

used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain (1) the party's name, address, and telephone number, (2) the number of participants, and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c).

We will make our final determination no later than 135 days after the date of publication of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-821]

#### **Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Thailand**

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

**EFFECTIVE DATE:** January 26, 2004.

**SUMMARY:** We preliminarily determine that polyethylene retail carrier bags from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination.

**FOR FURTHER INFORMATION CONTACT:** Lyn Johnson (Thai Plastic Bags) or Fred Aziz (Universal Polybag), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4733.

#### **SUPPLEMENTARY INFORMATION:**

##### **Preliminary Determination**

The Department of Commerce (the Department) has conducted this antidumping investigation in accordance with section 733 of the Tariff Act of 1930, as amended (the Act). We preliminarily determine that polyethylene retail carrier bags (PRCBs) from Thailand are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

##### **Case History**

We initiated this investigation on July 10, 2003. See *Initiation of Antidumping Duty Investigations: Polyethylene Retail Carrier Bags from The People's Republic of China, Malaysia, and Thailand*, 68 FR 42002 (July 16, 2003) (*Initiation Notice*). Since the initiation of this investigation the following events have occurred.

On July 14, 2003, we issued a letter to interested parties in this investigation providing an opportunity to comment on the characteristics we should use in identifying the different models the respondents sold in the United States. The petitioners and both respondents submitted comments on July 28, 2003. No other party submitted comments. After reviewing the parties' comments, we have adopted the characteristics and hierarchy as explained in the "Fair Value Comparisons" section, below.

On July 14, 2003, we sent a partial section A questionnaire to all of the producers and exporters named in the petition and to the producers/exporters who comprise the top 80 percent of producers and exporters in terms of quantity produced (in thousands of

units) of the subject merchandise according to data from U.S. Customs and Border Protection (CBP). We requested information on the quantity and value of merchandise sold by these producers/exporters in order to identify potential respondents in the investigation. We received responses from eight firms which reported exports of subject merchandise during the period of investigation (POI). In addition, a number of firms indicated that they did not export subject merchandise to the United States during the POI. We did not receive responses from Champion Paper Polybags Ltd., TRC Polypack, and Zip-Pac Co., Ltd. The record indicates that these companies received our July 14, 2003, questionnaire. On August 1, 2003, we sent a letter to these firms to reiterate our request for a response to our July 14, 2003, questionnaire. We received no responses from these firms.

On August 4, 2003, the United States International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from the PRC, Malaysia, and Thailand, which the ITC published in the **Federal Register** on August 11, 2003. See *Polyethylene Retail Carrier Bags From China, Malaysia, and Thailand*, 68 FR 47609 (August 11, 2003).

On August 14, 2003, the Department selected Thai Plastic Bags Industries Co., Ltd. (Thai Plastic Bags), and Universal Polybag Co., Ltd. (Universal), as mandatory respondents. See Memorandum from Laurie Parkhill to Jeff May dated August 14, 2003.

On August 14, 2003, the Department issued its antidumping questionnaire to the mandatory respondents. Both mandatory respondents responded to our questionnaire. We issued supplemental questionnaires to the mandatory respondents and received responses from both companies to our supplemental questionnaires. Because Thai Plastic Bags is comprised of three companies (Thai Plastic Bags Industries Co., Ltd., Winner's Pack Co., Ltd., and APEC Film Ltd.), it provided a unified response to our questionnaires with respect to the collapsed companies.

On October 16, 2003, the petitioners requested that the Department postpone its preliminary determination by 50 days. In accordance with section 733(c)(1)(A) of the Act, we postponed our preliminary determination by 50 days. See *Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations:*

*Polyethylene Retail Carrier Bags From the People's Republic of China, Malaysia, and Thailand*, 68 FR 61656 (October 29, 2003).

#### **Postponement of Final Determination and Extension of Provisional Measures**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. In accordance with 19 CFR 351.210(e)(2), the Department requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures in section 733(d) of the Act from a four-month period until not more than six months.

We received a request to postpone the final determination from Thai Plastic Bags. In its request, Thai Plastic Bags consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request. Therefore, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

#### **Period of Investigation**

The POI corresponds to the four most recent fiscal quarters prior to the filing of the petition, *i.e.*, April 1, 2002, through March 31, 2003.

#### **Scope Comments**

In accordance with the preamble to our regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (see 66 FR 42002). Interested parties submitted such comments by August 5, 2003.

Pursuant to the Department's solicitation of scope comments in the *Initiation Notice* on August 4, 2003, Regal Import Packaging, an importer of

PRCBs, requested that bags that are "four dimensional", bags with handles made of a material that differs from the bag itself, and custom-printed bags where the bag order is of 50,000 bags or less, be excluded from the scope of the investigation. The importer asserted that these types of bags were not manufactured in the United States and therefore should be excluded from the scope of the investigation. On August 12, 2003, the petitioners commented that the bags in question were manufactured in the United States and requested that the scope of the investigation not exclude these types of bags. We have not adopted the changes in the scope of the investigation requested by Regal Import Packaging because we find the petitioners have placed sufficient evidence on the record to show that the bags in question are manufactured in the United States and fall within the scope of the investigation.

#### **Scope of Investigation**

The merchandise subject to this investigation is polyethylene retail carrier bags, which also may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than .035 inch (0.889 mm) and no less than .00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

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 petition 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 classified under statistical category 3923.21.0090 of the *Harmonized Tariff Schedule of the United States*. This subheading also covers products that are

outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

#### **Selection of Respondents**

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters or producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. There is no data on the record that indicates conclusively the number of producers or exporters from Thailand that exported the subject merchandise to the United States during the POI. We also determined that we only had the resources to investigate two companies.

On July 14, 2003, the Department sent partial section A questionnaires addressed to all producers/exporters of the subject merchandise listed in the petition. As discussed above, we received responses from a number of firms in this investigation. Based on the responses we received to our July 14, 2003, questionnaire, we selected Thai Plastic Bags and Universal as mandatory respondents. We selected Thai Plastic Bags and Universal because these two firms account for 85.2 percent of known U.S. imports of subject merchandise and we do not have the resources to investigate all potential respondents. See Memorandum from Laurie Parkhill to Jeff May dated August 14, 2003.

#### **Use of Facts Otherwise Available**

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides such information but the information cannot be verified, the Department shall, subject to sections 782(d) and (e) of the Act, use facts otherwise available in reaching the applicable determination.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its

ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

As explained above, Champion Paper Polybags Ltd., TRC Polypack, and Zip-Pac Co., Ltd., failed to respond to our July 14, 2003, request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for all three of these companies because these firms did not provide the data we needed to decide whether they should be selected as a mandatory respondent. Also, because these companies failed to respond to our requests for information, we have found that they failed to cooperate to the best of their ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margins for these companies. As adverse facts available, we used the margins that the petitioners alleged in their June 20, 2003, petition and selected the highest of the three margins which we calculated to be 122.88 percent.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from the petitioners constitutes secondary information. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, at 870 (1994) (SAA), provides that the word "corroborate" means that the Department will satisfy itself that the secondary information used has probative value. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Review*, 61 FR 57391, 57392 (November 6, 1996) (*Tapered Roller Bearings and Parts Thereof from Japan*), in order to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

The petitioners' methodology for calculating the export price (EP) and normal value in the petition is discussed in the initiation notice. See *Initiation Notice*, 68 FR at 42003-4. To corroborate the petitioners' EP and normal-value calculations, we compared the prices and expenses in the petition

to the prices and expenses submitted by the responding companies for comparable products.

As discussed in the memorandum to the file entitled *Corroboration of Facts Available*, dated January 16, 2004, we found that the EP and normal-value information in the petition were reasonable and, therefore, we preliminarily determine that the petition information has probative value. Accordingly, we find that the highest margin based on petition information and adjusted as described above, 122.88 percent, is corroborated within the meaning of section 776(c) of the Act.

Furthermore, there is no information on the record that demonstrates that the rate we have selected is an inappropriate total adverse facts-available rate for the companies in question. On the contrary, our existing record supports the use of this rate as the best indication of the EP and dumping margin for these firms. Therefore, we consider the selected rate to have probative value with respect to the firms in question and to reflect the appropriate adverse inference.

Accordingly, for the preliminary determination, the margin for Champion Paper Polybags Ltd., TRC Polypack, and Zip-Pac Co., Ltd., is 122.88 percent. Because these are preliminary margins, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final margins for these companies.

#### Fair Value Comparisons

To determine whether sales of PRCBs to the United States by Thai Plastic Bags and Universal in this investigation were made at less than fair value, we compare EP or constructed export price (CEP) to normal value, as described in the "U.S. Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: 1) quality, 2) bag type, 3) length, 4) width, 5) gusset, 6) thickness, 7) percent of high density polyethylene resin, 8) percent of low density polyethylene resin, 9) percent of low linear density polyethylene resin, 10) percent of color concentrate, 11) percent of ink coverage, 12) number of ink colors, 13) number of sides printed.

#### U.S. Price

In accordance with section 772(a) of the Act, we used EP for Thai Plastic Bags because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation. In accordance with section 772(b) of the Act, we also used CEP for Thai Plastic Bags and for Universal because the subject merchandise was sold in the United States after the date of importation by a U.S. seller affiliated with the producer. In accordance with section 777A(d)(1)(A)(I) of the Act, we compared POI-wide weighted-average EPs and CEPs to the normal values.

We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. With respect to Thai Plastic Bags, we did not allow its claim of a duty drawback on U.S. sales since it has not provided sufficient or legible documentation to support its claim. In addition, it is not clear from Thai Plastic Bag's responses how it determined which of the three duty-drawback schemes to apply to each transaction it reported in its sales listing. See the Thai Plastic Bags Analysis Memorandum from the case analyst to the file dated January 16, 2004, for additional information. We will review this issue further during our verification of Thai Plastic Bag's home-market sales.

In accordance with section 772(d)(1) of the Act and the SAA at 823-824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes commissions, direct selling expenses, indirect selling expenses, and U.S. repacking expenses. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

The petitioners have identified an issue with respect to Universal in a number of comments submitted on the record in this investigation. Because of the business proprietary nature of this issue, please see the decision memorandum from Laurie Parkhill to Jeffrey May dated January 16, 2004, for a discussion of the issue.

#### Normal Value

##### 1. Home-Market Viability

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the

exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by Thai Plastic Bags in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. This company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like products were first sold for consumption in the exporting country.

The Department determined, based on Universal's response, that its home market was not viable. Furthermore, Universal's sole third-country market was also not viable. Therefore, in accordance with section 773(a)(4) of the Act, we based normal value on constructed value for Universal.

## 2. Affiliated-Party Transactions and Arm's-Length Test

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices. See 19 CFR 351.403(c). Sales to affiliated customers for consumption in the home market that were determined not to be at arm's-length prices were excluded from our analysis. Thai Plastic Bags reported sales of the foreign like product to affiliated end-users and resellers. To test whether these sales were made at arm's-length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002). We included in our normal-value calculations those sales to affiliated parties that were made at arm's-length prices.

## 3. Cost-of-Production Analysis

The petitioners submitted evidence on October 16, 2003, that suggested that Thai Plastic Bags sold the foreign like

product at prices that may have been below the cost of production (COP) as provided by section 773(b)(2)(A)(i) of the Act. Based on this evidence, we determined that we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value in this investigation may have been made at prices below the COP. Accordingly, pursuant to section 773(b)(1) of the Act, we conducted a COP investigation of sales by Thai Plastic Bags in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we relied upon the COP information provided by Thai Plastic Bags in its questionnaire response except for the following adjustments:

1. We adjusted the reported cost database for one of the three combined companies for an unreconciled difference shown in the reconciliation of the financial statements to the POI reported costs.

2. We adjusted the cost of inputs purchased from affiliates to the higher of transfer price, market price, or the affiliate's COP in accordance with section 773(f)(3) of the Act.

3. We adjusted the general and administrative (G&A) and financial-expense rates for mathematical errors.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates. See *Import Administration Policy Bulletin*, Number 94.1 of March 25, 1994, for further information on this test.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we disregarded the below-cost sales because they were made in

substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POI, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to Thai Plastic Bags. See the Thai Plastic Bags Analysis Memorandum from the case analyst to the file dated January 16, 2004, for additional information.

## 4. Calculation of Normal Value

We compared U.S. sales with sales of the foreign like product in the home market on the basis of the physical characteristics described under Fair Value Comparisons above. Wherever we were unable to match a U.S. model to identical merchandise sold in the home market, we selected the most similar model of subject merchandise in the home market as the foreign like product.

Home-market prices were based on the packed, ex-factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the EP or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. See the Level of Trade section below.

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there

were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act, which states that constructed value shall be based on the sum of each respondent's cost of materials and fabrication for the subject merchandise, plus amounts for SG&A, profit, and U.S. packing costs. For Thai Plastic Bags and Universal, we relied on the submitted constructed-value information except for the following adjustments:

#### *Thai Plastic Bags*

See adjustments in COP section above.

#### *Universal*

1. We imputed an interest expense amount for a certain loan. For the preliminary determination, we used an interest rate in Thailand, as published by the International Monetary Fund, to calculate the imputed interest expense. For further information, see Memorandum from Nancy Decker through Theresa Caherty to Neal Halper, "Universal Polybag Co., Ltd. Constructed Value Calculation Adjustments for the Preliminary Determination" dated January 16, 2004 (Universal Preliminary Cost Memorandum).
2. We increased the reported costs to include unreconciled differences in the reconciliations of the financial statements to financial accounting system and of the financial accounting system to the reported costs for the POI.

In accordance with section 773(e)(2)(A) of the Act, for Thai Plastic Bags, we based SG&A expenses and profit on the amounts incurred and realized by Thai Plastic Bags in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

Because Universal had no viable home or third-country market during the POI, the Department could not determine selling expenses and profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. In situations where we cannot calculate selling expenses and profit under section 773(e)(2)(A), section 773(e)(2)(B) of the Act sets forth three alternatives. The SAA states at 840 that "section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods." Section 773(e)(2)(B)(i) of the Act specifies that SG&A and profit may be calculated

based on "actual amounts incurred by the specific exporter or producer . . . on merchandise in the same general category" as subject merchandise. Universal does not produce any products other than the subject merchandise. Alternative (ii) of section 773(e)(2)(B) provides that SG&A and profit may be calculated based on "the weighted average of the actual amounts incurred and realized by {other} exporters or producers that are subject to the investigation." Because there is only one other respondent in this case, however, the Department cannot calculate selling expenses, G&A expenses, and profit based on section 773(e)(2)(B)(ii) of the Act because it would reveal the business proprietary information of the other respondent, Thai Plastic Bags. While Universal has suggested that the Department can use the combined data of the three companies that form the respondent Thai Plastic Bags, the Department considers Thai Plastic Bags to be one entity for purposes of this investigation and, therefore, to use the information of the three combined companies is to reveal that respondent's proprietary information.

Therefore, the only statutory option available to the Department to calculate the selling expenses, G&A expenses, and profit for constructed value for Universal is under section 773(e)(2)(B)(iii). This section allows the Department to use "any other reasonable method" to calculate selling expenses, G&A expenses, and profit for constructed value, provided that the amount for profit does not "exceed the amount normally realized by exporters or producers . . . in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise." On January 6, 2004, the petitioners provided 2001 financial-statement information on another Thai producer, Thantawan Industry Public Co. Ltd. (TIPC), of plastic products including PRCBs. This information provides expense and profit data for TIPC. Lacking more suitable information, we calculated constructed value selling expenses for Universal based on TIPC's reported selling and administrative expenses. Selling expenses are not separated in TIPC's financial statement. Therefore, we deducted Universal's reported G&A rate from TIPC's SG&A rate because we have no reason to believe that Universal's reported G&A expenses are unreliable.

We calculated amounts for constructed-value profit based on the profit earned by TIPC. While TIPC produces other merchandise in addition

to the subject merchandise, its financial information shows that more than 70 percent of its revenue comes from subject merchandise. Because we do not have any further information regarding profit on the same general category of merchandise other than that of the one other respondent in this case, we are not able to quantify the "profit cap" described in section 773(e)(2)(B)(iii) of the Act without revealing proprietary information of Thai Plastic Bags, as discussed above. The SAA anticipates such situations and directs that, where the Department cannot calculate a profit cap, the Department may apply section 773(e)(2)(B)(iii) of the Act on the basis of the facts available. Therefore, we have not calculated a "profit cap" for the instant determination. As neutral facts available, we have used TIPC's profit rate of 10.43 percent in calculating constructed value as a reasonable surrogate for Universal's home-market profit. See Universal Preliminary Cost Memorandum.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for circumstances-of-sale differences and level-of-trade differences. For comparisons to EP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstances-of-sale adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

#### **Level of Trade**

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either EP or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit. To determine whether home-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales were at a different level of trade from that of a U.S. sale and the difference affected

price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For Universal, because there was no viable home or third market and all sales in the United States were CEP sales, no level-of-trade comparison was necessary. For Thai Plastic Bags, with respect to EP, we found the EP level of trade to be the same as the home-market level of trade and, consequently, were able to match sales at the same level of trade. With respect to Thai Plastic Bags' CEP sales, because we deduct the expense of the selling activities performed by the U.S. affiliate under section 772(d) of the Act, we have concluded that CEP sales constitute a different level of trade from the home-market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on Thai Plastic Bags' home-market sales of the foreign like product. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. Therefore, we have granted a CEP offset for all such sales. The CEP offset is the sum of indirect selling expenses incurred on the home-market sale up to the amount of indirect selling expenses incurred on the U.S. sale. See the Thai Plastic Bags Analysis Memorandum from the case analyst to the file dated January 16, 2004, for more information on the level-of-trade decision.

#### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

#### Verification

As provided in section 782(i) of the Act, we will verify the information upon which we will rely in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(d)(2)(A) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise from Thailand that are entered, or withdrawn

from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percent margin
Thai Plastic Bags .....	2.84
Universal .....	34.76
Champion Paper Polybags Ltd. ....	122.88
TRC Polypack .....	122.88
Zip-Pac Co., Ltd. ....	122.88
All Others .....	11.54

Pursuant to section 735(c)(5)(A) of the Act, we have excluded from the calculation of the all-others rate margins which are zero or *de minimis* or determined entirely on facts available.

The Department will disclose calculations performed within five days of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. Section 735(b)(2) requires that the ITC make a final determination before the later of 120 days after the date of the Department's preliminary determination or 45 days after the Department's final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. Because we have postponed the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, the ITC will make its final determination within 45 days of our final determination.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline date for case briefs. A list of authorities

used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain (1) the party's name, address, and telephone number, (2) the number of participants, and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c).

We will make our final determination no later than 135 days after the date of publication of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 16, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-557-813]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Malaysia

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

**EFFECTIVE DATE:** January 26, 2004.