred from the chips division to the film division to reflect the cost of producing the super bright chips.
- We revised the reported overhead costs to exclude the cost of aluminum wire and other metalizing materials used only in the production of non-subject merchandise.
- We revised the consolidated financial expense rate to include losses on foreign currency translations and short-term interest income.

Details regarding the calculation of JBF's COP, as well as other calculation detail can be found in the December 3, 2012 Memorandum to Neal Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – JBF RAK LLC," and in the preliminary calculation SAS programs.

C. Cost of Production Test

On a product-specific basis, we compared JBF's revised COP figures to home market prices, net of applicable billing adjustments, discounts and rebates, movement charges, selling expenses, and packing, to determine whether home market sales had been made at prices below COP. In determining whether to disregard JBF's home market sales made at prices below COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

In accordance with section 773(b) of the Act, where less than 20 percent of a given product was sold at prices less than COP, we did not disregard any below-cost sales of that product, because the below-cost sales were not made in "substantial quantities." However, we disregarded the below-cost sales that: (1) have been made within an extended period of time (within six months to one year) in substantial quantities (20 percent or more), as defined by section 773(b)(2)(B) and (C) of the Act; and (2) were not made at prices which permit recovery of all costs within a reasonable period of time, as prescribed by section 773(b)(2)(D) of the Act. Accordingly, we

determined to disregard certain of JBF's sales in the determination of NV because (1) 20 percent or more of a given product was sold at prices less than COP, and (2) based on our comparison of prices to weighted-average COP figured for the POR, they were made at prices that would not permit recovery of all costs within a reasonable period of time. We used the remaining home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Constructed Value

After disregarding certain sales as below cost, as described above, home market sales of contemporaneous identical and similar products existed for JBF that allowed for price-to-price comparisons for all margin calculations. Therefore, the Department did not need to rely on constructed value for any calculations for these preliminary results.

E. Price-to-Price Comparisons

We calculated JBF's NV based on packed prices to unaffiliated customers in the home market. We used JBF's adjustments and deductions as reported. We made deductions, where appropriate, for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In so doing, we made COS adjustments for the cost of providing samples to customers. In addition, for comparisons involving similar merchandise, we made adjustments for cost differences attributable to the physical differences between the products compared, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. Finally, we added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act, respectively.

FLEX's Margin Calculation

Constructed Export Price

In calculating the antidumping duty margins for FLEX, we used CEP, as defined in section 772(b) of the Act, because all sales to unaffiliated purchasers in the United States were made through Flex America, Inc. (FLEX America), a company affiliated with FLEX. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. We made deductions from CEP for all movement expenses reported by FLEX, as well as imputed credit expenses, and several direct expenses, including documentation charges, credit insurance expenses, terminal handling charges, demurrage charges, and several other fees, like port security charges, incurred on U.S. sales. In addition, we deducted indirect selling expenses associated with economic activity in the United States and imputed inventory carrying costs incurred by FLEX America.¹⁹ Finally, pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. Details regarding calculation of FLEX's CEP, as well as other calculation detail, can be found in the December 3, 2012 Memorandum to Mark Hoadley, Program Manager, AD/CVD Operations, Import Administration, "Preliminary Analysis Memorandum for Flex Middle East FZE and Flex America, Inc.," and in the preliminary calculation SAS programs for FLEX.

¹⁹ See sections 772(c)(2)(A) and 772(d)(1) of the Act.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales of PET Film in the home market to serve as a viable basis for calculating NV, we compared the volume of FLEX's home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. In accordance with section 773(a)(1)(B) of the Act, and 19 CFR 351.404(b), because FLEX's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we have determined that the home market was viable for comparison purposes.

B. Cost of Production Analysis

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of FLEX's cost of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative expenses, interest expenses, and home market packing costs. We have examined the cost data submitted by FLEX and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on reported cost data. As such, we have made no adjustments to FLEX's reported COP.²⁰

C. Cost of Production Test

On a product-specific basis, we compared FLEX's COP figures to home market prices, net of applicable billing adjustments, discounts and rebates, movement charges, selling expenses, and packing, to determine whether home market sales had been made at prices below COP. In determining whether to disregard FLEX's home market sales made at prices below COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

In accordance with section 773(b) of the Act, where less than 20 percent of a given product was sold at prices less than COP, we did not disregard any below-cost sales of that product, because the below-cost sales were not made in "substantial quantities." However, we disregarded the below-cost sales that: (1) have been made within an extended period of time (within six months to one year) in substantial quantities (20 percent or more), as defined by section 773(b)(2)(B) and (C) of the Act; and (2) were not made at prices which permit recovery of all costs within a reasonable period of time, as prescribed by section 773(b)(2)(D) of the Act. Accordingly, we determined to disregard certain of FLEX's sales in the determination of NV because (1) 20 percent or more of a given product was sold at prices less than COP and (2) based on our

²⁰ See the December 3, 2012 Memorandum to Neal M. Halper, Director of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Flex Middle East FZE."

comparison of prices to weighted-average COP figured for the POR, they were made at prices that would not permit recovery of all costs within a reasonable period of time. We used the remaining home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Constructed Value

After disregarding certain sales as below cost, as described above, home market sales of contemporaneous identical and similar products existed for FLEX that allowed for price-to-price comparisons for all margin calculations. Therefore, the Department did not need to rely on constructed value for any calculations for these preliminary results.

E. Price-to-Price Comparisons

We calculated FLEX's NV based on packed prices to unaffiliated customers in the home market. We made deductions for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. In addition, for comparisons involving similar merchandise, we made adjustments for cost differences attributable to the physical differences between the products compared, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversions

Pursuant to section 773A(a) of the Act and 19 CFR 351.415, we made currency conversions into U.S. dollars for FLEX's and JBF's sales based on the daily exchange rates in effect on the dates of the relevant U.S. sales as certified by the Federal Reserve Bank of New York.

Conclusion

We recommend applying the above methodology for these preliminary results.

Agree Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

November 30, 2012
Date