

**DEPARTMENT OF COMMERCE****International Trade Administration**

A-557-813

**Polyethylene Retail Carrier Bags From Malaysia: Final Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** On July 9, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Malaysia. The review covers exports of this merchandise to the United States by Euro Plastics Malaysia Sdn. Bhd. (Euro Plastics) for the period of review August 1, 2007, through July 31, 2008.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments and the revised cost information we received from Euro Plastics, we have made changes to the margin calculation for the final results of this review. The final weighted-average margin is listed below in the "Final Results of Review" section of this notice.

**EFFECTIVE DATE:** November 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jerrold Freeman or Yang Jin Chun, 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) 482-0180 and (202) 482-5760, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On July 9, 2009, the Department published the preliminary results of review and invited parties to comment. See *Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 32880 (July 9, 2009) (*Preliminary Results*). On August 10, 2009, Euro Plastics and the petitioners<sup>1</sup> filed case briefs. On August 17, 2009, Euro Plastics and the petitioners filed rebuttal briefs. There was no hearing requested or conducted for this administrative review.

<sup>1</sup> The Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation.

**Scope of the 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 (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 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.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

**Analysis of the Comments Received**

All issues raised in the case briefs by parties to this review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Acting Deputy Assistant Secretary John M. Andersen to Acting Assistant Secretary Ronald K. Lorentzen dated November 6, 2009, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memo and attached to this notice as an Appendix. The Decision Memo, which is a public document, is on file in the Central Records Unit (CRU) 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 Memo are identical in content.

**Sales Below Cost in the Home Market**

The Department conducted an investigation to determine whether Euro Plastics made home-market sales at prices below the cost of production. See *Preliminary Results*, 74 FR at 32882. As a result of its investigation, the Department disregarded certain below-cost home-market sales for the preliminary results. For the final results, in accordance with section 773(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department has continued to disregard certain below-cost home-market sales.

**Changes Since the Preliminary Results**

Based on our analysis of comments received and based on our own analysis of the *Preliminary Results*, we have made revisions that have changed the results for Euro Plastics. We have corrected programming and ministerial errors in the margin calculations we included in the *Preliminary Results*. A detailed discussion of each correction we made is in the final analysis memorandum for Euro Plastics which is on file in the CRU of the main Department of Commerce building, Room 1117.

**Final Results of Review**

As a result of our review, we determine that a margin of 56.13 percent exists for Euro Plastics for the period August 1, 2007, through July 31, 2008.

**Assessment Rates**

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries of merchandise produced and/or exported by Euro Plastics. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an importer/customer-specific assessment rate or value for subject merchandise. See also section 751(a)(2)(C) of the Act.

With respect to export-price (EP) sales, we divided the total dumping margins for each importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise on each of that importer's or customer's entries during the period of review. For constructed export-price (CEP) sales, we divided the total dumping margins for the reviewed sales by the total entered value of those

reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries during the period of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the period of review produced by Euro Plastics for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

#### Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PRCBs entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) the cash-deposit rate for Euro Plastics will be 56.13 percent; (2) for previously investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published in the *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128, 34129 (June 18, 2004) (*Final Determination*); (3) if the exporter is not a firm covered in this review or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 84.94 percent, the all-others rate for this proceeding published in the *Final Determination*. These deposit requirements shall remain in effect until further notice.

#### Notification to Importers

This notice serves as a final 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties. See 19 CFR 351.402(f)(3).

#### Notification Regarding APOs

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 also 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 publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 6, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

#### Appendix

1. Product-Specific Resin Cost
2. G&A and Financial Expenses
3. Product-Specific Yield Losses
4. Home-Market Sales Tax and Import Duties
5. Home-Market Freight Expenses
6. Home-Market Credit Expense
7. Standard Weight versus Actual Weight
8. U.S. Indirect Selling Expenses
9. U.S. Discounts

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### Notice of Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Years 2007 and 2008

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of indirect cost rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Years 2007 and 2008.

**SUMMARY:** The National Oceanic and Atmospheric Administration's

(NOAA's) Damage Assessment, Remediation, and Restoration Program (DARRP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal years (FY) 2007 and 2008. The indirect cost rates for these fiscal years and dates of implementation are provided in this notice. More information on these rates and the DARRP policy can be found at the DARRP Web site at <http://www.darrp.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact LaTonya Burgess at 301-713-4248, ext. 211, by fax at 301-713-4389, or e-mail at [LaTonya.Burgess@noaa.gov](mailto:LaTonya.Burgess@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The mission of the DARRP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARRP consists of three component organizations: the Office of Response and Restoration (ORR) within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel for Natural Resources (GCNR). The DARRP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with Federal accounting requirements, the DARRP is required to account for and report the full costs of its programs and activities. Further, the DARRP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARRP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

#### The DARRP's Indirect Cost Effort

In December 1998, the DARRP hired the public accounting firm Rubino & McGeehin, Chartered (R&M) to: Evaluate the DARRP cost accounting system and