

March 14, 2011

MEMORANDUM TO: Kim Glas
Acting Deputy Assistant Secretary
for Import Administration

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

SUBJECT: Laminated Woven Sacks from the People’s Republic of China:
Issues and Decision Memorandum for the Final Results of the First
Antidumping Duty Administrative Review

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the first administrative review of the antidumping duty order on laminated woven sacks (“Sacks”) from the People’s Republic of China (“PRC”). As a result of our analysis, we have made changes to the Preliminary Results.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties:

General Issues

Comment 1: Preliminary Decision Regarding Country of Origin

- a. Procedures in Determining Country of Origin
- b. Department’s Decision of Country of Origin of Sacks
- c. Authority to Issue Clarification Instruction to CBP
- d. Finalizing the Country-of-Origin Memorandum

Comment 2: Liquidation Instructions

BACKGROUND:

The merchandise covered by the Order² is Sacks as described in the “Scope of the Order” section of the final results issued concurrently with this memorandum. The period of review (“POR”) is

¹ See Laminated Woven Sacks From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 55568 (September 13, 2010).

² See Notice of Antidumping Order: Laminated Woven Sacks From the People’s Republic of China, 73 FR 45941, 45942 (August 7, 2008) (“Order”).

January 31, 2008, through July 31, 2009. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results.

On September 20, 2010, Zibo Aifudi³, the only mandatory respondent in this administrative review, informed the Department of its withdrawal from this proceeding and refused to participate further.⁴ On the same day, AMS⁵ entered an appearance into this proceeding. On October 14, 2010, Petitioners⁶ and two interested parties, AMS and Commercial Packaging⁷, filed case briefs. On October 19, 2010, AMS and Petitioners filed rebuttal briefs. On November 12, 2010, the Department of Commerce (“Department”) released U.S. Customs and Border Protection (“CBP”) data to interested parties under administrative protective order (“APO”).⁸ No parties commented on the CBP data. The Department did not hold a public hearing pursuant to 19 CFR 351.310(d), because the hearing request made by Petitioners was withdrawn.

DISCUSSION OF THE ISSUES:

Comment 1: Preliminary Decision Regarding Country of Origin

1a. Procedures in Determining Country of Origin

AMS’ Case Brief Arguments

- The Department failed to follow administrative procedures and should have initiated a scope inquiry, given notice of initiation, allowed for comments, and given notice to the importer that they may have to pay cash deposits from the date of initiation of the scope inquiry.
- Because the Department did not initiate a scope inquiry, neither AMS nor Zibo Aifudi was alerted to the possibility of cash deposits being required, and thus did not have the opportunity to stop shipments to limit their liability.

Petitioners’ Rebuttal Brief Arguments

- The Department followed proper procedures.
- The Department has previously determined substantial transformation issues as part of an investigation or administrative review.
- The Court of International Trade (“CIT”) has previously upheld the Department’s process for determining substantial transformation and has recognized the Department’s authority to decide whether an official scope inquiry is the correct venue in which to complete the analysis.⁹

³ Zibo Aifudi Plastic Packaging Co., Ltd. (“Zibo Aifudi”).

⁴ See Letter from Zibo Aifudi Regarding “Withdrawal from Administrative Review,” dated September 20, 2010.

⁵ AMS Associates, Inc., operating as Shapiro Packaging (“AMS”), the U.S. importer of merchandise from Zibo Aifudi.

⁶ Petitioners are the Laminated Woven Sacks Committee and its individual members, Coating Excellence International and Polytex Fibers Corporation.

⁷ Commercial Bag Company, doing business as Commercial Packaging (“Commercial Packaging”), a U.S. importer of subject merchandise.

⁸ See “Memorandum to the File from Catherine Bertrand re: Laminated Woven Sacks from the People’s Republic of China: Case Reference Files,” dated November 12, 2010.

⁹ See E.I. Du Pont de Nemours & Co. v. United States, 8 F. Supp. 2d 854, 858 and 860 n.5 (CIT 1998) (“Du Pont”).

Department's Position

The Department finds that it followed proper procedures when conducting the country-of-origin analysis within the administrative review.¹⁰ Although 19 CFR 351.225(b) states that the Secretary may self-initiate a scope inquiry, this is only necessary if the Secretary finds that an inquiry is warranted. The Department has the authority not only to define the scope of an antidumping investigation, but also to clarify the scope of antidumping or countervailing duty orders and findings.¹¹ The Department may make scope decisions within the context of an administrative review and is not limited only to formal scope inquiries.¹² Therefore, self-initiation of a scope inquiry is not necessary when it is decided that the country of origin can be determined through analysis of the information on the record in conjunction with the current administrative review. Furthermore, the Department has previously made country-of-origin determinations within an administrative review without initiating a separate scope proceeding.¹³

Regarding AMS' argument that it was not allowed to comment on the preliminary country-of-origin decision, we note that AMS could have participated throughout the course of the review but chose not to until September 20, 2010, well after the issuance of the preliminary country-of-origin memorandum and corresponding clarification instruction.¹⁴ Despite the fact that AMS did not participate in the administrative review until September 2010, Zibo Aifudi, AMS' supplier and the sole mandatory respondent in this proceeding, had numerous opportunities to comment on the issues and reply to Petitioners' comments. Furthermore, Zibo Aifudi commented on the preliminary country-of-origin memorandum on June 14, 2010.¹⁵ Therefore, interested parties were offered an opportunity to comment before and after the issuance of the preliminary country-of-origin memorandum and certain parties elected to participate early on in the review by submitting comments.

¹⁰ See "Memorandum to Abdelali Elouaradia from Zhulieta Willbrand through Robert Bolling re: Preliminary Decision Regarding the Country of Origin of Laminated Woven Sacks Exported by Zibo Aifudi Plastic Packaging Co., Ltd. - Laminated Woven Sacks from the People's Republic of China," dated May 25, 2010 ("Country of Origin Memo").

¹¹ See e.g., Crawfish Processors Alliance v. United States, 483 F.3d 1358, 1361 (Fed. Cir. 2007) (quoting Ericsson GE Mobile Communications, Inc. v. United States, 60 F.3d 778, 782 (Fed. Cir. 1995)); Mitsubishi Heavy Industries, Ltd. v. United States, 986 F. Supp. 1428, 1433 (1997) (quoting Minebea Co., Ltd. v. United States, 782 F. Supp. 117, 120 (CIT 1992)); Wheatland Tube Co. v. United States, 973 F. Supp. 149, 158 (CIT 1997); Diversified Products Corp. v. United States, 572 F. Supp. 883, 887 (CIT 1983).

¹² See Mukand Int'l, Ltd. v. United States, 412 F. Supp. 2d 1312, 1320 (CIT 2005).

¹³ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 844 (January 6, 2010) ("Tapered Roller Bearings") and accompanying Issues and Decision Memorandum at Comment 1; and Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 3; and Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 69 FR 74495 (December 14, 2004) and accompanying Issues and Decision Memorandum at Comment 4.

¹⁴ See Letter from AMS regarding entry of appearance, dated September 20, 2010.

¹⁵ See Zibo Aifudi's submission, dated June 14, 2010.

1b. Department's Decision of Country of Origin of Sacks

AMS' Case Brief Arguments

- The Department's decision was unsupported by substantial evidence on the record.
- Evidence on the record shows that the fabric is the most significant input in the Sacks and that the lamination process only permits a company to add graphics to the Sacks for marketing purposes.
- The CBP ruling letter¹⁶ stating that the country of origin of Sacks is determined by where the fabric is sewn is a proper guideline in determining whether Sacks made from fabric woven in third countries is subject merchandise.

Petitioners' Rebuttal Arguments

- The Department properly determined the country of origin for Sacks is the country of assembly and export.
- The CBP ruling on country of origin of Sacks is not binding on the Department.
- Circumvention is possible if subject merchandise made from fabric woven in third countries continues to be declared as having a country of origin where the fabric is woven.

Department's Position

For the final results, we continue to find that the Sacks finishing process, which includes the lamination and printing processes, substantially transforms the inherent nature of the woven fabric input. In addition, we continue to find that when such substantial transformation takes place in the PRC, the country of origin for the Sacks produced is the PRC.

As the CIT has explained, “{b}ecause antidumping orders apply to merchandise from particular countries, not individual producers, determining the country where the merchandise is produced is fundamental to the proper administration and enforcement of the antidumping statute.”¹⁷ Further, the CIT upheld the Department's substantial transformation rule, which “provides a yardstick for determining whether the processes performed on merchandise in a country are of such significance as to require the resulting merchandise to be considered the product of the country in which the transformation occurred,” as the basis for the Department to conduct its country-of-origin examination.¹⁸ Specifically, the CIT has stated that “{t}he ‘substantial transformation’ rule provides a means for Commerce to carry out its country-of-origin examination and properly guards against circumvention of existing antidumping orders.”¹⁹

In these final results, we based our substantial transformation analysis on criteria used by the Department in the preliminary decision on the country of origin of Sacks made from fabric woven in third countries.²⁰ Specifically, the Department applied, as appropriate, the following

¹⁶ See CBP Ruling Letter NY N028508 entitled “Classification and country of origin determination for woven sacks and woven fabric; 19 CFR 102.21(c)(2); tariff shift” (May 27, 2008) (“CBP Country of Origin Ruling”).

¹⁷ See section 731 of the Tariff Act of 1930, as amended (“the Act”); see *Du Pont*, 8 F. Supp. 2d at 859.

¹⁸ See *id.* at 858.

¹⁹ See *id.* at 859.

²⁰ See Country of Origin Memo.

criteria: (1) whether the processed downstream product falls into a different class or kind of product when compared to the upstream product;²¹ (2) whether the essential component of the merchandise is substantially transformed in the country of exportation;²² (3) the extent of processing,²³ and (4) the value added to the product.²⁴ The weight of any one of the factors considered by the Department in the analysis below can vary from case to case and depends on the particular circumstances unique to the product at issue. In determining whether substantial transformation has occurred for the purposes of establishing the country of origin for Sacks exported to the United States, we conducted the following analysis:

A. Class or Kind/Scope

Antidumping orders are issued for “a class or kind of foreign merchandise.”²⁵ In the past, the Department has “generally found that substantial transformation has taken place when the upstream and downstream products fall within two different ‘classes or kinds’ of merchandise...”²⁶

In the Sacks investigation, the Department found that the scope of the investigation covered one domestic like product and one “class or kind.” No party argued that the woven fabric should be considered part of the domestic like product or class or kind of merchandise encompassing Sacks.²⁷ The scope of the Order explicitly states: “[l]aminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating or polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (“BOPP”) or to an exterior ply of paper that is suitable for high quality print graphics; printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.”²⁸ The scope of the Order therefore explicitly states that the product exported to the United States is Sacks, printed with three colors or more in register, that weigh less than one kilogram. Woven fabric imported into the PRC that is not laminated to an exterior ply of plastic film or paper is not suitable for high quality print graphics that are printed with three colors or more in register. Therefore, the fabric woven in third countries and imported into the PRC as a factor of production for producing Sacks is of a different class or kind of product than the Sacks as a finished product.

²¹ See Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea, 69 FR 17645, 17647 (April 5, 2004) (“TTR from Korea”).

²² See Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value, 51 FR 39680, 39692 (October 30, 1986) (“EPROMs”).

²³ See TTR from Korea, 69 FR at 17647-48.

²⁴ See id. at 17647.

²⁵ See section 731(1) of the Act.

²⁶ See TTR from Korea, 69 FR at 17647.

²⁷ See Laminated Woven Sacks from the People's Republic of China: Initiation of Antidumping Duty Investigation, 72 FR 40833, 40835 (July 25, 2007).

²⁸ See Order.

B. Nature/Sophistication of Processing

In its preliminary country-of-origin decision, the Department also examined the essential qualities of imported woven fabric and the extent of manufacturing and processing in the exporting country and in the third country.²⁹ AMS has argued that the woven fabric is the most significant input and has cited to the Department's position in Artist Canvas.³⁰ As discussed in the Country of Origin Memo³¹, in Artist Canvas the Department determined that the artist canvas exported from the PRC did not undergo substantial transformation in the PRC through the finishing process of stretching and framing. Rather, the Department determined that the weaving and priming of the fabric in a third country imparted the essential characteristic of the artist canvas prior to completion of the subject merchandise in the PRC.³² However, here, the Department has determined that one of the most important characteristics of Sacks is the lamination itself. Without the lamination process, the woven fabric cannot be considered a Sacks. This process, performed prior to the manufacturing of the cloth into a sack, substantially alters the inherent nature of the woven fabric exported from a third country. Specifically, the lamination process "alters the physical characteristics and qualities of the woven fabric exported from third countries by adding strength and odor-and moisture-resistance, and allows for the high quality print graphics that are printed with three colors or more in register."³³

C. Extent of Processing

The extent of processing completed in the PRC is substantial and involves numerous production steps. With regard to the lamination process in particular, companies must invest in the expensive equipment that is needed to bond the BOPP film to the fabric using a specially created liquid resistant material.³⁴ Moreover, the lamination, printing, and sack manufacturing processes that take place in the PRC substantially transform the woven fabric imported to the PRC from third countries. These additional processes impart the characteristics of Sacks that are important to the customer, such as greater strength, odor- and moisture-resistance, and suitability for high-quality print graphics.³⁵ Thus, the Department has determined that the additional processing undergone in the PRC of woven fabric imported from third countries into subject merchandise is significant.

D. Value Added

The Department has also determined that the production processes completed in the PRC add significant value to the woven fabric imported from third countries. Using information and data supplied by Zibo Aifudi, Petitioners calculated that the average value added in the PRC was a significant portion of the total value of the Sacks.³⁶ Although Zibo Aifudi rebutted this

²⁹ See, e.g., Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof From Japan, 54 FR 6433, 6435 (February 10, 1989); see also EPROMs, 51 FR at 39692.

³⁰ See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006) ("Artist Canvas") and accompanying Issues and Decision Memorandum at Comment 1.

³¹ See Country of Origin Memo.

³² See Artist Canvas at Comment 1.

³³ See Country of Origin Memo at 7.

³⁴ See Petitioners' submission dated March 17, 2010, at 17-19.

³⁵ See id. at 10-17.

³⁶ See id. at 21.

calculation, it did not provide any data to refute Petitioners' calculation and analysis.³⁷

Thus, based on the totality of the circumstances, we have determined that because the lamination, printing, and sack manufacturing processes substantially transform imported woven fabric, the country where such production processes take place imparts the country of origin for antidumping purposes. Further, we do not agree with AMS' argument that the CBP Country of Origin Ruling is the proper guideline for determining, for antidumping purposes, the country of origin of Sacks made from fabric woven in third countries. In May 2008, CBP ruled that the country of origin for Sacks is the country where the fabric is woven.³⁸ However, CBP stated that its ruling "applies only to the specific factual situation" in the ruling request. The three factual situations presented to CBP in the ruling request differ from this case. Specifically, the three situations that CBP ruled on dealt with: (1) woven fabric and BOPP film made in the PRC that is laminated in a third country; (2) BOPP film made in the PRC and used in the production of the bag using fabric woven in the same third country where the bag is manufactured; and (3) fabric and BOPP film made in the PRC that are shipped to the United States for further assembly into Sacks. Although the CBP ruling took into account Sacks made from fabric woven in third countries, the instant case differs from the three scenarios examined by CBP in that the manufacturing of the BOPP film, as well as the lamination, printing, and assembly processes all occur in the PRC, substantially transforming fabric woven in a third country into subject merchandise that is then exported to the United States.

Furthermore, regardless of the outcome of CBP rulings, as the Department has stated in prior cases, CBP decisions regarding country of origin and substantial transformation, while instructive in antidumping and countervailing duty determinations, are not binding on the Department.³⁹ Crucially, the Department makes these decisions with concerns specific to enforcement of antidumping and countervailing duty laws in mind, including anti-circumvention and whether the merchandise is subject to the antidumping order.⁴⁰ Therefore, although the Department may consider the decisions of CBP, it is not obligated to follow, nor is it bound by, the CBP's determinations.⁴¹

With respect to Petitioners' concerns of circumvention, the Department has not initiated an anti-circumvention inquiry in this proceeding. Therefore, the Department has not examined the criteria related to anti-circumvention proceedings, and does not reach a determination as to whether circumvention has occurred or may occur.

³⁷ See Country of Origin Memo at 7.

³⁸ See CBP Country of Origin Ruling.

³⁹ See Artist Canvas at Comment 1.

⁴⁰ See Tapered Roller Bearings at Comment 1; TTR from Korea, 69 FR at 17648; Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 67 FR 70927, 70928 (November 27, 2002).

⁴¹ See Wirth Ltd. v. United States, 5 F. Supp. 2d 968, 973 (CIT 1998).

1c. Authority to Issue Clarification Instruction to CBP

AMS' Case Brief Arguments

- The Department lacked the authority to issue an instruction to CBP following the preliminary decision made in the Country of Origin Memo.
- Interested parties did not have the ability to file case briefs following the issuance of the Country of Origin Memo.
- Precedent establishes that the Department only has the authority to issue instructions to CBP following the publication of the final determination and no other regulations permit the Department to issue instructions to CBP based solely upon a preliminary decision in an administrative review.⁴²
- The Department's use of the word "clarification" in the instruction sent to CBP is erroneous, as a substantial transformation analysis is needed in the form of a scope inquiry to properly determine the country of origin.

Petitioners' Rebuttal Brief Arguments

- The Department had the authority to issue the clarification instruction.
- The clarification instruction only served to clarify that the merchandise in question is covered by the scope of the Order.
- Both the CIT and precedent uphold the Department's ability to issue clarification instructions.
- The Tapered Roller Bearings case cited by AMS is inapplicable because the final determination in that case showed that substantial transformation of subject merchandise did not occur and there was no threat of circumvention or liquidation due to an importer not declaring subject merchandise.

Department's Position

The Department had the authority to issue an instruction to CBP following the preliminary decision made in the Country of Origin Memo. Early in this administrative review proceeding, it was apparent that the Department needed to address a scope issue to determine the country of origin of Sacks produced in the PRC from imported woven fabric and sold to the United States by the respondent during the POR. Such an examination is akin to that made in a separate scope inquiry, which provides a mechanism for interested parties to obtain a scope decision, without having to seek an administrative review. Both proceedings provide interested parties notice and opportunity to comment. The Department's regulations governing an administrative review, however, do not specifically address the suspension of liquidation with respect to a product whose status is subject to a scope inquiry conducted in the context of an administrative review proceeding. Accordingly, when the Department makes a scope decision within the context of the review, the regulations governing scope inquiries provide relevant guidance. See 19 CFR 351.225. These regulations provide that the Department may order the suspension of liquidation of a product found to be included within the scope of an order to continue or to commence, as the case may be, following a preliminary scope determination. See 19 CFR 351.225(1)(2). The provision for suspension of liquidation is to preserve the ability to assess appropriate duties on

⁴² See Tapered Roller Bearings at Comment 1.

the subject merchandise in the future. Therefore, consistent with the regulations governing scope inquiries, when making a scope decision in the context of an administrative review, the Department has the authority to issue instructions to CBP regarding the suspension of entries, as appropriate, after issuing a preliminary country of origin or scope decision conducted within that segment.

The Department notes that in order to prevent subject merchandise from being liquidated without regard to antidumping or countervailing duties and in order to ensure the collection of appropriate cash deposits on Sacks manufactured in the PRC, the Department issued an instruction to CBP to resolve confusion that might arise from differences between the Department's and CBP's respective country-of-origin classifications. Although no additional suspension of liquidation would normally be needed, as explained in 19 CFR 351.225(l), in this instance the Department issued an instruction to prevent liquidation of merchandise properly subject to the order and to implement the findings in its preliminary Country of Origin Memo. We do not find the Tapered Roller Bearings case to be informative, as there is no discussion in that case of the Department's authority or need for suspension of liquidation. Therefore, notwithstanding Tapered Roller Bearings, the Department's issuance of instructions to CBP in this case, after a preliminary scope decision, was a reasonable exercise of its authority to properly administer and enforce the Order and prevent the liquidation of entries that are preliminarily found to be covered by the scope of the Order.

Finally, the Department notes that interested parties had ample opportunity to comment on the preliminary Country of Origin Memo, as the memo was placed on the record approximately four months prior to the Preliminary Results. In addition, because the preliminary country-of-origin determination was announced in the Preliminary Results, interested parties had further opportunity to comment on the memo and related issues in their case briefs.

1d. Finalizing the Country-of-Origin Memorandum

Petitioners' Case Brief Arguments

- The Department should publish the results of the Country of Origin Memo to finalize the decision.
- Finalizing the Country of Origin Memo would prevent exporters from erroneously applying country of origin in future segments and would alleviate any concern that exporters might make a future claim that the decision had not been finalized.

AMS' Rebuttal Brief Arguments

- The Department should initiate a scope inquiry and issue a final determination, as opposed to finalizing the Country of Origin Memo that was incorrectly issued during the administrative review.

Department's Position

As analyzed and discussed above, the Department is adopting the analysis, findings, and decision in the preliminary Country of Origin Memo for the final results. Regarding AMS' rebuttal

argument that the initiation of a scope inquiry is a more proper venue in which to determine country of origin, see Comments 1a and 1c above.

Comment 2: Liquidation Instructions

Commercial Packaging’s Case Brief Arguments

- The Department should issue liquidation instructions to CBP to assess duties at the entry rates for subject merchandise exported by companies for which this administrative review has been rescinded. Because Changshu Xinshen Bags Producing Company Ltd. (“Changshu”) is no longer covered by the review it could no longer be part of the PRC-wide entity and its entries should have been liquidated as entered at the time of rescission.
- As the POR overlapped with the provisional measures cap period, the Department should apply the provisional measures deposit cap and assess duties during the cap period at the PRC-wide rate of 91.73%.

No other parties commented on this issue.

Department’s Position

As stated in the corresponding Federal Register notice of these final results, the Department will issue liquidation instructions for the PRC-wide entity within 15 days from the publication date of the final results.⁴³ Changshu was not involved in the less than fair value investigation and thus was not found to be entitled to a separate rate. Accordingly, pursuant to the Department’s longstanding practice, any entries from Changshu were required to be deposited at the PRC-wide rate.⁴⁴ As the administrative review for Changshu was rescinded, Changshu’s status has not changed: it remains part of the PRC-wide entity. Changshu’s entries were not liquidated at the time of rescission of the administrative review because those entries are considered to have been made by part of the PRC-wide entity. Although the company had requested a separate review of itself, by withdrawing the request for review, no review continued as to this company distinct from that of the PRC-wide entity. As stated in the initiation notice, and in accordance with Department practice, the PRC-wide entity remained potentially under review in this segment.⁴⁵ Further, as explained in the Federal Register notice of these final results, the PRC-wide entity is under review, and a rate is being assigned to the entity in this review. The Department will issue instructions to CBP to assess duties on all entries from the PRC-wide entity during the period of review consistent with the results of this review. See section 751(a)(2)(C) of the Act.

⁴³ See final results issued concurrently with this memorandum in the Federal Register.

⁴⁴ See Laminated Woven Sacks from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 35646, 35648 (June 24, 2008) (“The PRC-wide rate applies to all entries of subject merchandise except for Aifudi and the Separate Rate Applicants which are listed in the ‘Final Determination Margins’ section below.”). See id. at 35649 (“CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.”).

⁴⁵ Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 74 FR 48224, 48229 n.5 (September 22, 2009) (“If one of the above named companies does not qualify for a separate rate, all other exporters of laminated woven sacks from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.”).

We agree that section 737(a)(2) of the Act is applicable, in that the amount of estimated duties deposited during the provisional measures period was higher than the amount of duties determined under the order for the PRC-wide entity. The Department will issue appropriate instructions to CBP in accordance with section 737(a)(2) of the Act.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE_____

DISAGREE_____

Kim Glas
Acting Deputy Assistant Secretary
for Import Administration

Date