

Comment 4: Preferential Lending for the Plastics Industry

Comment 5: Chin Sheng's Policy Lending Rate Should Be Recalculated Using the Data Collected at Verification

Comment 6: Fotai's Short-Term Loan Data Were Not Verified

Comment 7: Proper Benchmark for Preferential Lending

Comment 8: The Provision of Land at LTAR

Comment 9: The Proper Benchmark for the Provision of Land at LTAR

Comment 10: Duty Exemptions on Imports of Raw Materials Provided to Fotai

Comment 11: Chin Sheng's Sales Denominator

Comment 12: Income Tax Programs and Programs Not Used

Comment 13: Application of AFA to API

VIII. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-560-822]

Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (the Department) has determined that imports of 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 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Continuation of Suspension of Liquidation" section of this notice.

DATES: *Effective Date:* April 1, 2010.

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 November 3, 2009, the Department published *Polyethylene Retail Carrier Bags from Indonesia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final*

Determination, 74 FR 56807 (November 3, 2009), as amended in *Polyethylene Retail Carrier Bags From Indonesia: Amended Preliminary Determination of Sales at Less Than Fair Value*, 74 FR 63720 (December 4, 2009) (collectively, *Preliminary Determination*), in the *Federal Register*. We selected the following companies for individual examination: P.T. Super Exim Sari Ltd. and P.T. Super Makmur (collectively, SESSM);¹ P.T. Sido Bangun (SBI). See *Preliminary Determination*, 74 FR at 56808.

On November 16, 2009, SBI informed the Department that it would not participate in the verification of its information and withdrew from the investigation. See SBI's withdrawal letter to the Department dated November 16, 2009. SBI requested that the Department remove all of its submissions from the administrative record and certify the destruction of the submissions that are in the possession of interested parties to the investigation. *Id.* We have decided to retain all of SBI's submissions in the administrative record of this investigation because this information serves as the basis for SBI's margin. See Memorandum to Laurie Parkhill entitled "Polyethylene Retail Carrier Bags from Indonesia—PT Sido Bangun's Request That Its Submissions Be Removed from the Administrative Record" dated March 25, 2010, incorporated herein by reference.

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by SESSM. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by SESSM. See Memoranda to the File entitled "Polyethylene Retail Carrier Bags from Indonesia: Sales Verification of P.T. Super Exim Sari Ltd. and P.T. Super Makmur" and "Verification of the Cost Response of P.T. Super Exim Sari Ltd. and P.T. Super Makmur in the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Indonesia" dated January 11, 2010, and January 12, 2010, respectively. All verification reports are on file and available in the Central Records Unit, Room 1117, of the main Department of Commerce building.

On December 29, 2009, SESSM submitted the sales and cost databases with revisions that reflect SESSM's

¹ Because these two companies function as one common corporate entity that share common sales and production facilities, we have treated SESSM as one company.

minor corrections before the verifications and the Department's findings of SESSM's reporting errors during the verifications. See SESSM's December 29, 2009, submission of the sales and cost databases.

SESSM and the petitioners² filed their case briefs with the Department on January 22, 2010, and rebuttal briefs on January 27, 2010. At the petitioners' request, we held a hearing, including a closed session where parties discussed business-proprietary information, on January 29, 2010.

We used SESSM's December 29, 2009, sales and cost databases to calculate SESSM's antidumping duty margin. No parties have objected to the use of these databases.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, we have exercised our discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this investigation have been extended by seven days. The revised deadline for the final determination of this investigation is now March 25, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Period of Investigation

The period of investigation 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).

² The petitioners in this investigation are Hilex Poly Co. LLC and Superbag Corporation.

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.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty investigation are addressed in the "Issues and Decision Memorandum for the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Indonesia" (Decision Memorandum) from Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations John M. Andersen to Deputy Assistant Secretary for Import Administration Ronald K. Lorentzen dated March 25, 2010, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum which is on file in the Central Records Unit of the main Department of Commerce building, Room 1117, and is accessible on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Targeted Dumping

In the *Preliminary Determination*, we followed the methodology we adopted 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*), 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). See *Preliminary Determination*, 74 FR at 56808–09. Based on the targeted-dumping test that we applied in the *Preliminary Determination*, we found a pattern of export prices for comparable merchandise that differ significantly among certain time periods. *Id.* As a result and following the methodology in *Nails*, in the *Preliminary Determination* we applied the average-to-transaction comparison methodology to SESSM's targeted sales and the average-to-average comparison methodology to SESSM's non-targeted sales. In calculating SESSM's weighted-average margin, we combined the margin we calculated for the targeted sales with the margin we calculated for the non-targeted sales and did not offset any margins found among the targeted sales. See *Preliminary Determination*, 74 FR at 56809.

In the *Preliminary Determination* we announced that, given the withdrawal of the regulations that guided our practice in *Nails*, we would consider various options regarding the specific group of sales to which we apply the average-to-transaction methodology (the withdrawn targeted-dumping regulation would have limited such application to just the targeted sales). *Id.* We requested comments on the following three 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, not offset any margins found on these transactions; (2) apply the average-to-transaction methodology to all sales to the time period found to be targeted (not just those specific sales found to be targeted) and, consistent with our average-to-transaction practice, not offset any margins found on these transactions; (3) apply the average-to-transaction methodology to all sales by SESSM and, consistent with our average-to-transaction practice, not

offset any margins found on these transactions. *Id.*

For the final determination, we find that, in this investigation, the result using the standard average-to-average methodology is not substantially different from that using the alternative average-to-transaction methodology. Accordingly, for this final determination we have applied the standard average-to-average methodology to all U.S. sales that SESSM reported. For a complete discussion, see the Decision Memorandum at Comment 1.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculation for SESSM. For a discussion of these changes, see the Decision Memorandum and "Final Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Indonesia—Analysis Memorandum for P.T. Super Exim Sari Ltd. and P.T. Super Makmur" dated March 25, 2010, and "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—P.T. Super Exim Sari, Ltd. and P.T. Super Makmur" dated March 25, 2010. For SBI, we applied adverse facts available in accordance with section 776(a)(2)(D) of the Act. See the "Use of Facts Otherwise Available" section below and the Decision Memorandum at Comment 6.

Cost of Production

As explained in the *Preliminary Determination*, we conducted an investigation concerning sales at prices below the cost of production in the home market. We found that, for certain specific products, more than 20 percent of SESSM's home-market sales were at prices less than the cost of production 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. Based on this test, for this final determination we have disregarded below-cost sales by SESSM.

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)(D) of the Act requires the Department to use facts available when a party provides information but that information cannot be verified. 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, after the publication of the *Preliminary Determination*, SBI notified the Department that it would no longer participate in this antidumping investigation and that it would not participate in any verification. See letter from SBI dated November 16, 2009. Pursuant to section 776(a) of the Act, in reaching our final determination we

have used total facts available for SBI because we could not verify SBI’s data. Also, because SBI refused to participate in the verification of its responses, we find that SBI has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we have used an adverse inference in selecting from the facts available for the margin for SBI. We have assigned 85.17 percent as the margin. This was the highest control-number-specific margin we found for SBI for the *Preliminary Determination*. See page 54 of the margin program output attached to “Preliminary Determination of Sales at Less Than Fair Value in the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Indonesia—Analysis Memorandum for PT Sido Bangun Indonesia” dated October 27, 2009. See the Decision Memorandum at Comment 6 for further discussion.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to

suspend liquidation of all entries of subject merchandise from Indonesia entered, or withdrawn from warehouse, for consumption on or after November 3, 2009, the date of the publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated below, as follows: (1) The rates for SESSM and SBI will be the rates we have determined in this final 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 69.64 percent as discussed in the “All-Others Rate” section below. These suspension-of-liquidation instructions will remain in effect until further notice.

Final Determination

The final antidumping duty margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
P.T. Sido Bangun Indonesia	85.17
P.T. Super Exim Sari Ltd. and P.T. Super Makmur	69.64

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 producers and exporters individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. SESSM is the only respondent in this investigation for which we have calculated a company-specific rate. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for SESSM which is 69.64 percent. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750, 30755 (June 8, 1999), and *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 72 FR 30753, 30757 (June 4, 2007) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free*

Sheet Paper from Indonesia, 72 FR 60636 (October 25, 2007)).

Disclosure

We will disclose the calculations performed within five days of the date 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 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative, the ITC will determine within 45 days whether imports of the subject merchandise are causing material injury or threat of material injury to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, we will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or

withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. See 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: March 25, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

List of Issues in the Issues and Decision Memorandum

1. Targeted Dumping.
2. Level of Trade.
3. Adverse Facts Available.
4. Home-Market Credit Expenses.
5. General and Administrative Expenses.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-806]

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

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

DATES: *Effective Date:* April 1, 2010.

SUMMARY: The Department of Commerce (the "Department") has determined 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 735 of the Tariff Act of 1930, as amended (the "Act"). The final dumping margins for this investigation are listed in the *Final 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:

Case History

On November 3, 2009, the Department published in the **Federal Register** its preliminary determination that PRCBs from Vietnam are being, or are likely to be, sold in the United States at LTFV, as provided in the Act. *See Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 56813 (November 3, 2009) ("*Preliminary Determination*").

For the *Preliminary Determination*, the Department assigned a 76.11 percent dumping margin to the Vietnam-wide entity—including mandatory respondents Advance Polybag Co., Ltd. ("API") and Fotai Vietnam Enterprise Corp. ("Fotai Vietnam")—and a 52.30 percent dumping margin to 16 separate rate applicants. Because no interested party submitted case or rebuttal briefs, it was not necessary to prepare an accompanying Issues and Decision Memorandum. As a further consequence of no submissions, a hearing was not held.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final determination of this investigation is now March 25, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Period of Investigation

The period of investigation is July 1, 2008, through December 31, 2008. This period corresponds to the two most recent fiscal quarters prior to the month in which the petition was filed (*i.e.*, March 2009). *See* 19 CFR 351.204(b)(1).

Scope of the 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 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 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.

Changes Since the Preliminary Determination

Because no party submitted case briefs and there are no other circumstances which warrant the revision of the *Preliminary Determination*, the Department has not made changes to its analysis, or the dumping margins calculated, with respect to the *Preliminary Determination*. For further details of the issues addressed in this proceeding, see the *Preliminary Determination*.

Combination Rates

In the initiation notice, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *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). This change in practice is described in *Separate Rates and Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, 70 FR 17233 (April 5, 2005) which states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its {non-market economy} investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms