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June 20, 2016

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: Decision Memorandum for Preliminary Results of Administrative
Review: Polyethylene Retail Carrier Bags from Malaysia

SUMMARY

The Department of Commerce (the Department) is conducting this administrative review of the antidumping duty (AD) order on polyethylene retail carrier bags (PRCBs) from Malaysia. The review covers one producer/exporter of the subject merchandise, Euro SME Sdn Bhd (Euro SME). The period of review (POR) is August 1, 2014 through July 31, 2015. We preliminarily find that Euro SME has sold subject merchandise at less than normal value (NV) during the POR.

Background

In August 2004, the Department published in the *Federal Register* an AD order on PRCBs from Malaysia.¹ Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), Euro SME requested an administrative review of the AD order on PRCBs from Malaysia on August 31, 2015.² On October 6, 2015, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the AD order on PRCBs from Malaysia.³

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government during Snowstorm Jonas. The deadline for these preliminary

¹ See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 48203 (August 9, 2004).

² See Letter from Euro SME to the Department, "Polyethylene Retail Carrier Bags from Malaysia; Administrative Review Request and Notice of Appearance" (August 31, 2015).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 60356 (October 6, 2015).



results of review has been extended by four business days.⁴ On April 11, 2016, the Department extended the due date for the preliminary results of this administrative review by 45 days to June 20, 2016.⁵

Scope of the Order

The merchandise subject to the AD order is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches (15.24 cm) but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Bona Fides Analysis

On December 21, 2015, the petitioners requested that we investigate the *bona fide* nature of Euro SME's sole U.S. sale.⁶ In evaluating whether a sale is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, the Department considers, *inter alia*, such factors as: (a) the timing of the sale; (b) the price and quantity; (c) the expenses arising from the transaction; (d) whether the goods were resold at a profit; and (e) whether the transaction was made on an arm's-length basis.⁷ Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an

⁴ See Memorandum for the Record from Acting Assistant Secretary Ron Lorentzen entitled "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'" (January 27, 2016).

⁵ See Polyethylene Retail Carrier Bags from Malaysia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014-2015 (April 11, 2016).

⁶ See Letter from the petitioners, Polyethylene Retail Carrier Bag Committee and its individual members, Hiley Poly Co., LLC and Superbag Corporation, titled "Polyethylene Retail Carrier Bags from Malaysia: Petitioners' Comments on Euro SME's Initial Questionnaire Responses," dated December 21, 2015.

⁷ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) (TTPC).

alleged sale of subject merchandise.”⁸ Finally, where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its dumping margin calculations.⁹

Based on our analysis of the factors described above, we preliminarily find that Euro SME’s U.S. sale is *bona fide*.¹⁰ Moreover, our review of Euro SME’s responses to our initial and supplemental questionnaires found no facts that would indicate this sale was structured in a manner that could not be repeated in the future.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Euro SME’s sales of the subject merchandise from Malaysia to the United States were made at less than NV, the Department compared the export price (EP) to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average EP (or constructed export prices (CEP)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the EP (or CEP) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly 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, in fact, analogous to the issue in less-than-fair-value investigations.¹¹

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹² The Department finds

⁸ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum at New Shipper Review of Clipper Manufacturing Ltd.).

⁹ See *TTPC*, 366 F. Supp. 2d at 1249.

¹⁰ See Memorandum to The File titled “2014-2015 Administrative Review of Polyethylene Retail Carrier Bags from Malaysia – Preliminary *Bona Fides* Sales Analysis of Euro SME Sdn Bhd,” dated concurrently with this memorandum, for more details including certain business proprietary information.

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) and the accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int’l Trade 2014).

¹² See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this 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 a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. 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 weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. 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 period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and normal value 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* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period 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 used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the 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 (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, 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 prices 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 prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines 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 comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average 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, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move 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 Euro SME, based on the results of the differential pricing analysis, the Department preliminarily finds that 0.00 percent of the value of U.S. sales pass the Cohen's *d* test,¹³ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Euro SME.

Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by Euro SME and sold in the United States and in the home market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product

¹³ See the Memorandum to the File from Jerrold Freeman, "2014-2015 Administrative Review of the Antidumping Order on Polyethylene Retail Carrier Bags from Malaysia – Preliminary Results Memorandum for Euro SME," dated concurrently with this memorandum at 2.

sold in the United States. In the order of importance these characteristics are as follows: 1) quality (prime); 2) bag type; 3) length; 4) width; 5) gusset; 6) thickness; 7) percentage of high-density polyethylene resin; 8) percentage of low-density polyethylene resin; 9) percentage of low-linear density polyethylene resin; 10) percentage of color concentrate; 11) percentage of ink coverage; 12) number of ink colors; and 13) number of sides printed.

Date of Sale

Section 351.401(i) of the Department's regulations states that, normally, we will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that we may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹⁴

With respect to Euro SME's home-market sales and its sale to the United States, Euro SME reported the invoice date as the date of sale.¹⁵ Thus, because the evidence does not demonstrate that the material terms of sale were established on another date, and consistent with our practice, we used Euro SME's reported invoice date as the appropriate date of sale for all home-market and U.S. sales.¹⁶

Export Price

In accordance with section 772(a) of the Act, we used EP for Euro SME because the subject merchandise was sold to the unaffiliated U.S. customer.¹⁷ Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." We calculated EP based on the delivered price to the unaffiliated purchaser in, or for exportation to, the United States. We made deductions for any movement expenses (*i.e.*, domestic inland freight – plant/warehouse to customer and domestic brokerage and handling) in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the EP by deducting selling expenses (*i.e.*, credit) associated with economic activities occurring in the United States.¹⁸

¹⁴ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁵ See Euro SME's November 23, 2015, response to Section A of the Department's questionnaire, at 13.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ See Preliminary Analysis Memorandum, at 4-5.

Normal Value

A. Home Market Viability as Comparison Market

In order to determine whether there is 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 five percent or more of the aggregate volume of U.S. sales), we compared the volume of Euro SME's home-market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act.¹⁹ Based on this comparison, we determined that Euro SME had a viable home market during the POR. Consequently, we based NV on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade and sales made to affiliated purchasers where we find prices were made at arm's length, described in detail below.

B. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act,²⁰ to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For EP, the LOT is that of the export sale. To determine whether home-market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.²¹ If the comparison market sales are at a different LOT and the difference affects price comparability, as described in 19 CFR 351.412(d) and as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In the home market, Euro SME reported one channel of distribution: direct sales to retailers and trading companies.²² In the U.S. market, Euro SME also reported one channel of distribution, an EP sale to a trading company.²³ Euro SME reported that it incurred the following selling functions and activities: Sales Forecasting; Strategic/Economic Planning; Procurement/Sourcing Services; Packing; Order Input/Processing; Direct Sales Personnel; Sales/Marketing Support; Market Research; and Technical Assistance.²⁴ Additionally, Euro SME reported that, with the exception of inventory maintenance, performed only in the home-market, all selling activities were performed to the same degree on all sales to both the U.S. and home markets. Finally, Euro SME stated, the company is not claiming a LOT adjustment for this POR.²⁵

¹⁹ See Euro SME's November 23, 2015, response to Section A of the Department's questionnaire, at 3 and Exhibit 1.

²⁰ See H.R. Doc. No. 316, 103d Cong., 2d Sess. 829-831 (1994).

²¹ See 19 CFR 351.412(c)(2).

²² See Euro SME's November 23, 2015, response to Section A of the Department's questionnaire, at 12 and Exhibit 7; and Euro SME's January 15, 2016, supplemental response at Exhibit 5.

²³ *Id.*

²⁴ *Id.*

²⁵ See Euro SME's December 11, 2015 Section BCD response at 18.

After analyzing the data on the record, we find that Euro SME made sales at one marketing stage (*i.e.*, one LOT) in both the U.S. and home markets. We did not find that there were significant differences between the selling activities associated with the EP LOT and those associated with the home-market LOT and, thus, in accordance with 19 CFR 351.412, we have preliminarily determined to not make a LOT adjustment.

C. Cost of Production

Pursuant to the amendment of Section 773(b)(2) of the Tariff Act of 1930 and 19 U.S.C. 1677b(b), to modify the treatment of distorted prices or costs in antidumping proceedings, we requested that Euro SME respond to section D of our questionnaire (*i.e.*, the section relating to cost of production (COP)).²⁶ We examined the cost data for Euro SME and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data, as described below.

1. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Euro SME in its questionnaire responses for the COP calculation.

2. Test of Comparison Market Sales Prices

As required under section 773(b)(2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we disregarded no below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home-market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

²⁶ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

Because we are applying our standard annual-average cost test in these preliminary results, we also applied our standard cost-recovery test with no adjustments. Our cost test for Euro SME indicated that, for certain home-market sales, more than 20 percent were sold at prices below the COP. Therefore, we disregarded those sales and used the remaining sales as the basis for determining NV.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV on the starting prices to home-market customers. Pursuant to section 773(a)(6)(B)(ii) of the Act, we deducted inland-freight expenses Euro SME incurred on its home-market sales. We made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We made deductions for direct selling expenses, as appropriate.²⁷

Currency Conversion

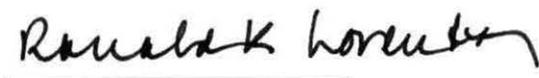
We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance's website at <http://enforcement.trade.gov/exchange/index.html>.

Conclusion

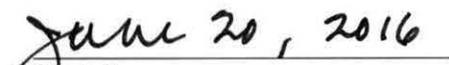
We recommend applying the above methodology for these preliminary results.

✓

Agree Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



(Date)

²⁷ See Preliminary Analysis Memorandum, at 4-5.