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International Trade Administration
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DATE: December 1, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate 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

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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 one producer/exporter of the subject merchandise, JBF RAK LLC (JBF). The period of review (POR) is November 1, 2012, through October 31, 2013. The Department preliminarily determines that sales of subject merchandise have been made below normal value (NV) in the United States by JBF during the POR.

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, 2013, the Department published a notice of

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[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).

opportunity to request an administrative review of the Order.[2] In response, on November 29, 2013, JBF requested review of itself,[3] and on December 2, 2013, Dupont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively, the petitioners) requested administrative reviews of JBF and FLEX Middle East FZE (FLEX).[4] As a consequence, we initiated this review of JBF and FLEX on December 30, 2013.[5] On March 31, 2014, petitioners withdrew their request for review of FLEX.[6] On April 23, 2014, the Department rescinded the review of FLEX.[7]

Between January 24, 2014, and November 3, 2014, JBF submitted timely responses to the Department's questionnaires.

On July 7, 2014, we extended the deadline for these preliminary results by 120 days, to December 1, 2014.[8]

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 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.

DATE OF SALE

The Department will normally use the 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.[9] We preliminarily determine that no departure from our standard practice is

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[2] See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 78 FR 65612 (November 1, 2013).
[3] See the November 29, 2013 Letter to the Secretary of Commerce from JBF.
[4] See the December 2, 2013 Letter to the Secretary of Commerce from the petitioners.
[5] See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 78 FR 79392 (December 30, 2013).
[6] See the March 31, 2014 Letter to the Secretary of Commerce from the petitioners.
[7] See Polyethylene Terephthalate Film, Sheet and Strip from the United Arab Emirates: Partial Rescission of Antidumping Duty Administrative Review; 2012-1013, 79 FR 22624 (April 23, 2014).
[8] See the July 7, 2014 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."
[9] See 19 CFR 351.401(i).

warranted. JBF 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.[10]

DISCUSSION OF THE METHODOLOGY

Fair Value Comparisons

Pursuant to section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether JBF's sales of PET Film were made in the United States at less than NV, we compared the export price (EP) or constructed export price (CEP) to the NV as described in the "Export Price" and "Normal Value" sections of this notice. In these preliminary results, the Department applied the average-to-average comparison methodology to JBF's sales, as noted in the "Differential Pricing" section below.
When making this comparison in accordance with section 771(16) of the Act, we considered all products sold in the home market, as described above in the "Scope of the Order" section of this notice, in the ordinary course of trade for purposes of determining an appropriate product comparison to the U.S. sale. If contemporaneous sales of identical home market merchandise, as described above, were reported, then we made comparisons to the monthly weight-averaged home market prices that were based on all such sales. If there were no contemporaneous home market sales of identical merchandise, then we identified home market sales of the most similar merchandise that were contemporaneous with the U.S. sales in accordance with 19 CFR 351.414(e).

A. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weight-averaged NVs to weight-averaged EPs (or CEPs) (the average-to-average method) "unless the Secretary determines that another method is appropriate in a particular case." In antidumping investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(l)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.[11] In recent proceedings, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.[12] The Department finds that the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this

[10] See JBF's March 26, 2014 Section B and C response at B-17 and C-16.
[11] See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012).
[12] See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Determination of the Comparison Method; see also Polyvinyl Alcohol From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2010–2012, 78 FR 20890 (April 8, 2013) unchanged in Polyvinyl Alcohol from Taiwan: Final Results of Antidumping Duty Administrative Review; 2010-2012, 78 FR 37794 (June 24, 2013).

administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weight-averaged dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weight-averaged dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (i.e., zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weight-averaged dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weight-averaged dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weight-averaged dumping margin between the average-to-average method and the appropriate alternative method, or (2) the resulting weight-averaged dumping margin moves across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For JBF, based on the results of the differential pricing analysis, the Department finds that more than 33 percent of JBF's export sales indicated the existence of a pattern of EPs for comparable merchandise that differ pervasively among purchasers, regions, or time periods. Because more than 33 percent of the value of total U.S. sales passes the differential pricing test, the results of the test support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method. When analyzing the weight-averaged dumping margins calculated using the average-to-average method for all U.S. sales compared to the alternative method, we did not find a meaningful difference in the results for JBF.[13] Therefore, the average-to-average method will appropriately account for the observed price differences for JBF.

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

[13] See Memorandum to the File, "Preliminary Analysis for JBF RAK LLC (JBF)," dated concurrently with this memorandum. (JBF Preliminary Calculation Memorandum).

sales: grade, specification, thickness, thickness category, and surface treatment.[14] In accordance with sections 771(16)(B) and (C) of the Act, 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.

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.[15] We calculated EP based on the packed price to unaffiliated purchasers in the United States, as appropriate.[16] 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. Home Market Viability and Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that, pursuant to section 773(a)(1)(C) of the Act, and 19 CFR 351.404(b), JBF had a viable home market during the POR. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales.

B. Level of Trade

To determine whether NV sales are at a different level of trade (LOT) than U.S. sales pursuant to section 773(a)(1)(B)(i) of the Act, 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.[17] Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[18] Substantial differences in selling activities are a necessary, but not a sufficient, condition for determining that there is a difference in the stages of marketing.[19] To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system

[14] See the Department's March 26, 2014 Initial Questionnaire at B11-B-14 and C10-C13.
[15] See JBF's February 21, 2014 Section A Response at Exhibit A-1.
[16] See section 772(c) of the Act.
[17] See 19 CFR 351.412(c)(2).
[18] See id.
[19] See id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997); Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7.

in each market (i.e., the chain of distribution), including selling functions, class of customers (customer category), and the level of selling expenses for each type of sale.

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 regarding the selling functions involved in their home market and U.S. sales, including a description of these selling functions, in JBF's February 26, 2014 submission at Exhibit A-5. Our analysis revealed that there were not any significant differences in selling functions between the different channels of distribution or customer types in either the home or U.S. markets. Therefore, we preliminarily determine that JBF made all home-market sales at one LOT. Moreover, we preliminarily determine that all home-market sales by JBF were made at the same LOT as their U.S. sales. Accordingly, a LOT adjustment is not warranted.

C. Calculation of Normal Value Based on Comparison Market Prices

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 in accordance with section 773(a)(6) of the Act. We made deductions, where appropriate, 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 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.

Cost of Production Analysis

A. 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 examined the 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 the reported data.[20] Based on our analysis of JBF's questionnaire responses, we made the following adjustments to JBF's reported COP:

- 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.

[20] See section 773(b)(2)(d) of the Act.

Details regarding the calculation of JBF's COP, as well as other calculation detail can be found in the JBF Preliminary Calculation Memorandum.

B. 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.

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.[21] We used the remaining home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Price-to-CV Comparison

Where we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on constructed value (CV). Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

D. Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of JBF's material and fabrication costs, selling, general and administrative (SG&A) expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by JBF in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

[21] See section 773(b)(2)(d) of the Act; JBF Preliminary Calculation Memorandum.

Currency Conversions

Pursuant to section 773A(a) of the Act and 19 CFR 351.415, we made currency conversions into U.S. dollars for 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 ____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

1 DECEMBER 2014
Date