

Dated: June 10, 2010.

David M. Robinson,
Chief Financial Officer.

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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: At the request of interested parties, 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, 2008, through July 31, 2009. We have preliminarily determined that sales have been made at prices below normal value by Euro Plastics Malaysia Sdn. Bhd. 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 the issue and a brief summary of the argument.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Richard Rimlinger, 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) 482-0180 or (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 3, 2009, 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, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 38397 (August 3, 2009). Pursuant to section 751(a)(1) of the Tariff Act of

1930, as amended (the Act), and 19 CFR 351.213(b), the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners), and Euro Plastics Malaysia Sdn. Bhd. and its affiliated trading company, Eplastics Procurement Center Sdn. Bhd. (collectively, Euro Plastics), requested an administrative review of the antidumping duty order on PRCBs from Malaysia with respect to Euro Plastics. On September 22, 2009, in accordance with 19 CFR 351.221(c)(1)(i), we initiated the administrative review of the antidumping duty order on PRCBs from Malaysia for the period of review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009).

Although Euro Plastics withdrew its request for the Department to conduct the administrative review on October 30, 2009, the request by the petitioners for the Department to conduct an administrative review of Euro Plastics remains in effect.

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 segment of the proceeding have been extended by seven days. 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. On May 7, 2010, we extended the due date for the preliminary results of this administrative review to June 9, 2010. See *Polyethylene Retail Carrier Bags From Malaysia: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 25207 (May 7, 2010).

Period of Review

The period of review is August 1, 2008, through July 31, 2009.

Scope of the Order

The merchandise subject to the 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, trashcan 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.

Use of Adverse Facts Available

For the reasons discussed below, we determine that the use of adverse facts available is appropriate for the preliminary results with respect to Euro Plastics.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use facts otherwise available in reaching the applicable determination.

On September 28, 2009, we sent our questionnaire to Euro Plastics. On October 30, 2009, Euro Plastics withdrew the request for the Department to conduct the 2008-2009 administrative review because, as explained in the submission, Euro

Plastics had been placed into receivership and no longer existed as operating entities. Euro Plastics stated that, because the records and information were in the custody of the receiver, Euro Plastics could not provide the information necessary to participate in this review.

On April 27, 2010, we transmitted a supplemental questionnaire to Euro Plastics via FedEx. We requested that Euro Plastics clarify its operating status further, identify its receiver, and provide a company official's certification statement for the October 30, 2009, submission. The due date for the response to our supplemental questionnaire was May 5, 2010. The April 27, 2010, supplemental questionnaire stated that, if Euro Plastics was unable to respond by the deadline, it must formally request an extension of time in writing and provide an explanation for the request. Notwithstanding our efforts to assist FedEx in the delivery of this questionnaire (see June 9, 2010, Memorandum to the File entitled "Delivery of Supplemental Questionnaire"), Euro Plastics received the questionnaire on May 6, 2010. The Department never received a response or a request for an extension of time from Euro Plastics.

Because Euro Plastics did not respond to either the Department's original or supplemental questionnaire, we are unable to calculate a dumping margin for Euro Plastics. Accordingly, pursuant to sections 776(a)(2)(A) and (B) of the Act, we must rely entirely on facts available.

B. Application of Adverse Inferences for Facts Available

In selecting among the facts otherwise available, 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 an inference adverse to the interests of that party. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994), reprinted in 1994 U.S.C.A.N. 4040 (SAA), establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. The SAA also instructs the Department to consider, in employing adverse inferences, "the extent to which a party may benefit from its own lack of cooperation." *Id.* Moreover, "affirmative

evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

We find that, by failing completely to respond to our questionnaire, Euro Plastics withheld requested information and thus failed to cooperate to the best of its ability. While the Department may consider a company's inability to respond to questionnaires due to the liquidation of its assets, the Department must be satisfied that the record adequately demonstrates the company's inability to obtain the requested data. Thus, the Department has also found that a party has failed to act to the best of its ability where a party continues to produce subject merchandise but fails to provide requisite information to the Department. See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Germany*, 63 FR 8953 (February 23, 1998). Because Euro Plastics failed to provide further information on its operating status, receiver, and accessibility of its books and records, the Department finds that Euro Plastics failed to act to the best of its ability and, thus, an adverse inference is warranted in selecting from facts otherwise available. By doing so, we ensure that this company will not obtain a more favorable rate by failing to cooperate than had it cooperated fully.

C. Selection of Information Used as Facts Available

Where the Department applies an adverse facts-available rate because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and the SAA at 870.

For the preliminary results, we have selected 101.74 percent as the adverse facts-available dumping margin for Euro Plastics. The adverse facts-available rate of 101.74 percent was the highest product-specific margin presented by the petitioners in the less-than-fair-value investigation of PRCBs from Malaysia. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Malaysia*, 69 FR 3557 (January 26, 2004). See also *Notice of Final Determination of Sales at Less*

Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia, 69 FR 34128 (June 18, 2004) (*Final Determination*). We corroborated the information that we used to calculate the 101.74 percent in the less-than-fair-value investigation. See *Final Determination*, 69 FR at 34129. We have selected this rate because we do not have any additional information about this company in this review. Moreover, we believe this rate is sufficiently high to ensure that Euro Plastics does not obtain a more favorable result by failing to cooperate.

D. Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information as facts available, it must corroborate, to the extent practicable, that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics, and customs data as well as information obtained from interested parties during the particular proceeding. *Id.*

To corroborate secondary information, to the extent practicable, the Department normally examines the reliability and relevance of the information to be used. See, e.g., *Ball Bearings and Parts Thereof from France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Rescind Reviews in Part*, 73 FR 25654, 25657 (May 7, 2008), unchanged in *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008). Unlike other types of information such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for antidumping duty margins are administrative determinations.

Thus, with respect to an administrative review, if the Department chooses to use as facts available a petition rate which was corroborated in the less-than-fair-value investigation and no information has been presented in the current review that calls into the question of reliability of this information, the information is reliable. See, e.g., *Certain Tissue Paper from the People's Republic of China: Preliminary Results and Preliminary Rescission, In*

Part, of Antidumping Duty Administrative Review, 72 FR 17477, 17480–81 (April 9, 2007), unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642, 58644–45 (October 16, 2007). Because our adverse facts-available rate of 101.74 percent in this review was corroborated in the *Final Determination* and no information in the current review calls into the question of reliability of this rate, we find that the adverse facts-available rate of 101.74 percent is 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 adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as 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 discredited or judicially invalidated. See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (CAFC 1997).

In this review, there are no circumstances present to indicate that the selected margin is not appropriate as adverse facts available. Moreover, there is no information on the record of this review that demonstrates that 101.74 percent is not an appropriate adverse facts-available rate for Euro Plastics. We examined the transaction-specific margins we determined for Euro Plastics in the administrative review of the antidumping duty order on PRCBs from Malaysia covering the period August 1, 2007, through July 31, 2008, and found a number of transaction-specific margins in our calculations which were higher than the adverse facts-available rate of 101.74 percent. See the June 9, 2010, Memorandum to the File entitled "Polyethylene Retail Carrier Bags From Malaysia: Placement on Record" for details which contain Euro Plastics's business-proprietary information. With the information at our disposal for the corroboration of this adverse facts-available rate, we find that the rate of 101.74 percent is corroborated to the

greatest extent practicable in accordance with section 776(c) of the Act.

Because we are making an adverse inference with regard to Euro Plastics based on the most recent information at our disposal, we preliminarily find that the rate of 101.74 percent is a reasonable indication of the margins that Euro Plastics would have received concerning its U.S. transactions had it responded to our request for information. We preliminarily find that use of the rate of 101.74 percent as adverse facts available is sufficiently high to ensure that Euro Plastics does not benefit from failing to cooperate in our review by refusing to respond to our questionnaire.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the weighted-average dumping margin for PRCBs from Malaysia produced and/or exported by Euro Plastics during the period August 1, 2008, through July 31, 2009, is 101.74 percent.

Disclosure and Public Comment

We will disclose the memoranda cited above and the draft liquidation instructions to parties to this review within five days of the date of publication of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) The party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed.

Issues raised in the hearing will be limited to those raised in the case briefs. See 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. See 19 CFR 351.309(d)(1) and 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument

a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2).

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs, not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are relying on total adverse facts available to establish the dumping margin for Euro Plastics, we intend to instruct CBP to apply a dumping margin of 101.74 percent to PRCBs from Malaysia that were produced and/or exported by Euro Plastics and entered, or withdrawn from warehouse, for consumption during the period of review.

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

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of PRCBs from Malaysia entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for Euro Plastics will be the rate established in the final results of this review; (2) for other previously reviewed or investigated companies, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior 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 established in the *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia*, 69 FR 34128 (June 18, 2004). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of

their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of review. 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.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: June 9, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-834]

Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from Quimica Amtex S.A. de C.V. (Amtex), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Mexico. The review covers exports of the subject merchandise to the United States produced and exported by Amtex; the period of review (POR) is July 1, 2008, through June 30, 2009.

We preliminarily find that Amtex has made sales at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on differences between the export price (EP) or constructed export price (CEP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues, (2) a brief summary of the arguments, and (3) a table of authorities.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6312 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CMC from Mexico on July 11, 2005. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, 70 FR 39734 (July 11, 2005). On July 1, 2009, the Department published the notice of opportunity to request an administrative review of CMC from Mexico for the period of July 1, 2008, through June 30, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 31406 (July 1, 2009). On July 22, 2009, respondent Amtex requested an administrative review. On August 25, 2009, the Department published in the *Federal Register* a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 42873 (August 25, 2009).

On September 3, 2009, the Department issued its standard antidumping duty questionnaire to Amtex. Amtex submitted its response to section A of the Department's questionnaire on October 9, 2009 (Amtex Section A Response). Amtex submitted its response to sections B and C of the Department's questionnaire on October 29, 2009 (Amtex Sections B and C Response).

Period of Review

The POR is July 1, 2008, through June 30, 2009.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat

treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Date of Sale

The Department's regulations state that it will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). However, if the Department is satisfied that "a different date * * * better reflects the date on which the exporter or producer establishes the material terms of sale," the Department may choose a different date. *Id.* Amtex has reported the definitive invoice (as differentiated from *pro forma* invoice) as the invoice date. *See* Amtex Section A Response at A20-A21.

With regard to the invoice date, Amtex bills some of its sales via "delayed invoices" in both the home and U.S. markets. *Id.* In these instances, delivery is made to the customer and a *pro forma* invoice is issued, but the subject merchandise remains in storage and continues to be the property of Amtex until withdrawn for consumption by the customer (usually at the end of a regular, monthly billing cycle), at which time a definitive invoice is issued. *Id.* In Amtex's normal books and records, it is this definitive invoice date (not the *pro forma* invoice date) that is recorded as the date of sale. *Id.* Therefore, the Department preliminarily determines that the definitive invoice date is the date of sale provided that the definite invoice is issued on or before the shipment date; and that the shipment date is the date of sale where the invoice is issued after the shipment date. *See* Purified Carboxymethylcellulose from Mexico: Preliminary Results Analysis Memorandum for Quimica Amtex, S.A. de C.V., dated June 8, 2010 (Analysis Memorandum), for further discussion of date of sale. A public version of this memorandum is on file in the Department's Central Records Unit (CRU) located in Room 1117 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230.