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January 22, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Laminated Woven Sacks from the
People's Republic of China

SUMMARY

In response to a request from an interested party, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on laminated woven sacks from the People's Republic of China ("PRC") for the period of review ("POR") August 1, 2011, through July 31, 2012. Initially, the review covered one exporter of the subject merchandise, Zibo Aifudi Plastic Packaging Co., Ltd. ("Aifudi"). However, because Aifudi was unresponsive to the Department's request for information, failed to provide the requested information by the deadline, and thus failed to establish its eligibility for a separate rate, the company is being treated as part of the PRC-wide entity. As a result, the PRC-wide entity is now under review. We have preliminarily applied adverse facts available ("AFA") to the PRC-wide entity because an element of the entity, Aifudi, failed to act to the best of its ability in complying with the Department's request for information in this review.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").



Background

On August 31, 2012, pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b), the Laminated Woven Sacks Committee and its individual members, Coating Excellence International, LLC and Polytex Fibers Corporation, (collectively, "Petitioners"), requested an administrative review of the antidumping duty order on sacks from the PRC with respect to a single company: Aifudi.¹ On September 26, 2012, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the antidumping duty order on sacks from the PRC.² On October 16, 2012, we issued the antidumping duty questionnaire to Aifudi, the only company under review. As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now May 6, 2013.³ On November 27, 2012, we noted on the record that counsel for Aifudi confirmed, in writing, receipt of the antidumping duty questionnaire from the Department.⁴ However, we did not receive responses to any portion of the antidumping duty questionnaire from Aifudi. Moreover, Aifudi did not file any requests for extensions of the deadlines to submit its responses to the antidumping duty questionnaire.

Scope of the Order

The merchandise covered by the order is laminated woven sacks. Laminated 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 of 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;⁵ 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.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If

¹ See Petitioners' Request for Administrative Review, dated August 31, 2012.

² See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 59168 (September 26, 2012) ("Initiation Notice").

³ See "Memorandum to the Record from Paul Piquado, AS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane," dated October 31, 2012.

⁴ See "Memorandum to the File from Irene Gorelik, Analyst, re; Receipt Confirmation of the Non-Market Economy ("NME") Questionnaire," dated November 27, 2012.

⁵ "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

DISCUSSION OF THE METHODOLOGY

Non-Market Economy ("NME") Country Status

The Department considers the PRC to be a NME country.⁶ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as a NME country for purposes of these preliminary results.

Separate Rates

There is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.⁷ In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.⁸ It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a NME country under the test established in Sparklers,⁹ as amplified by Silicon Carbide.¹⁰ However, if the Department determines that a company is wholly foreign-owned or located in a

⁶ See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012).

⁷ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

⁸ See Initiation Notice, 77 FR at 59168-9.

⁹ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers").

¹⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

market economy (“ME”), then a separate rate analysis is not necessary to determine whether it is independent from government control.¹¹

As noted above, Aifudi has not submitted any information to the Department, including information pertaining to its separate rate eligibility. Therefore, the Department preliminarily determines that there were exports of merchandise under review from a PRC exporter (Aifudi) that did not demonstrate its eligibility for separate rate status. As a result, the Department is treating Aifudi as part of the PRC-wide entity.¹²

PRC-Wide Entity

As discussed above, because Aifudi did not provide information pertaining to its eligibility for a separate rate, we have preliminarily determined that Aifudi did not demonstrate its eligibility for a separate rate and is properly considered part of the PRC-wide entity. Specifically, Aifudi did not provide any information, including information pertaining to separate rate eligibility.

Use of Facts Available and AFA

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.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Application of Total AFA to the PRC-Wide Entity

In the Initiation Notice, the Department stated that “if the above-named company 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.”¹³ As noted above, the Department has preliminarily determined that Aifudi is not eligible for a separate rate because it has not

¹¹ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People’s Republic of China, 72 FR 52355, 52356 (September 13, 2007).

¹² See, e.g., Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review, 76 FR 66903, 66906-07 (October 28, 2011) (where the Department determined that certain unresponsive mandatory respondents had not demonstrated their eligibility for a separate rate as a result of their decision to terminate their participation in the review, and thus considered the companies to be part of the PRC-wide entity), unchanged in Steel Wire Garment Hangers From the People’s Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review, 77 FR 12553 (March 1, 2012).

¹³ See Initiation Notice, 77 FR at 59178, fn 5.

provided any information, including information pertaining to separate rate eligibility, and is consequently now being treated as part of the PRC-wide entity for purposes of this review.

The PRC-wide entity, including Aifudi, withheld information requested by the Department, failed to provide the requested information within the established deadlines, and significantly impeded the proceeding. As a result, the Department preliminarily determines, in accordance with sections 776(a)(2)(A), (B) and (C) of the Act, that the Department must rely on facts otherwise available to assign a dumping margin to the PRC-wide entity. Further, the Department finds that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which the Department concludes that less than full cooperation has been shown. Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that because the PRC-wide entity has failed to cooperate by not acting to the best of its ability, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding.¹⁴ The Court of International Trade ("CIT") and the Court of Appeals for the Federal Circuit ("CAFC") have consistently upheld the Department's practice.¹⁵ The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."¹⁶ The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁷

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's commercial activity, selecting the highest prior margin reflects a "common sense inference that the highest prior margin is the most probative evidence of current rates because, if it were not so, the importer,

¹⁴ See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504, 19507 (April 21, 2003).

¹⁵ See KYD, Inc. v. United States, 607 F.3d 760, 766-67 (CAFC 2010) ("KYD"); Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (CAFC 1990) ("Rhone Poulenc"); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value (LTFV) investigation); Kompass Food Trading Int'l v. United States, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

¹⁶ See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) ("SAA").

¹⁷ See id.; see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910, 76912 (December 23, 2004), and D&L Supply Co. v. United States, 113 F.3d 1220, 1223 (CAFC 1997).

knowing the rule, would have produced current information showing the respondent's rate to be less."¹⁸ Consistent with the statute, court precedent, and its normal practice, the Department has assigned as AFA a rate of 91.73 percent to the PRC-wide entity, including Aifudi. This margin, which is the PRC-wide rate from the final determination of the less-than-fair-value investigation, is the highest dumping margin on the record of any segment of this proceeding, and the rate currently applicable to the PRC-wide entity.¹⁹

Corroboration of Secondary Information

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 or review, 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.²⁰ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.²¹ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.²² Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.²³

In this case, the AFA rate being assigned to the PRC-wide entity (91.73 percent), including Aifudi, is the highest rate from any segment of this proceeding, and is the PRC-wide rate from final determination of the less-than-fair-value investigation.²⁴ Furthermore, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will

¹⁸ See KYD, 607 F.3d at 766 (citing Rhone Poulenc, 899 F.2d at 1190) (original emphasis).

¹⁹ 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 (June 24, 2008) ("Sacks LTFV Final"); see also Laminated Woven Sacks From the People's Republic of China: Preliminary Results of the Second Administrative Review, 75 FR 81218 (December 27, 2010) ("LWS AR2 Prelim") unchanged in Laminated Woven Sacks From the People's Republic of China: Final Results of Second Antidumping Duty Administrative Review, 76 FR 21333 (April 15, 2011) ("LWS AR2 Final").

²⁰ See SAA at 870.

²¹ See id.

²² See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

²³ See SAA at 870; see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183 (March 11, 2005).

²⁴ See Sacks LTFV Final, 73 FR at 35648.

disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers From Mexico,²⁵ the Department disregarded the highest margin in that case as adverse best information available (the predecessor to “facts available”) because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been judicially invalidated.²⁶

Pursuant to section 776(c) of the Act, the Department corroborated the petition rate of 91.73 percent in the investigation by comparing the petition margin to the individual CONNUM margins calculated for Aifudi in the investigation.²⁷ We found that since the petition margin of 91.73 percent was within the range of Aifudi’s calculated CONNUM margins, the margin of 91.73 percent has probative value. As no company cooperated in this segment of the proceeding, we have no new calculated margins with which to further evaluate the 91.73 percent margin applied to the PRC-wide entity in the investigation. Accordingly, in light of the corroboration of this margin in the investigation, we find that the rate of 91.73 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA, we determine that this rate has relevance.

As the 91.73 percent rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 91.73 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (i.e., that it have probative value). Thus, we have assigned this AFA rate to exports of the subject merchandise from the PRC-wide entity, including Aifudi.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of these preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

²⁵ Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996).

²⁶ See D&L Supply Co. v. United States, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).

²⁷ See LWS AR2 Prelim, 75 FR at 81220, unchanged in LWS AR2 Final.

CONCLUSION

We recommend applying the above methodology for these preliminary results.

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

22 JANUARY 2013
Date