



A-549-821
AR: 08/01/13 – 07/31/14
Public Document
AD/CVD I: DV

May 1, 2015

MEMORANDUM TO: Paul Piquado
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 the 2013/2014
Antidumping Duty Administrative Review: Polyethylene Retail
Carrier Bags from Thailand

SUMMARY

In response to requests from the domestic interested parties, the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corporation (collectively, the petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand,¹ pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). These preliminary results cover 33 companies. The period of review (POR) is August 1, 2013, through July 31, 2014. We preliminarily find that subject merchandise has been sold at less than normal value by Beyond Packaging Co., Ltd. (Beyond Packaging).

BACKGROUND

On August 9, 2004, the Department published the *Order* in the *Federal Register*. On September 30, 2014, we published a notice of initiation of an administrative review of 33 companies.² On October 24, 2014, we received a timely submission from Super Grip Co., Ltd. (Super Grip) reporting to the Department that it did not have sales, shipments, or entries of the subject

¹ See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 48204 (August 9, 2004) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 58729 (September 30, 2014) (*Initiation Notice*).



merchandise during the POR.³ We transmitted a “No-Shipment Inquiry” to CBP regarding this company.⁴ On November 5, 2014, we selected Beyond Packaging for individual examination.⁵ On December 16, 2014, the petitioners withdrew their request for an administrative review of all companies for which they requested a review except Beyond Packaging.⁶

SCOPE OF THE ORDER

The merchandise subject to the antidumping duty 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 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.

As a result of changes to the Harmonized Tariff Schedule of the United States (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

RESCISSION OF REVIEW IN PART

As discussed above, on December 16, 2014, the petitioners timely withdrew their request for review of 32 of the 33 requested companies. In accordance with 19 CFR 351.213(d), the Department will rescind an administrative review in part “if a party that requested a review withdraws the request within 90 days of the date of the publication of notice of initiation of the requested review.” Because there are no other requests for review of these companies, and the

³ See Super Grip’s letter entitled “*Polyethylene Retail Carrier Bags from Thailand: Notice of No Shipments (08/01/13-07/31/14)*” dated October 24, 2014.

⁴ See CBP message 4300302, dated October 27, 2014.

⁵ See memorandum from Dmitry Vladimirov, International Trade Compliance Analyst, AD/CVD Operations, Office I, to Thomas Gilgunn, Acting Director, AD/CVD Operations, Office I, “Polyethylene Retail Carrier Bags from Thailand: Selection of Respondents for Individual Examination” dated November 5, 2014 (Respondent Selection Memorandum).

⁶ For a full list of these companies, see *Initiation Notice*. The *Initiation Notice* incorrectly lists one of the companies as 2PK Inetrplas Co., Ltd., instead of 2PK Interplas Co., Ltd. This error was corrected in *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 64565 (October 30, 2014).

petitioners' request was timely, we are rescinding the review with respect to all companies for which we initiated a review with the exception of Beyond Packaging.

DISCUSSION OF THE METHODOLOGY

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for these preliminary results with respect to the weighted-average dumping margin for Beyond Packaging.

A. Use of Facts Available

On November 7, 2014, we sent the antidumping questionnaire to Beyond Packaging at the addresses provided by the petitioners.⁷ We were notified by the carrier that the shipment could not be delivered.⁸ The information contained in the CBP data that were released to all interested parties show the same company address for Beyond Packaging which proved to be undeliverable.⁹ In response to our request for alternative contact information for Beyond Packaging, on December 2, 2014, the petitioners placed on the record of this review the registration documentation for Beyond Packaging filed with Thailand's Ministry of Commerce.¹⁰ This information revealed that one of the addresses to which we sent the questionnaire on November 7, 2014, is the same address that was used by Beyond Packaging to register the company with the Thai government authorities.¹¹ The information also revealed the identities and addresses of the company's directors at the time of the company's registration.¹²

On December 8, 2014, we sent the antidumping questionnaire to the address of Beyond Packaging's main shareholder and principal director who, according to Beyond Packaging's registration documents, was, at that time, authorized to represent Beyond Packaging and to bind the company to certain legal commitments.¹³ We were notified by the carrier that the shipment could not be delivered.¹⁴

⁷ See memorandum to the file from Dmitry Vladimirov, International Trade Compliance Analyst, AD/CVD Operations, Office I, entitled "Polyethylene Retail Carrier Bags from Thailand; 2013-2014 AR – Antidumping Duty Questionnaire for Beyond Packaging Co., Ltd.; Shipment Tracking and Delivery Status Details" dated November 24, 2014.

⁸ *Id.*

⁹ See memorandum to the file from Dmitry Vladimirov, International Trade Compliance Analyst, AD/CVD Operations, Office I, entitled, "Polyethylene Retail Carrier Bags from Thailand – Placement of CBP Data on the Record," dated October 8, 2014.

¹⁰ See letter from King & Spalding LLP on behalf of the petitioners entitled "Polyethylene Retail Carrier Bags From Thailand: Response To Request For Information" dated December 2, 2014 (Factual Information Submission) at Tab 1, Attachment 2.

¹¹ *Id.*

¹² *Id.*

¹³ See memorandum to the file from Dmitry Vladimirov, International Trade Compliance Analyst, AD/CVD Operations, Office I, entitled "Polyethylene Retail Carrier Bags from Thailand; 2013-2014 AR – Antidumping Duty Questionnaire for Beyond Packaging Co., Ltd.; Shipment Tracking and Delivery Status Details" dated January 14, 2015.

¹⁴ *Id.*

Section 751(a)(2)(A) of the Act directs the Department to determine the “dumping margin” for “each entry.” Accordingly, to determine information pertaining to Beyond Packaging’s entries, on January 14, 2015, we requested that the petitioners provide us with any publicly available information regarding the names and addresses of the importers of record for subject exports made by Beyond Packaging.¹⁵ On January 21, 2015, the petitioners identified Globalink Enterprises, LLC (Globalink) as the sole importer of record and provided relevant information about the company.¹⁶ Further, the petitioners’ submissions provided publicly available information regarding the subject entries and indicated the company address for Beyond Packaging that was the same address to which the Department had sought to deliver the questionnaire.¹⁷ The information contained in the expanded CBP data that were released to all interested parties confirmed the identity of Globalink as the sole importer of record for entries of subject merchandise exported by Beyond Packaging during the POR.¹⁸

We sent questionnaires to Globalink on January 28, 2015, and February 13, 2015, asking for an address or any other contact information for Beyond Packaging, as well as other general questions regarding its purchases of subject merchandise from and its relationship with Beyond Packaging. The first questionnaire was successfully delivered.¹⁹ After we did not receive a response from Globalink by the established deadline we issued a subsequent questionnaire, identical to the first, and specifying that failure to respond may result in the application of AFA. The second questionnaire was also successfully delivered.²⁰ Globalink again did not respond our request for information.

In sum, we sent five separate requests for information: two to Beyond Packaging; one to the main shareholder and principal director of Beyond Packaging; and two to Beyond Packaging’s importer.

Section 776(a)(1) of the Act states that the Department “shall use” facts available if necessary information is not available on the record. Further, section 776(a)(2) of the Act provides that the Department “shall use” facts available if it determines that an interested party withheld information requested by the Department or significantly impeded a proceeding. We preliminarily determine that the use of facts available is warranted because Beyond Packaging’s address was necessary to this proceeding. Furthermore, Beyond Packaging and Globalink withheld information necessary for the Department to conduct an administrative review of Beyond Packaging’s entries, thereby significantly impeding the conduct of this proceeding.

¹⁵ See letter from the Department to King & Spalding LLP, dated January 14, 2015.

¹⁶ See letter from King & Spalding LLP on behalf of the petitioners entitled “Polyethylene Retail Carrier Bags From Thailand: Response To Request For Information,” dated January 21, 2015; *see also* Factual Information Submission at Tab 2.

¹⁷ *Id.*

¹⁸ See memorandum to the file from Dmitry Vladimirov, International Trade Compliance Analyst, AD/CVD Operations, Office I, entitled “Polyethylene Retail Carrier Bags from Thailand – Placement of CBP Data for Beyond Packaging Co., Ltd., on the Record” dated January 27, 2015.

¹⁹ See memorandum to the file from Dmitry Vladimirov, International Trade Compliance Analyst, AD/CVD Operations, Office I, entitled “Polyethylene Retail Carrier Bags from Thailand; 2013-2014 AR – Requests for Information from the Importer of Record; Shipment Tracking and Delivery Status Details” dated March 9, 2015.

²⁰ *Id.*

We preliminarily find that the circumstances here are different from other instances in which the Department has been unable to deliver its request for information to a respondent, and the Department rescinded the review.²¹ Unlike in those instances, in this case, Globalink, the importer for Beyond Packaging's entries and an interested party under section 771(9)(A) of the Act, failed to respond to a request for information necessary for the conduct of this review. Further, the mandatory respondent exporter appears not to have provided an accurate working address for itself, or its shareholders/directors, on the record with its own government, nor to have maintained an accurate working address for purposes of document submission to CBP and entering merchandise subject to the *Order* into the United States. These facts demonstrate unreasonable commercial conduct by Beyond Packaging and Globalink which inhibited the Department's ability to administer the antidumping law.

In accordance with the Department's mandate to effectively administer the antidumping law and provide the statutory relief requested by the domestic industry, as supported by information on the record of an administrative review, the Department preliminarily determines that the use of facts available is warranted in determining a weighted-average dumping margin for merchandise produced and/or exported by Beyond Packaging.

B. Application of Facts Available With an Adverse Inference

Section 776(b) of the Act provides that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.²² In addition, the SAA²³ provides that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁴

As explained above, the Department made several attempts to deliver the antidumping questionnaire to Beyond Packaging's corporate address, as well as to the personal address of a principal shareholder and member of its board of directors. Beyond Packaging's corporate address was originally provided by the petitioners in their request for an administrative review.²⁵ Subsequently, the Department confirmed this address with the information provided by Beyond Packaging to its importer and CBP for the POR entries of subject merchandise exported by Beyond Packaging. Furthermore, Beyond Packaging provided the same address in its business

²¹ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand; Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 50931 (September 5, 2007); see also *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006).

²² See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

²³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA).

²⁴ See SAA at 870; see also, e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

²⁵ See letter from the petitioners to the Secretary of Commerce, "Polyethylene Retail Carrier Bags from Thailand: Request for Administrative Review" dated August 29, 2014.

registration with the Government of Thailand. Beyond Packaging's Thai business registration documentation also included the identity and personal addresses for three shareholders and board members who, according to the registration materials, were authorized to bind Beyond Packaging in legal matters.

A company exercising reasonable business practices and due diligence would provide accurate and reliable information to government authorities, including contact information, and maintain such information for those authorities. It appears that Beyond Packaging and Globalink did not do so. The information provided to CBP by Globalink, which contained information from Beyond Packaging for the purpose of supporting entries of its merchandise into the United States, proved to be unreliable. The address for Beyond Packaging submitted by Beyond Packaging and provided by Globalink to CBP is identical to the address Beyond Packaging provided in its business registration to the Thai government. A company's business registration should reflect current and accurate information, including its corporate address, and other material information, such as the identity and contact information for its shareholders and members of its board of directors. However, the Department has been unable to rely on this information to conduct this administrative review. Additionally, Globalink, a U.S. importer of Beyond Packaging's merchandise subject to this review, failed to respond to the Department's additional attempts to obtain the necessary information to conduct this review.

A company such as Beyond Packaging, which sells merchandise into the United States, should be knowledgeable of the laws governing its sales into the United States, including the U.S. antidumping duty law when its merchandise is subject to an antidumping duty order. Beyond Packaging and Globalink knew, or reasonably should have known, that Beyond Packaging's shipments of PRCBs from Thailand to the United States were subject to the *Order*. In addition, Beyond Packaging and Globalink knew, or reasonably should have known, that these entries of subject merchandise could be, and are, subject to an administrative review in accordance with the U.S. antidumping laws. This includes the Department's standard notifications published in the *Federal Register* announcing the opportunity to request a review²⁶ in the anniversary month of an order, the initiation of an administrative review²⁷ if one is requested, the process for participation as an interested party to an administrative review,²⁸ and the identification of companies who are expected to provide the Department information with which it may conduct the administrative review.²⁹

In light of the fact that Beyond Packaging and its U.S. importer, Globalink, are on notice as to the conduct of this review, and the unreasonable commercial conduct of these companies, we preliminarily determine that Beyond Packaging and Globalink have not cooperated by acting to the best of their ability in providing the necessary information for the Department to calculate a weighted-average dumping margin for Beyond Packaging's exports of subject merchandise to the United States for this POR. Accordingly, we preliminarily find that the application of facts

²⁶ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 79 FR 44740 (August 1, 2014)(*Opportunity Notice*).

²⁷ See *Initiation Notice*.

²⁸ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); cited in both the *Opportunity Notice* and the *Initiation Notice*.

²⁹ See Respondent Selection Memorandum.

available with an adverse inference, pursuant to section 776(b) of the Act, is warranted for the weighted average dumping margin for Beyond Packaging for the preliminary results of this administrative review.

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.³⁰ As AFA, we preliminarily assign to Beyond Packaging a weighted-average dumping margin of 122.88 percent, the highest rate found in the *Final LTFV*.³¹ We applied this rate in the *Final LTFV* as well as in each successive administrative review of this proceeding.³² Further, we applied this rate to Beyond Packaging in the recently completed administrative review.³³ This rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.³⁴

Section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”³⁵ As clarified in the SAA, “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.³⁶ To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information.³⁷ As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information.³⁸ Further, independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs

³⁰ See also 19 CFR 351.308(c) and SAA at 868-870.

³¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 34122, 34125 (June 18, 2004) (*Final LTFV*).

³² See *Final LTFV*, 69 FR at 34123-34124, *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982, 1983 (January 17, 2007), *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007), *Polyethylene Retail Carrier Bags from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 2511, 2512 (January 15, 2009) (2006-2007 *Final Results*), and *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 74 FR 65751 (December 11, 2009).

³³ See *Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review; 2012–2013*; 79 FR 51953 (September 2, 2014).

³⁴ See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (CAFC 2010).

³⁵ See SAA at 870.

³⁶ *Id.*

³⁷ See 2006-2007 *Final Results* and accompanying Issues and Decision Memorandum at comment 1.

³⁸ See SAA at 869.

data, and information obtained from interested parties during the particular investigation or review.³⁹

The 122.88 percent rate is derived from the petition in the investigation. Specifically, the petitioners calculated a dumping margin using a normal value and export price derived from a single large Thai producer and exporter.⁴⁰ In the investigation, the Department found the rate of 122.88 percent to be reliable because the rate was calculated in consideration of source documents from that large Thai producer and exporter, including a review of several other price quotes of various sizes of PRCBs commonly produced in Thailand, import statistics, and affidavits from managers of that Thai company.⁴¹ With respect to the relevance aspect of corroboration, the Department determined that, because the price quote reflected commercial practices of the particular industry during the period of investigation, the information was relevant to mandatory respondents which refused to participate in the investigation.⁴² Accordingly, the Department found the rate to be corroborated in the investigation.

The rate of 122.88 percent has been applied to other producers or exporters since the investigation. Indeed, it was affirmed by the Court of Appeals for the Federal Circuit (CAFC) in *KYD* as corroborated for purposes of the second administrative review of the *Order*.⁴³ For purposes of that review, the CAFC held that the rate was “well-grounded because...that margin was supported not only by the evidence submitted with the petition, but also by Commerce’s calculation of “high volume transaction-specific margins for cooperative companies which are both higher than the 122.88 percent petition rate and are close to that rate.”⁴⁴

Beyond Packaging provided the Department with no company-specific commercial information and no information has been presented in the current review that calls into question the relevance or reliability of this rate. Accordingly, by using information that was corroborated in the investigation and preliminarily determined to be relevant to Beyond Packaging in this review, we corroborated the AFA rate “to the extent practicable.”⁴⁵ We therefore preliminarily determine that the AFA rate is corroborated for purposes of this administrative review.

Duty Absorption

On October 29, 2014, the petitioners requested that the Department determine whether antidumping duties have been absorbed by Beyond Packaging.⁴⁶ The basis for the petitioners’ request was that, because a determination under 19 CFR 351.218(d) was issued on October 19,

³⁹ See 19 CFR 351.308(d) and SAA at 870.

⁴⁰ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 3552, 3553-3554 (January 26, 2004) (*Prelim LTFV*), unchanged in *Final LTFV*.

⁴¹ *Id.*

⁴² See *Prelim LTFV*, 69 FR at 3553-3554.

⁴³ See *KYD v. United States*, 607 F.3d 760, 766 (CAFC 2010).

⁴⁴ *Id.*

⁴⁵ See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, “pursuant to the ‘to the extent practicable’ language...the corroboration requirement itself is not mandatory when not feasible”).

⁴⁶ See letter from petitioners entitled “Polyethylene Retail Carrier Bags From Thailand: Request For Duty Absorption Determination” dated October 29, 2014.

2009,⁴⁷ the regulations at 19 CFR 351.213(j)(a) provide for a duty absorption inquiry in this review. However, the CAFC made clear in *FAG Italia* that the Department does not have the authority to conduct a duty absorption inquiry after the first sunset review.⁴⁸ Consistent with the Court's decision in *FAG Italia* we have not conducted a duty absorption analysis because this administrative review does not cover the second or fourth anniversary of the publication of the antidumping duty order.

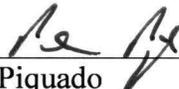
RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

1 MAY 2015

Date

⁴⁷ See *Polyethylene Retail Carrier Bags From the People's Republic of China, Thailand, and Malaysia: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 74 FR 53470 (October 19, 2009).

⁴⁸ See *FAG Italia S.p.A. v. United States*, 291 F.3d 806, 815 n. 13 (CAFC 2002) (*FAG Italia*) (rejecting the claim that the Department has the authority to conduct duty absorption inquiries every second and fourth year after each successive sunset review because “neither the statute nor its legislative history suggests that Commerce may conduct duty absorption inquiries beyond the initial sunset review, and the plain language of the statute provides that duty absorption inquiries be conducted ‘2 years or 4 years after the publication of an antidumping duty order.’”).”