



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-583-843
Circumvention Inquiry
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May 27, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for the Circumvention Inquiry
of the Antidumping Duty Order on Polyethylene Retail Carrier
Bags from Taiwan – SmileMakers, Inc.

SUMMARY

In response to a request from Hilex Poly Co., LLC and Superbag Corp. (the petitioners), the Department of Commerce (the Department) initiated an anti-circumvention inquiry of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Taiwan, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act).¹ The merchandise subject to this inquiry is defined as certain rolls of polyethylene film from Taiwan.

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 certain rolls of polyethylene film from Taiwan are circumventing the *Order*.²

BACKGROUND

In April 2013, the Department placed two memoranda on the record stating that it received from U.S. Customs and Border Protection (CBP) a sample of an unfinished PRCB along with proprietary shipment documentation associated with the sample. The Department invited parties to view the sample and submit comments.³ The sample, taken from a continuous roll, resembles in-scope PRCBs in all respects except that they are in a continuous roll such that the bottoms are open and they lack handles. The merchandise appears ready to undergo the final processing,

¹ See *Polyethylene Retail Carrier Bags From Taiwan: Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order*, 78 FR 46319 (July 31, 2013) (*Initiation Notice*).

² See *Antidumping Duty Orders: Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam*, 75 FR 23667 (May 4, 2010) (*the Order*).

³ See Memoranda to the File dated April 18, 2013, and April 24, 2013.



which consists of cutting the unfinished PRCBs to length, sealing the bottoms, and die-cutting the unfinished PRCBs to create the handles of the finished PRCBs.⁴

On May 20, 2013, the petitioners requested that the Department issue an affirmative anti-circumvention determination, pursuant to section 781(a) of the Act and 19 CFR 351.225(g).⁵ The petitioners further stated that CBP officials advised them that the practice of importing unfinished PRCBs is increasing and expanding to multiple ports.⁶ The petitioners claim 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.⁷ Specifically, the petitioners allege that SmileMakers, an importer of subject merchandise, is engaged in circumvention of the *Order* by importing certain rolls of polyethylene film from Taiwan and converting such merchandise into polyethylene bags in the United States.⁸

On July 25, 2013, the Department initiated an anti-circumvention inquiry on imports of certain rolls of polyethylene film from Taiwan under section 781(a) of the Act.⁹ The Department initiated this inquiry with respect to all such unfinished PRCBs from Taiwan provided by CBP as described above, regardless of the producer or exporter.¹⁰

Subsequent to the initiation of this inquiry, the Department sent a questionnaire to SmileMakers, Inc., the importer of record for the merchandise in question.¹¹ On September 5, 2013, SmileMakers submitted a response to our questionnaire.¹² We also sent a supplemental questionnaire to SmileMakers and received a response on November 27, 2013.¹³

SCOPE OF THE ORDER:

The merchandise subject to this antidumping dumping duty order is PRCBs, 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 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than

⁴ The particular sample measures roughly 42.5 inches by 9 inches and the front surface is printed with multi-color graphics and the words "Brush," "Floss," and "Smile." The sample also shows the location of oval handles that have not yet been die cut out of the bags and the color printing registration marks used to print the bag in Taiwan are contained in the location of the oval handles.

⁵ See the petitioners' letter to the Department, "Polyethylene Retail Carrier Bags From Taiwan/Request For An Affirmative Anti-Circumvention Determination" dated May 20, 2013 (the petitioners' request).

⁶ *Id.*, at 3.

⁷ *Id.*

⁸ See letter from the petitioners entitled, "Polyethylene Retail Carrier Bags From Taiwan/ Request For An Affirmative Anti-Circumvention Determination" dated May 20, 2013 (Initiation Request).

⁹ See *Initiation Notice*, 78 FR at 46322.

¹⁰ *Id.*

¹¹ See Letter to SmileMakers dated August 1, 2013.

¹² See SmileMakers September 5, 2013, submission.

¹³ See SmileMakers' November 27, 2013, submission.

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 (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 3923.21.0085¹⁴ of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of the order. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of the order is dispositive.

MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES AND SUBJECT TO THE ANTIDUMPING ANTI-CIRCUMVENTION INQUIRY:

This anti-circumvention inquiry covers merchandise from Taiwan that appears to be an unfinished PRCB ready to undergo the final steps in the production process, *i.e.*, cutting the unfinished PRCBs to length, sealing the bottoms, and die-cutting the unfinished PRCBs to create the handles of the finished PRCBs. 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.¹⁵

STATUTORY AND REGULATORY FRAMEWORK

The Act

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

- (1) In general. If
 - (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,

¹⁴ This HTSUS number changed effective July 1, 2005. Prior to July 1, 2005, imports of subject merchandise were classified under statistical category 3923.21.0090 of the HTSUS. *See* Harmonized Tariff Schedule of the United States (2005) – Supplemental I Annotated for Statistical Reporting Purposes Change Record- 17th Edition – Supplement 1; this HTSUS number remains unchanged in the February 2012 update (Section VII-1; Chapter 39).

¹⁵ *See* Memoranda to the File from Hermes Pinilla entitled “Polyethylene Retail Carrier Bag from Taiwan: Placing the Sealed Sample Product on the Record” and “Polyethylene Retail Carrier Bag from Taiwan: Placing Customs Documentation on the Record”, dated April 18, 2013 and April 24, 2013; respectively.

- (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's Regulations

19 CFR 351.225(a) states:

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 a change 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:

Under 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 steps of the production process, *i.e.*, cutting-to-size the merchandise, sealing the bag on one end to form a closure, and creating the handles of a finished PRCB (using a die press to stamp out the opening).¹⁶

Citing the International Trade Commission (ITC)'s 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.¹⁷ The petitioners describe the final, normal "conversion" step as follows: "After the printing process is complete, the large roll of film is then cut to size with hot knives that seam the sides of the bags together when cut. Then, the film is fed into bag manufacturing machines where the top and bottom seals are formed and handles are cut out."¹⁸

The petitioners contend that the unfinished PRCBs that are subject to their request represent an interruption in this continuous production process because, while they have been sealed on their sides, the bottom and top are open and the oval handle has not been die cut.¹⁹ Completion of

¹⁶ See the petitioners' request at 6.

¹⁷ *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.

¹⁸ *Id.*, at 6.

¹⁹ *Id.*

these steps would make the bags subject of the antidumping duty order if they were imported in this finished condition.²⁰

SmileMakers argues that the petitioners failed to demonstrate that SmileMakers' polyethylene film tubes are circumventing merchandise within the meaning of section 781(a) of the Act. SmileMakers asserts that the record is clear that it has been importing these same polyethylene film tubes since before the Taiwan PRCBs less-than-fair-value investigation was initiated.²¹ Furthermore, SmileMakers argues that the record confirms that its decision to import the polyethylene film tubes had nothing to do with an attempt to evade antidumping duty.²² Because certain details are business proprietary in nature, *see* the accompanying business proprietary Preliminary Analysis Memorandum.²³

ANALYSIS

A. The Merchandise Sold in the United States Is of the Same Class or Kind As Merchandise Subject to the Order

The petitioners state that the merchandise sold in the United States is of the same class or kind as the subject merchandise. The petitioners agree with the Department's statement that the samples "closely resemble" a PRCB.²⁴ Moreover, the merchandise is made of polyethylene film and the dimensions of the finished PRCBs are within those of the scope definition. Finally, the petitioners state that, because the bags are completely and exclusively used as PRCBs used in a dentist's office and completion in the United States is for such purpose, there can be no doubt of the bags intended use as subject merchandise within the scope definition of *the Order*.²⁵

In its September 5, 2013 submission, SmileMakers describes the unfinished PRCBs as polyethylene film tubes that are uniquely designed as continuous sleeves (*i.e.*, lay-flat tubes) that are open (un-sealed), and the tubes contain no other seams or seals. In addition, SmileMakers states that the polyethylene tubes in question contain no perforations or cutouts, nor do they have handles or even perforations where handles might exist. Thus, according to SmileMakers, the polyethylene film tubes are continuous tubes of polyethylene.²⁶

SmileMakers states that after importing the rolls of polyethylene film tubes into the United States, it converts them into customized polyethylene bags or regular polyethylene bags, using a proprietary and confidential manufacturing process.²⁷ SmileMakers contends that the process involves feeding the tubes into machines, which print customized names, addresses, and other information onto the polyethylene film, as requested by the purchasing doctors, dentists, or

²⁰ *Id.*

²¹ *See* SmileMakers' September 5, 2013, submission at 9 and Exhibit E.

²² *Id.*, at 9 and 14; *see also* SmileMakers' November 27, 2013, submission.

²³ *See* memorandum entitled, "Preliminary Analysis Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from Taiwan," dated concurrently with this memorandum (Preliminary Analysis Memorandum).

²⁴ *See* the petitioners' request at 10.

²⁵ *Id.*, at 10 and 11.

²⁶ *See* SmileMakers' submission dated September 5, 2013, at 4 and 5.

²⁷ *Id.*

teachers. SmileMakers states that the bags are then cut to length and a handle is formed by punching out a portion of the material near the top opening of the bag.²⁸

SmileMakers argues that it does not convert the rolls into customized bags in the United States to evade antidumping duties but for other commercial reasons. Because details concerning this argument are business proprietary, *see* the Preliminary Analysis Memorandum. SmileMakers converts the polyethylene film tubes into customized bags or regular polyethylene bags as indicated by the information it placed on the record.²⁹ Information submitted by SmileMakers indicates that the customized bags or regular polyethylene bags are cut to into sections of either nine or 12 inches in length and during the cutting process, the cut sections are heat-sealed on one end to form closure.³⁰ In addition, SmileMakers indicates that during the cutting process, a handle is cut by punching out a portion of the material near the top, non-heat sealed, end of the cut section of the polyethylene film tube.³¹ Thus, record evidence indicates that after conversion, the customized polyethylene bags or regular polyethylene bags that SmileMakers finishes in the United States would be subject to the antidumping duty order if they were imported in this finished condition because such bags meet the physical characteristics outlined in the scope of the *Order*. For these reasons, we preliminarily determine that the unfinished PRCBs imported into the United States are PRCBs of the same class or kind as the subject merchandise.

B. The Merchandise Sold in the United States Is Completed from Parts or Components Produced in Taiwan, the Foreign Country

The petitioners cite to the CBP referral documentation and SmileMakers' scope ruling request to support their claim that the imported rolls of film tubes are completed in the United States from parts and components produced in Taiwan. All the necessary raw materials for a finished PRCB are imported from Taiwan. Performing the final cutting-to-length, sealing and die-cutting operations in the United States simply finishes the PRCBs.³²

Evidence submitted by SmileMakers does not dispute the petitioners' claim that the imported rolls of polyethylene film tubes are completed in the United States from parts and components produced in Taiwan. For example, SmileMakers explains that after importation into the United States from Taiwan, SmileMakers uses the polyethylene film tubes to produce customized bags for dentists' and doctors' offices, and teachers.³³ SmileMakers states that the tube is then cut into sections of either 9 or 12 inches in length and during the cutting process, the cut sections are heat-sealed on one end to form a closure.³⁴ SmileMakers states that during the cutting process, a handle is cut by punching out a portion of the material near the top, non-heat-sealed, end of the cut section of polyethylene film tube. In addition, SmileMakers states that pursuant to requests it receives it will print the names and addresses of its customers.³⁵

²⁸ *Id.*, at 3.

²⁹ *See* the petitioners' request at 10-11.

³⁰ *See* SmileMakers' submission dated September 5, 2013, at 5 and Exhibit B.

³¹ *Id.*, at 5.

³² *See* the petitioners' request at 11.

³³ *See* SmileMakers' submission dated September 5, 2013, at Exhibit B.

³⁴ *Id.*

³⁵ *Id.*

The submissions of both parties support a finding that the finished PRCBs that are sold in the United States are completed in the United States using the component parts produced in Taiwan. Specifically, Smilemakers' submissions demonstrate that it imports unfinished PRCBs as polyethylene film tubes from Taiwan and then completes them in the United States to be finished PRCBs. The finished PRCBs fit the description of merchandise covered by the *Order*. For this reason, we preliminarily determine that the unfinished PRCBs are completed and sold 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

According to the petitioners, the process of converting this product into a finished PRCB is minor or insignificant, particularly relative to the production process as a whole. The petitioners assert that the sealing and cutting operations are simple steps that occur only at the very end of the multi-step production process. Specifically, the bottom of the bag is sealed with a hot knife and the handles cut by clamping a die to a press and then pressing on the pillow pack.³⁶ Consequently, only one machine is necessary to seal the bag and cut out an oval handle.³⁷

The petitioners provided an advertisement demonstrating that the equipment needed to accomplish the completion tasks in the United States can be purchased new for \$11,000 to \$13,000.³⁸ In contrast, the petitioners claim that the operations performed in Taiwan are highly capital-intensive and technologically sophisticated.³⁹

SmileMakers does not produce the polyethylene film tubes and claims that it does not have access to information from its producer regarding the production process as a whole or the cost of producing polyethylene film tubes.⁴⁰ SmileMakers did provide information regarding the production process of the polyethylene film tubes and the finished polyethylene bags in Taiwan. The factory processes in Taiwan for producing the rolls of polyethylene film tubes and finished PRCBs are business proprietary.⁴¹ SmileMakers asserts that the descriptions of the production process are based on the information made available to it and may not be exhaustive.⁴²

³⁶ See the petitioners' request at 12.

³⁷ *Id.*, at 11.

³⁸ *Id.*

³⁹ *Id.*, and Exhibit 10, and petitioners' October 21, 2013, submission at Exhibit 6.

⁴⁰ See SmileMakers' submission dated September 5, 2013, at 2.

⁴¹ See the Preliminary Analysis Memorandum for information concerning these processes.

⁴² *Id.*, at 3.

Section 781(a)(2) of the Act instructs us to consider the following when determining whether the process of assembly or completion is minor or insignificant under 781(a)(1)(c):

- (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.

With regard to parts (A) through (E) under section 781(a)(2), because we have no information from the foreign producer, we are reliant on the information placed on the record by the participating parties. Thus, our analysis is based on information provided by both the petitioners and SmileMakers.

With regard to part (A) under section 781(a)(2), the petitioners argue that the level of investment in the United States is extremely limited because the only necessary piece of equipment is a machine that seals the bag and cuts out an oval handle. The petitioners also provided information from an independent industry expert who estimates that the total investment in the foreign country necessary to produce the polyethylene film tubes is \$3.62 million.⁴³ According to the independent industry expert, the production facilities for blowing film bubbles require significant additional investment in buildings with sufficient height clearance to house the film bubble and the structural towers that are constructed pursuant to engineered drawings.⁴⁴ According to the independent industry expert, at least 80 to 90 percent of the total investment necessary to produce a finished PRCB is embodied in the production and multicolor printing of the polyethylene film tube.⁴⁵

SmileMakers provided various figures in response to our inquiries with regard to the level of investment it incurred in the United States with respect to its process for completion of the unfinished PRCBs. In its December 17, 2013 submission, SmileMakers provided a chart that outlines its level of investment, research and development expenditures in the United States from 2007 through 2013.⁴⁶ SmileMakers asserts that the cumulative total does not include the cost of the imported rolls and may also exclude certain other *de minimis* items.⁴⁷

Based on the level of investment detailed in the Preliminary Analysis Memorandum, we preliminarily find that the figure calculated by Smilemakers accurately represents the initial investment SmileMakers undertook in order to establish the business of converting polyethylene film tubes into finished PRCBs. Thus, we preliminarily find it appropriate to compare the \$3.62 million amount that the petitioners argue is the initial amount required to start up the production of polyethylene film tubes in Taiwan with the amount reported by SmileMakers because both amounts represent the initial investment required to start the polyethylene film tube production

⁴³ See the petitioners' December 30, 2013, submission (the petitioners' submission) at 19.

⁴⁴ *Id.*, at 20.

⁴⁵ *Id.*

⁴⁶ See the Preliminary Analysis Memorandum for details of SmileMakers' level of investment.

⁴⁷ See SmileMakers' December 17, 2013, submission at Exhibit 1.

and the conversion process in their respective countries. After comparing the \$3.62 million with the amount SmileMakers calculated for its investment, we preliminarily find that the level of investment is significant in the foreign country compared to the reported level of investment in the United States. Specifically, we estimate that the level of investment in Taiwan represents a significant portion of the total investment required for these types of businesses.⁴⁸ Thus, with respect section 781(a)(2)(A), we preliminarily find the level of investment in the United States is minimal when compared to the level of investment in the foreign country.

With regard to part (B) under section 781(a)(2), the petitioners further argue that no research and development expenditures are required to perform the simple sealing, and die-cutting operations, as the technically complex research and development activities are performed prior to this stage and relate only to the production processes performed in Taiwan. The petitioners argue that it is the blown film production process performed in the foreign country that is the focus of research and development activities in the PRCB industry.⁴⁹

SmileMakers does not produce the polyethylene film tubes, and, therefore, does not have any specific information from the producer regarding its research and development expenditures in Taiwan.⁵⁰ In addition and in response to our inquiries, SmileMakers provided a chart that outlines its research and development expenditures along with the level of investment it incurred annually. The chart provided by SmileMakers comingles research and development expenditures with line items that fall under the category of level of investment. Thus, SmileMakers did not identify specifically which line items are better categorized as research and development and which are better categorized as investments. As a result, we treated all line items in SmileMakers' chart as level of investment incurred by SmileMakers, which we analyzed above for purposes of addressing part (A) under section 781(a)(2) of the Act. Because of what the line items in SmileMakers' chart appear to show, we consider the information SmileMakers provided to be better categorized as investments it incurred.⁵¹ In addition, SmileMakers did not dispute the petitioners' assertion that no research and development activities are performed in the United States. In addition, we preliminarily find that the processes for printing and sealing the bottom of film tubes and cutting oval handles appear to be activities that do not require significant research and development initiatives and expenditures because such activities are industry standards for companies that are in the conversion business.⁵² Thus, with respect to section 781(a)(2)(B) of the Act, we preliminarily find that the level of research and development initiatives and expenditures in the United States is limited when compared to the research and development initiatives and expenditures likely necessary in the foreign country.

With regard to part (C) above under section 781(a)(2) of the Act, the petitioners argue that the nature of U.S. production processing is extremely minor in scope and elementary in technique, particularly relative to the production process as a whole.⁵³

⁴⁸ See the Preliminary Analysis Memorandum for the figures underlying the Department's conclusion.

⁴⁹ See the petitioners' submission at 22.

⁵⁰ See SmileMakers' September 5, 2013, submission at 13.

⁵¹ See the Preliminary Analysis Memorandum.

⁵² See the petitioners' October 21, 2013, submission at Exhibit 6.

⁵³ See the petitioners' submission at 23.

With respect to section 781(a)(2)(C) of the Act, we preliminarily find that the nature of the production process in the United States is relatively minor. For example, record evidence indicates that after importation, SmileMakers converts the polyethylene film tubes into finished polyethylene bags by cutting the film into sections of either nine or 12 inches in length, heat-sealing on one end to form closure, and punching out a portion of the material near the top to create the handle, and printing the names and addresses of its customers.⁵⁴ Based on the information SmileMakers provided, this process requires less processing than production of the polyethylene film tubes in Taiwan.⁵⁵

With regard to section 781(a)(2)(D) of the Act, the petitioners argue that the necessary production facilities in the United States are minor because the sealing and cutting could be done in a small single-story room.⁵⁶

With respect section 781(a)(2)(D) of the Act, we preliminarily find that SmileMakers' production facility for completing finished PRCBs is not extensive.⁵⁷

With regard to section 781(a)(2)(E) of the Act, the petitioners contend that the value of the processing performed in the United States represents a negligible proportion of the value of the merchandise sold in the United States. The petitioners claim that a single employee can perform the sealing and die-cutting to produce the finished bags.⁵⁸ The petitioners assert that the capital and marginal costs of the sealing and die cut operations in the United States are relatively insignificant in comparison to those performed in the country of origin of the circumventing merchandise.⁵⁹ Thus, according to the petitioners, the value added by the sealing and die-cutting operations in the United States likely constitutes a relatively negligible proportion of the value of the completed PRCB.⁶⁰ The petitioners further explain that the Department need not collect precise information on the amount of the value added in the United States to conclude that the process is minor or insignificant, but may instead rely on a qualitative assessment to draw this conclusion.⁶¹

SmileMakers argues that the Department should measure the relative value of polyethylene film tubes versus finished customized PRCBs by looking solely into its costs. SmileMakers asserts that this comparison demonstrates that the value of the processing performed in the United States is not a "small proportion" of the value of the merchandise sold in the United States because after taking into consideration its purchase cost along with the labor cost required to convert the

⁵⁴ See SmileMakers' submission dated September 5, 2013, at Exhibit B.

⁵⁵ See the Preliminary Analysis Memorandum.

⁵⁶ See the petitioners' submission at 28-29.

⁵⁷ See the Preliminary Analysis Memorandum for further details underlying the Department's conclusion.

⁵⁸ See the petitioners' May 20, 2013, submission at 12.

⁵⁹ *Id.*

⁶⁰ See the petitioners' submission at 30-31.

⁶¹ *Id.* at 10 n. 37 (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)).

polyethylene film tubes into finished PRCBs, the record shows that the processing cost is not minimal.⁶²

As stated above, with regard to parts (A) through (E) under section 781(a)(2) of the Act, because we have no information from the foreign producer, we are reliant on the information placed on the record by the participating parties. Thus, our analysis is based on information provided by both the petitioners and SmileMakers.

With regard to this criterion, we preliminarily determine that the appropriate measure for valuing the processing performed in the United States is by comparing SmileMakers' total processing costs with the average sales prices of the finished PRCBs. As discussed in our Preliminary Analysis Memorandum, our comparison of the Smilemakers' total processing costs (and the components thereof) indicates that 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.⁶³ Thus, with respect section 781(a)(2)(E) of the Act, we preliminarily determine that 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.

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

The petitioners relied on the information and arguments in the "minor or insignificant process" portion of their anti-circumvention request to indicate that the value of Taiwan production for unfinished PRCBs is significant relative to the total value of finished PRCBs sold in the United States.⁶⁴

SmileMakers argues that the value of parts or components produced in the foreign country is not a significant portion of the total value of the merchandise as demonstrated by the cost it incurs for purchasing the polyethylene film tubes and the sale of the finished PRCBs.⁶⁵ According to SmileMakers, the record shows that the imported rolls of polyethylene film tubes are not a significant portion of the value of the finished produced as required by section 781(a)(1)(D) of the Act.⁶⁶

However, based on our analysis of the figures placed on the record by participating parties, using a methodology previously adopted by the Department,⁶⁷ we preliminarily find that the value of the parts or components produced in the foreign country is a significant portion of the total value of the merchandise in question.⁶⁸

⁶² See SmileMakers' January 8, 2014, submission at 8.

⁶³ See the Preliminary Analysis Memorandum for details underlying the Department's conclusion.

⁶⁴ See the petitioners' submission at 31.

⁶⁵ See SmileMakers' January 8, 2014, submission at 8; see also the Preliminary Analysis Memorandum for details underlying SmileMakers' claim.

⁶⁶ *Id.*

⁶⁷ See *Ferrovanadium and Nitrided Vanadium from Russia: Anticircumvention Inquiry - Preliminary Determination Calculation of Value Added in the United States*, dated January 31, 2012.

⁶⁸ See the Preliminary Analysis Memorandum.

E. Additional Factors to Consider

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.

Pattern of Trade, Including Sourcing Patterns

The petitioners argue that consideration of changes in patterns of trade does not undercut an affirmative finding.⁶⁹ According to the petitioners, SmileMakers' imports of finished PRCBs from Taiwan contributed to the increase in such imports that led to the filing of petitions against imports of PRCBs from Indonesia, Taiwan, and Vietnam in March 2009. The petitioners assert that although SmileMakers indicates that it had an independent business reason for customizing bags in the United States, there is no reason that bags on a roll or polyethylene film tubes being customized in the United States should be exempted from relief. According to the petitioners, the bags on a roll or polyethylene film tubes customized in the United States circumvent relief because they substitute for highly comparable non-custom and custom bags that are purchased in the United States. The petitioners assert that by evading the imposition of duties, the bags on a roll or polyethylene film tubes make the customized PRCBs more cost competitive in the U.S. market and encourage a greater quantity of such imports than would otherwise be the case.⁷⁰ Further, the petitioners argue in their initial filing that CBP officials had advised the petitioners' counsel that the practice of importing unfinished PRCBs is increasing and extending to multiple ports. One example of this is when CBP provided the Department with samples of unfinished PRCBs in April 2013.⁷¹

We initiated the less-than-fair-value investigation of this proceeding on April 20, 2009.⁷² The import data provided by SmileMakers indicate that its imports of polyethylene film tubes more than double from 2009 to 2010, and then subsequently decreased significantly from 2010 to 2011.⁷³ In addition, the data SmileMakers provided with regard to its imports of finished PRCBs show the same trade trend as its imports of polyethylene film tubes.⁷⁴ In light of record evidence, we preliminarily determine that the data provided on the record are inconclusive and therefore we are unable to determine whether importation of unfinished PRCBs entered into the United States represents a change in the pattern of trade. However, our preliminary finding with regard to this factor does not necessarily detract from our preliminary affirmative circumvention determination that unfinished PRCBs from Taiwan are circumventing the *Order*.

Affiliation

Under section 781(a)(3)(B) of the Act, the Department shall take into account whether the producer or exporter of the parts or components is affiliated with the person who assembles or

⁶⁹ See the petitioners' December 30, 2013, submission at 32.

⁷⁰ *Id.*

⁷¹ See the petitioners' January 14, 2014, submission at 17.

⁷² See *Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19047 (April 27, 2009) (*Initiation of Investigations Notice*).

⁷³ See SmileMakers' September 27, 2013, submission at Attachment 1.

⁷⁴ *Id.*

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. SmileMakers indicated that it is not affiliated with the Taiwanese producer⁷⁵ and there is no information on the record to contradict SmileMakers' claim. Thus, we find no evidence on the record to indicate that the manufacturer is affiliated with SmileMakers.

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 increased after the initiation of the investigation, which resulted in the issuance of the order, when making a decision in a circumvention case.

We initiated the less-than-fair-value investigation in April 2009.⁷⁶ SmileMakers provided statistics of its imports of both polyethylene film tubes and of finished PRCBs. According to SmileMakers, from 2009 to 2010, imports of polyethylene film tubes increased.⁷⁷ From 2010 to 2011, imports of polyethylene film tubes decreased and from 2011 to 2012 imports of polyethylene film tubes decreased again.⁷⁸ From 2012 to 2013, imports of polyethylene film tubes decreased. SmileMakers also provided data concerning imports of finished PRCBs. According to SmileMakers, from 2009 to 2010, imports of finished PRCBs increased.⁷⁹ From 2010 to 2011, imports of finished PRCBs decreased and from 2011 to 2012, imports decreased again.⁸⁰ From 2012 to 2013, imports of finished PRCBs decreased.⁸¹ SmileMakers' data also demonstrate a similar increase and subsequent decrease in imports of finished PRCBs and the polyethylene film tubes over the same time period.⁸² Thus, on the whole, these factors do not necessarily detract from or support our findings outlined above.

⁷⁵ See SmileMakers' September 5, 2014, submission at 2.

⁷⁶ See *Initiation of Investigations Notice*.

⁷⁷ See SmileMakers' September 27, 2013, submission at Attachment 1.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See the Preliminary Analysis Memorandum.

RECOMMENDATION

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

✓ Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

27 MAY 2014
(Date)