

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-916]

Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances

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

EFFECTIVE DATE: June 24, 2008.

SUMMARY: On January 31, 2008, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of laminated woven sacks ("LWS") from the People's Republic of China ("PRC"). The period of investigation ("POI") is October 1, 2006, to March 31, 2007. We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculations for the mandatory respondents. We determine that LWS from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2243.

SUPPLEMENTARY INFORMATION:**Case History**

The Department published its preliminary determination of sales at LTFV on January 31, 2008. See *Laminated Woven Sacks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 5801 (January 31, 2008) ("Preliminary Determination").

We issued Aifudi¹ and SSJ² additional supplemental questionnaires on January 28, 2008, and January 31, 2008,

respectively. We received Aifudi's response on February 29, 2008. On February 15, 2008, SSJ submitted a letter stating that it was not responding to the questionnaire.

Between March 31 and April 11, 2008, the Department conducted verifications of Aifudi and its constructed export price (CEP) entities. See the "Verification" section below for additional information.

We invited parties to comment on the *Preliminary Determination*. On May 14, 2008, Petitioners and Aifudi filed case briefs. On May 19, 2008, Petitioners³ and Aifudi submitted rebuttal briefs.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Laminated Woven Sacks from the People's Republic of China: Issues and Decision Memorandum," dated June 16, 2008 ("Issues and Decision Memorandum"), which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 1217, and is accessible on the Web at <http://www.trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination and Amended Preliminary Determination

Based on our analysis of information on the record of this investigation, and comments received from the interested parties, we have made changes to the margin calculations for Aifudi. For SSJ, see Use of Facts Available section below. For Aifudi, we have determined that printing cylinders are not a factor of production, and should be treated as factory overhead. For further details, see Issues and Decision Memorandum at Comment 1. We have also revalued several of the surrogate values used in the *Preliminary Determination*. The values that were modified for this final determination are the surrogate financial ratios and the wage rate. For further details, see Issues and Decision Memorandum at Comments 2 and 4, and Memorandum to the File from Javier Barrientos, through Alex

Villanueva, Program Manager, AD/CVD Operations, Office 9, and James C. Doyle, Director, AD/CVD Operations, Office 9: Laminated Woven Sacks from the People's Republic of China: Surrogate Values for the Final Determination, dated June 16, 2008 ("Final Surrogate Value Memo").

In addition, we have incorporated, where applicable, post-preliminary clarifications based on verification and made certain clerical error corrections for Aifudi. For further details on these company-specific changes, see Issues and Decision Memorandum at Comments 8 and 9; see also Memorandum to the File from Javier Barrientos, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9: Laminated Woven Sacks from the People's Republic of China: Analysis of Zibo Aifudi Plastic packaging Co., Ltd., for the Final Determination, dated June 16, 2008 ("Aifudi Final Analysis Memo").

Scope of Investigation

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;⁴ printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric

¹ Zibo Aifudi Plastic Packaging Co., Ltd. ("Aifudi").

² Shouguang Jianyuanchun Co., Ltd. ("SSJ").

³ The Laminated Woven Sacks Committee and its individual members, Bancroft Bags, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid America Packaging, LLC, and Polytex Fibers Corporation.

⁴ "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (“the Act”), provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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

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 will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time

limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (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.

Furthermore, section 776(b) of the Act states 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 from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” See also *Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA)*, H.R. Rep. No. 103-316, Vol. 1 at 870 (1994).

For this final determination, in accordance with sections 776(a)(2)(A) through (D) of the Act, we have determined that the use of adverse facts available (“AFA”) is warranted for SSJ because of its refusal to answer the Department’s supplemental questionnaire. See Issues and Decision Memorandum at Comment 7. As total AFA, we are applying the petition rate to SSJ.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Aifudi for use in our final determination. See Aifudi Verification Report. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) it is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3)

we have reliable data from India that we can use to value the factors of production. See *Preliminary Determination*. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving non-market-economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department’s policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“Sparklers”), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“Silicon Carbide”), and Section 351.107(d) of the Department’s regulations. In the *Preliminary Determination*, we found that Aifudi, SSJ, and the separate rate applicants who received a separate rate (“Separate Rate Applicants”) demonstrated their eligibility for separate-rate status. For all the same reasons, in the final determination, we continue to find that the evidence placed on the record of this investigation by Aifudi and the Separate Rate Applicants demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate rate status. With respect to SSJ, because SSJ refused to answer our supplemental questionnaires and stopped participating in the investigation, its responses, including its eligibility for separate status, were incomplete and could not be verified. Accordingly, we now consider SSJ part of the PRC-wide entity. Moreover, the Department’s application of facts available to SSJ contributes to the application of facts available applied against the PRC-wide entity, as described herein.

The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that certain companies and the PRC-wide entity did not respond to our requests information. In the *Preliminary Determination*, we

treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC-wide entity, including SSJ for this final determination, has not provided the Department with the requested information; therefore, pursuant to sections 776(a)(2)(A) through (D) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also, SAA at 870. We determined that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within

a NME country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate - the PRC-wide rate - to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for Aifudi and the Separate Rate Applicants which are listed in the "Final Determination Margins" section below.

Critical Circumstances

In the *Preliminary Determination*, we found that there had been massive imports of the subject merchandise over a relatively short period for Aifudi and the Separate Rate Applicants. In addition, we found that there had not been massive imports of the subject merchandise over a relatively short period for SSJ and the PRC-wide entity. In the *Preliminary Determination*, we relied on a comparison period of four months, which was the maximum duration for the information we had available at that time, for determining whether imports of the subject merchandise were massive.

For the final determination, however, we collected an additional three months of data from Aifudi. After analyzing the

additional data, we continue to find that Aifudi and the Separate Rate Applicants had massive imports of LWS over a relatively short period of time. See Memorandum to the File from Javier Barrientos, Senior Case Analyst: Critical Circumstances Data for the Final Determination of Antidumping Duty Investigation of Laminated Woven Sacks from the People's Republic of China, dated June 16, 2008, at Attachment I ("CC MTF"). In reviewing the data, we find no reason to believe that the HTS categories used in this case are overly broad for this purpose. Additionally, we find that the PRC-wide entity (including SSJ) did not have massive imports of LWS over a relatively short period of time. *Id.*

Corroboration

Pursuant to section 776(c) of the Act, we corroborated the petition rate of 91.73 percent by comparing the petition margin to the individual CONNUM margins for Aifudi. See Aifudi Final Analysis Memorandum at Attachment I. We found that since the petition margin of 91.73 percent was within the range of CONNUM margins, we find that the margin of 91.73 percent has probative value. Accordingly, we find that the rate of 91.73 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Exporter	Producer	Weight Average Margin
ZIBO AIFUDI PLASTIC PACKAGING CO., LTD.	ZIBO AIFUDI PLASTIC PACKAGING CO., LTD.	64.28%
POLYWELL INDUSTRIAL CO., a.k.a. FIRST WAY (H.K.) LIMITED	POLYWELL PLASTIC PRODUCT FACTORY	64.28%
ZIBO LINZI WORUN PACKING PRODUCT CO., LTD.	ZIBO LINZI WORUN PACKING PRODUCT CO., LTD.	64.28%
SHANDONG QIKAI PLASTICS PRODUCT CO., LTD.	SHANDONG QIKAI PLASTICS PRODUCT CO., LTD.	64.28%
CHANGLE BAODU PLASTIC CO. LTD.	CHANGLE BAODU PLASTIC CO. LTD.	64.28%
ZIBO LINZI SHUAIQIANG PLASTICS CO. LTD.	ZIBO LINZI SHUAIQIANG PLASTICS CO. LTD.	64.28%
ZIBO LINZI QITIANLI PLASTIC FABRIC CO. LTD.	ZIBO LINZI QITIANLI PLASTIC FABRIC CO. LTD.	64.28%
SHANDONG YOULIAN CO. LTD	SHANDONG YOULIAN CO. LTD	64.28%
ZIBO LINZI LUITONG PLASTIC FABRIC CO. LTD.	ZIBO LINZI LUITONG PLASTIC FABRIC CO. LTD.	64.28%
WENZHOU HOTSON PLASTICS CO. LTD	WENZHOU HOTSON PLASTICS CO. LTD	64.28%
JIANGSU HOTSON PLASTICS CO. LTD.	JIANGSU HOTSON PLASTICS CO. LTD.	64.28%
CANGNAN COLOR MAKE THE BAG	CANGNAN COLOR MAKE THE BAG	64.28%
ZIBO QIGAO PLASTIC CEMENT CO. LTD	ZIBO QIGAO PLASTIC CEMENT CO. LTD	64.28%
PRC-WIDE RATE		91.73%

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

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

Protection ("CBP") to continue to suspend liquidation of all entries of subject merchandise from the PRC-wide

entity entered, or withdrawn from warehouse, for consumption on or after January 31, 2008, the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

The Department continues to find that critical circumstances exist for Aifudi and the Separate Rate Applicants and therefore we will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from Aifudi and the Separate Rate Applicants entered, or withdrawn from warehouse, for consumption on or after November 2, 2007, which is 90 days prior to the date of publication of the preliminary determination. CBP shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

In accordance with the preliminary affirmative determination of critical circumstances, we instructed CBP to suspend liquidation of all entries of the subject merchandise for Aifudi, which were entered or withdrawn from warehouse, on or after November 2, 2007, which is 90 days prior to January 31, 2008, the date of publication of the Preliminary Determination in the **Federal Register**. Because we do not find critical circumstances for the PRC-wide entity, including SSJ, for this final determination, we will instruct CBP to terminate suspension of liquidation, and release any cash deposits or bonds, on imports with respect to SSJ during the 90 day period prior to the date of publication of the *Preliminary Determination*.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 16, 2008.

Stephen Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I

Comment 1: Printing Cylinders
Comment 2: Ink Surrogate Value
Comment 3: BOPP Surrogate Value
Comment 4: Labor Surrogate Value
Comment 5: Boxes Surrogate Value
Comment 6: Surrogate Financial Ratios
Comment 7: Total AFA for SSJ
Comment 8: Billing Adjustments
Comment 9: Conversion Factor for Certain Inputs

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