

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)(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.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 2, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-821]

#### Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part

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

**SUMMARY:** In response to requests from 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 Thailand. The review covers five exporters/producers. The period of review is August 1, 2006, through July 31, 2007.

We have preliminarily determined that sales have been made at prices below normal value by various companies subject to this review. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** September 9, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Edythe Artman 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) 482-3931 or (202) 482-4477, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 9, 2004, the Department published in the **Federal Register** the antidumping duty order on PRCBs from Thailand. See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 48204 (August 9, 2004). In accordance with 19 CFR 351.213(b), we received requests for an administrative review for five companies. In accordance with 19 CFR 351.213(g) and 19 CFR 351.221(b), we published a notice of initiation of an administrative review of these companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428, 54429 (September 25, 2007) (*Initiation Notice*).<sup>1</sup>

Since initiation of the review, we extended the due date for completion of these preliminary results from May 2, 2008, to September 2, 2008. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand*, 73 FR 15724 (March 25, 2008), and *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand*, 73 FR 29738 (May 22, 2008).

The period of review (POR) is August 1, 2006, through July 31, 2007. We are conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

<sup>1</sup> We stated that the review covers the following companies: King Pac Industrial Co., Ltd., King Pak Ind. Co., Ltd., Kor Ratthanakit Co., Ltd., Master Packaging Co., Ltd., Naraipak Co., Ltd., and Poly Plast (Thailand) Co., Ltd. *Id.* Although we listed six companies in the *Initiation Notice*, we consider King Pac Industrial Co., Ltd., and King Pak Ind. Co., Ltd., to be alternative spellings of the name of one company. See the April 3, 2006, Memorandum from Catherine Cartos to File entitled "Administrative Review of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from Thailand (1/26/04-7/31/05) - Different Spellings for King Pac Industrial Co., Ltd.," which is on file in the Central Records Unit, room 1117 of the main Commerce building. Accordingly, we effectively initiated an administrative review of five companies.

#### 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 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.

As a result of changes to the *Harmonized Tariff Schedule of the United States* (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

#### Selection of Respondents

Due to the large number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request has been made, the Department is exercising its authority to limit the number of respondents selected for individual examination. Where it is not practicable to examine all known exporters/producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection or exporters and

producers accounting for the largest volume of subject merchandise from the exporting country that can be examined reasonably. Accordingly, on October 4, 2007, we requested information concerning the quantity and value of sales to the United States from the five exporters/producers listed in the *Initiation Notice*. We received responses from all of the exporters/producers. We also examined import data from CBP concerning unliquidated entries of merchandise subject to the antidumping duty order.

Based on our analysis of the responses and import data obtained from CBP, we determined that King Pac Industrial Co., Ltd. (King Pac), Naraipak Co., Ltd., and Narai Packaging (Thailand) Ltd. (collectively NPG), and Poly Plast (Thailand) Co., Ltd. (Poly Plast), were the three largest exporters/producers during the POR. Specifically, we determined that these exporters/producers accounted for a majority of the total reported quantity of imports of the subject merchandise from the requested companies to the United States during the POR and a majority of the total quantity from the requested companies reported in the CBP data. Accordingly, we chose to examine these three companies as accounting for the largest volume of subject merchandise from the exporting country that can reasonably be examined. See Memorandum entitled "Polyethylene Retail Carrier Bags from Thailand - Respondent Selection" dated December 6, 2007.

On March 27, 2008, the Department determined that it had the resources available to examine the remaining respondent,<sup>2</sup> Master Packaging Co., Ltd. (Master Packaging), individually. See Memorandum entitled "Polyethylene Retail Carrier Bags from Thailand: Selection of Master Packaging as a Mandatory Respondent," dated March 27, 2008.

#### Intent to Rescind Review in Part

In an October 25, 2007, submission, Kor Ratthanakit Co., Ltd. (Kor Ratthanakit), indicated that it had no shipments of subject merchandise to the United States during the POR. Our review of information from CBP supports Kor Ratthanakit's claim that there were no entries of its merchandise subject to the order into the United States during the POR. See Memorandum to the File, "U.S. Customs and Border Protection Data," dated December 3, 2007. Because we

preliminarily find that there were no imports from Kor Ratthanakit during the POR, we intend to rescind the administrative review with respect to this company. If we continue to find at the time of our final results of administrative review that there were no imports of PRCBs from Thailand from Kor Ratthanakit, we will rescind our review of Kor Ratthanakit.

#### Verification

As provided in section 782(i) of the Act, we have verified sales and cost information provided by NPG and Poly Plast using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, dated June 23 and August 13, 2008, for Poly Plast and dated August 5 and August 13, 2008, for NPG, and which are on file in the Central Records Unit, room 1117 of the main Commerce building.

#### Use of Adverse Facts Available

Section 776(a) of the Act provides that, if necessary information is not available on the record or if an interested party (1) withholds information that has been requested by the Department (2) fails to provide such information by the deadlines established, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act (3) significantly impedes the proceeding or (4) provides such information but the information cannot be verified, the Department shall use, subject to section 782(d) of the Act, the facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department, provided that all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Section 782(d) of the Act provides that, if the Department determines that a response to a request

for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall provide that person, to the extent practicable, with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review.

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. The purpose of the adverse call, as explained in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), is "to ensure that the party does not obtain a more favorable result by failing to cooperate {to the best of its ability} than if it had cooperated fully." See SAA at 870, reprinted in 1994 U.S.C.C.A.N. 4040, 4199. Further, as explained in the SAA, in employing adverse inferences the Department will consider "the extent to which a party may benefit from its own lack of cooperation." *Id.*

#### King Pac and Master Packaging

On December 6, 2007, we sent a questionnaire to King Pac, one of the companies which we had selected for individual examination, seeking information related to King Pac's corporate structure and its production and sales of PRCBs, information which is necessary for us to complete the administrative review. King Pac did not respond to the questionnaire.

On March 27, 2008, we sent an antidumping questionnaire to Master Packaging and requested that it respond by May 5, 2008. Subsequently, at the respondent's request, we granted Master Packaging an extension of time to respond. On May 20, 2008, we received Master Packaging's questionnaire response, which we rejected on June 11, 2008, due to filing deficiencies; we provided Master Packaging an opportunity to resubmit its response in accordance with our regulations by June 24, 2008. Master Packaging submitted its response in accordance with the regulations on June 24, 2008. On June 27, 2008, we requested that Master Packaging submit the electronic versions of both its home-market and U.S. sales lists which should have been submitted with its June 24 response. On July 7, 2008, Master Packaging submitted the electronic versions of its

<sup>2</sup> As discussed below, we intend to rescind the administrative review with respect to Kor Ratthanakit Co., Ltd.

sales lists. On July 9, 2008, after reviewing Master Packaging's resubmitted questionnaire response, we issued Master Packaging a supplemental questionnaire. Master Packaging did not respond to our supplemental questionnaire or request an extension of time to do so.

Because King Pac and Master Packaging have failed to provide the information we requested and thus have significantly impeded this proceeding, we must use facts available to establish their dumping margins. See section 776(a) of the Act. Furthermore, because King Pac could have provided correct and verifiable data about its corporate structure, production, and sales but did not do so, we determine that King Pac has failed to cooperate by not acting to the best of its ability. Therefore, we conclude that the use of an adverse inference is warranted with respect to King Pac. See section 776(b) of the Act and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (CAFC 2003). Additionally, because Master Packaging could have provided correct and verifiable data in response to our supplemental questionnaire but did not do so, we determine that Master Packaging has failed to cooperate by not acting to the best of its ability. Therefore, we conclude that the use of an adverse inference is warranted with respect to Master Packaging. *Id.*

As adverse facts available (AFA), we have preliminarily assigned King Pac and Master Packaging the highest rate found in the less-than-fair-value investigation, which was 122.88 percent. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 34122, 34125 (June 18, 2004) (*Final LTFV*). We applied this rate to Zippac Co., Ltd. (Zippac), for the less-than-fair-value investigation. *Id.*, 69 FR at 34123–34124. We also applied this rate to King Pac, which we collapsed with Zippac, for the 2004–2005 and 2005–2006 administrative reviews. See *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53406–53407 (September 11, 2006) (collapsing King Pac, Dpac Industrial Co., Ltd., Zippac, and King Bag Co.); *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982, 1983 (January 17, 2007) (*2005–2006 Final Results*); and *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007).

When a respondent is not cooperative, such as King Pac and Master Packaging here, the Department has the discretion to presume that the highest prior margin reflects the current margins. See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (CAFC 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (CAFC 1990)). If this were not the case, the party would have produced current information showing the margin to be less. See *Rhone Poulenc*, 899 F.2d at 1190. Further, by using the highest prior antidumping duty margin we offer the assurance that the exporter will not benefit from refusing to provide information and we apply an antidumping duty rate that bears some relationship to past practices by this company as it is part of the industry in question. See *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1346 (CIT 2005) (citing *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (CAFC 1997)).

Section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” See SAA at 870, 1994 U.S.C.C.A.N. at 4199. As clarified in the SAA, “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. See *id.* To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information. As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information. See SAA at 869, 1994 U.S.C.C.A.N. at 4198. Further, independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See 19 CFR 351.308(d) and SAA at 870, 1994 U.S.C.C.A.N. at 4199.

With respect to the reliability aspect of corroboration, the Department found the rate of 122.88 percent to be reliable in the investigation. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Thailand*, 69

FR 3552, 3553–3554 (January 26, 2004) (unchanged). There, the Department pointed out that the rate was calculated from source documents included with the petition, namely, a price quotation for various sizes of PRCBs commonly produced in Thailand, import statistics, and affidavits from company officials, all from a different Thai producer of subject merchandise. Because the information is supported by source documents, we preliminarily determine that the information is still reliable. See Memorandum to the File entitled “Polyethylene Retail Carrier Bags from Thailand: Inclusion of Memorandum, dated January 16, 2004, to the record of this administrative review” dated August 11, 2008 (AFA Memorandum).

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. In the investigation, the Department determined that, because the price quote reflected commercial practices of the particular industry during the period of investigation, the information was relevant to mandatory respondents which refused to participate in the investigation. See AFA Memorandum. No party contested the application of that rate in the investigation. *Id.* Furthermore, the rate of 122.88 percent is King Pac's current rate and has been applied to Zippac since the less-than-fair-value investigation. Therefore, we find this rate to continue to have relevance.

#### *Poly Plast*

We found at verification that Poly Plast did not report foreign bank charges for all sales to two major U.S. customers. See Poly Plast verification report, dated June 23, 2008, at page 13–15. Because foreign bank charges vary by invoice, we do not have complete and accurate information pertaining to these expenses. Accordingly, because Poly Plast failed to report these expenses, the use of facts available is necessary. See section 776(a)(2)(D) of the Act. In addition, Poly Plast had the documents necessary to report the correct foreign bank charges for its U.S. sales. See Poly Plast verification report at exhibits 6, 7, and 11 which include documentation such as the bank's credit advice. We used these documents to ascertain the actual foreign bank charges for the particular U.S. sales we examined in detail. Because Poly Plast did not report this expense for a number of U.S. sales, we find that Poly Plast did not act to the best of its ability in reporting these expenses and, accordingly, the use of an adverse

inference is necessary. See section 776(b) of the Act and *Nippon Steel*, 337 F.3d at 1382–83. As partial adverse facts available, we used the highest reported value for foreign bank charges for sales to two U.S. customers for which these expenses were not reported.

#### Importer Request

On January 25, 2008, prior to the deadline for the submission of factual information, KYD, Inc. (KYD), an importer of subject merchandise, submitted information concerning its purchases of subject merchandise.<sup>3</sup> KYD requested that the Department calculate an importer-specific assessment rate for KYD based on KYD's information because one of its former suppliers, King Pac, did not respond to the Department's questionnaire. KYD submitted its information in a form resembling a response to Section C of the Department's standard questionnaire for U.S. sales and included copies of its relevant purchase orders and supplier invoices. Additionally, KYD explained the sales, shipping, and payment terms associated with its purchases. Because most of the information upon which the Department relies to calculate an antidumping margin and assessment rate was not available to KYD—specifically, home-market sales, cost-of-production, and complete U.S. sales information—KYD suggested that the Department use data collected from other respondents as a surrogate. Because we do not have all of the information that is necessary to calculate an accurate margin for the supplier(s) from which KYD purchased subject merchandise during the POR, however, we cannot calculate an importer-specific assessment rate for KYD.

#### Export Price

We calculated dumping margins for NPG and Poly Plast as described below. For the price to the United States for NPG and Poly Plast, we used export price (EP) as defined in section 772(a) of the Act. We calculated EP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. See section 772(c) of the Act. We made deductions, as appropriate, for discounts and rebates. See section 772(d) of the Act. We also made deductions for any movement expenses

<sup>3</sup> We determined that KYD had not justified many of its requests for proprietary treatment of the information in its January 25 submission. On April 1, 2008, we requested that KYD re-submit its document with adequate or revised claims for proprietary treatment of its information. KYD re-submitted the document on April 8, 2008.

in accordance with section 772(c)(2)(A) of the Act.

#### Comparison-Market Sales

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by NPG in Thailand was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. NPG's quantity of sales in Thailand was greater than five percent of its quantity of sales to the U.S. market. See section 773(a)(1)(c) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like product was first sold for consumption in Thailand in the usual commercial quantities and in the ordinary course of trade and at the same level of trade as the U.S. sales.

Poly Plast did not have a viable home market within the meaning of section 773(a)(1)(B)(ii)(II) of the Act. Poly Plast reported its quantities of sales in third-country markets and we determined that Angola was a viable third-country market for Poly Plast under section 773(a)(1)(C) of the Act. Therefore, we based normal value for Poly Plast's U.S. sales on the prices at which the foreign like product was first sold for consumption in Angola in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the U.S. sales. See section 773(a)(1)(C) of the Act.

#### Cost of Production

In accordance with section 773(b) of the Act, we disregarded the below-cost sales of NPG in the most recently completed administrative review of this company. See *2005–2006 Final Results*. Therefore, we have reasonable grounds to believe or suspect that NPG's sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we have conducted a COP analysis of NPG's sales in the comparison market in this review.

The petitioners in this proceeding filed an allegation that Poly Plast made sales in the comparison market at prices below the COP. Based on the information in the allegation, we found that we had reasonable grounds to

believe or suspect that sales of the foreign like product were made by Poly Plast at prices that are less than the COP of the product. See section 773(b)(2)(4)(i) of the Act and Memorandum entitled “Administrative Review of Antidumping Duty Order on Polyethylene Retail Carrier Bags from Thailand: Request to Initiate Cost Investigation for Poly Plast (Thailand) Co., Ltd.,” dated March 4, 2008. Therefore, pursuant to section 773(b)(1) of the Act, we conducted a COP investigation of sales made by Poly Plast in its comparison market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the comparison-market sales and COP information provided by each respondent in its questionnaire responses. We made some adjustments to the COP information based on our findings at the cost verifications of NPG and Poly Plast. These adjustments are detailed in Memoranda to Neal Halper entitled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Naraipak Co., Ltd.” and “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Poly Plast (Thailand) Co., Ltd.,” dated September 2, 2008.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether comparison-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. We compared model-specific COPs to the reported comparison-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to

sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. See the Department's analysis memoranda for Poly Plast and NPG, dated September 2, 2008. Based on this test, we disregarded below-cost sales with respect to Poly Plast and NPG.

#### Model-Match Methodology

We compared U.S. sales with sales of the foreign like product in the comparison market. Specifically, in making our comparisons, we used the following methodology. If an identical comparison-market model was reported, we made comparisons to weighted-average comparison-market prices that were based on all sales which passed the COP test of the identical product during the relevant or contemporaneous month. We calculated the weighted-average comparison-market prices on a level of trade-specific basis. If there were no contemporaneous sales of an identical model, we identified the most similar comparison-market model. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondents in the following order of importance: (1) quality; (2) bag type; (3) length; (4) width; (5) gusset; (6) thickness; (7) percentage of high-density resin; (8) percentage of low-density resin; (9) percentage of linear low-density resin; (10) percentage of color concentrate; (11) percentage of ink coverage; (12) number of ink colors; and (13) number of sides printed.

#### Normal Value

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices. See 19 CFR 351.403(c). Where affiliated-party sales were reported, we excluded from our analysis sales to affiliated customers for consumption in the comparison market that we determined not to be at arm's-length prices. To test whether these sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices

charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (explaining the Department's practice). We included those sales to affiliated parties that were made at arm's-length prices in our calculations of normal value.

Comparison-market prices were based on the packed, ex-factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting comparison-market direct selling expenses from and adding U.S. direct selling expenses to normal value. We also made adjustments, if applicable, for comparison-market indirect selling expenses to offset U.S. commissions in EP calculations.

With respect to NPG, we found at the sales verification that commissions it had reported for sales made by Naraipak through an affiliated selling agent were not based on selling expenses actually incurred by the agent. Thus, we have not accepted NPG's claim for a commission on these sales. In addition, we have not accepted bank charges for numerous home-market Naraipak sales that NPG first submitted to the Department as a minor correction at the sales verification. NPG asserted that, until that point, it had inadvertently omitted these charges from its reported home-market sales data. Because we find these charges to constitute untimely-filed new factual information, we have not accepted them in our calculation of normal value. Similarly, NPG submitted revised packing costs for Naraipak's home-market sales as a minor correction at the sales verification, asserting that it had inadvertently failed to update the packing costs at the time it filed revised cost data for a supplemental questionnaire due prior to the start of verification. We have not accepted these revised packing costs, which we find to

be untimely-filed new factual information.

With respect to Poly Plast, we found at verification, that 1) although it did not claim an adjustment to normal value, Poly Plast incurred foreign bank charges for a number of third-country sales and 2) Poly Plast claimed certain export charges in more than one data field for all third-country sales made in 2007, which resulted in Poly Plast either double-counting or partially double-counting these expenses for the sales in question. See Poly Plast verification report, dated June 23, 2008, at page 13–15. Poly Plast had the documents necessary to report the correct foreign bank charges and certain export charges for its third-country sales. See Poly Plast verification report at exhibits 6, 7, and 11, which include documentation such as bills for terminal handling charges and bill-of-lading document fees, loading-certificate invoices, and broker's invoices. We used these documents to ascertain the actual foreign bank charges and actual export charges for the third-country sales we examined in detail. Because foreign bank charges and certain export charges vary by invoice, however, we do not have complete and accurate information pertaining to these expenses. Further, with respect to certain export charges, there is no way to distinguish these expenses from the other expenses (*i.e.*, brokerage and handling expenses) with which they were comingled and reported. Because there is no information on the record that enables us to calculate the expenses in question, we have not made the claimed adjustment for certain export charges Poly Plast reported for all third-country sales made in 2007.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value at the same level of trade as the EP sales. See the *Level of Trade* section below.

#### Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no comparable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, U.S. packing expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the

ordinary course of trade for consumption in the comparison market.

As a result of findings at the cost verifications, we made some adjustments to the constructed-value information provided by NPG and Poly Plast. These adjustments are detailed in the Memoranda to Neal Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Naraipak Co., Ltd.," and "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Poly Plast (Thailand) Co., Ltd.," dated September 2, 2008.

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

We calculated constructed value at the same level of trade as the EP.

#### Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales. The normal-value level of trade is that of the starting-price sales in the comparison market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether comparison-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

Neither NPG nor Poly Plast reported any significant differences in selling functions between different channels of distribution or customer type in either their comparison or U.S. markets. Therefore, we determined that all comparison-market sales were made at one level of trade for each company. Moreover, we determined that all comparison-market sales of the companies were made at the same level of trade as EP sales.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average dumping margins on PRCBs from

Thailand exist for the period August 1, 2006, through July 31, 2007:

Producer/Exporter	Percent Margin
King Pac (aka King Pak) .....	122.88
Master Packaging .....	122.88
NPG .....	1.84
Poly Plast .....	8.84

#### Comments

We will disclose the calculations used in our analysis 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. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the case and rebuttal 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). If requested, any hearing 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 or at the hearing, if held, not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have

calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review.

With respect to sales by NPG and Poly Plast, for these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each exporter's 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 in each of that importer's/customer's entries during the review period.

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 POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their 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*.

For companies for which we are relying on total AFA to establish a dumping margin, we will instruct CBP to apply the assigned dumping margins to all entries of subject merchandise during the POR that were produced or exported by the companies.

We will issue liquidation instructions 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 the notice of final results of administrative review for all shipments of PRCBs from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, 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 2.80 percent, the all-others rate for this proceeding. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importer

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 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.

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

Dated: September 2, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-20928 Filed 9-8-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-810]

#### Stainless Steel Bar From India: Notice of Final Results of Antidumping Duty Administrative Review

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

**SUMMARY:** On March 7, 2008, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar ("SSB") from India. This review covers sales of SSB from India with respect to two producers/exporters: D.H. Exports Pvt. Ltd. ("DHE") and Sunflag Iron & Steel Co. Ltd. ("Sunflag"), during the period February 1, 2006, through January 31, 2007.

We have noted the changes made since the preliminary results in the "Changes Since the Preliminary Results" section, below. The final results are listed below in the "Final Results of Review" section.

**DATES:** *Effective Date:* September 9, 2008.

**FOR FURTHER INFORMATION CONTACT:** Devta Ohri or Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3853 and (202) 482-1279, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 21, 1995, the Department published in the **Federal Register** the antidumping duty order on SSB from India. *See Antidumping Duty Orders: Stainless Steel Bar From Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On February 2, 2007, the Department published a notice in the **Federal Register** providing an opportunity for interested parties to request an administrative review of this order for the period February 1, 2006, through January 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 72 FR 5007 (February 2, 2007). The Department published in the **Federal Register** the preliminary results of this review on March 7, 2008. *See Stainless Steel Bar From India: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12382 (March 7, 2008) ("Preliminary Results"). On March 20, 2008, the Department published a correction notice to the Preliminary Results. *See Stainless Steel Bar From India: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 15049 (March 20, 2008).

Following the Preliminary Results, the Department issued two supplemental questionnaires to both DHE and Sunflag. The Department received DHE's responses on March 20, 2008, and April 2, 2008. The Department received Sunflag's responses on April 2, 2008, and July 7, 2008. On June 24, 2008, the Department published a notice extending the deadline for these final results to September 3, 2008. *See Stainless Steel Bar From India: Notice of Extension of Time Limit for the Final Results of the 2006-2007 Antidumping Duty Administrative Review*, 73 FR 35639 (June 24, 2008).

We invited interested parties to comment on the Preliminary Results. On July 16, 2008, the Petitioners<sup>1</sup> and

DHE submitted case briefs.<sup>2</sup> In its case brief, DHE requested that the Department consider the purchase order date as the U.S. date of sale, rather than the invoice date. To support this request, DHE provided the Department with unsolicited new information in the form of a revised U.S. sales database containing purchase order dates for its U.S. sales. On July 17, 2008, the Petitioners filed a rebuttal brief. The Petitioners requested that the Department reject and return to DHE the new factual information submitted in its case brief. According to the Petitioners, the Department did not request this new date of sale information and the deadline for the submission of new factual information had passed, as per 19 CFR 351.301(b)(2). On July 17, 2008, the Department rejected DHE's case brief because it contained unsolicited new factual information. *See* July 17, 2008, Letter from Brandon Farlander to DHE, which is on file in the Central Records Unit ("CRU") in room 1117 of the main Department building. The Department instructed DHE to re-file its case brief excluding the unsolicited new factual information relating to purchase order date. DHE submitted its revised case brief, excluding the unsolicited new factual information, on July 21, 2008.

On July 22, 2008, Sunflag filed a rebuttal brief. On August 8, 2008, the Department rejected Sunflag's July 22, 2008 (dated July 19, 2008) rebuttal brief because it contained unsolicited new factual information relating to certain rent paid to affiliate Ridge Farm Developers. *See* August 8, 2008, Letter from Brandon Farlander to Sunflag, which is on file in the CRU in room 1117 of the main Department building. The Department instructed Sunflag to re-file its rebuttal brief excluding the unsolicited new factual information. On August 18, 2008, the Department received Sunflag's revised rebuttal brief, excluding the unsolicited new factual information.

#### Scope of the Order

Imports covered by the order are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross-section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished

<sup>1</sup> Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc.

<sup>2</sup> DHE incorrectly called this submission its "rebuttal brief."