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April 5, 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 the 2014/2015
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 (AD) 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). The period of review (POR) is August 1, 2014, through July 31, 2015. We preliminarily find that subject merchandise has been sold at less than normal value by K. International Packaging Co., Ltd. (K. International Packaging).

BACKGROUND

On August 9, 2004, the Department published the *Order* in the *Federal Register*. On October 6, 2015, we published a notice of initiation of an administrative review of 45 companies.² On October 8, 2015, 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*, 80 FR 60356 (October 6, 2015) (*Initiation Notice*).



merchandise during the POR.³ We transmitted a “No-Shipment Inquiry” to CBP regarding this company.⁴ On November 3, 2015, we selected K. International Packaging for individual examination.⁵ On December 18, 2015, the petitioners withdrew their request for an administrative review of all companies for which they requested a review except K. International Packaging.⁶ In accordance with 19 CFR 351.213(d), because there were no other requests for review of these companies, and the petitioners’ request was timely, we rescinded the review with respect to all companies for which we initiated a review with the exception of K. International Packaging.⁷

SCOPE OF THE ORDER

The merchandise subject to this 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.

³ See Super Grip’s letter entitled “*Polyethylene Retail Carrier Bags from Thailand: Notice of No Shipments (08/01/14-07/31/15)*,” dated October 8, 2015.

⁴ See CBP message 5296318, dated October 23, 2015.

⁵ See Memorandum from Andre Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office I, to James Maeder, Senior Director, AD/CVD Operations, Office I, “*Polyethylene Retail Carrier Bags from Thailand: Selection of Respondents for Individual Examination*” dated November 3, 2015 (Respondent Selection Memorandum).

⁶ For a full list of these companies, see *Initiation Notice*.

⁷ See *Polyethylene Retail Carrier Bags From Thailand: Rescission of Antidumping Duty Administrative Review in Part; 2014-2015*, 80 FR 45952 (August 3, 2015).

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 K. International Packaging.

A. Use of Facts Available

On November 5, 2015, we sent the AD questionnaire to K. International Packaging to the address provided by its publicly available website at <http://www.kinterpack.com>,⁸ which matches the address provided by the petitioners in their request for review.⁹ We were notified by the carrier that the shipment was delivered on November 9, 2015.¹⁰ K. International Packaging did not submit a response to the Department's questionnaire.

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 K. International Packaging did not respond to the AD questionnaire and significantly impeded the conduct of this proceeding. Accordingly, in accordance with sections 776(a)(1) and 776(a)(2) of the Act, we have preliminarily determined that the application of facts available is warranted with respect to K. International Packaging.

B. Application of Facts Available With an Adverse Inference

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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

⁸ See Memorandum to the File from Andre Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office I, entitled "Polyethylene Retail Carrier Bags from Thailand; 2014-2015 AR – Shipment Tracking and Delivery Status Details" dated December 1, 2015 (Shipment Tracking and Delivery Status Details).

⁹ See *Polyethylene Retail Carrier Bags from Thailand: Request for Administrative Review* letter from the petitioners dated August 31, 2015.

¹⁰ See Shipment Tracking and Delivery Status Details.

otherwise available.¹¹ In addition, the SAA¹² 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.”¹³ The “best of its ability” standard requires a party to “do the maximum it is able to do.”¹⁴ Evidence of “bad faith, or willfulness” on the part of the respondent is not required for the Department to make an adverse inference.¹⁵

As explained above, the Department delivered the AD questionnaire to K. International Packaging’s corporate address, which was originally provided by the petitioners in their request for an administrative review.¹⁶ Subsequently, the Department confirmed this address with the information provided by K. International Packaging on its publicly available website at <http://www.kinterpack.com/>.¹⁷

Since K. International Packaging received the Department’s questionnaire, but did not respond, we preliminarily determine that K. International Packaging has not cooperated by acting to the best of its ability in providing the necessary information for the Department to calculate a weighted-average dumping margin for K. International Packaging’s exports of subject merchandise to the United States for this POR. Accordingly, we preliminarily find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted for the weighted-average dumping margin for K. International Packaging for the preliminary results of this administrative review.

The Department's practice is to select an AFA rate that is sufficiently adverse as to effectuate the purpose of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.¹⁸ Specifically, the Department's practice in reviews, when selecting a rate as total AFA, is to use the highest rate on the record of the proceeding, which, to the extent practicable, can be corroborated.¹⁹

¹¹ 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).

¹² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA).

¹³ 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).

¹⁴ See SAA at 870.

¹⁵ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382-3 (Fed. Cir. 2003) (*Nippon Steel*).

¹⁶ See letter from the petitioners to the Secretary of Commerce, “Polyethylene Retail Carrier Bags from Thailand: Request for Administrative Review” dated August 29, 2014.

¹⁷ See Respondent Selection Memorandum.

¹⁸ See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8911 (February 23, 1998); see also *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005), and SAA at 870.

¹⁹ See *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) (“Commerce may, of course,

C. Selection and Corroboration of Information Used as Facts Available

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to United States antidumping and countervailing law including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.²⁰ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.²¹

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.²²

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that 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 of the Act concerning the subject merchandise. However, pursuant to section 776(c)(2) as amended by the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

As AFA, we preliminarily assign to K. International Packaging a weighted-average dumping margin of 122.88 percent, the highest rate found in the *Final LTFV*.²³ We applied this rate in the

begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.”)

²⁰ 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) (*Applicability Notice*).

²¹ *Id.*

²² See also 19 CFR 351.308(c) and SAA at 868-870.

²³ 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*).

Final LTFV, as well as in each successive administrative review of this proceeding.²⁴ 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.²⁵ According to 776(c)(2) of the Act, this rate does not require corroboration.

When a respondent is not cooperative, such as K. International Packaging in this review, the Department has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin.²⁶ If this were not the case, the party would have produced current information showing its rate to be less.²⁷ Therefore, we preliminarily determine that the AFA rate is appropriate for purposes of this administrative review.

RECOMMENDATION

For the reasons stated above, we recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 6, 2016
Date

²⁴ 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).

²⁵ See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010).

²⁶ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)).

²⁷ See *Rhone Poulenc*, 899 F.2d at 1190.