

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-916

Laminated Woven Sacks from the People's Republic of China: Initiation of Antidumping Duty Investigation

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

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

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3207.

INITIATION OF INVESTIGATION:

The Petition

On June 28, 2007, the Department of Commerce ("Department") received a petition concerning imports of laminated woven sacks ("LWS") from the People's Republic of China ("PRC") filed in proper form by 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 (collectively, "Petitioners"). See Petition on Laminated Woven Sacks from the People's Republic of China filed on June 28, 2007 ("Petition"). On July 2, and 11, 2007, the Department issued requests for additional information and clarification of certain areas of the Petition. Based on the Department's requests, the Petitioners filed additional information on July 9, and 12, 2007. The

period of investigation (“POI”) is October 1, 2006, through March 31, 2007. See 19 CFR 351.204(b).

In accordance with section 732(b) of the Tariff Act of 1930, as amended (“the Act”), the Petitioners allege that imports of LWS from the PRC 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 retarding the establishment of an industry in the United States, or that such an industry is materially injured or threatened with material injury by reason of such imports.

The Department finds that the Petitioners filed this Petition on behalf of the domestic industry because the Petitioners are interested parties as defined in section 771(9)(C), (E) and (F) of the Act, and have demonstrated sufficient industry support with respect to the antidumping duty investigation (see “Determination of Industry Support for the Petitions” section below).

Scope of Investigation

The merchandise covered by this investigation is laminated woven sacks. See Attachment I to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of Investigation

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 (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), 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 by August 7, 2007. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, attention Catherine Bertrand, room 4003. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of laminated woven sacks to be reported in response to the Department's antidumping questionnaire. For example, we are considering whether certain physical characteristics such as width, gusset, length, fabric thickness, coating thickness, film thickness, and total bag weight are relevant. This information will be used to identify the key physical characteristics of the subject merchandise in order for respondents to more accurately report the relevant factors of production.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use 1) as general product characteristics and 2) as the product reporting criteria. We note that it is not always appropriate to use all product characteristics as product reporting criteria. In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive non-proprietary comments at the above-referenced address by August 8, 2007, and

rebuttal comments must be received within 10 calendar days of the receipt of timely filed comments.

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: (i) at least 25 percent of the total production of the domestic like product; and (ii) 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. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

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 a 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 both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a 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 like product, such differences do not render the decision of either agency contrary to law. See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing Algoma Steel Corp. Ltd. v. United States, 688 F. Supp. 639, 644 (1988), aff'd 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

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).

With regard to the domestic like product, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that laminated woven sacks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the Antidumping Investigation Initiation Checklist: Laminated Woven Sacks from the People's Republic of China (PRC), Industry Support at Attachment II (Initiation Checklist), on file in the Central Records Unit, Room B-099 of the main Department of Commerce building.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as

such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See Section 732(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under 732(c)(4)(A)(i) because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under 732(c)(4)(A)(ii) because the domestic producers (or workers) who support the Petition account for 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. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act See Initiation Checklist at Attachment II (Industry Support).

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. See Initiation Checklist at Attachment II (Industry Support).

Allegations and Evidence of Material Retardation and of Material Injury and Causation

Section 733(a)(1)(B) of the Act states that the ITC “shall determine . . . whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise.” The Petitioners allege that imports of subject merchandise from the PRC have materially retarded the establishment of the domestic industry producing LWS. The Petitioners argue that U.S. producers of LWS have not stabilized

their operations and, therefore, a U.S. industry producing LWS has not been established. To support their argument, the Petitioners examine the five factors considered by the ITC to determine if an industry is established, as set forth in the ITC's Antidumping and Countervailing Duty Handbook. See Antidumping and Countervailing Duty Handbook (12th Ed.), USITC Pub. 3916 (April 2007). Furthermore, the Petitioners contend that their efforts to establish a domestic LWS industry have been thwarted by dumped imports of LWS from the PRC.

The Petitioners also allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). The Petitioners contend that the industry's injured condition is illustrated by lost sales, lost revenue, underselling and price depression or suppression, poor financial performance, capacity and depressed capacity utilization rate, and increased import penetration.

We have assessed the allegations and supporting evidence regarding material retardation and material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist at Attachment III (Injury).

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation on imports of LWS from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the checklist. See Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary

or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

Export Price

The Petitioners relied on two U.S. offers for LWS manufactured in the PRC and offered for sale in the United States. The two price offers were for a certain type of laminated woven sack falling within the scope of the Petition, for sale to the U.S. customer within the POI. The Petitioners deducted from the prices the costs associated with exporting and delivering the product, foreign inland freight costs, and foreign brokerage and handling. See Initiation Checklist. The Petitioners adjusted the U.S. price for foreign inland freight charges based on the methodology used by the Department in Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review, 72 FR 27287 (May 15, 2007) (“Hand Trucks”) See Petition at page 29. The Petitioners adjusted the U.S. price for foreign brokerage and handling based on Indian surrogate value data applied in Hand Trucks. See Petition at page 29.

Normal Value

The Petitioners stated that the PRC remains a non-market economy (“NME”) country and no determination to the contrary has yet been made by the Department. Recently, the Department examined the PRC’s market status and determined that NME status should continue for the PRC. See Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, Regarding The People’s Republic of China Status as a Non-Market Economy, dated May 15, 2006. (This document is available online at

<http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>.) In addition, in two recent investigations, the Department also determined that the PRC is an NME country. See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007), and Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The Petitioners selected India as the surrogate country arguing that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a level of economic development comparable to that of the PRC and is a significant producer and exporter of LWS. See Petition at page 23. Based on the information provided by the Petitioners, we believe that the use of India as a surrogate country is appropriate for purposes of initiation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection.

The Petitioners provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. However, because information regarding the factors of production consumed by Chinese producers is not available to the Petitioners, the Petitioners calculated NVs for each U.S. price discussed above based on consumption rates for producing LWS as experienced by U.S. producers. See Petition at page 22. The Petitioners use a U.S. producer's consumption figures, as actual factors of production for a Chinese company were not reasonably available. The Petitioners provide affidavits to support their NV calculation. See July 9, 2007, response at Exhibits B and C. Accordingly, we found the Petitioners' use of the production data to be reasonable.

For the NV calculations, the Petitioners were unable to obtain surrogate value figures contemporaneous with the POI for all material inputs, and accordingly relied upon the most recent information available. The sources of these data include the World Trade Atlas compilation of Indian import statistics, which provided data through November 2006 at the time the Petition was filed. See Petition at page 24. Where an input price reflected a period preceding the POI, the Petitioners adjusted it for inflation using the wholesale price index for India reported by the Reserve Bank of India. See id. To value the cost of electricity, the Petitioners used the identical methodology recently used by the Department in Hand Trucks. See Petition at page 15 and Exhibit 15. The Petitioners excluded those values from countries previously determined by the Department to be NME countries; imports into India from Indonesia, the Republic of Korea and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies, as well as imports from unspecified countries. See Hand Trucks accompanying

Issues and Decision Memorandum at Comment 23. The surrogate values used by the Petitioners for the material and packing inputs consist of information reasonably available to the Petitioners and are, therefore, acceptable for purposes of initiation.

With respect to the surrogate financial expenses, the Petitioners relied on the factory overhead, SG&A expenses and profitability of two Indian LWS producers, KG Petrochem, Ltd, and Dhoot Compack, Ltd., taken from the companies' most recently available annual reports that are closest to the POI. See Petition at page 28 and Exhibit 18. We find that the Petitioners' use of these two companies' information as the source for the surrogate financial expenses is appropriate for purposes of initiation.

Fair Value Comparisons

Based on the data provided by the Petitioners, there is reason to believe that imports of LWS from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for laminated woven sacks are 74.70 percent and 91.73 percent.

Initiation of Antidumping Investigations

Based upon the examination of the Petition on LWS from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of laminated woven sacks from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Separate Rates and Quantity and Value Questionnaire

The Department recently modified the process by which exporters and producers may obtain separate-rate status in NME investigations. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. The process requires the submission of a separate-rate status application. Based on our experience in processing the separate-rate applications in the following antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. See Initiation of Antidumping Duty Investigations: Certain Lined Paper Products From India, Indonesia, and the People's Republic of China, 70 FR 58374, 58379 (October 6, 2005); Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China, 70 FR 21996, 21999 (April 28, 2005); and Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea, 70 FR 35625, 35629 (June 21, 2005). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the Federal Register. The separate-rate application is due no later than September 17, 2007.

NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the PRC Petition. Although many NME exporters respond to the quantity and value information request, at times some exporters may not have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline. Therefore, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies that manufacture and export subject merchandise to the United States, as well as to manufacturers that produce the subject merchandise for companies that were engaged in exporting subject merchandise to the United States during the POI. The quantity and value data received from NME exporters is used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Attachment II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters no later than August 8, 2007. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the IA website: <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department will send the quantity and value questionnaire to those companies identified in Exhibit 4 of Volume I of the Petition and those identified by the NME government.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in the PRC investigation. The Separate Rates and Combination Rates Bulletin, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin, at 6.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, copies of the public version of the Petition have been provided to the representatives of the Government of the PRC. We will attempt to provide a copy of the public version of the Petition to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than August 13, 2007, whether there is a reasonable indication that imports of laminated woven sacks from the PRC are materially retarding the establishment of a U.S. industry, or whether such an industry is materially injured or threatened with material injury by reason of such imports. A negative ITC determination with respect to the investigation will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration

Date

Attachment I

Scope of the Antidumping Duty Investigation Laminated Woven Sacks from the People's Republic of China

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; 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;¹ 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; with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags 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 consisting of woven polypropylene strip and/or woven polypropylene 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, laminated woven sacks may be classifiable under HTSUS subheading 5903.90.2500 and 3921.19.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

¹ "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.

Attachment II

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) 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 and value of the subject merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (see scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period October 1, 2006, through March 31, 2007.

Market	Total Quantity <u>in Pieces</u>	Terms of Sale	Total Value
United States			

1. Export Price Sales			
2. a. Exporter Name b. Address c. Contact d. Phone No. e. Fax No.			
3. Constructed Export Price Sales			
4. Further Manufactured			
Total Sales			

Total Quantity:

- Please report quantity on a piece basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

- Please report all sales on the same terms (e.g., free on board).

Total Value:

- All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales:

- Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before importation into the United States.
- Please include any sales exported by your company directly to the United States;
- Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please **do not** include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

- Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.
- Please include any sales exported by your company directly to the United States;
- Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please **do not** include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured:

- Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.