

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we are directing CBP to suspend liquidation of all imports of subject merchandise from Thailand that are entered, or withdrawn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.

**SUMMARY:** We preliminarily determine that polyethylene retail carrier bags from Malaysia 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:** J. David Dirstine (Bee Lian Plastic Industries Sdn. Bhd.) or Catherine Cartos (Teong Chuan Plastic and Timber Sdn. Bhd.), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4033 or (202) 482-1757, respectively.

#### **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 Malaysia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Act. The estimated margins of sales at less than fair value 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 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/exporters named in the petition and to the producers/exporters

who comprise the top 80 percent of producers/exporters in terms of quantity (in thousands of units) of the subject merchandise shipped to the United States 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 and exporters in order to identify potential respondents in the investigation. We received responses from 17 firms which reported exports of subject merchandise during the period of investigation (POI). We did not receive responses from two firms in Malaysia, Branpak Industries Sdn. Bhd. and Gants Pac Industries, although 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 the July 14, 2003, questionnaire. We received no response from these firms.

On August 4, 2003, the U.S. 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 People's Republic of China, Malaysia, and Thailand. See *Polyethylene Retail Carrier Bags From China, Malaysia, and Thailand*, 68 FR 47609 (August 11, 2003).

On August 14, 2003, the Department selected the following four mandatory respondents: Bee Lian Plastic Industries Sdn. Bhd. (Bee Lian), Sido Bangun Sdn. Bhd., Zhin Hin/Chin Hin Plastic Manufacturer Sdn. Bhd., Teong Chuan Plastic and Timber Sdn. Bhd. (Teong Chuan). See Memorandum from Laurie Parkhill to Jeff May regarding selection of respondents dated August 14, 2003.

On August 14, 2003, the Department issued its full antidumping questionnaire to the mandatory respondents. Only Bee Lian and Teong Chuan responded to our questionnaire. On November 21, and November 28, 2003, we issued supplemental questionnaires to Bee Lian and Teong Chuan, respectively. Bee Lian submitted its supplemental questionnaire response to the Department on December 5, 2003. Although Teong Chuan submitted a supplemental questionnaire response on November 28, 2003, it was neither fully responsive to our questionnaire nor filed in proper form pursuant to 19 CFR 351.303 and 351.304.

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 Bee Lian, dated November 20, 2003. In its request, the respondent 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, 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 33048-33049). Interested parties submitted such comments by August 5, 2003. On August 4, 2003, Regal Import Packaging, an importer of PRCBs,

requested that four-dimensional bags, bags with handles made of a different material than the bag itself, and custom-printed bag orders of 50 thousand bags or less be excluded from the scope of the investigation. On August 12, 2003, the Polyethylene Retail Carrier Bag Committee and its individual members, PCL Packaging, Inc., Sonoco Products Company, Superbag Corp., Vanguard Plastics, Inc., and Intoplast Group, Ltd. (collectively, "the petitioners"), requested that the investigation not exclude those products specified by Regal Import Packaging. 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 petition.

### Scope of Investigation

The merchandise subject to this investigation is polyethylene retail carrier bags, 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 .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 investigation 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* (HTSUS). This subheading also covers products that are outside 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, however, when faced with a large number of exporters/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/exporters from Malaysia that exported the subject merchandise to the United States during the POI.

On July 14, 2003, the Department sent partial section A questionnaires addressed to all producers/exporters of the subject merchandise listed in the petition. We received responses from a number of firms. As discussed below, we did not receive responses from two companies. Based on the responses we received to our July 14, 2003, questionnaire, we selected Bee Lian, Sido Bangun, Zhin Hin/Chin Hin, and Teong Chuan as mandatory 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. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

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. 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, Branpak Industries Sdn. Bhd. and Gants Pac Industries did not respond to our July 14, 2003, request for information. Furthermore, Sido Bangun and Zhin Hin/Chin Hin did not respond to our August 14, 2003, antidumping questionnaire.

Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for Branpak Industries Sdn. Bhd. and Gants Pac Industries because the firms did not provide the data we needed to decide whether they should be selected as mandatory respondents. Also, we have used total facts available for Sido Bangun and Zhin Hin/Chin Hin because these firms did not respond to our August 14, 2003, antidumping questionnaire as mandatory respondents. Also, because all these companies failed to respond, wholly or in part, to our request 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. See Memorandum from Laurie Parkhill to Jeffrey May dated January 16, 2004, "Determination to Apply Adverse Facts Available and the Calculation of the Adverse Facts-Available Rate" (AFA Memo).

Regarding Teong Chuan, we found that it did not meet the filing requirements of our regulations in regards to most of its questionnaire responses and subsequent re-submissions, resulting in our rejection of the majority of its submissions. Despite our repeated attempts to allow Teong Chuan to correct for the procedural and substantive deficiencies in its response, the firm did not do so. The information Teong Chuan provided which remains on the record is inadequate and does not allow us to calculate a dumping margin. For example, we have no cost-of-production (COP) information necessary to test whether Teong Chuan made sales in the home market at below-cost prices or to

calculate constructed value in the absence of usable home-market sales. In effect, Teong Chuan did not respond to our questionnaires. See AFA Memo for further discussion. Therefore, pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for Teong Chuan because crucial information necessary to calculate a margin is not on the record.

Further, we find that Teong Chuan did not cooperate to the best of its ability because it did not seek our guidance and clarifications in its attempts to provide us with acceptable responses and it ignored instructions we had given the company previously. 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 Teong Chuan. See AFA Memo.

As adverse facts available, we have examined the margins that the petitioners alleged in their June 25, 2003, response to our June 25, 2003, letter requesting supplemental information with respect to the petition and selected the higher of the two margins; that rate is 101.74 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, Vol. 1, at 870 (1994) (SAA), provides that the word "corroborate" means that the Department will satisfy itself that the secondary information to be 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.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where

circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Further, in accordance with *F.LII De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027 (Fed. Cir. June 16, 2000), we also examine whether information on the record would support the selected rates as reasonable facts available.

Our analysis of the petitioners' methodology for calculating the export price and normal value in the petition is discussed in the initiation notice. See *Initiation Notice*, 68 FR at 42003-4. To corroborate the petitioners' export-price and normal-value calculations, we compared the prices and expenses used by the petitioners to the source documents upon which the petitioners' methodology was based.

As discussed in the AFA Memo, we found that the export-price and normal-value information in the supplemental petition was reasonable and, therefore, we preliminarily determine that the information has probative value. Accordingly, we find that the highest margin based on that information, 101.74 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, which includes a Malaysian company's quotation for a commonly produced type of PRCB, a freight quotation, and a specification sheet for a purchase-order inquiry, supports the use of this rate as the best indication of the export price 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, we have applied a margin of 101.74 percent to Branpak Industries Sdn. Bhd., Gants Pac Industries, Sido Bangun, Zhin Hin/Chin Hin, and Teong Chuan. 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 Bee Lian in this investigation were made at less than fair value, we compared export price 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 export prices.

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 export price for Bee Lian because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average export prices to the weighted-average normal values. We calculated export price 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.

#### Normal Value

##### 1. Home-Market Viability

Bee Lian did not make sales of the foreign like product for consumption in its home market. Therefore, in accordance with section 773(a)(1)(B)(ii) of the Act, we based normal value on the prices at which the foreign like product was first sold for consumption in a country other than the exporting country and the United States. Specifically, we based normal value on the prices at which the foreign like product is sold for consumption in the United Kingdom. The aggregate quantity of the foreign like product sold by Bee Lian in the United Kingdom was, pursuant to section 773(a)(1)(C) of the Act, five percent or more of the

aggregate quantity of the subject merchandise sold in the United States.

## 2. Affiliated-Party Transactions

Bee Lian's production unit sold the foreign like product and subject merchandise to a wholly owned affiliate located in Singapore that acted as the sales arm of Bee Lian. Bee Lian reported the prices of its affiliate to the first unrelated customers in the United States and the United Kingdom.

## 3. Cost-of-Production Analysis

The petitioners submitted evidence on October 16, 2003, alleging that Bee Lian sold the foreign like product in the comparison market at prices that may have been below 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 Bee Lian in the comparison 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 used the comparison-market sales and COP information provided by Bee Lian in its questionnaire responses, except we excluded the claimed offset to the company's reported cost of manufacturing for the sale of waste. For further discussion of this adjustment, see the cost memorandum from Mark Todd to Neal Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination," dated January 16, 2004.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether comparison-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 comparison-market prices less any applicable movement charges, discounts, and rebates.

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, 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 certain sales because they were below cost. We used the remaining third-country sales to calculate normal value.

## 4. Calculation of Normal Value

We compared U.S. sales with sales of the foreign like product in the comparison 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 comparison market, we selected the most similar model of subject merchandise in the comparison market as the foreign like product.

Comparison-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. We made circumstances-of-sale adjustments by deducting comparison-market direct selling expenses from, and adding U.S. direct selling expenses to, normal value. We also made adjustments, where applicable, for comparison-market indirect selling expenses to offset U.S. commissions.

In accordance with section 773(a)(1)(B)(ii) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the export price. 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. In accordance with section 773(e) of the Act, we calculated constructed value based on the sum of Bee Lian's cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing costs. We relied on the submitted constructed-value information for Bee Lian except as adjusted for the sale of waste (see above).

Where 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. We made circumstances-of-sale adjustments by deducting comparison-market direct selling expenses from, and adding U.S. direct selling expenses to, normal value. We also made adjustments, when applicable, for comparison-market indirect selling expenses to offset U.S. commissions.

## Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales. When there were no sales at the same level of trade, we compared U.S. sales to comparison-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the comparison 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 comparison-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, 61732 (November 19, 1997).

**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) of the Act, we are directing CBP to suspend liquidation of all imports of subject merchandise from Malaysia (except for entries of Bee Lian because this company has a *de minimis* margin) 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 export price, 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 or Producer	Weighted-average percent margin
Bee Lian Plastic Industries Sdn. Bhd. ....	00.14
Teong Chuan Plastic and Timber Sdn. Bhd. ....	101.74
Brandpak Industries Sdn. Bhd. ....	101.74
Gants Pac Industries ....	101.74
Sido Bangun Sdn.Bhd. ....	101.74
Zhin Hin/Chin Hin Plastic Manufacturer Sdn. Bhd. ....	101.74
All Others .....	84.81

All companies that we examined have either a *de minimis* margin or rates based on total adverse facts available. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(B) of the Act, we have calculated a simple average of the six margin rates we have determined in the investigation. See All-Others Rate Calculation Memorandum from Laurie Parkhill to Jeffrey May dated January 16, 2004. 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) of the Act 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 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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**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Docket number: 031120285-3285-01**

**Certification and Submission of False Statements to Import Administration During Antidumping and Countervailing Duty Proceedings**

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

**ACTION:** Notice of Inquiry

**SUMMARY:** The Tariff Act of 1930, as amended, requires that any person who provides factual information to Import Administration (IA) during an antidumping or countervailing duty proceeding must certify to the accuracy and completeness of such information. IA regulations set forth the specific content requirements for such certifications. IA may refer and has referred allegations of fraud regarding these certifications to the Department of Commerce's Office of Inspector General or to U.S. Customs and Border Protection, for appropriate disposition. However, IA currently has no regulations setting forth procedures for