

Dated: October 27, 2009.

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*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-560-822]

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

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

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that polyethylene retail carrier bags (PRCBs) from Indonesia are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination.

Pursuant to requests from the respondents, we are postponing by 60 days the final determination and extending provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

EFFECTIVE DATE: November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0410 or (202) 482-5760 respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2009, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners) filed an antidumping petition concerning imports of PRCBs from Indonesia. See the Petition for the Imposition of Antidumping and Countervailing Duties on Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam, dated March 31, 2009.

On April 20, 2009, the Department initiated the antidumping duty investigation on PRCBs from Indonesia. See *Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19049 (April 27, 2009) (*Initiation Notice*).

The Department 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 the date of publication of the *Initiation Notice*. See *Initiation Notice*, 74 FR at 19049. See also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997). We received no comments from interested parties concerning product coverage. The Department also set aside a period of time for parties to comment on product characteristics for use in the antidumping duty questionnaire. See *Initiation Notice*, 74 FR at 19050. On May 11, 2009, we received comments from the petitioners. After reviewing the petitioners' comments, we have adopted the characteristics and hierarchy as explained in the "Product Comparisons" section of this notice, below.

On May 29, 2009, the International Trade Commission (ITC) published its affirmative preliminary determination that there is a reasonable indication that imports of PRCBs from Indonesia are materially injuring the U.S. industry, and the ITC notified the Department of its finding. See *Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam; Determinations*, Investigation Nos. 701-TA-462 and 731-TA-1156-1158 (Preliminary), 74 FR 25771 (May 29, 2009).

On May 21, 2009, we selected P.T. Sido Bangun (SBI) and P.T. Super Exim Sari Ltd. and P.T. Super Makmur (collectively SESSM) as mandatory respondents in this investigation. See the "Selection of Respondents" section of this notice, below.

On May 26, 2009, we issued the antidumping questionnaire to SBI and SESSM. On July 20, 2009, we received a questionnaire response from SBI. On July 22, 2009, we received a questionnaire response from SESSM. We issued supplemental questionnaires to the respondents and received responses from both respondents.

On July 22, 2009, based on a timely request from the petitioners, we extended the deadline for alleging targeted dumping.

On July 30, 2009, the petitioner alleged that SBI and SESSM made comparison-market sales of PRCBs at prices below the cost of production

(COP) during the period of investigation (POI). On August 14, 2009, we initiated an investigation to determine whether the respondents made comparison-market sales of PRCBs at prices below the COP during the POI. See the "Cost of Production" section of this notice, below. In letters dated August 14, 2009, we requested that the respondents respond to the COP section of the antidumping questionnaire. On September 8, 2009, we received the cost response from SESSM and on September 11, 2009, we received the cost response from SBI.

On August 7, 2009, the petitioners filed an allegation of targeted dumping by SBI and SESSM. See the "Targeted-Dumping Allegation" section below.

On August 13, 2009, 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 *Postponement of Preliminary Determination of Antidumping Duty Investigations: Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam*, 74 FR 42229 (August 21, 2009).

On September 17, 2009, the petitioners requested that, in the event of a negative preliminary determination in this investigation, the Department postpone the final determination in accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i). The petitioners did not specify the number of days by which to postpone the final determination. On September 18, 2009, and September 23, 2009, SBI and SESSM requested respectively that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. For further discussion, see the "Postponement of Final Determination and Extension of Provisional Measures" section of this notice, below.

On October 14, 2009, and on October 21, 2009, the petitioners submitted comments for consideration in the preliminary determination.

On October 21, 2009, SESSM submitted new sales databases which it said were necessary to correct "data entry errors in product code names, work order numbers, payment dates, gross unit prices and quantities sold, cylinder revenue, per-unit conversion factors and other individual items." See SESSM's submission dated October 21,

2009, at page 3. SESSM also submitted a new cost database which it said was necessary to “reflect corrections to resin and overhead cost calculations and certain production quantities.” *Id.* We have not used these revised databases in this preliminary determination because they were submitted too late for us to evaluate and analyze in time for this preliminary determination and very little explanation was provided as to the extent and reasons for the changes. We will analyze and consider these databases for the final determination.

Period of Investigation

The POI is January 1, 2008, through December 31, 2008. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, March 2009. See 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise subject to this investigation 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 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 this 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 merchandise included within the scope of this investigation are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading may also cover products that are outside the scope of this

investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the 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. The data on the record indicates that there are more than ten potential producers or exporters from Indonesia that exported the subject merchandise to the United States during the POI. In the *Initiation Notice* we stated that we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under HTSUS number 3923.21.0085 during the POI and we invited comments on CBP data and selection of respondents for individual examination. See *Initiation Notice*, 74 FR at 19054.

On April 27, 2009, we released the CBP data to all parties with access to information protected by administrative protective order. Based on our review of the CBP data and our consideration of the comments we received from the petitioners on May 7, 2009, we determined that we had the resources to examine two companies. Accordingly, we selected SBI and SESSM as mandatory respondents. These companies are the two major producers/exporters of subject merchandise that account for the largest volume of subject merchandise during the POI that we can reasonably examine in accordance with the statute. See Memorandum to John M. Andersen entitled “Antidumping Duty Investigation on Polyethylene Retail Carrier Bags from Indonesia Selection of Respondents” dated May 21, 2009.

Targeted-Dumping Allegation

The statute allows the Department to employ the average-to-transaction margin-calculation methodology under the following circumstances: 1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; 2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. See section 777A(d)(1)(B) of the Act.

On August 7, 2009, the petitioners submitted an allegation of targeted dumping with respect to SBI and SESSM and asserted that the Department should apply the average-to-transaction methodology in calculating the margin for SBI and SESSM. In their allegation, the petitioners assert that there are patterns of export prices (EPs) for comparable merchandise that differ significantly among purchasers, regions, and time periods for SBI and among time periods for SESSM. The petitioners relied on the Department’s targeted-dumping test in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007) (CFS); the petitioners also made their allegations using the Department’s test in *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008), and *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (collectively, *Nails*).

Because our analysis includes business-proprietary information, for a full discussion see Memoranda to John M. Anderson entitled “Less-Than-Fair-Value Investigation on Polyethylene Retail Carrier Bags from Indonesia: Targeted Dumping PT Sido Bangun Indonesia,” dated October 27, 2009 (SBI Targeted-Dumping Memo) and “Less-Than-Fair-Value Investigation on Polyethylene Retail Carrier Bags from Indonesia: Targeted Dumping P.T. Super Exim Sari Ltd.,” dated October 27, 2009 (SESSM Targeted-Dumping Memo) (collectively Targeted-Dumping Memoranda).

In our letter to the petitioners dated September 4, 2009, we stated that the petitioners’ allegation using the CFS methodology lacked certain analysis for appropriately establishing the significance of differences in pricing patterns between targeted and non-targeted sales. In that letter we also stated that, because the methodology in *Nails* is our current targeted-dumping methodology, we planned to evaluate any targeted-dumping allegation concerning SBI and SESSM only in the context of the determination we made in *Nails*. We also identified certain ministerial errors we had found in the computer program that was used in *Nails* and alerted the petitioners that they could re-submit their allegation which incorporates these corrections. The petitioners did not submit a revised

allegation of targeted dumping with respect to either respondent.

On October 1, 2009, the petitioners submitted comments for consideration in the preliminary determination. Specifically, the petitioners' comments relate to the issue of determining the proper rounding of prices in the targeting-dumping test and the issue of application of the average-to-transaction comparison method to all sales (not just to targeted sales) in an effort to unmask dumping associated with targeted sales.

A. Targeted-Dumping Test

After correcting certain ministerial errors mentioned above and described in detail in our September 4, 2009, letter, we conducted customer, regional, and time-period targeted-dumping analyses for SBI and time-period targeted-dumping analysis for SESSM using the methodology we adopted in *Nails* and used most recently in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008).

The methodology we employed involves a two-stage test; the first stage addresses the pattern requirement and the second stage addresses the significant-difference requirement. See section 777A(d)(1)(B)(i) of the Act and *Nails*. In this test we made all price comparisons on the basis of identical merchandise (*i.e.*, by control number or CONNUM). The test procedures are the same for the customer, region, and time-period targeted-dumping allegations. We based all of our targeted-dumping calculations on the U.S. net price which we determined for U.S. sales by SBI and SESSM in our standard margin calculations. For further discussion of the test and the results, see the Targeted-Dumping Memoranda.

As a result of our analysis, we preliminarily determine that there is a pattern of EPs for comparable merchandise that differ significantly among certain customers and time periods for SBI and among time periods for SESSM in accordance with section 777A(d)(1)(B)(i) of the Act and our practice as discussed in *Nails*.

B. Price-Comparison Method

Section 777A(d)(1)(B)(ii) of the Act states that the Department may compare the weighted average of the normal value to EPs of individual transactions for comparable merchandise if the Department explains why differences in

the patterns of EPs cannot be taken into account using the average-to-average methodology. As described above, we have preliminarily determined that, with respect to sales by SBI for certain customers or time-periods and sales by SESSM for a certain time period, there was a pattern of prices that differ significantly. We find that these differences cannot be taken into account using the average-to-average methodology because the average-to-average methodology conceals differences in the patterns of prices between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group.

In December 2008, the Department withdrew the regulation concerning targeted dumping. See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 72 FR 74930 (December 10, 2008). The withdrawn targeted-dumping regulation normally would have limited the application of the average-to-transaction methodology to just those sales that constitute targeted dumping. In light of the withdrawn regulation and the petitioners' comments in this case, we have considered the following options:

1. Apply the average-to-transaction methodology just to sales found to be targeted as the withdrawn regulation directed and, consistent with our average-to-transaction practice, do not offset any margins found on these transactions.
2. Apply the average-to-transaction methodology to all sales to the customer or time period found to be targeted (not just those specific sales found to be targeted) and, consistent with our average-to-transaction practice, do not offset any margins found on these transactions.
3. Apply the average-to-transaction methodology to all sales by SBI and SESSM and, consistent with our average-to-transaction practice, do not offset any margins found on these transactions.

The Department received comments on the price-comparison methodology in response to the *Withdrawal of Regulation*. Because consideration of those comments is still underway, for purposes of this preliminary determination and consistent with our practice in the *Nails* investigations, we have applied the average-to-transaction methodology to any targeted sales and applied the average-to-average methodology to the remaining non-targeted sales. When calculating the weighted-average margin, we combined the margin we calculated for the

targeted sales with the margin we calculated for the non-targeted sales without offsetting any margins found among the targeted sales. See Targeted-Dumping Memoranda.

We invite interested parties to comment on the issue of the appropriate price-comparison methodology to use for the final determination in this investigation. Further, given the timing and complexity of the petitioners' October 1, 2009, comments, we intend to address such comments fully in the context of the final determination.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and the accompanying Issues and Decision Memorandum (I&D Memo) at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and the accompanying I&D Memo at Comment 2.

SESSM reported that the date of sale is the earlier date of the sales invoice date or the date of shipment for both home-market and U.S. sales. Based on record evidence, we preliminarily determine that it is appropriate to use the earlier date of the sales invoice date or the shipment date as the date of sale for SESSM's home-market and U.S. sales. Consistent with our practice, we used the earlier date of the sales invoice date or the shipment date as the date of sale for SESSM's home-market and U.S. sales.

SBI reported the date of sale as the invoice date. Pursuant to 19 CFR 351.401(i), we used the invoice date as the date of sale for SBI's comparison-market and U.S. sales because SBI's response demonstrated that the material

terms of sale were established at the date of invoice.

Fair-Value Comparisons

To determine whether sales of PRCBs to the United States by SBI and SESSM were made at LTFV during the POI, we compared EP 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 POI-wide weighted-average EPs except for those sales discussed above in the "Targeted-Dumping Allegation" section of this notice.

Product Comparisons

We have taken into account the comments that were submitted by the interested parties concerning product-comparison criteria. In accordance with section 771(16) of the Act, all products produced by the respondents that are covered by the description in the "Scope of the Investigation" section, above, and sold in the respective comparison markets during the POI are considered to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We have relied on thirteen criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: quality, bag type, length, width, gusset, thickness, percentage of high-density polyethylene resin, percentage of low-density polyethylene resin, percentage of low linear-density polyethylene resin, percentage of color concentrate, percentage of ink coverage, number of ink colors, and number of sides printed. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade for comparison to U.S. sales, we matched U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Export Price

In accordance with section 772(a) of the Act, we used EP for SBI's U.S. sales and SESSM's U.S. sales 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 EPs to the weighted-average normal values.

We calculated EP based on the packed F.O.B., C&F, or C.F.R. price to unaffiliated purchasers in the United States. We made deductions, as appropriate, for discounts. We also made deductions for any movement

expenses in accordance with section 772(c)(2)(A) of the Act. See the October 27, 2009, preliminary analysis memoranda for SBI and SESSM for additional information.

SESSM received freight revenue from the customer for certain U.S. sales. It is the Department's practice to treat such revenues as an offset to the specific expenses for which they were intended to compensate. See *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) (*OJ Brazil*), and the accompanying I&D Memo at Comment 7, and *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009) (*PRC Bags*), and the accompanying I&D Memo at Comment 6. Accordingly, we have used SESSM's freight revenue as an offset to its international freight expenses.

In their October 14, 2009, pre-preliminary comments, the petitioners argue that we should not make an adjustment to U.S. price for interest revenue on the grounds that SBI did not demonstrate that the customer was liable for interest charges nor did it demonstrate that the customer actually paid the interest charges. We have made the adjustment because we have not yet asked SBI to make such demonstrations. We intend to examine this issue further at verification and will consider the issue in the context of the final determination.

Normal Value

A. Home-Market Viability and Comparison-Market Selection

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home-market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home-market sales of the foreign like product to its volume of U.S. sales of the subject merchandise. See section 773(a)(1)(B) of the Act. Based on this comparison, we determined that SESSM had a viable home market during the POI but SBI did not. Consequently, with respect to SESSM, we based normal value on home-market sales in accordance with section 773(a)(1)(B) of the Act. With respect to SBI, we based normal value on third-country sales in accordance with section 773(a)(1)(C) of the Act. We selected SBI's largest third-country market, the United Kingdom, as the

comparison market because it was the only comparison market that was viable. See SBI's section A response dated July 20, 2009, at page A-2 and Exhibit A-1. Consequently, with respect to SBI, we based normal value on sales to the United Kingdom.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP sales in the U.S. market. Pursuant to 19 CFR 351.412(c)(1), the normal-value level of trade is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses and profit. For EP sales, the U.S. level of trade is based on the starting price of the sales in the U.S. market, which is usually from the exporter to the importer.

To determine whether comparison-market sales are at a different level of trade than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. See 19 CFR 351.412(c)(2). If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and the comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61733 (November 19, 1997).

In this investigation, we obtained information from the respondents regarding the marketing stages involved in making their reported comparison-market and U.S. sales, including a description of the selling activities the respondents performed for each channel of distribution.

During the POI, SBI reported that it sold PRCBs in the comparison market to distributors through a single channel of distribution. We found that the selling activities associated with all sales through this channel of distribution did not differ. Accordingly, we found that the comparison-market channels of distribution constituted a single level of trade.

SBI reported that its EP sales were made to distributors through a single

channel of distribution. We found that the selling activities associated with all sales through this channel of distribution did not differ. Accordingly, we found that the EP channels of distribution constituted a single level of trade. We found that EP level of trade was identical to the comparison-market level of trade in terms of selling activities. Thus, we matched SBI's EP sales at the same level of trade in the comparison market and made no level-of-trade adjustment.

SESSM reported two channels of distribution in the home market: retail end-users and distributors. We found that the selling activities associated with sales to retail end-users differed significantly from the selling activities associated with sales to distributors in several areas. Based on these differences and other factors, we found that the two home-market channels constitute two different levels of trade.

SESSM reported that it made its EP sales to distributors only during the POI and reported only one channel of trade in the U.S. market: distributors. Because we found that the level of selling activities associated with EP sales were identical with the level of selling activities associated with home-market sales to distributors in several areas, we found that SESSM's EP sales were made at the same level of trade as its home-market sales to distributors. As such, we matched the sales at the same level of trade as much as possible. If we found no contemporaneous home-market distributor sales of the relevant product, we matched the EP sale to home-market retail end-user sales.

Because we compared SESSM's sales at different levels of trade in some instances, we examined whether a level-of-trade adjustment was appropriate and determined that there was a pattern of consistent price differences between the retail end-users and distributors levels of trade in the home market. Therefore, when we matched an EP sale to a retail end-user sale, we made a level-of-trade adjustment to the home-market price for these differences in the level of trade in accordance with section 773(a)(7)(A) of the Act. This adjustment represents the weighted-average difference in prices between these two levels of trade in the home market. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the normal value determined at the different level of trade.

In their October 21, 2009, pre-preliminary comments, the petitioners argue that we should not make a level-of-trade adjustment on the grounds that

SESSM did not demonstrate that it is entitled to a level-of-trade adjustment. We have not had time to consider the petitioners' arguments on this issue adequately and, based on the analysis above, we have made a level-of-trade adjustment for SESSM in this preliminary determination. We intend to examine this issue further at verification and will consider the issue in the context of the final determination.

C. Cost of Production

Based on our analysis of the petitioners' allegations, we found that there were reasonable grounds to believe or suspect that SBI's and SESSM's sales of PRCBs in the respective comparison markets were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether these companies had sales that were made at prices below their respective COP. See Memorandum to John M. Andersen entitled "Less-Than-Fair-Value Investigation on Polyethylene Retail Carrier Bags from Indonesia: Request to Initiate Cost Investigation for P.T. Sido Bangun Indonesia" dated August 14, 2009, and Memorandum to John M. Andersen entitled "Less-Than-Fair-Value Investigation on Polyethylene Retail Carrier Bags from Indonesia: Request to Initiate Cost Investigation for P.T. Super Exim Sari Ltd. and P.T. Super Makmur" dated August 14, 2009.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product plus an amount for selling, general and administrative expenses (SG&A), financial expenses, and comparison-market packing costs (see the "Test of Comparison-Market Sales Prices" section below for treatment of comparison-market selling expenses and packing costs). We relied on the COP data submitted by the respondents except as indicated below with respect to SBI:

- a. We increased SBI's reported cost of manufacturing (COM) to account for the unreconciled difference between the COM from the company's normal books and records and reported COM.
- b. In accordance with the "transactions disregarded" rule of section 773(f)(2) of the Act, we adjusted SBI's COM to reflect the higher of the market price or transfer price of materials that were purchased from an affiliate.

- c. We adjusted SBI's reported material cost to allocate the cost offset for internally generated and consumed scrap to products produced from both resin and purchased plastic rolls.

For additional details, see Memorandum to Neal M. Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination PT Sido Bangun Indonesia" dated October 27, 2009.

2. Test of Comparison-Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the comparison-market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether the sales were made at prices below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were adjusted for discounts and were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than COP, we determine that such sales have been made in "substantial quantities" and, thus, we disregard below-cost sales. See section 773(b)(2)(C) of the Act. Further, we determine that the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examine below-cost sales occurring during the entire POI. In such cases, because we compare prices to POI-average costs, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

In this case, we found that, for certain specific products, more than 20 percent of SBI's and SESSM's comparison-market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the

remaining sales as the basis for determining normal value in accordance with section 773(b)(1) of the Act with respect to both SBI and SESSM.

D. Calculation of Normal Value Based on Comparison–Market Prices

We based normal value on packed, delivered prices to unaffiliated customers in the respective comparison market. We made an adjustment to the starting price, where appropriate, for discounts in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, for movement expenses under section 773(a)(6)(B)(ii) of the Act.

For comparisons to EP, we made circumstance–of–sale adjustments by deducting comparison–market direct selling expenses from, and adding U.S. direct selling expenses to, normal value.

We 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. We deducted comparison–market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

SESSM received freight revenues from the customer for certain home–market sales. As explained above, the Department treats such revenues as an offset to the specific expenses for which they were intended to compensate. Accordingly, we have used SESSM’s freight revenues as an offset to its inland–freight expenses incurred to deliver products to its home–market customers.

E. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value for SESSM where there were no usable sales of the foreign like product in the home market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, financial expenses, U.S. packing expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses and profit on the amounts incurred and realized by SESSM in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. We made the same adjustments to constructed value as outlined in the “Calculation of Cost of Production” section above.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance–of–sale differences and level–of–trade differences. For comparisons to EP, we made circumstance–of–sale adjustments by deducting home–market direct selling expenses from and adding U.S. direct selling expenses to constructed value. We also made adjustments in EP comparisons, when applicable, for home–market indirect selling expenses incurred for U.S. sales to offset home–market commissions.

When possible, we calculated constructed value at the same level of trade as the EP. If constructed value was

calculated at a different we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act.

Currency Conversion

It is our normal practice to make currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on 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)(1) of the Act, we intend to verify the information relied upon in making our final determination for SBI and SESSM.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of PRCBs from Indonesia 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 margins, as indicated below, as follows: (1) the rates for SBI and SESSM will be the rates we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 67.40 percent, as discussed in the “All–Others Rate” section, below. These suspension–of–liquidation instructions will remain in effect until further notice.

Manufacturer/Exporter	Weighted–Average Margin (percent)
P.T. Sido Bangun Indonesia	67.62
P.T. Super Exim Sari Ltd. and P.T. Super Makmur	67.18

All–Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all–others rate shall be an amount equal to the weighted–average of the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins and any margins determined entirely under section 776 of the Act. For this preliminary determination, we have calculated margins for SBI and SESSM that are both above *de minimis*. We have

not calculated the all–others rate by using the weighted average of the rates for SBI and SESSM because doing so risks disclosure of proprietary information. Therefore, for purposes of determining the all–others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the simple–average rate of the dumping margins calculated for SBI and SESSM, *i.e.*, 67.40 percent. This is consistent with our practice in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Light–Walled Rectangular Pipe and Tube*

From Mexico, 73 FR 45400, 450401 (August 5, 2008).

Disclosure

We will disclose the calculations performed in our preliminary determination to interested parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination. If the Department’s final determination

is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of PRCBs from Indonesia are materially injuring, or threatening material injury to, the U.S. industry (see section 735(b)(2) of the Act). Because we are postponing the deadline for our final determination to 135 days from the date of the publication of this preliminary determination, as discussed below, the ITC will make its final determination no later than 45 days after our final determination.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this proceeding. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. See 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. See 19 CFR 351.309(c)(2). Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, the Department will hold a public hearing, if timely requested, to afford interested parties an opportunity to comment on issues raised in case briefs, provided that such a hearing is requested by an interested party. See also 19 CFR 351.310. If a timely request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for filing a rebuttal brief at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing 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 publication of this notice. Requests should contain the following: (1) the party's name,

address, and telephone number; (2) a list of participants; (3) a list of the issues to be discussed. See 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

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 or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On September 18, 2009, and September 23, 2009, SBI and SESSM requested respectively that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, SBI and SESSM requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2) from a four-month period to a six-month period. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b)(2), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting this request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-26431 Filed 11-2-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-806]

Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

DATES: *Effective Date:* November 3, 2009.

SUMMARY: The Department of Commerce (the "Department") preliminarily determines that polyethylene retail carrier bags ("PRCBs") from the Socialist Republic of Vietnam ("Vietnam") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The estimated dumping margins are shown in the *Preliminary Determination Margins* section of this notice.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-4114 and (202) 482-0679, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2009, the Department received a petition concerning imports of PRCBs from Indonesia, Taiwan, and Vietnam filed in proper form by Hilex Poly Co., LLC and Superbag Corporation ("Petitioners"). See Petition from Petitioners to the Secretary of Commerce, "Petition for the Imposition of Antidumping and Countervailing Duties on Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam" (March 31, 2009) ("Petition"). The Department initiated an antidumping duty investigation of PRCBs from Indonesia, Taiwan, and Vietnam on April 20, 2009. See *Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19049 (April 27, 2009) ("Initiation Notice").

On April 21, 2009, the Department requested quantity and value ("Q&V") information from the 65 companies identified in the Petitioners' revision of a list provided in the Petition as