

and the terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 3, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-504]

#### **Petroleum Wax Candles from the People's Republic of China: Preliminary Results and Partial Rescission of the Eighth Administrative Review**

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

**SUMMARY:** The Department of Commerce ("the Department") is currently conducting an administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China ("PRC") covering the period August 1, 2005, through July 31, 2006. This review covers imports of subject merchandise from one manufacturer/exporter: Deseado International, Ltd. ("Deseado"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries in accordance with these results. We invite interested parties to comment on these preliminary review results and will issue the final review results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** May 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6905.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On August 28, 1986, the Department published in the **Federal Register** the antidumping duty order on petroleum wax candles from the PRC. See *Antidumping Duty Order: Petroleum Wax Candles From the People's*

*Republic of China*, 51 FR 30686 (August 28, 1986) ("*Candles Order*").

On August 31, 2006, Deseado submitted a timely request for an administrative review. On September 29, 2006, in response to Deseado's request and in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the "Act"), and section 351.213(b) of the Department's regulations, the Department initiated the eighth administrative review of petroleum wax candles from the PRC on 14 companies.<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006).

On October 12, 2006, the Department issued a Q&V questionnaire to Deseado and the other 13 companies upon which we initiated the review.<sup>2</sup> On October 30, 2006, the Department sent a letter to Deseado notifying the company of its failure to submit a Q&V questionnaire response by the deadline date.<sup>3</sup> We provided Deseado with a new deadline of November 3, 2006, to submit a Q&V questionnaire response, which Deseado timely submitted. On December 7, 2006, the Department issued its standard non-market economy ("NME") questionnaire to Deseado. On January 4, 2007, Deseado submitted its section A response to the Department's antidumping duty questionnaire.<sup>4</sup> In its section A questionnaire response, Deseado informed the Department that it is a trading company/exporter of the merchandise under consideration with an unaffiliated manufacturer/supplier in the PRC.<sup>5</sup>

<sup>1</sup> The following companies upon which we initiated an administrative review, except Deseado, withdrew their requests for review after the issuance of the quantity and value ("Q&V") questionnaire: Amstar Business Company Limited ("Amstar"), Apex Enterprises International Ltd. ("Apex") and Apex's producer, Golden Industrial Co., Ltd. ("Golden"), Fuzhou Eastown Arts Co., Ltd. ("Fuzhou"), Gift Creative Company, Ltd. ("Gift"), Maverick Enterprise Co., Ltd. ("Maverick") and Maverick's producer Great Founder International Co. ("Great Founder"), Qingdao Kingking Applied Chemistry Co., Ltd. ("KingKing"), Shantou Jinyuan Mingfeng Handicraft Co. ("Shantou Jinyuan"), Shanghai Shen Hong Arts and Crafts Co., Ltd. ("Shen Hong") and Shen Hong's producer Shanghai Changran Enterprise, Ltd. ("Changran"), Shenzhen Sam Lick Manufactory (and affiliated exporter Prudential (HK) Candles Manufacturing Co., Ltd.) ("Sam Lick," collectively), Transfar International Corp. ("Transfar");

<sup>2</sup> The original deadline for the quantity and value questionnaire was October 26, 2006.

<sup>3</sup> See Letter dated October 30, 2006, to Deseado regarding the missed deadline for Q&V questionnaire response.

<sup>4</sup> Sections A (Organization, Accounting Practices, Markets and Merchandise), C (Sales to the United States), D (Factors of Production), E (Cost of Further Manufacturing Performed in the United States) and Sales and Factors of Production Reconciliations.

<sup>5</sup> See Deseado's Section A questionnaire response dated January 4, 2007, at 19.

On January 8, 2007, the National Candle Association ("Petitioner") submitted deficiency comments with respect to Deseado's Separate Rates Application. On January 26, 2007, Petitioner submitted additional deficiency comments with respect to Deseado's separate rates application and its section A response.

On January 29, 2007, Deseado submitted the CBP 7501 entry summaries for its sales of subject merchandise to the United States, as requested by the Department, as well as its sections C and D questionnaire responses. On February 6, 2007, Petitioner submitted deficiency comments with respect to Deseado's section C response. On February 16, 2007, Petitioner submitted additional deficiency comments regarding Deseado's section C response relative to Deseado's submission of its CBP 7501 entry summaries. On February 16, 2007, the Department issued a supplemental section A questionnaire to Deseado. On March 6, 2007, Deseado submitted its supplemental section A response.

On March 8, 2007, the Department issued a letter to Deseado stating that, upon review of Deseado's sections C and D questionnaire responses, Deseado had not provided any data that the Department could use to calculate an antidumping duty margin. The Department provided instructions within this letter for Deseado to correct its data deficiencies by March 19, 2007. On March 19, 2007, Deseado informed the Department that it was unable to provide the information requested by the Department in the March 8, 2007, letter.<sup>6</sup> On April 3, 2007, Petitioner submitted a request to terminate the administrative review with respect to Deseado. On April 10, 2007, Deseado submitted a letter stating that because it was the only party to have requested the administrative review, Petitioner had no grounds upon which to request a termination of the administrative review.

##### **Period of Review**

The period of review ("POR") covers August 1, 2005, through July 31, 2006.

##### **Scope of the Order**

The products covered by *Candles Order* are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and

<sup>6</sup> In its March 19, 2007, letter, Deseado stated that it was unable to provide the information requested in the Department's March 8, 2007, letter due to its supplier's unwillingness to cooperate and provide the information.

straight-sided dinner candles; round, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States ("TSUS") 755.25, Candles and Tapers. The product covered are currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") item 3406.00.00. Although the HTSUS subheading is provided for convenience purposes, our written description remains dispositive. See *Candles Order and Notice of Final Results of the Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China*, 69 FR 77990 (December 29, 2004).

#### Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary must rescind an administrative review if a party requesting a review withdraws the request within ninety (90) days of the date of publication of the notice of initiation. As noted above, thirteen companies upon which the Department initiated an administrative review submitted timely withdrawals of their requests for review, in accordance with 19 CFR 351.213(d)(1).<sup>7</sup> No interested party provided any comments on the withdrawals. Therefore, because no other interested party requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding the administrative review of these thirteen companies for the POR.

#### Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013

(February 10, 2006). None of the parties to this proceeding has contested such treatment.

#### Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate). In its separate rates application, Deseado reported that it is owned wholly by an entity located and registered in a market-economy country (*i.e.*, Hong Kong). Thus, because we have no evidence indicating that Deseado is under the control of the PRC government, a separate-rate analysis is not necessary to determine whether it is independent from government control. See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (Aug. 23, 2001), results unchanged from *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 29080, 29081 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001) (where the respondent was wholly owned by a company located in Hong Kong), results unchanged from *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (Dec. 20, 1999) ("*Creatine from the PRC*") (where the respondent was wholly owned by persons located in Hong Kong).

#### Application of Adverse Facts Available

As discussed further below, pursuant to sections 776(a)(2)(A), (B), and (C), and 776(b) of the Act, the Department preliminarily determines that the use of total adverse facts available is warranted for Deseado. Section 776(a)(2) of the Act, provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner

requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to the requirements listed in section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

#### Use of Facts Available

We find that, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we should apply facts available to exports by Deseado because Deseado (1) failed to provide information requested by the Department; (2) failed to report in a timely manner information that was requested by the Department; and (3) significantly impeded the proceeding.

As discussed above, the Department reviewed Deseado's section C and D questionnaire responses, which should have contained detailed information regarding Deseado's sales of subject

<sup>7</sup> On October 25, 2006, Nantucket Distributing Co., Inc., a U.S. importer, withdrew request for administrative reviews with respect to Sam Lick; on October 26, 2006, KingKing, withdrew its request for an administrative review; on October 25, 2006, Amstar withdrew its request for an administrative review; on October 26, 2007, Specialty Merchandise Corporation (≥SMC≥), a U.S. importer withdrew its request for administrative reviews with respect to Fuzhou, Gift, Maverick (and its producer Great), Shantou Jinyuan, Shen Hong (and its producer Changran), and Transfar; on November 22, 2006, SMC withdrew its request for administrative reviews with respect to Apex (and its producer, Golden).

merchandise to the United States and factors of production ("FOP") data, respectively.

Deseado failed to provide accurate or complete information with respect to: (1) A sales reconciliation, as requested; (2) data fields in the sales database that are supposed to contain sale-specific data were instead populated with information other than numerical data, which renders the database unuseable; (3) payment data for each sale invoice amount of subject merchandise sold to the United States; and (4) inland freight, which was reported as an estimation of distance rather than an accurate reporting of inland freight distance for each sale to the United States.<sup>8</sup> Consequently, the breadth of the deficient, incorrect, or missing data alone forced the Department to send its letter dated March 8, 2007, to enumerate the deficiencies and receive a response upon which we could conduct an accurate analysis of Deseado's POR sales to the United States. As discussed below, the Department attempted to provide Deseado with an opportunity to remedy the deficiencies contained within its original section C response.

In the March 8, 2007, letter to Deseado, the Department stated that Deseado's sales data was unusable in the format in which it was submitted. Specifically, Deseado's sales data included a control number assigned to each sale that did not contain any physical characteristics of the merchandise under consideration, as requested by the Department in its initial questionnaire.<sup>9</sup> The Department's March 8, 2007, letter provided the steps necessary for Deseado to reconstruct its CONNUM methodology into a format that is specific to the physical characteristics of the subject merchandise, which would reconcile to the FOPs used in manufacturing the

merchandise. Moreover, the March 8, 2007, letter also stated that the sales database must be formatted pursuant to the Department's instructions in its initial questionnaire for use in the Department's margin calculation. Deseado's response in its March 19, 2007, letter did not address any of the sales data deficiencies remarked upon in our March 8, 2007, letter.

Additionally, in reviewing Deseado's section D questionnaire response, which should have contained information and data related to FOPs and the cost portion of the merchandise under consideration, the Department found that Deseado entirely omitted the FOP database and narrative descriptions of the FOPs from the section D questionnaire response.<sup>10</sup> Deseado did not provide any consumption data<sup>11</sup> for the FOPs used to produce the subject merchandise, without which the Department is unable to construct a normal value ("NV"). FOP information is fundamental for calculating a dumping margin. Section 771(35)(A) of the Act requires that dumping margins are calculated by comparing the NV to the export price or constructed export price. For NME countries, the Act states that the NV is determined "on the basis of the value of the factors of production utilized in producing the merchandise." See section 773(c)(1) of the Act.

Deseado also failed to submit a cost reconciliation, as requested in the original questionnaire. The Department's letter dated March 8, 2007, also addressed Deseado's omission of the entire FOP narrative and data, providing it an opportunity to remedy this deficiency as well. On March 19, 2007, Deseado provided a brief response with respect to the missing FOP data, stating that its supplier was uncooperative. Deseado did not provide any further detail regarding the failures of its supplier to provide FOP data.

Therefore, pursuant to sections 776(a)(2)(A) and (B) of the Act, the Department has determined that it is appropriate to apply the facts available to Deseado's sales of subject

merchandise to the United States during the POR because Deseado has failed to provide FOP information requested by the Department. Because the Department provided Deseado with an opportunity on March 8, 2007, to remedy the defects in its section D questionnaire response and Deseado failed to comply with the Department's request for information, we find that the information Deseado submitted is so incomplete that the Department's reliance upon it would not result in an accurate measurement or reflection of Deseado's selling practices. Therefore, we find that the curative provisions of sections 782(d) and (e) are not applicable. In addition, we find that Deseado's statement that it is unable to provide its own sales data because it cannot obtain other information from its supplier does not satisfy the requirements of section 782(c)(1) of the Act. Deseado has neither demonstrated the steps it undertook to gather the information, nor demonstrated its supplier's unwillingness to provide the information, nor suggested alternative or substitutable information for use in place of the missing FOP data. Therefore, as discussed above, we find that the application of facts available pursuant to sections 776(a)(2)(A) and (B) of the Act is warranted in calculating a margin for Deseado for these preliminary results.

We also find, pursuant to section 776(a)(2)(C) of the Act, that it appropriate to apply facts available to Deseado because its failure to respond to the Department's questionnaires and its failure to provide complete FOP data significantly impeded the progress of this proceeding. Because Deseado has not provided its FOP data as requested by the Department, the Department cannot construct Deseado's NV and, therefore, it cannot determine an accurate dumping margin for Deseado. In addition, the questionnaire responses that Deseado provided were so incomplete that they could not be used by the Department. Therefore, we find that the application of the facts available is also warranted, pursuant to section 776(a)(2)(C), because Deseado's actions significantly impeded the progress of this proceeding.

#### *Use of Adverse Inferences*

In selecting from among facts available, pursuant to section 776(b) of the Act, the Department may apply an adverse inference when it has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information." An adverse inference may include reliance on

<sup>8</sup> See Deseado's section C questionnaire response ("SCQR") dated January 29, 2007, at C-9 through C-11 and Exhibit C-1.

<sup>9</sup> The control number ("CONNUM") is assigned to each unique product reported in the sales database. Each identical product would be assigned the same CONNUM. However, products with physical variations require multiple CONNUMs assigned to it. The CONNUM methodology is based on the "physical characteristics" of each unique product sold by Deseado, which is used to tie each unique product sold to the cost of materials, labor, energy and packing, *i.e.*, the FOPs, to manufacture that unique product. Rather, Deseado provided the bar code numbers ("SKU") numbers associated with the finished good rather than constructing a CONNUM for each unique product based in the physical characteristics of the merchandise. See SCQR at 8-9. The SKU numbers are not descriptive of the physical characteristics of the unique product. Thus, the Department could not compare the sale of the product with the FOPs used in manufacturing that product in the data submitted by Deseado as required by the dumping calculation.

<sup>10</sup> See Deseado's Section D questionnaire response dated January 29, 2007, at Exhibit D-1. The Department notes that Exhibit D-1, which Deseado referred to as the FOP database, is simply the FOP worksheet we include in the original questionnaire for respondents to provide information such as percentages of NME versus market economy purchases, supplier distance information, units of measurement, modes of transport, etc.

<sup>11</sup> Consumption data consist of the POR consumption quantity of FOP inputs used to produce subject merchandise divided by the total POR production of subject merchandise. This methodology for calculating FOP consumption ratios is fully explained in the original Section D questionnaire.

information derived from (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 of the Act or determination under section 753 of the Act, or (4) any other information on the record. See section 776(b) of the Act.

Congress has noted that adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See *Statement of Administrative Action accompanying the URAA*, H.R. Doc. No. 103–316, Vol. 1 at 870 (1994) (“SAA”); *Mannesmannrohren-Werke AG v. United States*, 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit (“the Federal Circuit”) in *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (“*Nippon*”), provided an explanation of the “failure to act to the best of its ability” standard, stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. *Id.* The Federal Circuit acknowledged, however, that “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well. *Id.* Compliance with the “best of the ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation. *Id.* The Federal Circuit further noted that while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. *Id.*

As discussed above, we determine that, within the meaning of section 776(b) of the Act, Deseado failed to cooperate by not acting to the best of its ability to comply with the Department’s multiple requests for information and significantly impeded this proceeding, and that the application of adverse facts otherwise available (“AFA”) is warranted.<sup>12</sup> The Department finds that

Deseado failed to cooperate to the best of its ability because it did not respond accurately to the Department’s questions on such basic information as payment received for its POR sales. Furthermore, Deseado provided an unuseable CONNUM to compare sales to FOPs, did not provide sales or cost reconciliations, and omitted an entire database and narrative description of production data consumption for the POR. The information requested by the Department can only be supplied by Deseado and cannot be obtained from any other sources. Without this information, the Department cannot calculate a dumping margin for Deseado. Therefore, the Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, Deseado has failed to cooperate to the best of its ability.

First, because this is an NME proceeding, it is necessary that the Department have valid FOP information in order to calculate the NV, as stated above. In cases such as this, when we are precluded from reviewing the FOPs of the suppliers, and absent any FOP information provided, the Department cannot simply create or postulate the costs of the uncooperative suppliers. Additionally, the Department has no other FOP information on the record. Because Deseado and its supplier have failed to provide FOP information for this administrative review, the Department cannot properly calculate a dumping margin in accordance with section 773(c)(1) of the Act. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China; Final Results of 1997–1998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837, 61846 (November 15, 1999) (“TRBs–11”); see also *Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003), and accompanying Issues and Decision Memorandum, Comment 7 (“*Crawfish*”). Thus, the

*Administrative Review*, 71 FR 45768, 45771 (August 10, 2006) (where the Department stated that “...these deficiencies in the revised response, in view of the Department’s detailed instructions and guidance, indicate that Liaoning Company did not act to the best of its ability in providing the requested information”); see also *Final Results of Antidumping Administrative Review: Foundry Coke From the People’s Republic of China*, 69 FR 4108 (January 28, 2004), results unchanged from *Notice of Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People’s Republic of China*, 68 FR 57869, 57873 (October 7, 2003).

Department finds that Deseado and its supplier have not acted to the best of their ability.

Second, Deseado and its supplier have failed to provide any explanation why they were unable to provide the FOP information, nor did they offer any alternative forms by which they might be able to comply with the Department’s requests. As the Federal Circuit has held, a respondent must “put forth its maximum efforts” in complying with the Department’s requests. See *Nippon*, 337 F.3d at 1382.

Additionally, it has been the Department practice to apply adverse facts available when a respondent has failed to provide convincing evidence “claiming that their suppliers cannot supply requested factors of production information.” See *Creatine from the PRC*, 64 FR at 71108 (applying adverse facts available because the respondent did not provide an acceptable explanation on the record for its suppliers’ failure to provide the FOP information); see also TRBs–11, 64 FR at 61846 (finding that the respondent did not act to the best of its ability when it was unable to provide letters from unrelated suppliers stating their unwillingness to supply factors of production information); see also *Notice of Fresh Garlic From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 36767, 36768 (June 19, 2003) (“*Garlic*”) (applying adverse facts available when a supplier stated that it was unwilling to provide details on its production process or its FOPs; and the respondent did not provide an explanation as to why it or its supplier could not provide the FOP information); see also *Notice of Certain Cased Pencils from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum, at Comment 10 (finding that there was no acceptable explanation on the record for the supplier’s failure to provide factor of production information, an adverse inference in applying facts available was warranted due to the supplier’s failure to act to the best of its ability).

Although Deseado claimed that it attempted to obtain the information from its supplier, it is ultimately Deseado’s responsibility for submitting accurate FOP information, as it is the party that is seeking the rate based on the FOP information and it is more readily available to them, and any “failures, even if made by a supplier, may provide grounds for the application of adverse facts available.” See

<sup>12</sup> See *Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 75710 (December 18, 2006), results unchanged from *Cut-to-Length Carbon Steel Plate from the People’s Republic of China: Notice of Rescission, In Part, and Preliminary Results of Antidumping Duty*

*Crawfish*, 68 FR at 19504; *see also* *Garlic*, 68 FR at 36768.

Therefore, pursuant to section 776(b) of the Act, we are preliminarily applying the AFA rate to Deseado's sales of subject merchandise to the United States during the POR. In the instant proceeding, we find it appropriate to use an inference that is adverse to the interests of Deseado in selecting from among the facts otherwise available because Deseado failed to comply with the Department's request for sales and cost data required in the original questionnaire and its subsequent failure to provide corrected data upon the second opportunity to do so, despite the Department's specific and detailed explanations within the March 8, 2007, letter. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decision Memorandum at Comment 27 (where "the Department found that Jilin Bright Future failed to cooperate to the best of its ability to comply with the Department's request for information"). Deseado failed to provide the Department with complete or revised responses during this administrative review and the application of total AFA in this case is appropriate because it should not be rewarded for its noncompliance. *See, e.g., Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1340 (Fed. Cir. 2002). Accordingly, we are applying as AFA the rate of 108.3 percent, the highest calculated rate from any segment of this proceeding. *See* the "Corroboration" section below for a discussion of the probative value of the 108.30 percent rate.

#### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. As described in the SAA, it is the Department's practice to use secondary information from the petition, the final determination, or any previous review under section 751 concerning the subject merchandise. *See* SAA at 870. The Department will satisfy itself that the secondary information has probative value and, to the extent practicable, will examine the reliability and relevance of the information to be used.

The AFA rate being assigned to Deseado (108.30 percent) is the highest

calculated rate determined in any segment of this proceeding (the 2001–2002 administrative review). *See Amended Notice of Final Results of the Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China ("Amended Final")* 69 FR 20858 (April 19, 2004). This rate was corroborated in the most recently completed new shipper review subsequent to the Amended Final. *See Notice of Final Results of the Antidumping Duty New Shipper Review: Petroleum Wax Candles from the People's Republic of China ("2002–2003 New Shipper Review")* 69 FR 77990 (December 29, 2004). Furthermore, no information has been presented in the current review that calls into question the reliability of this information. We note that this is the highest rate from any segment of the proceeding and the rate is less than four years old. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 at Comment 4 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been judicially invalidated. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The information used in calculating this margin was based on sales and production data submitted by the respondents in the 2001–2002 administrative review, together with the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in the 2001–2002 administrative review, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. Moreover, as there is no information on the record of this review that demonstrates that this rate is not

appropriately used as AFA, we determine that this rate has relevance.

Based on our analysis, we find that the margin of 108.30 percent is reliable and has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 108.30 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (that it have probative value). Consequently, we have assigned this AFA rate to exports of the subject merchandise from Deseado.

#### Preliminary Results of Review

We preliminarily determine that the following margin exists during the period August 1, 2005, through July 31, 2006:

#### PETROLEUM WAX CANDLES FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Deseado Industrial Co., Ltd. ....	108.30

#### Public Comment

The Department will disclose to parties of this proceeding the information utilized in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of

merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

#### Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 108.30 percent; and (3) the cash deposit rate for all non-PRC exporters (including Deseado) of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 2, 2007

David A. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-9040 Filed 5-9-07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-557-813]

#### Polyethylene Retail Carrier Bags from Malaysia: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to a request from an interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Malaysia. The review covers one manufacturer/exporter. The period of review is August 1, 2005, through July 31, 2006. We have preliminarily determined that sales have not been made below normal value by the company subject to this review. We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument a statement of each issue and a brief summary of the argument.

**EFFECTIVE DATE:** May 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5760 and (202) 482-4477, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 9, 2004, we published in the **Federal Register** the antidumping duty order on PRCBs from Malaysia. See *Antidumping Duty Order: Polyethylene*

*Retail Carrier Bags From Malaysia*, 69 FR 48203 (August 9, 2004). On August 1, 2006, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on PRCBs from Malaysia. See *Antidumping or Countervailing Duty Order, Findings, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 43441 (August 1, 2006). Pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), Euro Plastics Malaysia Sdn. Bhd. (Euro Plastics) requested an administrative review of the antidumping duty order on PRCBs from Malaysia on August 8, 2006. On September 29, 2006, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of this order. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006). We are conducting an administrative review of the order on PRCBs from Malaysia for Euro Plastics for the period August 1, 2005, through July 31, 2006.

#### Scope of Order

The merchandise subject to this antidumping duty order is PRCBs 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 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 the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, e.g., garbage bags, lawn bags, trash-can liners.