

DATE: May 13, 2009

MEMORANDUM TO: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Barbara E. Tillman
Director
AD/CVD Operations, Office 6

Mark Hoadley
Program Manager
AD/CVD Operations, Office 6

FROM: Gene H. Calvert
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AD/CVD Operations, Office 6

SUBJECT: Selection of Respondents for the Countervailing Duty
Investigation of Polyethylene Retail Carrier Bags from the
Socialist Republic of Vietnam

Background

On April 20, 2009, the Department of Commerce (the Department) initiated the countervailing duty (CVD) investigation of Polyethylene Retail Carrier Bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam).¹ In the Initiation Notice, we stated that we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the Harmonized Tariff Schedule of the United States (HTSUS) number 3923.21.0085 during the period of investigation (POI) (i.e., calendar year 2008). We released the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO on April 22, 2009,² and invited comments on these CBP data in the Initiation Notice.³

¹ See Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law to Imports From the Socialist Republic of Vietnam, 74 FR 19064 (April 27, 2009) (Initiation Notice).

² See Memorandum to the File, Countervailing Duty Investigation of Polyethylene Retail Carrier Bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam): CBP Entry Data (April 22, 2009).

The Department received comments from Advance Polybag Co., Ltd. (Advance Polybag), and Fotai Vietnam Enterprise Corporation Limited (Fotai),⁴ both of which are Vietnamese producers/exporters of subject merchandise. The discussion below constitutes our analysis concerning the selection of company respondents for the subject CVD investigation.

Issue 1: Limitation of the Number of Respondents to Be Investigated

Section 777A(e)(1) of the Tariff Act of 1930, as amended (the Act), directs the Department to calculate individual countervailable subsidy rates for each exporter and producer of the subject merchandise. However, when faced with a large number of producers/exporters, section 777A(e)(2) of the Act provides the Department with discretion to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies.

In their petition,⁵ Hilex Poly Co., LLC and Superbag Corporation (collectively, petitioners) named 66 producers/exporters of the foreign like product.⁶ These same 66 producers/exporters were also named in the Department's Initiation Checklist.⁷ Additionally, we obtained import data from CBP with respect to U.S. imports of the subject merchandise from Vietnam during 2008.⁸ From these data, we identified [] possible producers/exporters of subject merchandise imported into the United States from Vietnam during 2008. In its comments, Advance Polybag suggested that the Department should investigate the top four or five Vietnamese producers/exporters by import volume, to ensure the respondent pool accounts for a significant percentage of total imports into the United States during the POI. Fotai suggested that the Department should limit its selection to the top six Vietnamese producers/exporters, which cover [] of the total quantity of imports from Vietnam during the POI. Also, Fotai argued that such a selection would be more likely to include both foreign-invested enterprises and domestically owned companies, and that the existence or use of any of the alleged countervailable subsidies will likely vary by type of company.

³ See Initiation Notice, 74 FR at 19068.

⁴ See Letter from Advance Polybag Co., Ltd. to the Secretary of Commerce regarding PRCBs from Vietnam (April 24, 2009); see also Letter from Fotai Vietnam Enterprise Corporation Limited to the Secretary of Commerce regarding PRCBs from Vietnam (May 4, 2009).

⁵ See Petition For The Imposition of Antidumping Duties Against Polyethylene Retail Carrier Bags from Indonesia, Taiwan, And Vietnam And Countervailing Duties Against Polyethylene Retail Carrier Bags From Vietnam, from Hilex Poly Co., LLC and Superbag Corporation to the Secretary of Commerce (March 31, 2009) (Petition).

⁶ See Letter from Hilex Poly Co., LLC and Superbag Corporation to the Secretary of Commerce regarding PRCBs from Vietnam (April 16, 2009) at Revised Exhibit II-6/III-12.

⁷ See Office of AD/CVD Enforcement Initiation Checklist for the Countervailing Duty Petition on Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam (April 20, 2009) (Initiation Checklist).

⁸ The Department treats information obtained from this source as business proprietary information. Attachment I lists the names of producers/exporters that exported subject merchandise to the United States during the POI, and their respective volumes of exports. These data were compiled using the HTSUS subheading 3923.21.0085.

In examining Advance Polybag's and Fotai's comments, we note that both companies' ranking of the top Vietnamese producers/exporters is consistent with the results of the Department's analysis.

Analysis

After careful consideration of the office's resources, we find that it would not be possible to examine [] producers/exporters of subject merchandise in this investigation. In addition to this investigation, Office 6 is currently involved in the CVD investigations of certain tow-behind lawn groomers and certain parts thereof from the People's Republic of China (PRC), and commodity matchbooks from India. In addition, Office 6 is also involved in numerous administrative reviews, including multiple reviews of fresh garlic from the PRC, uranium from France, and chlorinated isocyanurates from Spain. We are also conducting several new shipper reviews and participating in several World Trade Organization proceedings. Moreover, other offices within Import Administration do not have additional resources to assist Office 6 with this investigation. Based on our analysis of the allegations and the workload required for this investigation, we find that we have the resources to examine no more than three producers that export PRCBs from Vietnam to the United States. We do not have the resources to examine the top four, five or six producers as suggested by the comments we received. We also note that it has not been the Department's policy to target certain types of enterprises or to consider the "mix" of enterprises we are selecting.

Issue 2: Selection of Mandatory Company Respondents

Background

A. Applicable Statutory Provision

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(e)(2)(A) of the Act permits us to investigate: 1) a sample of exporters, producers or types of products that is statistically valid based on the information available at the time of selection; or 2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined.

B. Information on the Record

In order to determine the total and relative volume and value data for each potential respondent, the Department reviewed CBP entry data for 2008, the POI. From these data, the Department combined entries that had similar information listed under company name, manufacturer identification number, and address. The Department generated a list, ranking each potential respondent based on its volume of subject merchandise exported to the United States.⁹

⁹ See Attachment II.

C. Analysis

In a case where it is not practicable to make individual CVD determinations for each known exporter/producer of the subject merchandise, section 777A(e)(2)(A) of the Act does not require the Department to meet a minimum threshold in determining the number of mandatory company respondents. Instead, the Act allows the Department to limit the examination to a reasonable number of companies if it is not practicable to examine all companies.

After carefully considering the import volume data, the complexity of the issues involved, and the Department's available resources, we conclude that the office responsible for this investigation has the resources to investigate three companies. Our analysis of the CBP import data indicates that the top two Vietnamese producers/exporters accounted for a significant percentage of the volume of subject merchandise imported to the United States during the POI. While selecting the top two Vietnamese producers/exporters as mandatory company respondents would cover the companies that exported a significant percentage of subject merchandise, information on the record indicates that some plastics exporters only package their finished products in Vietnam, but that the PRCBs may be produced in another country.¹⁰ In this unique situation, the selection of three mandatory company respondents will increase the likelihood that we have selected at least two Vietnamese exporters that actually produce the product under investigation, and reduces the likelihood of the Department having to select an additional mandatory company respondent as our investigation proceeds. Thus, we find it appropriate to select the three largest (by volume) Vietnamese producers/exporters of the subject merchandise, pursuant to section 777A(e)(2)(A)(ii) of the Act.

Selecting the largest producers/exporters is preferable to a statistical sample that could result in covering a smaller portion of the actual exports during the POI. Furthermore, in order to select a statistically valid sample group, we would likely need to obtain additional information about such factors as product lines, degree of vertical integration, and sales channels. This would significantly delay the respondent selection process and compromise our ability to complete this investigation within the statutory deadlines. Moreover, none of the interested parties suggested that we select respondents on the basis of a statistical sample. Based upon the totality of the information on the record, and given the Department's available resources, the team has identified the top three publicly identifiable producers/exporters of subject merchandise as proposed respondents.¹¹ These companies are, in alphabetical order, Advance Polybag Co., Ltd., Chin Sheng Co., Ltd., and Fotai Vietnam Enterprise Corporation.

¹⁰ See Petition, at Exhibit 3.

¹¹ See Attachment III.

Issue 3: Voluntary Respondents

Background

Section 782(a) of the Act directs the Department to calculate individual countervailable subsidy rates for companies that voluntarily provide information, except where the calculation of subsidy rates for such respondents would be unduly burdensome.

Analysis

Because the office’s resources will only be able to sustain an investigation of three respondents in this investigation, we do not intend to examine voluntary respondents in this investigation, unless a mandatory respondent chooses not to participate. Because at this point of time, the Department does not know whether all the mandatory respondents will participate, we are not foreclosing the opportunity for other producers/exporters to be considered as voluntary respondents. If a producer/exporter would like to be considered as a voluntary respondent, it must meet filing deadlines for all requests for information (and otherwise comply with all other regulatory deadlines).

Recommendation

We recommend investigating Advance Polybag Co., Ltd., Chin Sheng Co., Ltd., and Fotai Vietnam Enterprise Corporation, the three largest (by volume) publicly identifiable Vietnamese producers/exporters of subject merchandise during the POI.

√

Agree

Disagree

/signed/

John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Date