



A-570-886
Administrative Review
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June 6, 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: Polyethylene Retail Carrier Bags from the People's Republic of
China: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review; 2017-2018

I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (China) covering the period of review (POR) August 1, 2017, through July 31, 2018. Commerce preliminarily determines that, during the POR, the one exporter covered by this review did not demonstrate its eligibility for a separate rate and, therefore, we have preliminarily treated it as part of the China-wide entity and assigned it the China-wide rate of 77.57 percent. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless extended, we intend to issue the final results within 120 days from the date of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

On August 9, 2004, Commerce published in the *Federal Register* an AD order on PRCBs from China.¹ On August 7, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the order.² On August 31, 2018, the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag

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

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 38682 (August 7, 2018).



Corporation (collectively, the petitioners), timely requested an administrative review of Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa); Crown Polyethylene Products (International) Ltd. (Crown); and High Den Enterprises Ltd. (High Den).³ Commerce initiated an administrative review of PRCBs from China covering the requested companies on October 4, 2018.⁴

Commerce issued a questionnaire to all three companies on October 18, 2018.⁵ Commerce stated in the *Initiation Notice* that parties may withdraw a request for an administrative review within 90 days of the publication of the *Initiation Notice*.⁶ On December 21, 2018, the petitioners withdrew their request for review of Nozawa and Crown.⁷ We are rescinding the administrative review with respect to these companies. See the “Rescission of Administrative Review in Part” section of this memorandum. Accordingly, High Den is the sole respondent covered by this review.

We confirmed that High Den’s questionnaire was delivered and received on October 22, 2018.⁸ High Den’s response to the questionnaire was due on November 26, 2018. High Den did not respond to the questionnaire, nor did it contact Commerce to state that it was unable to respond or to request an extension of time to do so.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁹ The revised deadline for the preliminary results in this review is now June 12, 2019.

III. SCOPE OF THE ORDER

The merchandise subject to the AD 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 (15.24 cm) but not longer than 40 inches

³ See the petitioners’ Letter, “Polyethylene Retail Carrier Bags from the People’s Republic of China: Request for Administrative Review,” dated August 31, 2018.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

⁵ See Commerce’s Letter re: Antidumping Duty Questionnaire, dated October 18, 2018.

⁶ *Id.*

⁷ See the petitioners’ Letter, “Polyethylene Retail Carrier Bags from the People’s Republic of China: Partial Withdrawal of Request for Administrative Review,” dated December 21, 2018 (Petitioners’ Withdrawal Request).

⁸ See Memorandum, “High Den Enterprises, Ltd., Receipt of Questionnaire,” dated December 13, 2018.

⁹ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce’s practice, the deadline will become the next business day.

(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, the written description of the scope of the order is dispositive.

IV. RESCISSION OF ADMINISTRATIVE REVIEW IN PART

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation.

As noted above, the petitioners timely withdrew their request for review of Nozawa and Crown.¹⁰ No other parties requested a review of these companies. Accordingly, Commerce is rescinding this review, in part, with respect to Nozawa and Crown, in accordance with 19 CFR 351.213(d)(1).

V. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country Status

Commerce considers China to be a non-market economy (NME) country.¹¹ In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by Commerce.¹² Therefore, for the preliminary results of this

¹⁰ See Petitioners' Withdrawal Request.

¹¹ See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum to Gary Taverman, "China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

¹² See, *e.g.*, *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

review, we treated China as an NME country and applied our NME methodology, in accordance with section 773(c) of the Act.

B. Separate Rates

There is a rebuttable presumption that all companies within China are subject to government control and, thus, should be assessed a single antidumping duty rate.¹³ In the *Initiation Notice*, we notified parties of the application process by which exporters and producers may obtain separate rate status in this review.¹⁴ It is our policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, we analyze each exporting entity in an NME country under the test established in *Sparklers*,¹⁵ as amplified by *Silicon Carbide*.¹⁶ However, if we determine that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether it is independent from government control.¹⁷

To demonstrate separate rate status eligibility, Commerce requires entities subject to review who were assigned a separate rate in the previous segment of this proceeding to submit a separate-rate certification stating that they continue to meet the criteria for obtaining a separate rate.¹⁸ For entities that were not assigned a separate rate in the previous segment of this proceeding, Commerce requires a separate rate application to demonstrate separate rate status eligibility.¹⁹ In addition to submitting a separate rate application or certification, as appropriate, companies subject to individual examination also must respond to all parts of Commerce's questionnaire to be eligible for separate rate status.²⁰

As noted above, High Den failed to respond to Commerce's AD questionnaire and, therefore, did not demonstrate that it is entitled to a separate rate. Accordingly, we consider High Den to be part of the China-wide entity.

Under Commerce's current policy regarding conditional review of the China-wide entity, the China-wide entity will not be under review unless a party specifically requests, or Commerce

¹³ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

¹⁴ See *Initiation Notice*, 83 FR at 1329-30.

¹⁵ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

¹⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-89 (May 2, 1994) (*Silicon Carbide*).

¹⁷ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

¹⁸ See *Initiation Notice*, 83 FR 50077.

¹⁹ *Id.*

²⁰ *Id.*

self-initiates, a review of the entity.²¹ Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate of 77.57 percent is not subject to change.²² Thus, we have preliminarily assigned High Den the China-wide entity rate of 77.57 percent.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

6/6/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²¹ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

²² See *Antidumping Duty Order: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 48201 (August 9, 2004).