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Sunset Review
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June 5, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Second
Sunset Review of the Antidumping Duty Order on Laminated
Woven Sacks from the People's Republic of China

I. Summary

We have analyzed the substantive response of the Laminated Woven Sacks Fair Trade Coalition and its individual members, Polytex Fibers Corporation and ProAmpac Holdings, Inc. (collectively, the domestic interested parties), in the second sunset review of the antidumping duty (AD) order covering laminated woven sacks from the People's Republic of China (China). We recommend that you approve the positions described in the *Discussion of the Issues* section of this memorandum. Below is the complete list of issues in this sunset review for which we received substantive responses:

1. Likelihood of the continuation or recurrence of dumping
2. Magnitude of the margins of dumping likely to prevail

II. Background

On February 5, 2019, the Department of Commerce (Commerce) published the notice of initiation of the second sunset review of the AD order on laminated woven sacks from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).¹ Commerce received a notice of intent to participate from the domestic interested parties, within the deadline specified in 19 CFR 351.218(d)(1)(i).² The domestic interested parties claim interested party status under section 771(9)(C) of the Act, as producers of a domestic like product in the United States, and

¹ See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 1704 (February 5, 2019) (*Notice of Initiation*).

² See Laminated Woven Sacks Fair Trade Coalition's (LWSFTC) Letter, "Domestic Interested Parties Notice of Intent to Participate," dated February 19, 2019.



under section 771(9)(E) and (F) of the Act, as a trade association whose members are producers of a domestic like product in the United States.

Commerce received a complete substantive response to the *Notice of Initiation* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).³ Commerce did not receive comments on the adequacy of responses in this sunset review. We received no substantive responses from respondent interested parties, nor was a hearing requested. On March 20, 2019, Commerce notified the International Trade Commission (ITC) that it did not receive adequate substantive responses from respondent interested parties.⁴ As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the AD order on laminated woven sacks from China.

The *Order* on laminated woven sacks from China remains in effect for all producers and exporters of the subject merchandise.⁵

III. 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;⁶ 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

³ See LWSFTC's Letter, "Domestic Interested Party Substantive Response," dated March 7, 2019 (Domestic Interested Parties' Substantive Response).

⁴ See Commerce's Letter, "Sunset Review Initiated on February 5, 2019 Applicable February 1, 2019," dated March 20, 2019.

⁵ See *Notice of Antidumping Duty Order: Laminated Woven Sacks from the People's Republic of China*, 73 FR 45941 (August 7, 2008) (*Order*).

⁶ "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.

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.

IV. History of the Order

On June 24, 2008, Commerce published the final affirmative determination in the less than fair value (LTFV) investigation of laminated woven sacks from China in the *Federal Register*.⁷ On August 7, 2008, Commerce published the *Order*, which established the following weighted-average dumping margins:⁸

Exporter	Weighted-Average Dumping Margin (percent)
Zibo Aifudi Plastic Packaging Co., Ltd	64.28
Polywell Industrial Co., a.k.a. First Way (H.K.) Limited.	64.28
Zibo Linzi Worun Packing Product Co., Ltd.	64.28
Shandong Qikai Plastics Product Co., Ltd.	64.28
Changle Baodu Plastic Co. Ltd.	64.28
Zibo Linzi Shuaiqiang Plastics Co. Ltd.	64.28
Zibo Linzi Qitianli Plastic Fabric Co. Ltd.	64.28
Shandong Youlian Co. Ltd.	64.28
Zibo Linzi Luitong Plastic Fabric Co. Ltd.	64.28
Wenzhou Hotson Plastics Co. Ltd	64.28
Jiangsu Hotson Plastics Co. Ltd	64.28
Cangnan Color Make The Bag	64.28
Zibo Qigao Plastic Cement Co. Ltd	64.28
China-Wide Rate	91.73

Administrative Reviews and First Sunset Review

Since the publication of the *Order*, Commerce has conducted five administrative reviews (ARs).⁹ No ARs were requested in four of the last five years. The last AR conducted was for the period

⁷ 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) (*Final Determination*).

⁸ See *Order*, 73 FR at 45942-43.

⁹ See *Laminated Woven Sacks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 22165 (April 21, 2015) (AR 13-14); *Laminated Woven Sacks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 34285 (June 16, 2014) (AR 12-13); *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) (AR 11-12); *Laminated Woven*

of review August 1, 2013, through July 31, 2014.¹⁰ In the completed ARs, Commerce found that producers/exporters have continued to dump subject merchandise at above *de minimis* rates despite the *Order*.¹¹ Commerce has also completed one sunset review, finding that the revocation of the *Order* would likely lead to a continuation or recurrence of dumping at the same rates established in the *Order*.¹² The *Order* remains in effect for all manufacturers, producers, and exporters of laminated woven sacks from China.¹³

Anti-Circumvention Inquiry, Section 129 Proceeding, Scope Inquiries, and Duty Absorption

Commerce conducted an anti-circumvention inquiry in 2012-2013, investigating laminated woven sacks from China that used only two ink colors but created the appearance of more than two distinct colors due to the printing process. Commerce determined that imports of the investigated merchandise were not circumventing the *Order* within the meaning of section 781(d) of the Act, finding that the laminated woven sacks at issue were commercially available when the less-than-fair-value investigation was initiated.¹⁴

In 2012, Commerce completed a determination in a proceeding conducted under section 129 of the Uruguay Round Agreements Act, making certain adjustments pursuant to section 777A(f) of the Act and revising the AD cash deposit rates established in the LTFV investigation for separate rate companies downward from 64.28 percent to 20.19 percent and for the China-wide entity downward from 91.73 percent to 47.64 percent.¹⁵ However, the section 129 final determination was challenged at the Court of International Trade and, following a remand, Commerce

Sacks from the People's Republic of China: Final Results of Second Antidumping Duty Administrative Review, 76 FR 21333 (April 15, 2011) (AR 09-10); *Laminated Woven Sacks from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906 (March 18, 2011) (AR 08-09).

¹⁰ See AR 13-14.

¹¹ See AR 13-14 (assigning the China-wide rate of 47.67 percent to all companies covered by the review); AR 12-13 (assigning the China-wide rate of 47.67 percent to all companies covered by the review); AR 11-12 (assigning the China-wide rate of 91.73 percent to the only company covered by the review); AR 09-10 (assigning the China-wide rate of 91.73 percent to the only company covered by the review); A R08-09 (assigning the China-wide rate of 91.73 percent to the only company covered by the review).

¹² See *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) (1st Sunset Review).

¹³ See *Laminated Woven Sacks from the People's Republic of China: Continuation of Antidumping Duty Order*, 79 FR 16770 (March 26, 2014).

¹⁴ See *Laminated Woven Sacks from the People's Republic of China: Negative Final Determination of Circumvention*, 78 FR 12716 (February 25, 2013).

¹⁵ 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).

reconsidered and revised its previous adjustment to the AD cash deposit rates for “double remedies” under section 777A(f)(1) of the Act as follows:¹⁶

Exporter	Producer	Revised AD Cash Deposit Rate (%)
Zibo Aifudi Plastic Packaging	Zibo Aifudi Plastic	64.28
Polywell Industrial Co., a.k.a. First Way (H.K.) Limited.	Polywell Plastic Product Factory	64.28
Zibo Linzi Worun Packing	Zibo Linzi Worun Packing	64.28
Shandong Qikai Plastics	Shandong Qikai Plastics	64.28
Changle Baodu Plastic Co.	Changle Baodu Plastic Co.	64.28
Zibo Linzi Shuaiqiang Plastics	Zibo Linzi Shuaiqiang	64.28
Zibo Linzi Qitianli Plastic	Zibo Linzi Qitianli Plastic	64.28
Shandong Youlian Co. Ltd.	Shandong Youlian Co. Ltd.	64.28
Zibo Linzi Luitong Plastic	Zibo Linzi Luitong Plastic	64.28
Wenzhou Hotson Plastics Co.	Wenzhou Hotson Plastics	64.28
Jiangsu Hotson Plastics Co.	Jiangsu Hotson Plastics Co.	64.28
Cangnan Color Make The Bag	Cangnan Color Make The	64.28
Zibo Qigao Plastic Cement	Zibo Qigao Plastic Cement	64.28
China-Wide Entity		91.73

There have been three completed scope inquiries with respect to laminated woven sacks.¹⁷ There have been no duty-absorption findings or changed circumstance reviews since the issuance of the *Order*.

V. Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, Commerce shall consider both the weighted-average dumping margins

¹⁶ See *Notice of Court Decision Not in Harmony with Final Determination Under Section 129 of the Uruguay Round Agreements Act*, 81 FR 23457 (April 21, 2016) (*Section 129 Timken*); see also *Laminated Woven Sacks Committee v. United States*, 163 F. Supp. 3d 1248 (CIT 2016) (judgment sustaining the remand redetermination).

¹⁷ See Memoranda: “Final Scope Ruling: Antidumping and Countervailing Duty Orders on Laminated Woven Sacks from China,” dated February 17, 2009; “Final Scope Ruling: Antidumping and Countervailing Duty Orders on Laminated Woven Sacks from China,” dated July 29, 2009; “The Super Poly Partnership Final Scope Ruling,” dated May 18, 2011.

determined in the investigations and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and after the issuance of the *Order*.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA),¹⁸ the House Report,¹⁹ and the Senate Report,²⁰ Commerce's determinations of likelihood will be made on an order-wide, rather than company-specific, basis.²¹ In addition, Commerce normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.²²

In addition, as a base period of import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.²³ When analyzing import volumes for second and subsequent sunset reviews, Commerce's practice is to compare import volumes during the year preceding the initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.²⁴

Further, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the *Order* were revoked. Generally, Commerce selects the dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.²⁵ However, in certain circumstances, a more recently calculated rate may be more appropriate (*e.g.*, "if dumping margins have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review").²⁶

¹⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA).

¹⁹ See H. Rep. No. 103-826, pt. 1 (1994) (House Report), reprinted in 1994 U.S.C.C.A.N. 3773 (1994).

²⁰ See S. Rep. No. 103-412 (1994) (Senate Report).

²¹ See SAA at 879 and House Report at 56.

²² See SAA at 889-90, House Report at 63-64, and Senate Report at 52; see also *Policies Regarding the Conduct of Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*; Policy Bulletin 98.3, 63 FR 18871, 18872 (April 16, 1998).

²³ See, *e.g.*, *Stainless Steel Bar from Germany: Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

²⁴ See *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders*, 79 FR 14216 (March 13, 2014), and accompanying Issues and Decision Memorandum at 3.

²⁵ See SAA at 890; see also *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008) (*Persulfates Second Sunset Review*), and accompanying Issues and Decision Memorandum at Comment 2.

²⁶ See SAA at 890-91.

In February 2012, Commerce announced it was modifying its practice in sunset reviews such that it will not rely on weighted-average dumping margins that were calculated using the methodology found to be WTO-inconsistent (*i.e.*, zeroing/the denial of offsets).²⁷ However, Commerce explained that it “retain[s] the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate” in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.²⁸ In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.²⁹ Commerce further stated that apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the WTO-inconsistent methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”³⁰

Pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require Commerce to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.³¹

VI. Discussion of the Issues

1. Likelihood of Continuation or Recurrence of Dumping

The Domestic Interested Parties’ Comments

- Commerce should find that continuing the *Order* is warranted because the factors in this case meet the criteria Commerce uses to determine that revocation of an AD order is likely to lead to continued or recurring dumping.³²
- In each AR, Commerce has found that exporters failed to cooperate and assessed antidumping duties at the China-wide rate. Because dumping continued after the *Order* was issued, it is likely that dumping would continue if the *Order* were revoked.³³

²⁷ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

²⁸ *Id.* at 8102, 8105, 8109.

²⁹ *Id.* at 8103.

³⁰ *Id.*

³¹ See *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

³² See Domestic Interested Parties’ Substantive Response at 3-4.

³³ *Id.* at 5.

- Import volumes of subject merchandise have decreased significantly since the *Order* was issued, and have remained at less than one percent of the pre-*Order* volume, for each of the last five years.³⁴

No other comments were received from interested parties.

Commerce Position: As explained in the Legal Framework section above, when determining whether revocation of the *Order* would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct Commerce to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the AD order. According to the SAA, existence of dumping margins after the order “is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.”³⁵ In addition, “declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.”³⁶

Alternatively, the legislative history provides that declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.³⁷

Margins above *de minimis* have remained in effect for all companies for the period since the last sunset review. Several companies have individual rates of 64.28 percent, and the China-wide rate remains 91.73 percent.³⁸ Further, these margins did not rely on a WTO-inconsistent methodology, consistent with the *Final Modification for Reviews*.³⁹ We further find that these margins are reflective of the level of dumping without the discipline of an order in place.

Additionally, we examined the import statistics overall and for the period since the last sunset review, which show that imports of laminated woven sacks from China remain significantly lower than before initiation of the original investigation.⁴⁰ Specifically, imports of laminated woven sacks declined from 26,571,472 kilograms in 2007 to 75,710 kilograms in 2017.⁴¹ Since

³⁴ *Id.* at 6.

³⁵ See SAA at 890.

³⁶ *Id.* at 889, the House Report at 63, and the Senate Report at 52.

³⁷ See SAA at 889-90, the House Report at 63, and Senate Report at 52.

³⁸ See *Final Determination*; see also *Section 129 Timken*.

³⁹ See *Final Determination*, 73 FR at 35646 and *Antidumping*

Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (*Final Modification*).

⁴⁰ See Domestic Interested Parties’ Substantive Response at 5-6 and Exhibits 1 and 2.

⁴¹ *Id.*

the last sunset review, imports of laminated woven sacks have ranged from 40,302 to 180,533 kilograms per year.⁴² Accordingly, pursuant to section 752(c)(1) of the Act, Commerce determines that dumping is likely to continue or recur if the *Order* were revoked.

2. Magnitude of the Margins of Dumping Likely to Prevail

The Domestic Interested Parties' Comments

- As the margins calculated during the investigation did not employ zeroing and were reinstated following the section 129 litigation, Commerce should treat these rates as the magnitude of dumping likely to prevail if the *Order* were revoked.⁴³

Commerce Position: Pursuant to section 752(c)(3) of the Act, Commerce shall provide to the ITC the magnitude of the margins of dumping that are likely to prevail if the *Order* were revoked. Commerce's preference is to select a weighted-average dumping margin from the LTFV investigation because it is the only calculated rate that reflects the behavior of the producers and exporters without the discipline of an order or suspension agreement in place.⁴⁴ Finally, as explained above, in accordance with the *Final Modification for Reviews*, Commerce will not rely on weighted average dumping margins that were calculated using the methodology found to be WTO-inconsistent.⁴⁵

Because dumping continued following the issuance of the *Order*, and given the absence of arguments or evidence to the contrary, Commerce finds that the margins calculated in the original investigation and reinstated following the section 129 litigation are probative of the behavior of producers and exporters of subject merchandise from China if the *Order* were revoked. These rates were not affected by the denial of offsets, in accordance with the *Final Modification for Reviews*,⁴⁶ because the *Final Determination* occurred after Commerce ended the practice of zeroing when making average-to-average comparisons in investigations.⁴⁷ Consistent with section 752(c) of the Act, Commerce will report to the ITC the margins up to the highest rate from the investigation concerning subject merchandise from China as indicated in the "Final Result of Sunset Review" section of this memorandum. As described above, these margins did not involve zeroing.

VII. Final Results of Sunset Review

We determine that revocation of the *Order* on laminated woven sacks from China would likely lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be up to 91.73 percent.

⁴² *Id.* at Exhibit 2.

⁴³ *Id.* at 7-8.

⁴⁴ See SAA at 890; see also *Persulfates Second Sunset Review*, and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁵ See *Final Modification for Reviews*, 77 FR at 8103.

⁴⁶ *Id.*

⁴⁷ See *Final Determination*, 73 FR at 35646; *Final Modification*, 71 FR at 77722; see also *1st Sunset Review*, and accompanying Issues and Decisions Memorandum at 8-9.

VIII. Recommendation

Based on our analysis of the response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register*.



Agree

Disagree

6/5/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler

Assistant Secretary

for Enforcement and Compliance