



A-570-886
Circumvention Inquiry
OI: TES
Public Document

December 11, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Analysis Memorandum for the Circumvention Inquiry
of the Antidumping Duty Order on Polyethylene Retail Carrier
Bags from the People's Republic of China

SUMMARY:

In response to a request from The Polyethylene Retail Carrier Bag Committee and its individual members: PCL Packaging, Inc., Hilex Poly Co., LLC, Superbag Corp., and Inteplast Group, Ltd., (collectively, the petitioners), the Department of Commerce (the Department) initiated a circumvention inquiry of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC),¹ pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act).² The merchandise subject to this inquiry is defined as "unfinished PRCBs" (as described below) from the PRC.

Based on the information submitted by interested parties and the analysis below, we recommend that, pursuant to section 781(a) of the Act, the Department preliminarily find that unfinished PRCBs from the PRC are within the scope of the *Order*.

BACKGROUND:

On August 29, 2012, the Department placed a memorandum on the record of this proceeding stating that it received from U.S. Customs and Border Protection (CBP) a sample of merchandise that was part of a larger shipment imported into the United States along with proprietary documentation associated with the shipment, and invited parties to view the sample and submit comments.³ The sample resembles an in-scope, PRCB in all respects except that it is sealed on

¹ See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China*, 69 FR 48201 (August 9, 2004) (*Order*).

² See *Polyethylene Retail Carrier Bags From the People's Republic of China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 78 FR 28194 (May 14, 2013) (*Initiation Notice*).

³ See memorandum from Dustin Ross to the file, "Polyethylene Retail Carrier Bag from the People's Republic of China: Placing the Sealed Plastic Sample Product on the Record" (August 29, 2012) (Unfinished PRCB Memo).



all four sides and appears ready to undergo the final processing step of die-cutting the unfinished PRCB, which will create the opening and the handles of the PRCB.⁴

On March 15, 2013, the petitioners requested that the Department issue an affirmative circumvention determination, pursuant to section 781(a) of the Act and 19 CFR 351.225(g).⁵ Specifically, in their request for an affirmative circumvention determination, the petitioners state that CBP officials advised them that some importers have been entering merchandise described by the CBP officials as unfinished “t-shirt” style PRCBs.⁶ The petitioners explain that CBP officials conveyed that the unfinished PRCBs are sealed on all four sides and lack handles when entered into the United States, but that they are clearly intended for use as PRCBs.⁷ Furthermore, in their request for an affirmative circumvention determination, the petitioners explain that the CBP officials advised the petitioners that the practice of importing unfinished PRCBs is increasing and expanding to multiple ports.⁸ The petitioners further assert in their request for an affirmative circumvention determination that there is no commercial justification for not completing the PRCB production process at the place of manufacture and instead locating the final minor finishing operation in the United States except to evade the imposition of antidumping duties.⁹ The petitioners identified no individual producer, exporter or importer of unfinished PRCBs in their request for an affirmative circumvention determination.

On May 14, 2013, the Department initiated a circumvention inquiry on imports of unfinished PRCBs from the PRC under section 781(a) of the Act.¹⁰ The Department initiated this inquiry with respect to all such unfinished PRCBs received by CBP from the PRC as described above, regardless of the producer or exporter.¹¹

In the *Initiation Notice*, the Department invited all interested parties to provide their own evidence and information that may inform the Department’s determination.¹² However, apart from the petitioners, no parties came forward or submitted argument or information. Subsequently, the Department sent a questionnaire to the petitioners requesting additional

⁴This particular CBP sample measures roughly 19 inches by 11.5 inches; the front surface includes red print that reads “THANK YOU” six times; it contains the number “2” within the recycling symbol in the bottom left area; the product displays the caution, “WARNING: TO AVOID DANGER OF SUFFOCATION, KEEP THIS PLASTIC BAG AWAY FROM BABIES AND CHILDREN. DO NOT USE THIS BAG IN CRIBS, BEDS, CARRIAGES OR PLAYPENS.” The merchandise also includes the text, “PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING.” There are two holes near the top border of the CBP sample.

⁵ See letter from the petitioners, “Polyethylene Retail Carrier Bags From The People's Republic of China / Request For An Affirmative Anticircumvention Determination” (March 15, 2013) (ACR). The petitioners had filed a request for a circumvention inquiry previously on January 18, 2013, but we rejected that request for failure to serve it on all parties on the comprehensive scope service list. See letter to the petitioners from the Department dated March 12, 2013.

⁶ See ACR at 1.

⁷ *Id.*

⁸ *Id.*, at 2.

⁹ *Id.*, at 2-3.

¹⁰ See *Initiation Notice*, 78 FR at 28194.

¹¹ *Id.*, 78 FR at 28197.

¹² *Id.*

support for its claims in its circumvention request.¹³ The petitioners submitted their response on August 21, 2013.¹⁴

SCOPE OF THE ORDER:

The merchandise subject to the *Order* is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm). PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners. Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

MERCHANDISE SUBJECT TO THE MINOR ALTERATIONS ANTIDUMPING CIRCUMVENTION INQUIRY:

This circumvention inquiry covers merchandise from the PRC that appears to be an unfinished PRCB which is sealed on all four sides, cut to length, and which appears ready to undergo the final step in the production process, *i.e.*, to use a die press to stamp out the opening and create the handles of a PRCB. The unfinished PRCBs subject to this inquiry may or may not have printing and may be of different dimensions as long as they meet the description of the scope of the order.

STATUTORY AND REGULATORY FRAMEWORK

The Act

Section 781(a) of the Act dealing with merchandise completed or assembled in the United States, states as follows:

- (1) In general. If

¹³ See letter to the petitioners from the Department dated August 7, 2013.

¹⁴ See the petitioners' supplemental response dated August 21, 2013 (SQR).

(A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of

(i) an antidumping duty order issued under section 736,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 706 or section 303,

(B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the United States is minor or insignificant, and

(D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

(2) Determination of whether process is minor or insignificant. In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account

(A) the level of investment in the United States,

(B) the level of research and development in the United States,

(C) the nature of the production process in the United States,

(D) the extent of production facilities in the United States, and

(E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

(3) Factors to consider. In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in paragraph (1) applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

Department Regulations

19 CFR 351.225(a) states as follows:

Issues may arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department conducts circumvention inquiries that clarify the scope of an order or suspended investigation with respect to particular products.

19 CFR 351.225(g) states that, “{u}nder section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In making this determination, the Secretary will not consider any single factor of section 781(a)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(a)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(f)(3) of the Act.”

ALLEGATIONS OF CIRCUMVENTION AS IDENTIFIED IN THE INITIATION OF INQUIRY

As stated above, the petitioners filed a request for a circumvention determination, in which they commented on the relationship of this merchandise to merchandise covered by the scope of the *Order*. The petitioners allege that the product is intended to be a PRCB covered by the scope of the *Order*, and is dedicated to PRCB use, as it has gone through every stage of the production process except for the final die cut operation.¹⁵ According to the petitioners, the number “2” in the recycling symbol indicates that the product is made out of polyethylene.¹⁶ The petitioners also allege that the two holes near the top of the unfinished PRCBs are alignment holes that allow the merchandise to be slipped over pins to ensure that the stack of unfinished PRCBs is properly positioned for the die-cutting operation that opens the top and creates the handles of the PRCB.¹⁷ The petitioners explain that, once aligned, a simple press is used to cut the stack of unfinished PRCBs to create PRCBs that are ready for use.¹⁸

Citing the U.S. International Trade Commission (ITC)’s recent sunset review determination of PRCBs from the PRC, the petitioners explain that the PRCB production process can be described as a four-step process consisting of (1) blending polyethylene resin pellets, color concentrates, and other additives; (2) extrusion and film forming; (3) printing; and (4) PRCB conversion.¹⁹

¹⁵ See ACR at 7.

¹⁶ *Id.*, referencing “The American Chemistry Council Plastic Packaging Resin Codes,” provided at Exhibit 9 of the ACR.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*, at 4, citing *Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand*, Inv. Nos. 731-TA-1043-1045 (Review), USITC Pub. 4160 (June 2010) at I-17.

The final step in the conversion process for die-cut PRCBs, such as t-shirt bags, involves the use of an automated die and press at the end of an integrated PRCB conversion line to cut the film, which serves the dual purpose of opening the top of the PRCB and creating the PRCB's handles, at which point the merchandise is ready for inspection, packing, and shipment.²⁰ For the unfinished PRCBs subject to this circumvention inquiry, the product is taken off-line prior to completion of this final step, which the petitioners allege is subsequently performed after importation into the United States.²¹ Additionally, the petitioners continue, no material is added to complete the finished PRCBs, but rather the scrap film is typically removed for recycling.²²

FACTS AVAILABLE

Section 776(a) of the Act provides that the Department shall apply “facts otherwise available” if (1) necessary information is not available 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.

As described above, the Department invited all interested parties to provide their own evidence and information that may inform the Department's determination but, apart from the petitioners, no parties came forward or submitted argument or information. Because of this, we do not have available on the record necessary information with respect to whether the imported merchandise ultimately is sold in the United States after undergoing further processing and whether the merchandise is completed in the United States. Our use of the facts available is described in our analysis of these factors, below.

ANALYSIS

A. Merchandise of the Same Class or Kind

Citing to the Unfinished PRCB Memo, the petitioners state that the merchandise sold in the United States is of the same class or kind as subject merchandise; the unfinished PRCB entered into the United States is dedicated as a generic “Thank You” t-shirt bag and only requires undergoing a simple die-cutting operation to become proto-typical subject merchandise.²³ Citing to the Unfinished Bag Memo, the petitioners assert that the script on the merchandise identifies the product twice as a “bag” and states that it should be returned to the participating store for recycling, indicating that it is used by retail establishments.²⁴ Referring to photographs of the bag which they submitted with the ACR, the petitioners also assert that the merchandise is made of polyethylene film, as indicated by the “2” in the recycle triangle and the “HDPE” designation on the bag, and that it falls within the dimensions of in-scope merchandise.²⁵ For these reasons,

²⁰ *Id.*, at 6.

²¹ *Id.*

²² *Id.*

²³ *Id.*, at 10.

²⁴ *Id.*

²⁵ *Id.*, at Exhibit 8.

the petitioners argue, it is completely and exclusively intended for use as a PRCB once the unfinished PRCB undergoes the final “bag conversion” step of the production process and, therefore, is of the same class or kind as subject merchandise.

Thus, the petitioners presented information indicating that the merchandise sold in the United States is of the same class or kind as PRCBs from the PRC, which are subject to the *Order*. In the *Initiation Notice*, we stated “that there only exists a presumption at this time that the imported merchandise ultimately is sold in the United States after undergoing further processing.”²⁶ As described above, no responding interested party such as a foreign exporter or producer or U.S. importer has presented evidence, analysis or argument in this proceeding. Thus, while on the one hand, no party has rebutted this presumption, on the other, no party has provided evidence regarding the final disposition of the unfinished PRCBs. As a result, necessary information is missing from the record of this segment pursuant to section 776(a) of the Act and the Department must rely on the facts available including the fact that unfinished PRCBs need only undergo minimal processing to become PRCBs, the fact that no commercial reason is evident for importing these unfinished PRCBs other than circumventing the Order, and the fact that the Department is not aware of any exports of unfinished PRCBs from the United States. For all these reasons, as facts available, we preliminarily determine that the unfinished PRCB is entered into the United States and, after further processing, is a PRCB of the same class or kind as subject merchandise and sold in the United States.²⁷

B. Completion of Merchandise in the United States

The petitioners assert that the unfinished PRCBs are imported from the PRC, and that CBP officials described the product as only needing to undergo the final die-cutting operation to open the top and create the handles of PRCBs, which means that no materials are added in the United States.²⁸ As such, the merchandise as entered has all the necessary raw materials for a PRCB. Performing the final die-cutting operation in the United States simply removes the material to finish the PRCB.²⁹ The petitioners supported these statements with production-process flowcharts submitted by PRC producers of subject merchandise in the investigation of this *Order*, which the petitioners attached to the SQR.³⁰

Thus, the petitioners have presented some information to support their contention that the unfinished PRCBs are produced from merchandise imported into the United States from the PRC and further processed and then sold in the United States as in-scope merchandise. However, as described above, no interested parties aside from the petitioners have presented evidence regarding the final disposition of the unfinished PRCBs. Therefore as explained above and pursuant to section 776(a) of the Act, the Department preliminarily determines pursuant to the facts available that the unfinished PRCB is completed and sold in the United States.

²⁶ See *Initiation Notice*, 78 FR at 28197.

²⁷ As explained in the accompanying *Federal Register* notice, the Department is providing interested parties with a 45-day time period to enter an appearance in this segment. If responding parties make such an appearance and provide the Department with additional evidence, the Department will consider for the final determination the extent to which it must continue to rely on facts available pursuant to section 776(a) of the Act.

²⁸ See ACR at 11.

²⁹ *Id.*

³⁰ See SQR at Exhibit 1.

C. Minor or Insignificant Process

According to the petitioners, the process of converting this product into a PRCB is minor or insignificant.³¹ Based on publicly-available information, and their own industry experience, the petitioners argue that an analysis of the relevant statutory factors of section 781(a)(2) of the Act supports their conclusion that the final processing in the United States is “minor or insignificant” as the only remaining step to transform this unfinished PRCB into subject merchandise is to perform the final die-cutting operation.³² The petitioners assert that the Statement of Administrative Action (SAA) for the Uruguay Round Agreements Act provides that no single factor will be controlling in determining whether the process of assembly or completion is minor or insignificant, and that the Department will evaluate each of the factors as they exist in the United States depending on the particular factual pattern of each case.³³ These factors include: (1) the level of investment in the United States; (2) the level of research and development in the United States; (3) the nature of the production process in the United States; (4) the extent of production facilities in the United States; and (5) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.³⁴

The petitioners argue that the level of investment in the United States to complete the unfinished PRCBs is extremely limited as the only equipment needed to complete this operation is a small press and a die for the cut-out.³⁵ The petitioners assert that dies cost from \$45 to \$65 each; the petitioners supported this assertion with an invoice for dies purchased by one of the petitioners.³⁶ Furthermore, a new press, according to the advertisement provided by the petitioners, can be purchased for around \$3,950; the petitioners supported this assertion with an advertisement for a press for sale in the United States.³⁷ In contrast, the operations performed in the PRC, the petitioners contend, are highly capital-intensive and sophisticated, based on the responses of PRC producers in previous segments of this proceeding.³⁸

The petitioners argue that no research and development expenditures are required to perform the simple die-cutting operation, as the technically complex research and development activities are performed prior to this stage in the PRC.³⁹ In support of this, petitioners provided affidavits from Salim Bana, the Director of International Business at Hilex Poly Co. LLC, and Santiago Martinez, the Operations Manager at Superbag Operating, Ltd.⁴⁰

³¹ *Id.*

³² *Id.*

³³ See ACR at 9, citing SAA, Uruguay Round Agreements Act, H. Doc. 103-316, Vol. 1 (1994) at 893.

³⁴ *Id.*

³⁵ *Id.*, at 12.

³⁶ See SQR at Exhibit 2.

³⁷ *Id.*, at Exhibit 5; the petitioners also assert that a used press could be purchased at a substantially lower price, and submitted a screenshot of an Ebay auction page for a press, which they attached to the SQR at Exhibit 6.

³⁸ See ACR at 12 and SQR at 2-3.

³⁹ See ACR at 12.

⁴⁰ See SQR at Exhibits 3 and 4.

Next, the petitioners explain that all production steps, with the exception of the final die-cutting operation, are performed in the PRC and, therefore, the nature of the production process in the United States is minor in scope and elementary in technique, relative to the production process as a whole.⁴¹ In support of this, petitioners refer to the production-process flowcharts submitted by PRC producers of subject merchandise in prior segments of this proceeding.⁴² The petitioners also state that minor production facilities are required to perform the final die-cutting operation in the United States. Specifically, the operation could be performed in a small single-story room.⁴³

Finally, the petitioners assert that the value of processing performed in the United States represents a negligible proportion of the value of the merchandise sold in the United States.⁴⁴ Completion of the unfinished PRCB can be performed by a single employee, and the capital and marginal costs of the die-cutting operations in the United States are relatively insignificant in comparison to the manufacturing of the unfinished PRCB performed in the PRC.⁴⁵ The petitioners supported these assertions with Superbag's 2012 Income Statement, including the cost of production and an estimate of the production cost for die-cutting the handles.⁴⁶ The petitioners further explain that the Department need not collect precise information on the amount of value added in the United States to conclude that the process is minor or insignificant but may rather rely on a qualitative assessment to draw this conclusion.^{47,48}

The petitioners relied on publicly-available information to determine whether the further processing is minor or insignificant, including production information submitted by PRC producers in the investigation of the *Order*, as well as their own experience in the production process. The petitioners relied on their own knowledge of the production process to draw their conclusions and demonstrate that, qualitatively, the value of the conversion from an unfinished PRCB to PRCB is minor or insignificant because they do not have access to cost or price data of either the PRC producer or the U.S. importer or the U.S. finisher. Moreover, as described above, no interested parties aside from the petitioners have presented argument, analysis, or evidence in this proceeding. In the absence of any contradicting information to what the petitioners have provided, we preliminarily determine that performing the final die-cutting operation in the United States is a minor and insignificant process.

⁴¹ See ACR at 12.

⁴² See SQR at Exhibit 1.

⁴³ See ACR at 13.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See SQR at Exhibit 11.

⁴⁷ Citing *Anti-Circumvention 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 (August 6, 2003), unchanged in *Anti-Circumvention 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)

⁴⁸ See ACR at Footnote 40.

D. Value of the Parts or Components Produced in the Foreign Country Is a Significant Portion of the Total Value of the Merchandise

As stated above and supported by Superbag's 2012 Income Statement, which included the cost of production and an estimate of the production cost for die-cutting the handles, the petitioners contend that the value of the processing performed in the United States represents a minor portion of the value of the completed merchandise, as little value is added by processing in the United States.⁴⁹ Therefore, because virtually all of the value of the PRCB is created in the PRC, the value of the entered, unfinished PRCB is certainly a significant portion of the total value of merchandise.

The petitioners relied on the information and arguments in the "minor or insignificant process" portion of their request for a circumvention inquiry to indicate that the value of the PRC production for unfinished PRCBs is significant relative to the total value of PRCBs sold in the United States. As described above, no interested parties aside from the petitioners have presented argument, analysis, or evidence in this proceeding. The relevant legislative history directs that "{t}he determination of whether the value of the parts or components is a significant portion of the total value of the merchandise should be made on a case-by-case basis, looking at the totality of the circumstances."⁵⁰ As described in the foregoing discussion, the petitioners provided evidence that virtually all of the value of the PRCB is created in the PRC and, therefore, the value of the parts or components entered is a significant portion of the total value of merchandise in this case. In the absence of any contradicting information to what the petitioners have provided, we preliminarily determine that the value of merchandise produced in the PRC is a significant portion of the value of the merchandise sold in the United States.

E. Factors to Consider in Determining Whether Action Is Necessary

Section 781(a)(3) of the Act identifies additional factors that the Department shall consider in determining whether to include parts or components in an antidumping duty order as part of a circumvention inquiry.

⁴⁹ *Id.*, at 13 and SQR at Exhibit 11.

⁵⁰ *See* Uruguay Round Agreements Act, S. Rep. 103-412 (1994) at 82.

Pattern of Trade, Including Sourcing Patterns

The petitioners argue that importation of the circumventing merchandise represents a change in the pattern of trade.⁵¹ The petitioners assert that, prior to imposition of the *Order*, no party imported unfinished PRCBs and they support this statement with the affidavits from Salim Bana and Santiago Martinez.⁵² The petitioners argue that interrupting the production process prior to completion is neither economical nor rational, and the only reason not to complete the unfinished PRCB in the country of origin is to evade the application of antidumping duties upon importation.⁵³ In addition, the petitioners state that “CBP officials have advised the undersigned counsel that the practice of importing unfinished PRCBs is increasing and extending to multiple ports.”⁵⁴

As described above, no interested parties aside from the petitioners have presented argument, analysis, or evidence in this inquiry. The HTSUS number under which the unfinished PRCBs entered is 3923.21.0095, which covers non-subject polyethylene bags without an integral extruded closure, (*i.e.*, either without handles or with a length or width that is either shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm)).⁵⁵ We collected import statistics with respect to this HTSUS number, but are unable to segregate data that would identify information useful for ascertaining the pattern of trade of unfinished PRCBs.⁵⁶ Specifically, HTSUS number 3923.21.0095 includes PRCBs that are not subject to the *Order*, such as some laminated woven sacks.⁵⁷ Furthermore, we are aware of at least 24 producers or exporters of the subject merchandise.⁵⁸ Given our above analysis, it appears that all of these producers or exporters would necessarily be capable of producing non-subject bags (by not making a handle, which would exclude a bag from the scope of the order, which specifies that the subject merchandise “is defined as non-sealable sacks and bags with handles”). Additionally, we have no record information regarding how many other producers or exporters of non-subject bags exist. As a result, in the absence of a response by any producers or exporters of unfinished PRCBs, we are unable to identify the pattern of trade, aside from the petitioners’ statement that CBP officials indicated that the practice of importing unfinished PRCBs is increasing and extending to multiple ports. In light of what record information currently exists, and in the absence of any information contradicting what the petitioners have provided, we preliminarily determine that the importation of unfinished PRCBs entered into the United States represents a change in the pattern of trade.

⁵¹ See ACR at 14.

⁵² *Id.*, at 14 and SQR at Exhibits 3 and 4.

⁵³ *Id.*, at 14.

⁵⁴ *Id.*, at 2.

⁵⁵ See Harmonized Tariff Schedule. Can be accessed at <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1301c39.pdf>. Subject bags are classifiable under HTSUS number 3923.21.0085.

⁵⁶ The import statistics we collected are attached to this memorandum. See attachment.

⁵⁷ See *Laminated Woven Sacks From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 19209 (March 29, 2013) at “Scope of the Order”.

⁵⁸ See *Order*, 69 FR at 48202. Petitioners confirmed service of its request for a circumvention inquiry upon all 29 producers or exporters listed on the scope public-service list. See ACR at Certificate of Service.

Affiliation

Under section 781(a)(3)(B) of the Act, the Department shall take into account whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the PRCBs in the United States from the parts or components produced in the foreign country when making a decision in a circumvention inquiry. As noted above, CBP provided the Department with a sample unfinished PRCB along with proprietary documentation associated with the shipment.⁵⁹ However, the identity of those parties involved in the actual shipment received by CBP is proprietary information, thus precluding the Department or the petitioners from naming any specific PRC producer or exporter in this circumvention proceeding.⁶⁰ Furthermore, all known parties subject to this *Order* have been alerted to the initiation of the circumvention inquiry, and no parties have identified themselves or requested to participate.

Therefore, no interested parties aside from the petitioners have presented argument, analysis, or evidence in this proceeding. The only evidence before us is that unfinished PRCBs have been imported into the United States, presumably to be completed and sold in the United States. Thus, neither we nor the petitioners have any way of knowing specifically whether the manufacturer or exporter of the unfinished PRCB is affiliated with the person who completes the merchandise sold in the United States from the unfinished PRCB from the PRC.

While we lack specific information regarding potential affiliation, this factor is not required prior to making an affirmative circumvention determination,⁶¹ and its significance will vary depending on the nature of the circumvention inquiry or product at issue. In this case, we are not limiting this affirmative preliminary finding to a particular exporter or producer because it appears, based on the information on the record pertaining to the PRCB production process, that many, if not all, PRCB producers could produce unfinished PRCBs by simply removing the bags from the production line prior to the final die-cutting operation.⁶² As such, it is unlikely that our preliminary affirmative determination would change based on information pertaining to affiliation between the known exporter and entities completing the unfinished PRCB in the United States. Thus, we preliminarily determine that analysis of the affiliation factor is unnecessary to our preliminary determination of circumvention in this instance.

Subsequent Import Volume

Under section 781(a)(3)(C) of the Act, another factor the Department should consider is whether imports into the United States of the parts or components produced in the foreign country have increased after the initiation of the investigation, which resulted in the issuance of the order, when making a decision in a circumvention case.

⁵⁹ See Unfinished Bag Memo at 1.

⁶⁰ See Unfinished Bag Memo at Attachment.

⁶¹ See *Brass Sheet and Strip from Canada; Final Affirmative Determination of Circumvention of Antidumping Order* 58 FR 33610, 33613-14 (June 18, 1993) (explaining that the “factors to consider” are not mandatory criteria which must be present prior to making an affirmative determination of circumvention).

⁶² See SQR at Exhibit 1.

While we do not have import data with respect to unfinished PRCBs, as described above, the petitioners provided evidence that, prior to imposition of the *Order*, no party imported unfinished PRCBs. They based this statement on the affidavits from Salim Bana and Santiago Martinez.⁶³ Furthermore, according to the petitioners, CBP officials have indicated that the practice of importing unfinished PRCBs is increasing and extending to multiple ports.⁶⁴ As noted above, no interested parties aside from the petitioners have presented argument, analysis, or evidence in this inquiry. In light of what record information we have, and in the absence of any information contradicting what the petitioners have provided, we preliminarily determine that imports of unfinished PRCBs have increased from zero prior to initiation of the investigation to a number greater than zero after the initiation of the investigation.

Preliminary Findings

As discussed above, in order to make an affirmative determination of circumvention, all of the criteria under section 781(a)(1) of the Act must be satisfied, taking into account the factors listed in section 781(a)(2) and (3).

With respect to the four mandatory criteria under section 781(a)(1) of the Act, we find that all four criteria have been satisfied to find circumvention. As discussed above, (A) the merchandise entered in the United States, unfinished PRCBs, is of the same class or kind as any other merchandise that is the subject of the antidumping duty order on PRCBs from the PRC; (B) the PRCBs sold in the United States are completed in the United States from unfinished PRCBs produced in the PRC; (C) the process of assembly or completion of unfinished PRCBs in the United States is minor or insignificant (specifically, and go through the three factors in 781(a)(2)) ; and (D) the value of the unfinished PRCBs used in the production of PRCBs in the United States is a significant portion of the total value of the PRCBs. Moreover, we have considered the additional factors specified in section 781(a)(3) of the Act and find that they either support or are immaterial to a determination that unfinished PRCBs from the PRC are circumventing the *Order*.

Based upon our analysis of all of the factors under section 781(a) of the Act, as detailed above, we preliminarily find that circumvention of the antidumping duty order on PRCBs from the PRC is occurring by reason of imports of unfinished PRCBs from the PRC.

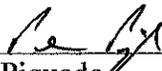
⁶³ See ACR at 14 and SQR at Exhibits 3 and 4.

⁶⁴ *Id.*, at 2.

Recommendation

We recommend that, pursuant to section 781(a) of the Act and 19 CFR 351.225, the Department issue an affirmative preliminary circumvention determination that unfinished PRCBs from the PRC are circumventing the *Order*.

✓ Agree _____ Disagree


Paul Piquado
Assistant Secretary
for Enforcement and Compliance

11 DECEMBER 2013
Date

Attachment

HTS - 3923210085: POLYETHYLENE RETAIL CARRIER BAGS WITH HANDLES Customs Value by HTS Number and Customs Value for China

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Jun

HTS Number	Country	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2012 YTD	2013 YTD	Percent Change
		<i>In 1,000 Dollars</i>													YTD2012
Customs Value where quantities are collected in thousand units															
3923210085	China	0	0	0	36,190	78,822	96,672	87,017	71,196	111,710	112,047	110,160	51,420	42,016	-18.30%
Total		0	0	0	36,190	78,822	96,672	87,017	71,196	111,710	112,047	110,160	51,420	42,016	-18.30%

HTS - 3923210085: POLYETHYLENE RETAIL CARRIER BAGS WITH HANDLES First Unit of Quantity by HTS Number and Customs Value for China

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Jun

HTS Number	Country	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2012 YTD	2013 YTD	Percent Change
		<i>In 1,000 Units of Quantity</i>													YTD2012
First Unit of Quantity where quantities are collected in thousand units															
3923210085	China	0	0	0	3,994	8,247	6,785	6,920	8,341	12,050	14,221	14,259	7,115	4,500	-36.80%

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

HTS - 3923210095: SACKS AND BAGS OF POLYMERS OF ETHYLENE, NESOI
Customs Value by HTS Number and Customs Value
for China

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Jun



HTS Number	Country	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2012 YTD	2013 YTD	Percent Change YTD2012 - YTD2013
		<i>In 1,000 Dollars</i>													
Customs Value where quantities are collected in thousand units															
3923210095	China	0	0	0	129,240	318,899	328,463	353,503	290,504	319,885	353,165	394,931	192,009	200,958	4.70%
Total		0	0	0	129,240	318,899	328,463	353,503	290,504	319,885	353,165	394,931	192,009	200,958	4.70%

HTS - 3923210095: SACKS AND BAGS OF POLYMERS OF ETHYLENE, NESOI
First Unit of Quantity by HTS Number and Customs Value
for China

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Jun



HTS Number	Country	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2012 YTD	2013 YTD	Percent Change YTD2012 - YTD2013
		<i>In 1,000 Units of Quantity</i>													
First Unit of Quantity where quantities are collected in thousand units															
3923210095	China	0	0	0	25,818	46,629	17,707	30,480	31,288	31,472	32,421	33,746	16,778	17,895	6.70%

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.