

Dated: July 9, 2003.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration, Group III.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-886, A-557-813, A-549-821]

#### Initiation of Antidumping Duty Investigations: Polyethylene Retail Carrier Bags from The People's Republic of China, Malaysia, and Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Fred W. Aziz, Thomas Schauer, or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4023, (202) 482-0410 or (202) 482-4477, respectively.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On June 20, 2003, the Department of Commerce ("the Department") received a petition on imports of polyethylene retail carrier bags ("PRCBs") from The People's Republic of China ("the PRC"), Malaysia, and Thailand, filed in proper form by PCL Packaging, Inc., Sonoco Products Company, Superbag Corp., Vanguard Plastics, Inc., and Intoplast Group, Ltd. (referred to hereafter as "the petitioners"). On June 25, 2003, the Department requested additional information and clarification of certain areas of the petition. The petitioners filed supplements to the petition on June 30, 2003 and July 8, 2003.

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), the petitioners allege that imports of PRCBs from the PRC, Malaysia, and Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(c) of the Act. Furthermore, with respect to the antidumping duty investigations the

petitioners are requesting the Department to initiate, they have demonstrated sufficient industry support (see "Determination of Industry Support for the Petition" below).

#### Scope of Investigation

The merchandise subject to this investigation is polyethylene retail carrier bags, which also 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 .035 inch (0.889 mm) and no less than .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). Polyethylene retail carrier bags are typically provided without any consumer packaging and free of charge by retail establishments (e.g., grocery, drug, convenience, department, specialty retail, and discount stores, and restaurants) to their customers to package and carry their purchased products. The scope of the petition excludes (1) polyethylene bags that are not printed with logos or store names and that are close-able 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 classified under statistical category 3923.21.0090 of the Harmonized Tariff Schedule of the United States. This subheading also covers products that are outside the scope of these investigations. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (62 FR 27296, 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import

Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination. Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.<sup>1</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

<sup>1</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988).

With regard to the definition of domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information presented by the petitioners, we have determined that there is a single domestic like product, plastic retail carrier bags, which is defined in the "Scope of Investigation" section above, and we have analyzed industry support in terms of the domestic like product.

The petitioners established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Industry Support Attachment to the Initiation Checklist ("Initiation Checklist"), dated July 10, 2003, on file in the Central Records Unit in Room B-099 of the main Department of Commerce Building.

#### Period of Investigation

The anticipated period of investigation is April 1, 2002, through March 31, 2003, for the Malaysia and Thailand investigations and October 1, 2002, through March 31, 2003, for the PRC investigation.

#### Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. price and normal value are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate.

The petition identified 37 producers of PRCBs in the PRC (see June 20, 2003, petition, Exhibit 5), 14 producers in Malaysia (see June 20, 2003, petition,

Exhibit 6), and 16 producers in Thailand (see June 20, 2003, petition, Exhibit 7).

#### Export Price and Normal Value - The PRC

The petitioners based export price on the price of the PRC-manufactured PRCBs from two Chinese exporters. We have examined the information provided regarding export price and have determined that it represents information reasonably available to the petitioners and have reviewed it for adequacy and accuracy. See Initiation Checklist.

The petitioners assert that the Department considers the PRC to be a non-market-economy ("NME") country and, therefore, they constructed normal value based on the factors-of-production methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that the PRC is an NME country. See *e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the People's Republic of China (Cold-Rolled Steel from China)*, 65 FR 34660 (May 31, 2000). In accordance with section 771(18)(c)(i) of the Act, the NME status remains in effect until revoked by the Department. The NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value of the product is based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-87 (May 2, 1994).

As required by 19 CFR 351.202(b)(7)(i)(c), the petitioners provided dumping margin calculations using the Department's NME methodology described in 19 CFR 351.408. For the calculation of normal value, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and overhead), for PRCBs on the quantities of inputs consumed by a U.S. producer of PRCBs. See Initiation Checklist.

The petitioners selected India as their surrogate country. The petitioners stated that India is comparable to the PRC in

its level of economic development and is a significant producer of comparable merchandise. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is reasonable for purposes of initiation of this investigation. See Initiation Checklist.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production for PRCBs, where possible, on reasonably available, public surrogate-country data. To value raw materials, including color concentrate, printing ink, adhesive, and corrugated boxes, the petitioners used official Indian government import statistics. They used the most current information for wholesale price indices in India as published in the *International Financial Statistics* of the International Monetary Fund to determine the appropriate adjustments for inflation. The petitioners valued labor using the Department's regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). For factory overhead expenses, selling, general and administrative expenses and profit, the petitioners applied rates derived from the publicly available data reported for 2000-2001 for companies in the *Reserve Bank of India Bulletin (RBI Bulletin)* from December 2002. The *RBI Bulletin* covers data for 1,126 companies, including producers of plastics products.

Based on comparisons of export price to normal value, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for PRCBs from the PRC range from 83.81 percent to 129.86 percent.

#### Export Price and Normal Value - Malaysia

The petitioners based export price on the price of Malay-manufactured PRCBs from a Malaysian producer. In order to obtain ex-factory prices, the petitioners deducted the appropriate inland freight from the sales value. We reviewed the information provided regarding export price and have determined that it represents information reasonably available to the petitioners and have reviewed it for adequacy and accuracy. See Initiation Checklist.

The petitioners based normal value on the price of Malay-manufactured PRCBs produced by the same company from which they obtained the export prices. In order to obtain ex-factory prices, the petitioners deducted inland freight, imputed credit, and value-added taxes from the sales value. The petitioners added charges for printing plates to the sales value. These charges were itemized separately in the price

quotation. The petitioners also made a packing adjustment and a difference-in-merchandise adjustment to normal value. We reviewed the normal value information provided and have determined that it represents information reasonably available to the petitioners and have reviewed it for adequacy and accuracy. See Initiation Checklist.

Based on comparisons of export price to normal value, the estimated dumping margins for PRCBs from Malaysia range from 81.55 percent to 101.74 percent.

#### *Export Price and Normal Value - Thailand*

The petitioners based export price on the price of Thai-manufactured PRCBs from a Thai producer. We reviewed the information provided regarding export price and have determined that it represents information reasonably available to the petitioners and have reviewed it for adequacy and accuracy. See Initiation Checklist.

The petitioners based normal value on the price of Thai-manufactured PRCBs produced by the same company from which they obtained the export prices. The petitioners made adjustments for imputed credit expenses, packing, and difference-in-merchandise to normal value. We reviewed the information provided regarding normal value and have determined that it represents information reasonably available to the petitioners and have reviewed it for adequacy and accuracy. See Initiation Checklist.

Based on comparisons of export price to normal value, the estimated dumping margins for PRCBs from Thailand range from 34.84 percent to 122.88 percent.

#### **Fair-Value Comparison**

Based on the data provided by the petitioners, there is reason to believe that imports of PRCBs from the PRC, Malaysia, and Thailand are being, or are likely to be, sold in the United States at less than fair value.

#### **Allegations and Evidence of Material Injury and Causation**

The petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury by reason of the imports of the subject merchandise sold at less than normal value. The petitioners contend that the industry's injured condition is evidenced by declining trends in market share, pricing, production levels, profits, sales, and utilization of capacity. Furthermore, the petitioners contend that injury and threat of injury is

evidenced by negative effects on its cash flow, ability to raise capital, and growth.

These allegations are supported by relevant evidence including import data, lost sales, lost revenue and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Initiation Checklist dated July 10, 2003, Re: Material Injury).

#### **Initiation of Antidumping Investigations**

Based upon the examination of the petition on PRCBs from the PRC, Malaysia, and Thailand, and other information reasonably available to the Department, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of PRCBs from the PRC, Malaysia, and Thailand are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### **Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the governments of the PRC, Malaysia, and Thailand. We will attempt to provide a copy of the public version of the petition to each producer named in the petition, as appropriate.

#### **International Trade Commission Notification**

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

#### **Preliminary Determination by the ITC**

The ITC will preliminarily determine, no later than August 4, 2003, whether there is a reasonable indication that imports of PRCBs from the PRC, Malaysia, and Thailand are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 10, 2003.

**Jeffrey May,**

*Acting Assistant Secretary for Grant Aldonas, Under Secretary.*

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## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

**[A-122-814]**

#### **Pure Magnesium from Canada: NAFTA Panel Decision**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of NAFTA Panel decision.

**SUMMARY:** On April 28, 2003, the North American Free Trade Agreement ("NAFTA") Panel remanded an affirmative determination by the Department of Commerce (the "Department") in the sunset review of the antidumping duty order on pure magnesium from Canada. *See Pure Magnesium from Canada*, Secretariat File No. USA-CDA-00-1904-06, as modified by the NAFTA Panel's June 24, 2003 Order<sup>1</sup> ("*Pure Magnesium from Canada, Third Remand*"). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. V. United States*, 893 F.2d 337 (Fed. Cir. 1990) (Timken), the Department is notifying the public that *Pure Magnesium from Canada, Third Remand* and the NAFTA Panel's earlier opinions in this case, discussed below, were "not in harmony" with the Department's original results.

**EFFECTIVE DATE:** July 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Martha Douthit or Kelly Parkhill, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482-5050 or (202) 482-3791, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On July 5, 2000, the Department published a notice of the final results of the sunset review of the antidumping duty order on pure magnesium from Canada. *See Pure Magnesium From Canada; Final Results of Full Sunset Review*, 65 FR 41436, July 5, 2000.

<sup>1</sup> See *Pure Magnesium from Canada*, Secretariat File No. USA-CDA-00-1904-06 (June 24, 2003).