UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-520-803
Anti-Circumvention Inquiry
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DATE: July 31, 2015

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: Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Decision Memorandum for the Final Determination of Anti-Circumvention Inquiry of the Antidumping Duty Order

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SUMMARY

We have analyzed the case and rebuttal briefs submitted by interested parties in the anti-circumvention inquiry of the antidumping duty order on polyethylene terephthalate film (PET film) from the United Arab Emirates (UAE).[1] As a result of our analysis of the comments received, we have not departed from our preliminary findings in the Preliminary Determination.[2] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Following a request from Polyplex USA LLC and FLEX USA, Inc. (Domestic Parties), on July 29, 2014, the Department of Commerce (the Department) initiated an anti-circumvention inquiry of the antidumping duty order of PET film from the UAE, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h).[3] On May 7, 2015, the Department published the negative preliminary determination of circumvention of the antidumping order on PET Film from the UAE.[4] Based on our analysis of the comments from the interested parties in this proceeding, we recommend finding that PET film produced in the

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[1] 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).
[2] See Preliminary Negative Determination of Circumvention of the Antidumping Order on Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates, (Preliminary Determination) 80 FR 26229 (May 7, 2015).
[3] See Polyethylene Terephthalate Film, Sheet, and Strip the United Arab Emirates: Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order, 79 FR 44006 (July 29, 2014).
[4] Id.

Kingdom of Bahrain (Bahrain) by JBF Bahrain S.P.C. (JBF Bahrain) from UAE-origin components, and exported to the United States, is not circumventing the Order.
Below is a complete list of the issues for which we received comments and to which we have responded:

Comment 1: Whether JBF Bahrain has taken deliberate action to circumvent the Order
Comment 2: Whether JBF Bahrain's process of completion or assembly is substantial or significant under Section 781(b)(2) of the Act
Comment 3: Whether the value of the merchandise produced in the order country 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
Comment 4: Completion by JBF Bahrain from parts or components produced in the UAE under Section 781(b)(1)(B) of the Act
Comment 5: Whether record evidence shows that Domestic Parties are interested parties

BACKGROUND

On May 7, 2015, the Department published the Preliminary Determination in the Federal Register.[5] On June 8, 2015, Domestic Parties and JBF Bahrain submitted timely case briefs. On June 10, the Department sent a letter to Domestic Parties, noting certain deficiencies in Domestic Parties' submission, and requesting that they resubmit their case brief. Domestic Parties timely resubmitted their case brief on June 11, 2015. On June 15, 2015, Domestic Parties, and DuPont Teijin Films, Mitsubishi Polyester Film Inc., and SKC, Inc. (collectively Petitioners), filed timely rebuttal briefs. On June 18, 2015, JBF Bahrain submitted a timely rebuttal brief. On July 9, 2015, the Department held a public hearing, following a timely request by Domestic Parties.

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 the 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 (R&D) in the third

[5] See Preliminary Determination.

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."[6]

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.

DISCUSSION OF THE ISSUES:

Issue 1: Whether JBF Bahrain has taken deliberate action to circumvent the Order

Domestic Parties' Comments

- JBF Industries, located in India, is the parent company of JBF RAK LLC (JBF RAK), a PET film and PET chip producer in the UAE, as well as JBF Bahrain. JBF Industries established PET film production in the UAE (i.e., JBF RAK) rather than India to avoid the AD order on PET film from India. JBF Industries shifted production from the UAE to Bahrain to avoid the order on PET film from UAE.
- There is no economic rationale for JBF Industries to open a facility in Bahrain other than to circumvent the order on PET film from India.
- The Department has recognized that JBF RAK and JBF Bahrain are affiliated, and, in previous cases recognized that circumvention is more likely when parties are related.
- JBF Bahrain sources PET chips from its affiliates in the UAE and India, which both have an order on PET film, and the record is clear that imports of PET chips to Bahrain from India and the UAE have, and continue to increase. The Department has stated in previous cases that circumvention is more likely when imports from the country subject to the order have increased into the third country.

Petitioners' Rebuttal Comments

- JBF Bahrain's production facilities in Bahrain represent a transparent attempt to avoid antidumping duties that would otherwise be due on PET film originating in the UAE.

[6] See 19 CFR 351.225(h); accord 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).

JBF Bahrain's Rebuttal Comments

- Domestic Parties' claim that JBF Bahrain is deliberately circumventing the Order is mere assertion, and not based on the statutory criteria.
- JBF Industries has never produced PET film in India, and opened its film production plant in the UAE prior to the investigation of Indian PET film, therefore, this could not have been deliberate action to circumvent the order on PET film from India.
- The economic incentive for opening operations in Bahrain was the U.S. Bahrain Free Trade Agreement, under which PET film from Bahrain is eligible for duty-free treatment.

Department Position: In its Preliminary Determination, the Department found, pursuant to section 781(b)(3) of the Act and 19 CF 351.225(h), that JBF Bahrain sourced inputs from an affiliate in the UAE, and that imports of PET chips into Bahrain from the UAE increased after issuance of the Order. In this proceeding, the Department must make its determination based upon the specific criteria under section 781(b)(1) and(2) of the Act, recognizing that duty avoidance is permissible, whereas actions that constitute circumvention under section 781(b)(1) and (2) allow the Department to subject such merchandise to the AD order. Thus, while the pattern of trade, affiliation, and whether imports of inputs into the third country have increased are factors the Department considers in determining whether to include the merchandise assembled or completed in a foreign country in the AD order, these factors alone, while relevant, are not conclusive of whether circumvention has occurred.

Issue 2: Whether JBF Bahrain's process of completion or assembly is substantial or significant under section 781(b)(2) of the Act

Domestic Parties' Comments

- Analyzing JBF Bahrain's level of investment and production facilities under sections 781(b)(2)(A) and 781(b)(2)(D) of the Act, the Department erred in comparing these to JBF RAK's operations in the UAE. The proper comparison for these criteria is to the merchandise being produced on a quantity and value basis.
- The Department erred in finding that the level of R&D was substantial under section 781(b)(2)(B) of the Act. The Department based its finding on a comparison of JBF Bahrain's level of R&D with JBF RAK's level of R&D in the UAE. The analysis should have been made relevant to the production of merchandise at issue.
- The Department erred in its calculation of the value of the processing performed in Bahrain. The Department's calculation should have excluded PET chips sourced from India, neglected to account for substantial costs not associated with processing in Bahrain, and should have been adjusted to account for startup costs.

JBF Bahrain's Rebuttal Comments

- Domestic Parties do not dispute the Department's determination under section 781(b)(2)(C) of the Act that the nature of the production process in Bahrain is significant.
- There is no statutory basis for comparing JBF Bahrain's level of investment to the quantity and value of the merchandise being produced.
- There is no statutory, accounting or logical basis for comparing JBF Bahrain's level of R&D to the production of merchandise at issue. The Department correctly determined that JBF Bahrain's level of R&D was substantial.

- The Department correctly calculated the value of processing in Bahrain. The statue is directed at parts and components from countries subject to the order, not multiple orders, and therefore the Department correctly included the cost of PET chips from India in its calculation. The Department also correctly included the cost of materials manufactured in Bahrain (i.e., costs Domestic Parties claim are not associated with processing in Bahrain.)
- The Department's calculation of the value of processing in Bahrain should not include startup costs. Section 773(f)(1)(C)(i) of the Act states that adjustments should be made for startup operations only when production levels are limited by technical factors. Domestic parties have failed to demonstrate that production levels were limited by technical factors, or were limited at all.

Department Position: The Department's practice, used in the Preliminary Determination, has been to compare investment levels in the third country with the amount invested in the home country. There is no precedent in circumvention inquiries for comparing the level of investment in the third country, extent of the production facilities, or level of R&D with the value and quantity of merchandise produced to determine if these factors are significant. Further, Domestic Parties made no argument that the nature of the production process in Bahrain is insignificant. Therefore, based on record evidence, we continue to find that the level of investment, level of R&D, the production process, and the nature of the production facilities in Bahrain are significant.

While Domestic Parties take issue with the fact that we compared the film production facilities in Bahrain with the film production facilities in UAE (which they suggest is a meaningless comparison since two film production plants are likely to involve similar investments, R&D, *etc*.), we believe this is the proper comparison. It is appropriate to compare the cost of the process and completion in the third-country facilities with the cost of the process and completion of the facilities needed to produce the subject merchandise in the home country.

However, upon review of parties' comments and record evidence we have revised our calculation of the value of processing using sales value, rather than cost of manufacturing in Bahrain as a basis of comparison. We compared the value of sales to the United States, minus all inputs, including PET chips from the UAE and India, to total sales value of sales to the United States. In so doing, we have estimated the value added in Bahrain, and compared it with the value of the merchandise exported to the United States, consistent with the Act's use of the phrase "value of processing performed," in section 781(b)(2)(D), not cost. This measure avoids the need for any possible "startup" adjustment as it does not require the allocation of costs, and accounts only for the value of processing in Bahrain, not the value of manufacturing occurring "upstream" in the UAE or India. While the number is business proprietary information (BPI), we find that the value of processing in Bahrain was substantial.[7]

We have continued to calculate the value of processing using the cost of manufacturing in Bahrain, comparing that cost to the total sales value of sales to the United States. After reviewing parties' comments, we have adjusted the Bahrain cost value. Specifically, we have

[7] See Memorandum to the File, "Analysis of JBF Bahrain's Value of Processing Performed in the Foreign Country Compared to the Merchandise Imported into the United States," dated July 31, 2015.

removed all direct materials costs, adding together only the labor and overhead expenses incurred in Bahrain. All direct materials costs reflect manufacturing outside of Bahrain and thus are not properly considered under section 781(b)(2)(D) of the Act. Likewise, we have excluded the costs not associated with processing in Bahrain from this calculation, as these costs are already included in the labor and overhead expenses incurred in Bahrain. Finally, we see no reason to adjust the cost figures for the "startup" nature of the Bahrain operations. Domestic Parties have not demonstrated that these facilities operated below full capacity because of their startup nature, as opposed to other reasons, such as low demand or other market patterns. The Department does not require costs to be from a facility operating at full capacity. Domestic Parties have not demonstrated that the Department's analysis is distorted by capacity utilization (as JBF Bahrain notes, the capacity utilization rate of the Bahrain facilities is consistent with other information on the record), nor is there evidence on the record regarding what operating costs would be at full capacity. While the exact number of the recalculated cost of processing to U.S. sales value is BPI, the figure indicates the value of processing in Bahrain to be significant.[8]

Based on our analysis of the factors under section 781(b)(2) of the Act, we do not find the process of completion or assembly conducted by JBF Bahrain to be minor or insignificant.

Issue 3: Whether the value of the merchandise produced in the order country 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

Domestic Parties' Comments

- The Department erred in not including PET chips sourced from India.
- Because PET chips produced in the foreign countries were not made at an arms-length basis, it is inappropriate to compare the value of PET film to the sales value of merchandise exported to the United States.
- The proper comparison is the total value of chips imported from the UAE and India to the cost of production of the subject merchandise, see, e.g., Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom.[9]

JBF Bahrain's Rebuttal Comments

- The Department should reject Domestic Parties' argument that Indian raw materials be included in its calculation. The statute is clear, and applies to one country, not multiple countries.
- The alternate methodology for calculating the value of merchandise produced in the order country misunderstands the reasoning used in Hot-Rolled Lead and Bismuth Carbon

[8] The Department has used multiple means of determining the value of processing in the third country. As noted, examining value added is consistent with the plain language of the Act. However, in certain proceedings, e.g., Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination, 77 FR 33405 (June 6, 2012) (Electrodes), we have determined value added is inappropriate and have relied on a cost measure instead (in Electrodes, value added was determined to be inappropriate because the value of the input coming into the third country originated in a non-market economy).

[9] See Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 64 FR 40336, 40340 (July 26, 1999).

Steel Products from Germany and the United Kingdom. In the case cited, an alternate methodology was used because there was no transfer price, not because the purchases were from an affiliate.

- The sales price of raw materials is supported by documentation, and, therefore should be used in the calculation.

Department Position: As we have found that the process of assembly or completion in Bahrain under section 781(b)(2) of the Act is not minor or insignificant, it is not necessary to reach a determination under section 781(b)(1)(D) of the Act regarding whether the value of the merchandise produced in the order country is a significant portion of the total value of the merchandise exported to the United States.

Issue 4: Completion by JBF Bahrain from parts or components produced in the UAE under section 781(b)(1)(B) of the Act

JBF Bahrain's Comments

- The Department's negative preliminary determination, while correct, was improperly based on a finding, under section 781(b)(1)(B) of the Act, that PET film from Bahrain was "completed or assembled" from PET chips produced in the UAE.
- The process of completion or assembly must be from parts or, at least, unfinished parts.[10] PET chips are raw materials used for creating PET film, not a "part" for assembling or completing PET film.
- The purpose of the statute is to prevent circumvention of order by minor or insignificant assembly of parts in third countries, i.e., screwdriver operations.[11] In this case, the finished product is made wholly of raw materials, and therefore section 781(b)(1)(B) of the Act does not apply.

Domestic Parties' Comments

- JBF Bahrain makes an "illogical leap" that materials imported by the third country in question must be "unfinished or incomplete parts."
- There is no requirement in the statute that the merchandise be a "part," and the Department has never construed the statue to have this requirement. The statutory language only requires "completion of the merchandise in the third country."
- The Department has found circumvention in the past where PET chips from a subject country were processed into subject merchandise, which is analogous to the instant case.[12]

Department Position: We agree with Domestic Parties. Circumvention may occur based on the "completion" of merchandise in a third country. JBF's argument rests on the faulty

[10] JBF Bahrain cited American NTN Bearing Mfg. Corp. v. US, 739 F. Supp. 1555, 1560 (CIT 1990) and Koyo Seiko Co., Ltd. v. US, 955 F. Supp. 1532 1547 (CIT 1997).
[11] JBF Bahrain cited the SAA at 892.
[12] See Granular Polytrafluroethylene Resin From Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order, 58 FR 26100, 26102 (April 30, 1993).

assumption that the term "completion" only pertains to the completion of finished products. This is incorrect. To fulfill its statutory purpose the term "completion" encompasses the completion of the product subject to the order.

Issue 5: Whether Domestic Parties are interested parties

JBF Bahrain's Comments

- There is no evidence on the record that interested parties are domestic producers of PET film.
- Based on the current record, Domestic Parties' processing of PET film is no more than, and may be less than, that of JBF Bahrain.
- If Domestic Parties' processing of PET film is insignificant, they are not interested parties and the inquiry was initiated based on an improper claim and should be terminated. If Domestic Parties' processing is significant, it likewise must be determined that JBF Bahrain's processing is also significant under the statute and therefore, a claim that JBF Bahrain's processing is minor or insignificant cannot be upheld.

Domestic Parties' Comments

- The record of this case includes a determination from the Department in the 2012-2013 Administrative Review of PET film from India[13] that the Domestic Parties are interested parties.
- Once it is determined that a party meets the criteria to be considered an interested party, no further inquiry is provided for by the statute or Department's regulations. Therefore, the Department should continue to find that this inquiry is properly before it.

Department Position: As an initial matter, a finding of circumvention under section 781(b) of the Act is separate and distinct from a determination as to whether a party qualifies as an interested party under section 771(9)(C) of the Act. In other words, a finding that a respondent circumvented an order would not mean that the party does not qualify as an interested party. Similarly, if a domestic producer were to have performed the same processes as a circumventing respondent, it would not necessarily mean that the domestic party does not qualify as a producer of the domestic like product.

Here, Domestic Parties stated in their request for an anti-circumvention inquiry that they are U.S. producers of subject merchandise.[14] The Department requested extensive information from Domestic Parties in the 2012-2013 administrative review of PET film from India, including, inter alia, information pertaining to Domestic Parties' business operations, production and wholesaler activities, and parent companies, and determined that both companies were "producers of a domestic like product" and qualified as interested parties under section 771(9)(C) of the Act.[15]

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[13] See Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Administrative Review; 2012–2013, 80 FR 11160 (March 2, 2015) (PET Film India).

[14] See Domestic Parties' letter "Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates (A-520-803). Request for Anti-circumvention Inquiry," dated May 27, 2015.

[15] See Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2012-2013, 79 FR 50620 (August 25, 2014) (concluding that Domestic Parties were eligible to request administrative reviews), unchanged in PET Film India; see also Memorandum to

Further, nothing on the record of this proceeding contradicts the finding in PET film from India that these same Domestic Parties qualify as interested parties. Therefore, the Department continues to find that Domestic Parties are interested parties within the meaning of section 771(9)(C) of the Act, and accordingly, determines that the anti-circumvention inquiry request in this proceeding was properly filed.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions, and issuing a final determination that, pursuant to section 781(b) of the Act and 19 CFR 351.225(h), JBF Bahrain is not circumventing the Order.

Agree ✓ Disagree _____

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

July 31, 2015
Date

Edward Yang, "Interested Party Status in the Antidumping Duty (AD) and Countervailing Duty (CVD) Administrative Reviews: Polyethylene Terephthalate Film, Sheet, and Strip (PET film) from India; 2012 – 2013," dated March 20, 2014.