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Department Of Commerce
International Trade Administration
(C-552-805)

Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative
Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Department) has determined that countervailable
subsidies are being provided to producers and exporters of polyethylene retail carrier bags
(PRCBs) from the Socialist Republic of Vietnam (Vietnam). For information on the estimated
countervailing duty rates, please see the "Suspension of Liquidation" section, below.

EFFECTIVE DATE: (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Jun Jack Zhao, AD/CVD
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Case History

The following events have occurred since the announcement of the preliminary
determination, which was published in the Federal Register on September 4, 2009. See
Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary
Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty
Determination with Final Antidumping Duty Determination, 74 FR 45811 (September 4, 2009)
(Preliminary Determination).

The Department issued a second supplemental questionnaire to the government of
Vietnam (GOV), Advance Polybag Co., Ltd. (API), Chin Sheng Company, Ltd. (Chin Sheng),

and Fotai Vietnam Enterprise Corporation and Fotai Enterprise Corporation (collectively, Fotai). The Department received responses to these questionnaires on October 7, 2009 from API, on October 14 from Chin Sheng and the GOV, and on October 16 from Fotai. A third supplemental questionnaire was subsequently issued to the GOV only. The GOV submitted a response on October 26. Public versions of the questionnaires and responses, as well as the various memoranda cited below, are available at the Department's Central Records Unit (Room 1117 in the HCHB Building) (hereafter referred to as "CRU"). Also on October 26, new factual information was submitted by Hilex Poly Co., LLC and Suberbag Corporation (collectively, Petitioners), the GOV, and Fotai. On October 21, 2009, the Department was informed by API that it was no longer participating in the investigation. See the October 21, 2009 Letter to the Secretary of Commerce, "Countervailing Duty Investigation Involving Polyethylene Retail Carrier Bags from Vietnam."

From November 2 through November 18, 2009, we conducted verification of the questionnaire responses submitted by the GOV, Chin Sheng and Fotai. We issued verification reports on January 4, 2010. See Memorandum to the File, "Verification of the Questionnaire Responses Submitted by the Government of Vietnam," and Memoranda to Mark Hoadley, Program Manager, AD/CVD Operations, Office 6, "Verification of the Questionnaire Responses Submitted by Chin Sheng Company, Ltd.," and "Verification of the Questionnaire Responses Submitted by Fotai Vietnam Enterprise Corporation." On January 11, 2010, we issued a report regarding discussions held with third party experts concerning banking in Vietnam. See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Private Experts Meeting on Vietnam's Banking Sector."

We received case briefs from Petitioners, the GOV, Chin Sheng and Fotai on January 25, 2010, and rebuttal briefs from Petitioners, the GOV, and Fotai on February 1, 2010. On January 27, 2010, Petitioners withdrew their request for a hearing, submitted on October 5, 2009.

On February 12, 2010, the Department exercised its discretion to toll Import Administration 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 were extended by seven days. See Memorandum to the Record from Ronald Lorentzen, Deputy Assistant Secretary for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,” dated February 12, 2010.” Based on this memorandum, the deadline for this final determination was changed from March 18, 2010 to March 25, 2010.

Scope of the Investigation

The scope of this investigation covers polyethylene retail carrier bags, which also 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 this investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, e.g., garbage bags, lawn bags, trash-can liners.

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

Injury Test

Because Vietnam is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from Vietnam materially injure, or threaten material injury to, a United States industry. On May 29, 2009, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from Vietnam of subject merchandise. See Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam; Determinations, 74 FR 25771 (May 29, 2009); and Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam (Preliminary), USITC Pub. 4080, Inv. Nos. 701-TA-462 and 731-TA-1156-1158 (May 2009).

Period of Investigation

The period for which we are measuring subsidies, i.e., the period of investigation (POI), is January 1, 2008 through December 31, 2008.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by Petitioners, the GOC, Chin Sheng and Fotai are addressed in the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam” (March 25, 2010) (hereafter referred to as the “Decision Memorandum”), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. Parties can find this public memorandum in the Department’s CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at <http://ia.ita.doc.gov/ia-highlights-and-news.html> or <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Application of Adverse Facts Available

For purposes of this final determination, we relied on adverse facts available (AFA) in accordance with sections 776(a) and (b) of the Act to determine the total countervailable subsidy rate for API. We also relied on AFA to determine the countervailable subsidy rate for Fotai for one of the programs under investigation. A full discussion of our decision to apply AFA is presented in the Decision Memorandum in the section “Application of Facts Otherwise Available and AFA to API and Fotai.”

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for Chin Sheng and Fotai, and assigned an AFA rate to API. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates based entirely on AFA under section 776 of the Act. Since API's rate is based entirely on AFA and since Chin Sheng's rate is de minimis, the all others rate is the rate calculated for Fotai.

<u>Producer/Exporter</u>	<u>Net Subsidy Rate</u>
Advance Polybag Co., Ltd.	52.56%
Chin Sheng Company, Ltd.	0.44% (<u>de minimis</u>)
Fotai Vietnam Enterprise Corp. And Fotai Enterprise Corporation	5.28%
All Others	5.28%

Although suspension of liquidation was required on the date of publication of the Preliminary Determination, we subsequently instructed U.S. Customs and Border Protection, pursuant to section 703(d) of the Act, to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after January 2, 2010, but to continue the suspension of liquidation of entries made on or after September 4, 2009 through January 1, 2010.

If the ITC issues a final affirmative injury determination, we will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act. We will then require a cash deposit of estimated countervailing duties for entries of subject merchandise

in the amounts indicated above, except for Chin Sheng, which would be excluded from an order because it has a de minimis rate. This exclusion will apply only to subject merchandise both produced and exported by Chin Sheng. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or

conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the

Act.

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date

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