



A-520-803
Anti-circumvention Inquiry
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DATE: May 1, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Preliminary Decision Memorandum for Anti-circumvention
Inquiry of the Antidumping Duty Order on Polyethylene
Terephthalate Film, Sheet, and Strip from the United Arab
Emirates

SUMMARY

In response to a request from Polyplex USA LLC and FLEX USA, Inc. (Domestic Parties), the Department of Commerce (the Department) initiated an anti-circumvention inquiry of the antidumping duty order of polyethylene terephthalate film (PET film) from the United Arab Emirates (UAE), pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act). The Department initiated an anti-circumvention inquiry pursuant to section 781(b) of the Act and 19 CFR 351.225(h) to determine whether PET film produced by JBF Bahrain S.P.C. (JBF Bahrain) in the Kingdom of Bahrain (Bahrain) from components originating in the UAE and exported to the United States from Bahrain is circumventing the order on PET film from the UAE.¹

Based on the information submitted by interested parties, and the analysis below, we recommend that, pursuant to section 781(b) of the Act, the Department preliminarily find that PET film produced in Bahrain from UAE-origin components and exported to the United States is not circumventing the Order.²

¹ See Polyethylene Terephthalate Film, Sheet, and Strip the United Arab Emirates: Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order, 79 FR 44006 (July 28, 2014) (Initiation).

² See Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates, 73 FR 66595 (November 10, 2008) (Order).



BACKGROUND

On May 27, 2014, Domestic Parties requested that the Department conduct an anti-circumvention inquiry pursuant to Section 781(b) of the Act.³ On July 29, 2014, in response to this request, the Department initiated an anti-circumvention inquiry,⁴ and sent a questionnaire to JBF RAK LLC (JBF) on August 14, 2014. JBF responded to this initial questionnaire on September 11, 2014. On September 17, 2014, the Department requested that JBF re-submit certain information from its initial response with revised bracketing of business proprietary information. JBF re-submitted information with revised bracketing on July 24, 2014. On December 8, 2014, the Department issued a supplemental questionnaire to JBF. JBF Bahrain submitted its response to this questionnaire on December 29, 2014. The Department issued a second supplemental response to JBF on February 24, 2015. JBF requested, and was granted, extensions to submit separate responses to the questions in this questionnaire. JBF submitted timely responses to the second supplemental on March 11, 16, and 24, 2015.

SCOPE OF THE ORDER

The products covered by the order are all gauges of raw, pre-treated, or primed polyethylene terephthalate film, whether extruded or co-extruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. Polyethylene terephthalate film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

SCOPE OF THE ANTICIRCUMVENTION INQUIRY

This anti-circumvention inquiry covers PET film produced in Bahrain by JBF Bahrain with inputs (PET chips and silica chips) manufactured in the UAE that is subsequently exported from Bahrain to the United States.

³ See Domestic Parties letter to the Department “Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People’s Republic of China and the United Arab Emirates. Request for Anti-circumvention Inquiry,” dated May 27, 2014 (Domestic Parties Request).

⁴ See Initiation.

STATUTORY FRAMEWORK

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is assembled or completed in a foreign country other than the country to which the order applies. In conducting circumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (1) whether the merchandise imported into the United States is of the same class or kind of any merchandise that is subject to the order; (2) before importation into the United States, whether such imported merchandise is completed or assembled in a third country from merchandise which is subject to the order or produced in the foreign country that is subject to an order; (3) whether the process of assembly or completion in the third country referred to above is minor or insignificant; and (4) whether the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States, and (5) whether action is appropriate to prevent evasion of an order.

With respect to whether process of assembly or completion in the third country is minor or insignificant, section 781(b)(2) of the Act directs the Department to consider (A) the level of investment in the third country; (B) the level of research and development in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether the value of the processing performed in the country represents a small proportion of the value of the merchandise imported into the United States. In reaching this determination, the Department “will not consider any single factor of section 781(b)(2) of the Act to be controlling.”⁵

Finally, section 781(b)(3) of the Act further provides that, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an antidumping duty order, the Department shall consider the following additional factors: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise described in accordance with section 781(b)(1)(B) of the Act is affiliated with the person who uses the merchandise described in accordance with section 781(b)(1)(B) to assemble or complete in the foreign country of the merchandise described in accordance with section 781(b)(1)(B) of the Act to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States; and (C) whether imports into the foreign country of the merchandise described in paragraph 781(b)(1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

STATUTORY ANALYSIS

Section 781(b) of the Act directs the Department to consider the criteria below to determine whether merchandise completed or assembled in a third-country circumvents an order. As explained below, the Department finds that PET Film produced by JBF Bahrain in Bahrain and

⁵ See 19 CFR 351.225(h); Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, at 893 (1994) (SAA); Antidumping Duties; Countervailing Duties, 62 FR 27296, 27328 (May 19, 1997).

exported to the United States from Bahrain with inputs from the UAE is not circumventing the Order.

(1) Whether JBF Bahrain’s Merchandise Exported to the United States from Bahrain is of the Same Class or Kind as Merchandise Subject to the Order.

Domestic Producers claim that the merchandise exported to the United States by JBF Bahrain is the same class or kind as that covered by the Order in this proceeding.⁶ Domestic Producers contend that International Trade Commission (ITC) data show that the merchandise from Bahrain enters the United States under the same tariff heading as subject merchandise, and that JBF Bahrain is the only producer of PET film in Bahrain.

JBF Bahrain, in its questionnaire response, stated that it produces “plain polyester film in different thickness,” which entered the United States under HTSUS subheading 3920.62.00.90.⁷ This product description and HTSUS number fall within the scope of the order (see Scope of the Order Section above). JBF Bahrain did not provide any argument or evidence that the film it produces is not of the same class or kind as the subject merchandise.

Analysis of the ITC data provided by Domestic Parties, as well as JBF Bahrain’s description of the product exported to the United States show that the PET film produced by JBF Bahrain is of the same class or kind as that covered by the order. Accordingly, the Department preliminarily finds that the merchandise subject to this inquiry is of the same class or kind of merchandise as that subject the Order, pursuant to section 781(b)(1)(A) of the Act.

(2) Whether, Before Importation into the United States, Merchandise is Completed by JBF Bahrain in Bahrain from Parts or Components Produced in the UAE

PET Film is generally assembled from two basic inputs: PET chips, silica chips. Analysis of JBF Bahrain’s questionnaire responses shows that for the PET film it exports to the United States, it sourced PET chips from its affiliate in the UAE.⁸ Therefore, the Department preliminarily finds that PET film sold in the United States by JBF Bahrain is completed from parts or components produced in the UAE.

(3) Whether the Process of Assembly or Completion by JBF Bahrain in Bahrain is Minor or Insignificant

As explained above, section 781(b)(2) of the Act instructs the Department to consider the following criteria when determining whether the process of assembly or completion is minor or insignificant:

⁶ See Domestic Parties Request, at 5 and Exhibit 10.

⁷ See Letter from JBF Bahrain S.P.C., “Anti-circumvention - Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates (A-520-803); Response to initial questionnaire - Bracketing response,” dated September 24, 2014 at 1 and 2.

⁸ Id. at Exhibit q13, and Letter from JBF Bahrain S.P.C., “Anti-circumvention - Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates (A-520-803); Response to supplemental questionnaire,” dated December 29, 2014, 2014 at Exhibit SQ.6.

- (A) the level of investment in the foreign country,
- (B) the level of research and development in the foreign country,
- (C) the nature of the production process in the foreign country,
- (D) the extent of production facilities in the foreign country, and
- (E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

The SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.⁹ Accordingly, it is the Department's practice to evaluate each of the factors as they exist in the third country depending on the particular circumvention scenario.¹⁰ Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case depending on the particular circumstances unique to each anti-circumvention inquiry.

In this inquiry, the Department based its analysis on both qualitative and quantitative factors in determining whether the process of manufacturing PET film in Bahrain is minor or insignificant, in accordance with the criteria of section 781(b)(2) of the Act. This approach is consistent with our analysis in prior anti-circumvention inquiries.¹¹

Domestic Parties allege that the production of chips, which JBF Bahrain sourced from affiliates in the UAE, comprises the majority of the value associated with the subject merchandise, and that the processing of PET chips into PET film, completed by JBF Bahrain, adds relatively little value.

Much of the information used to determine whether the process of assembly or completion is minor or insignificant is business proprietary and is addressed in a separate analysis memorandum.¹²

A. Level of Investment and D. Extent of Production Facilities in the Foreign Country. We analyzed JBF Bahrain's financial statements and information JBF Bahrain provided regarding its initial investment in Bahrain.¹³ We also requested and analyzed information regarding JBF's initial investment in its UAE PET film facilities for comparison purposes.¹⁴ The

⁹ See SAA at 893; accord 19 CFR 351.225(h).

¹⁰ See Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 73 FR 57591, 57592 (October 3, 2008).

¹¹ See, e.g., Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 68 FR 46571, 46573 (August 6, 2003), unchanged in Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 68 FR 54888 (September 19, 2003).

¹² See Memorandum to Mark Hoadley, "Preliminary Analysis of JBF Bahrain's Process of Assembly or Completion and Proportion of Value of Merchandise Produced in the Order Country Exported to the United States," (Preliminary Analysis Memorandum) dated concurrently with this memorandum.

¹³ See "Anti-circumvention - Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates (A-520-803); Response to initial questionnaire - Bracketing response," (Initial Response) dated September 24, 2014 at Exhibits q1 and q14.

¹⁴ See "Anti-circumvention - Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates (A-520-803); Response to supplemental questionnaire," (Supplemental Response) dated December 29, 2014 at ExhibitSQ.2b.

information provided by JBF Bahrain shows the initial investment in property plant and equipment to be substantial.¹⁵ JBF's initial investment in Bahrain is comparable to its initial investment in its PET film facilities in the UAE. Based on this information, the Department preliminarily finds that the level of investment in Bahrain is substantial.

With regards to its third country production facilities, the Department requested and received photo evidence of JBF Bahrain's production facilities, as well as documentation¹⁶ regarding its purchase of machinery for, and its investment in, the production facilities.¹⁷ The photos submitted by JBF Bahrain show a large production facility, with a footprint of more than one acre, containing machinery for the production of PET film. Analyzing these photos, in addition to JBF Bahrain's reported investment in property, plant, and equipment, in sum, we preliminarily find that JBF Bahrain has substantial production facilities in Bahrain. Nothing on the record suggests that the size JBF Bahrain's investment in property, plant and equipment, is less than substantial for purposes of producing PET Film.

B. Research and Development.

We analyzed information JBF Bahrain provided regarding time and expenses consumed to conduct research and development in Bahrain on various PET film products. All of this research and development was devoted to PET film rather than PET chips.¹⁸ For comparison, JBF did not report any research and development costs in the UAE for the most recent administrative review. The Department finds that JBF Bahrain did conduct research and development in Bahrain, and in comparison with the absence of research and development conducted in the UAE during the 11/01/2012-10/31/2013 administrative review, the Department preliminarily finds the research and development conducted in Bahrain to be substantial.¹⁹

C. Production Process.

JBF Bahrain provided information regarding its production process for processing PET chips into PET film.²⁰ Analyzing this information we find that JBF Bahrain's process for converting PET chips into PET film involves several complex steps,²¹ including the use of plant and machinery that required a significant financial investment and a significant number of employees, comparable to the number of employees at JBF's UAE facilities during its initial years of production.²² The process performed by JBF Bahrain is nearly identical to the production process JBF has reported for film making in the UAE. Therefore, based on the production process described by JBF Bahrain, as compared to JBF's experience in the UAE, the Department preliminarily finds that the nature of JBF Bahrain's production process to manufacture PET Film using PET chips from the UAE is significant.

¹⁵ See Preliminary Analysis Memorandum at page 2.

¹⁶ See Supplemental Response at Exhibit SQ.11.

¹⁷ See Initial Response at Exhibits q1, q.14 and q.15.

¹⁸ See "Anti-circumvention - Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates (A-520-803); Response to second supplemental questionnaire - questions 2-4," dated March 16, 2015 at Exhibit SQ2-2d.

¹⁹ See Preliminary Analysis Memorandum at page 2.

²⁰ See Initial Response at Exhibits 17 & 18.

²¹ See Preliminary Analysis Memorandum at pages 2 and 3.

²² See Supplemental Response as Exhibit SQ.3.

E. Value of Processing.

In past anti-circumvention inquiries, the Department has recognized that under this factor Congress has directed it “to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the parts and components imported into the processing country.”²³ Furthermore, Congress has also redirected the Department’s focus “from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process.”²⁴

Here, JBF Bahrain submitted information on its cost of production for PET film sold in the United States and the value of PET film imported into the United States.²⁵ To determine the value of processing we first calculated the cost of production in Bahrain by summing: (1) the cost of direct materials (excluding PET chips sourced for the UAE); (2) labor; and (3) fixed and variable overhead costs, for PET film imported into the United States. We divided the cost of production by the value of U.S. sales to determine the value of processing.²⁶

Domestic Parties asserted in their initial request that PET chips account for more than 70 percent of the value of PET film (*i.e.*, the value of processing would be less than 30 percent). Our calculation of the value of processing performed in Bahrain by JBF Bahrain does not show the same value of processing asserted by Domestic Parties.²⁷ Because much of this information in business proprietary, further discussion and analysis of this issue are included in the proprietary Preliminary Analysis Memorandum. Based on our calculation of the value of processing JBF Bahrain performs, we preliminarily find that the value of the processing performed in Bahrain as a proportion of the value of the merchandise imported into the United States is not small given the nature of the product.

(4) The Value of the Merchandise Produced in the UAE is a Significant Portion of the Total Value of the Merchandise Exported to the United States

Under section 781(b)(1)(D) of the Act, the Department must consider whether the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States for the Department to find circumvention. We reviewed data submitted by JBF Bahrain pertaining to the cost of chips purchased from the UAE and the value of U.S. sales,²⁸ and calculated the value of the PET chips produced in the UAE as a proportion of the value of merchandise exported to the United States, by dividing the cost of PET chips produced in the UAE by the value of U.S. sales.²⁹ Based on this calculation, we preliminarily do not find the value of the inputs produced

²³ See, e.g., Steel Wire Garment Hangers from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Order and Extension of Final Determination, 76 FR 27007, 27011-13 (May 10, 2011) (Wire Hangers), unchanged in Steel Wire Garment Hangers from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 76 FR 66895 (October 28, 2011); see also SAA at 893 (1994).

²⁴ See Wire Hangers; see also SAA.

²⁵ See Supplemental Response at Exhibit SQ.8.

²⁶ See Preliminary Analysis Memorandum at page 3.

²⁷ Id.

²⁸ See Supplemental Response at Exhibit SQ.8.

²⁹ See Preliminary Analysis Memorandum at page 3.

in the UAE to be a significant portion of the total value of the merchandise exported to the United States.

Summary of Analysis of Whether the Process of Assembly or Completion in Bahrain is Minor or Insignificant and Whether the Value of the Merchandise Produced in the UAE is a Significant Portion of the Total Value of the Merchandise Exported to the United States.

We preliminarily find that the totality of information on the record regarding assembly or completion performed by JBF Bahrain does not show the process to be minor or insignificant. JBF Bahrain has a substantial level of investment in, and extensive production facilities in, Bahrain. The process for producing PET film from PET chips is complex, and the value of processing is not insignificant. Further, JBF Bahrain conducts research and development in Bahrain. Based on the information on the record, the Department preliminarily finds that the process of assembly or completion performed by JBF Bahrain is not minor or insignificant. Further, the Department preliminarily finds the value of the inputs produced in the UAE is not a significant portion of the total value of the merchandise exported to the United States given the nature of the product.

SUMMARY OF STATUTORY ANALYSIS

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(b)(1) of the Act must be satisfied, taking into account the minor or insignificant criteria listed in section 781(b)(2) of the Act. In addition, section 781(b)(3) of the Act instructs the Department to consider, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, factors such as the pattern of trade, affiliation, and whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased after the initiation of the investigation.

Pursuant to section 781(b)(1)(A) and (D) of the Act, the Department preliminarily finds that the merchandise produced by JBF Bahrain in Bahrain and imported into the United States is within the same class or kind that is subject to the Order, and is completed or assembled in Bahrain from merchandise which is produced in the foreign country with respect to which the Order applies.

Pursuant to section 781(b)(1)(C) of the Act, the Department preliminarily finds that the process of assembly or completion of UAE-origin PET chips into PET film produced in Bahrain is not minor or insignificant. Furthermore, in accordance with section 781(b)(1)(D) of the Act, the Department preliminarily finds that the value of the inputs produced in the UAE are not a significant portion of the total value of the merchandise exported from Bahrain to the United States.

Pursuant to section 781(b)(3) of the Act, the Department preliminarily finds that JBF Bahrain sources inputs from JBF,³⁰ that JBF Bahrain is affiliated with JBF,³¹ and that imports of PET chips from the UAE to Bahrain increased after issuance of the order.³² While these factors

³⁰ See Initial Response at Exhibit q.11.

³¹ *Id.* at page 5.

³² See Domestic Parties Request at Exhibit 4.

indicate JBF may be shifting its production of subject merchandise to Bahrain, because the Department preliminarily finds that assembly and completion of subject merchandise in Bahrain is not minor, the Department preliminarily determines JBF Bahrain's exports of PET film do not circumvent the Order.

In light of the above, the Department preliminarily finds that the factors under section 781(b)(1) of the Act do not support a finding of circumvention of the Order, and therefore the Department preliminarily finds PET film produced in Bahrain by JBF Bahrain is not included within the scope of the Order.

RECOMMENDATION

We recommend preliminarily finding, pursuant to section 781(b) of the Act and 19 CFR 351.225, that JBF Bahrain is not circumventing the Order.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

1 MAY 2015
Date