



A-549-821  
Changed Circumstance Review  
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July 14, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Antidumping Duty Order on Polyethylene Retail Carrier Bags  
from Thailand: Decision Memorandum for the Initiation and  
Preliminary Results of Antidumping Duty Changed Circumstances  
Review Requested by the TPBI Public Company Limited

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I. Summary

In response to a request from TPBI Public Company Limited (TPBI), the Department of Commerce (the Department) is conducting a changed circumstances review (CCR) of the antidumping (AD) duty order on polyethylene retail carrier bags (PRCBs) from Thailand.<sup>1</sup> The Department is conducting this CCR pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216. The *Order* was revoked with respect to PRCBs manufactured and exported by Thai Plastic Bags Industries Company Limited (Thai Plastic Bags) effective July 28, 2010.<sup>2</sup> TPBI requested that the Department find that it is the successor-in-interest to Thai Plastic Bags.

We recommend that you approve the analysis we developed in this memorandum and preliminarily find that TPBI is the successor-in-interest to Thai Plastic Bags.

II. Background

On June 18, 2004, the Department published the *Order* on PRCBs from Thailand.<sup>3</sup> On August 12, 2010, the Department revoked the *Order* on PRCBs from Thailand with respect to PRCBs manufactured and exported by Thai Plastic Bags as the result of a section 129 proceeding.<sup>4</sup>

<sup>1</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 34122 (June 18, 2004) (*Order*).

<sup>2</sup> See *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand*, 75 FR 48940 (August 12, 2010).

<sup>3</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 34122 (June 18, 2004) (*Order*).



On June 4, 2015, TPBI requested that the Department initiate an expedited changed circumstances review to confirm that TPBI is the successor-in-interest to Thai Plastic Bags for purposes of determining antidumping duty liabilities.<sup>5</sup>

TPBI reported that Thai Plastic Bags was incorporated in Thailand as a private company in 1987 and that, in April 2015, Thai Plastic Bags changed its status of incorporation from that of a private company to that of a public limited company, and changed its name from Thai Plastic Bags Company Limited to TPBI Public Company Limited, using the initials of its former name.<sup>6</sup>

TPBI contends that TPBI and Thai Plastic Bags are the same company, just with a name change and a small change in corporate structure, and that its operations are the same.<sup>7</sup>

In support of its request, TPBI provided the following:

- Thai Plastic Bags' business license issued by the Thai government in 2010.<sup>8</sup>
- The business license issued to TPBI by the Thai government on April 28, 2015.<sup>9</sup>
- TPBI's certificate of incorporation as a public listed company, as issued by the Thai government.<sup>10</sup>
- A confirmation from Thai Customs of the change in corporate name and form of corporation, and that TPBI is the legal successor to Thai Plastic Bags.<sup>11</sup>
- A list of the shareholders of Thai Plastic Bags in 2010.<sup>12</sup>
- A list of suppliers of raw materials and auxiliary materials for the period 2010 forward.<sup>13</sup>
- A list of domestic customers for the period 2010 forward.<sup>14</sup>
- A list of export customers for the period of 2010 forward.<sup>15</sup>

In addition, TPBI provided a letter from counsel to the petitioners in which the petitioners stated that they do not oppose TPBI's request for a changed circumstances review and agree that TPBI should be considered as the successor-in-interest to Thai Plastic Bags.<sup>16</sup>

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<sup>4</sup> See *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand*, 75 FR 48940 (August 12, 2010) (*Revocation*).

<sup>5</sup> See Letter from TPBI to the Department, "Polyethylene Retail Carrier Bags (PRCBs) from Thailand: Request for Expedited Changed Circumstances Review" (June 4, 2015) (CCR Request).

<sup>6</sup> *Id.*, at 7.

<sup>7</sup> *Id.*, at 9.

<sup>8</sup> *Id.*, at Exhibit 1.

<sup>9</sup> *Id.*, at Exhibit 2.

<sup>10</sup> *Id.*, at Exhibit 3.

<sup>11</sup> *Id.*, at Exhibit 4.

<sup>12</sup> *Id.*, at Exhibit 5.

<sup>13</sup> *Id.*, at Exhibit 6.

<sup>14</sup> *Id.*, at Exhibit 7.

<sup>15</sup> *Id.*, at Exhibit 8.

<sup>16</sup> *Id.*, at Exhibit 9. The petitioners are the Polyethylene Retail Carrier Bag Committee and its individual members Hilex Poly Co., LLC and Superbag Corp.

### III. Scope of the Order

The merchandise subject to the *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.

### IV. Successor-in-Interest Analysis

#### A. *Analytical Framework*

In making a successor-in-interest determination, the Department examines several factors, including, but not limited to, changes in the following: 1) management; 2) production facilities; 3) supplier relationships; and 4) customer base.<sup>17</sup> While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.<sup>18</sup> Thus, if the record demonstrates that, with respect to the production and sale of subject merchandise, the new company operates as the same business entity as the predecessor company, the Department generally accords the new company the same AD treatment as its predecessor.<sup>19</sup> In conducting a successor-in-interest analysis, while we generally consider

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<sup>17</sup> See, *e.g.*, *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010); and *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941 (November 18, 2005) (*Brake Rotors-PRC*), citing *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992).

<sup>18</sup> See, *e.g.*, *Brake Rotors-PRC*, 70 FR at 69941.

<sup>19</sup> See, *e.g.*, *id.*

information from immediately before and after the formation of a new entity, the Department considers all information on the record relevant to the determination.<sup>20</sup>

In this case, the CCR Request demonstrates that Thai Plastic Bags changed its status of incorporation from that of a private company to that of a public limited company and changed its name from Thai Plastic Bags Company Limited to TPBI Public Company Limited in April 2015.<sup>21</sup>

## *B. Relevant Facts*

### 1. Management

The directors of TPBI are the same five members of the Borrisuttanakul family who comprised the directors of Thai Plastic Bags plus four additional independent directors.<sup>22</sup> The four independent directors are required for public listed companies by the Thai government to provide outside guidance for the board and represent the non-Borrisuttankul family shareholders, particularly on audit and remuneration/compensation issues.<sup>23</sup> In addition, two of the five Borrisuttanakul family members/directors are required to conduct company business, which was the same governance condition applicable to Thai Plastic Bags.<sup>24</sup>

### 2. Production Facilities

TPBI continued to produce PRCBs at its locations in Raikhing, Nakhon Pathom province and Nihom Phattana, Rayong province; these locations are listed both in the 2010 Thai Plastic Bags business license and the 2015 TPBI business license as branches and sub-branches.<sup>25</sup> The 2015 license also lists two additional branch offices, but these are not production facilities; rather, they are distribution centers which sell and distribute PRCBs.<sup>26</sup>

### 3. Customer Base

The lists TPBI submitted of the domestic customers and export customers from 2010 forward demonstrates that TPBI's customer base is largely unchanged from that of Thai Plastic Bags.<sup>27</sup>

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<sup>20</sup> See, e.g., *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results and Termination, in part, of the Antidumping Duty Changed Circumstance Review*, 76 FR 64898 (October 19, 2011) (*Diamond Sawblades*).

<sup>21</sup> See CCR Request at 7 and Exhibits 1 through 4.

<sup>22</sup> *Id.*, at 10-11 and Exhibits 1 and 2.

<sup>23</sup> *Id.*, at 11.

<sup>24</sup> *Id.*, at 10-11 and Exhibits 1 and 2.

<sup>25</sup> *Id.*, at 11 and Exhibits 1 and 2.

<sup>26</sup> *Id.*, at 11 and Exhibit 2.

<sup>27</sup> *Id.*, at 12 and Exhibits 7 and 8.

#### 4. Suppliers

The list TPBI submitted of the suppliers of raw materials and auxiliary materials for the period 2010 forward demonstrates that TPBI's suppliers are largely unchanged from those of Thai Plastic Bags.<sup>28</sup>

##### C. Analysis

The Department will consider a company the successor-in-interest to the previous entity if the new company's resulting operations are not materially dissimilar to those of its predecessor.<sup>29</sup> We analyzed the information provided by TPBI with regard to its management, production facilities, customer base, and suppliers. Based on this analysis, set forth below, we preliminarily find that TPBI is the successor-in-interest to Thai Plastic Bags at the time of the *Revocation*.

##### 1. Time Period

The Department has preliminarily limited its analysis to Thai Plastic Bags as it existed at the time of *Revocation* until the change of its status of incorporation and name change.<sup>30</sup>

##### 2. Successorship Analysis

###### a. Management

We preliminary determine that TPBI's management is essentially the same as Thai Plastic Bag's management. The five Borrisuttanakul family directors in TPBI are the same five Borrisuttanakul family directors in Thai Plastic Bag. TPBI's business license indicates that two of the five Borrisuttanakul family directors are authorized to conduct company business.<sup>31</sup> This is also the same as Thai Plastic Bags' business license in effect at the time of the *Revocation*.<sup>32</sup> The five Borrisuttanakul family directors comprise a majority of directors. The four independent outside directors in TPBI comprise a minority of directors and their roles within TPBI are limited to providing outside guidance to the board and representing the non-Borrisuttanakul family shareholders, which comprise only 1.45 percent of the total TPBI shares. The four independent outside directors are not authorized to conduct company business.<sup>33</sup>

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<sup>28</sup> *Id.*, at 12 and Exhibit 6.

<sup>29</sup> *See Brake Rotors-PRC*, 70 FR at 69941.

<sup>30</sup> *See, e.g., Diamond Sawblades* and the accompanying Issues and Decision Memorandum at Comment 2.

<sup>31</sup> *See CCR Request* at 10 and Exhibit 2.

<sup>32</sup> *Id.*, at Exhibit 1.

<sup>33</sup> *Id.*, at Exhibit 2.

b. Production Facilities

TPBI produces the subject merchandise in the same facilities as Thai Plastic Bags did at the time of Revocation. Accordingly, we preliminarily determine that there have been no material changes in production facilities.<sup>34</sup>

c. Customer Base

We preliminarily determine that Thai Plastic Bags' customer base has not materially changed with the changes in name and incorporation status. TPBI's customer base is largely the same.<sup>35</sup>

d. Suppliers

We preliminarily determine that Thai Plastic Bags' supplier base has not materially changed with the changes in name and incorporation status. TPBI's supplier base is largely the same.<sup>36</sup>

In cases where we have found companies not to be the successor-in-interest, the changes in those companies' management, production facilities, suppliers, and customer base were of such significance that their operations differed from their prior operations. For example, in the 2008-2009 administrative review of *TRBs-PRC*, the Department found a newly-acquired company not to be the successor-in-interest to the former company because the new owners replaced the company's Board of Directors and General Manager and significantly expanded the company's production facilities.<sup>37</sup> In *Polychloroprene Rubber-Japan*, the Department found that a company whose ownership changed was not the successor to its prior form because the new owners established a new subsidiary in the United States for purposes of selling the subject merchandise, thereby changing the company's selling practices.<sup>38</sup> It also replaced all of the senior managers at the company, and it altered the structure of the Board of Directors.<sup>39</sup>

Here, although there is a change in the number of directors since the *Revocation*, we preliminarily find that this change does not rise to such significance that it renders TPBI a new entity that is not the successor-in-interest to the operations of Thai Plastic Bags as it existed at the time of *Revocation*.

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<sup>34</sup> *Id.*, at 11 and Exhibits 1 and 2.

<sup>35</sup> *Id.*, at 12 and Exhibits 7 and 8.

<sup>36</sup> *Id.*, at 12 and Exhibit 6.

<sup>37</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 75 FR 41148, 41152 (July 15, 2010), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011) (*TRBs-PRC*).

<sup>38</sup> See *Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 61796, 61797 (October 21, 2004), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 69 FR 67890 (November 22, 2004) (*Polychloroprene Rubber-Japan*).

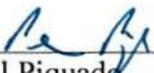
<sup>39</sup> *Id.*

V. Recommendation

In performing a successor-in-interest analysis, no one factor is dispositive, and we rely on the totality of circumstances to determine if a company's operations remain essentially unchanged. In this case, while Thai Plastic Bags experienced a change when it changed its status of incorporation in that it was required to add four additional directors, this change does not appear to result in a significant change to the business's operations. TPBI continues to be the manufacturer and exporter of PRCBs at the same facilities and there have been no significant changes in the customer base or the material supplier base.

Based on the above analysis, because the *Revocation* was with regard to the manufacturer/exporter, and there have been no significant changes to the manufacturer/exporter, we preliminarily recommend finding that the operations of TPBI are essentially the same as those of Thai Plastic Bags at the time of the *Revocation*. Therefore, we preliminarily recommend finding that TPBI is the successor-in-interest to Thai Plastic Bags at the time of the *Revocation* of the *Order*.

Agree  Disagree

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

14 July 2015  
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(Date)