

Dated: July 9, 2003.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration, Group III.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-886, A-557-813, A-549-821]

#### Initiation of Antidumping Duty Investigations: Polyethylene Retail Carrier Bags from The People's Republic of China, Malaysia, and Thailand

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

**EFFECTIVE DATE:** July 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Fred W. Aziz, Thomas Schauer, or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4023, (202) 482-0410 or (202) 482-4477, respectively.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On June 20, 2003, the Department of Commerce ("the Department") received a petition on imports of polyethylene retail carrier bags ("PRCBs") from The People's Republic of China ("the PRC"), Malaysia, and Thailand, filed in proper form by PCL Packaging, Inc., Sonoco Products Company, Superbag Corp., Vanguard Plastics, Inc., and Inteplast Group, Ltd. (referred to hereafter as "the petitioners"). On June 25, 2003, the Department requested additional information and clarification of certain areas of the petition. The petitioners filed supplements to the petition on June 30, 2003 and July 8, 2003.

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), the petitioners allege that imports of PRCBs from the PRC, Malaysia, and Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(c) of the Act. Furthermore, with respect to the antidumping duty investigations the

petitioners are requesting the Department to initiate, they have demonstrated sufficient industry support (see "Determination of Industry Support for the Petition" below).

#### Scope of Investigation

The merchandise subject to this investigation is 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 .035 inch (0.889 mm) and no less than .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). Polyethylene retail carrier bags are typically provided without any consumer packaging and free of charge by retail establishments (e.g., grocery, drug, convenience, department, specialty retail, and discount stores, and restaurants) to their customers to package and carry their purchased products. The scope of the petition excludes (1) polyethylene bags that are not printed with logos or store names and that are close-able 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 the subject merchandise are classified under statistical category 3923.21.0090 of the Harmonized Tariff Schedule of the United States. This subheading also covers products that are outside the scope of these investigations. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (62 FR 27296, 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import

Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination. Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (see section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.<sup>1</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

<sup>1</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988).