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February 20, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

RE: Laminated Woven Sacks from the People's Republic of China ("PRC"): Decision Memorandum for the Preliminary Results of the 2012-2013 Administrative Review

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In response to a request from the Laminated Woven Sacks Committee ("Petitioner"), the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty ("AD") order on laminated woven sacks from the People's Republic of China ("PRC") covering nine PRC firms[1] for the period of review ("POR") August 1, 2012, through July 31, 2013.[2] As none of the nine companies initiated for review have provided the Department with either a "no shipment" certification or evidence that demonstrates their eligibility for a separate rate, we have preliminarily treated the nine companies as part of the PRC-wide entity.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess ADs on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will 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").

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[1] Those nine companies are: Cangnan Color Make the Bag; Han Shing Corporation Limited; Jiangsu Hotsun Plastics; Ningbo Yong Feng Packaging Co., Ltd.; Polywell Industrial Co.; Shandong Qilu Plastic Fabric Group, Ltd.; Shandong Shouguang Jianyuanchun Co.; Shandong Youlian Subian Co. Ltd.; and Zibo Aifudi Plastic Packaging Co., Ltd.

[2] See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation, in Part, 78 FR 60834 (October 2, 2013) ("Initiation Notice").

Background

The Department initiated an administrative review with respect to nine firms for which we received a timely request[3] for an administrative review. No other party requested review of these nine companies. In a memorandum to the file dated October 22, 2013, we stated that our review of the CBP database showed no entries of laminated woven sacks originating in the PRC, subject to ADs/countervailing duties ("CVD") ("Type 3" entries), during the POR covering those nine firms for which we initiated the review.[4] We released this memorandum to interested parties and invited comment on the CBP data. We received no comments on the CBP data. None of the nine companies initiated for review certified that they had "no shipments" during the POR. Further, none of these nine companies filed separate rate certifications or applications to establish eligibility for a separate rate.

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 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 the order is dispositive.

[3] See September 3, 2013, Request for Administrative Review filed by the Laminated Woven Sacks Committee ("Petitioner").
[4] See "Memorandum to the File, from Irene Gorelik, Analyst, re; Release of Customs and Border Protection ("CBP") Data", dated October 22, 2013 ("CBP Entry Memo").
[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.

PRC-Wide Entity

All companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single AD rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities.[6]

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to submit either a "no shipment" certification or the separate rate application or certification.[7] Of the nine companies under review, three companies had a separate rate from a prior segment[8] but did not file a "no shipment" certification or a separate rate certification on the record of this review.[9] Consequently, these three companies have not provided any documentation supporting their continued eligibility for a separate rate. Thus, we have preliminarily considered them to be part of the PRC-wide entity, pursuant to our practice.[10]

The other six companies under review under review in this segment did not have a separate rate from a prior segment of the proceeding. Because these companies neither established their eligibility for a separate rate through a separate rate application nor filed "no shipment"

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[6] 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, 53080 (September 8, 2006).

[7] See Initiation Notice, 78 FR at 60834-60836.

[8] These three companies are: Cangnan Color Make the Bag, Jiangsu Hotsun Plastics, and Polywell Industrial Co. We note that these three companies received their separate rates in the underlying investigation and have not been under review since the investigation. 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).

[9] The Department notes that a company's eligibility for a separate rate necessarily requires reviewable entries from that company during the relevant period. See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 56211 (September 12, 2013) and accompanying Issues and Decision Memorandum at Comment 11, where the Department stated that "a company that did not export subject merchandise to the United States during the relevant period is likewise not eligible for a separate rate, because it has no reviewable POR entries and, thus, is not subject to the review (including the determination of a separate rate status);" see also Policy Bulletin 5.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 5, 2005 found at: http://enforcement.trade.gov/policy/bull05-1.pdf; see also Separate Rate Certification at page 2; found at: http://enforcement.trade.gov/nme/sep-rate-files/20121031/srv-sr-cert-20121031.pdf.

[10] See, e.g., Honey From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012, 78 FR 38941 (June 28, 2013) and accompanying Preliminary Decision Memorandum at page 3 ("Honey 2011-2012 Preliminary Results") ("during the review, Dongtai Peak did not file a separate rate application or certification, nor did it file a no shipments certification. Accordingly, because Dongtai Peak did not demonstrate its eligibility for a separate rate, the Department will preliminarily treat Dongtai Peak as part of the PRC-wide Entity."), unchanged in Honey From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012 ("Honey 2011-2012 Final Results), 78 FR 56860 (September 16, 2013). See also Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 70271, 70272 (November 25, 2013).

certifications, the Department preliminarily determines to treat these six companies as part of the PRC-wide entity.[11]

PRC-Wide Entity Rate

The Department conducted a proceeding pursuant to section 129 of the Uruguay Round Agreements Act ("URAA") regarding the AD and CVD investigations of laminated woven sacks.[12] Based on certain adjustments pursuant to section 777A(f) of the Act, the Department revised the PRC-wide entity rate from 91.73 percent, the only rate ever determined for the PRC-wide entity in this proceeding[13] to 47.64 percent.[14] Consequently, we are assigning the PRC-wide entity rate of 47.64 percent, as revised in the Section 129 Implementation, to the PRC-wide entity, which includes all nine companies initiated for review.

Recommendation

We recommend adopting the above determination finding that the nine companies subject to the review should be treated as part of the PRC-wide entity.

___✓___ Agree ________ Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

20 FEBRUARY 2014
(Date)

[11] See, e.g., Honey 2011-2012 Preliminary Results and accompanying Preliminary Decision Memorandum at 3, unchanged in Honey 2011-2012 Final Results, 78 FR at 56860.

[12] See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China, 77 FR 52683 (August 30, 2012) ("Section 129 Implementation").

[13] See, e.g., Laminated Woven Sacks From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review, 76 FR 14906 (March 18, 2011).

[14] See Section 129 Implementation, 77 FR at 52687-52688. See also Laminated Woven Sacks From the People's Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order, 78 FR 64472 (October 29, 2013).