

DEPARTMENT OF COMMERCE**International Trade Administration**

[C-552-805]

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

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

DATES: *Effective Date:* April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-1396 and (202) 482-3586, respectively.

SUPPLEMENTARY INFORMATION:**The Petition**

On March 31, 2009, the Department of Commerce (the Department) received a petition concerning imports of polyethylene retail carrier bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam) filed in proper form by Hilex Poly Co., LLC and Superbag Corporation (collectively, the petitioners), domestic producers of PRCBs. On April 6, 2009, the Department issued requests for additional information and clarification of certain areas of the Petition involving

countervailable subsidy allegations. *See* Letter from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, to the petitioners, "Petitions for the Imposition of Antidumping Duties on Polyethylene Retail Carrier Bags (PRCBs) from Indonesia, Taiwan, and Vietnam, and Countervailing Duties on Imports of PRCBs from Vietnam: Supplemental Questions on the Countervailing Duty Allegations, April 6, 2009." Based on the Department's request, the petitioners timely filed additional information concerning the Petition on April 8, 2009. The petitioners submitted a revised exhibit concerning domestic company shipments on April 10, 2009, and a revised list of all known Vietnamese producers and exporters of PRCBs that are believed to be benefitting from countervailable subsidies on April 16, 2009. During the consultations with the Government of Vietnam (GOV), *see* "Consultations" section below, the GOV presented a written statement and government publications in opposition of the countervailing duty Petition. On April 17, 2009, Bin Tay Import Export Production Services Joint Stock Company, Loc Cuong Trading Producing Co., Ltd., Ontrue Plastics Co., Ltd., (Vietnam) and Alta Company (collectively, Vietnamese producers) submitted comments on the level of industry support expressed in the Petition. On April 20, 2009, the petitioners submitted rebuttal comments to the GOV and Vietnamese producers concerning industry support. The GOV submitted additional government publications on April 16 and April 20, 2009.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that manufacturers, producers, or exporters of PRCBs in Vietnam received countervailable subsidies within the meaning of section 701 of the Act, and that imports materially injure, or threaten material injury to, 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, and the petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate (*see, infra*, "Determination of Industry Support for the Petition").

Period of Investigation

The anticipated period of investigation (POI) is calendar year 2008. *See* 19 CFR 351.204(b)(2).

Scope of the Investigation

The merchandise covered by this investigation is polyethylene retail carrier bags. *See* Attachment to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of the Investigation

As discussed in the preamble to the regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1117, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. 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.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Vietnam (the GOV) for consultations with respect to the countervailing duty Petition. The Department held these consultations on April 15, 2009. *See* Memorandum to the File, *Petition on Polyethylene Retail Carrier Bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam): Consultations with the Government of Vietnam (GOV)*, April 16, 2009 (Consultations Memo), on file in the CRU.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(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 702(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 section 702(c)(4)(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 U.S. 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 (CIT 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 PRCBs 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 Countervailing Duty Investigation Initiation Checklist: Countervailing Duty Petition on Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam (Initiation Checklist)*, at Attachment II (Analysis of Industry

Support for the Petition), on file in the CRU.

With regard to section 702(c)(4)(A) of the Act, in determining whether the petitioners have standing, (*i.e.*, those domestic workers and producers supporting 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), we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation" section above. To establish industry support, the petitioners provided their shipments of the domestic like product for the year 2008, and compared them to an estimate of shipments of the domestic like product for the entire industry. *See* Volume II of the Petition at Exhibit 3, and Supplement to the Petition, dated April 10, 2009. The petitioners argue that U.S. shipments of PRCBs are a reasonable proxy for U.S. production of PRCBs as most PRCBs are produced to order for specific retail customers, and that inventories that are maintained are typically small. *See* Volume II of the Petition at Exhibit 3. Based on the fact that total industry production data for the domestic like product for 2008 are not reasonably available, and that the petitioners have established that shipments are a reasonable proxy for production, we have relied upon shipment data for purposes of measuring industry support. For further discussion, *see Initiation Checklist* at Attachment II.

On April 15, 2009, the GOV, an interested party to this proceeding as defined in section 771(9)(B) of the Act, provided the Department with a written statement to accompany its remarks during consultations with the Department regarding the Petition. The first issue raised in this statement addresses the GOV's concerns that the petitioners may not meet the required threshold for standing. The Department placed the GOV's written statement on the record of the Petition. *See Consultations Memo*. Also, on April 17, 2009, we received submissions on behalf of Vietnamese producers of PRCBs, interested parties to this proceeding as defined in section 771(9)(A) of the Act, questioning the industry support calculation. *See Initiation Checklist*, at Attachment II (Analysis of Industry Support for the Petition). On April 20, 2009, the petitioners filed their reply to these challenges. For further discussion of all

of these submissions *see Initiation Checklist* at Attachment II (Analysis of Industry Support for the Petition).

The Department's review of the data provided in the Petition, supplemental submissions, other information on the record, and other information readily available to the Department, indicates that the petitioners have established industry support. Because the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Section 702(c)(4)(D) of the Act and *Initiation Checklist* at Attachment II. Nonetheless, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act 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. *See Initiation Checklist* at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act 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 702(b)(1) of the Act. *See Initiation Checklist* at Attachment II.

The Department finds that the petitioners filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. *See Initiation Checklist* at Attachment II.

Injury Test

Because Vietnam is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Vietnam materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of PRCBs from Vietnam are benefitting from countervailable subsidies and that such imports are causing, or threatening to cause, material injury to the domestic industries producing PRCBs. In addition, the petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act, as required by section 701(a)(1) of the Act.

The petitioners contend that the industries' injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production, reduced shipments, reduced employment, and an overall decline in financial performance. *See* the Petition at pages 13 and 17. We have assessed the allegations and supporting evidence regarding material injury, threat of 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*).

Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act, and (2) is accompanied by information reasonably available to the petitioners supporting the allegations. The Department has examined the countervailing duty Petition on PRCBs from Vietnam and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether producers and exporters of PRCBs from Vietnam receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see Initiation Checklist*.

We are including in our investigation the following programs alleged in the Petition to provide countervailable subsidies to producers and exporters of the subject merchandise:

A. Policy Lending Programs

1. Preferential Lending for Exporters
2. Preferential Lending for the Plastics Industry

B. Grant Programs

1. Export Promotion Program

- 2. Export Bonus Program
- 3. New Product Development Program
- C. Income Tax Programs
 - 1. Income Tax Preferences for Exporters
 - 2. Income Tax Preferences for Foreign Invested Enterprises (FIEs)
 - 3. Income Tax Preferences for FIEs Operating In Encouraged Industries
- D. Import Tax and Value Added Tax (VAT) Exemption Programs
 - 1. Import Tax Exemptions for FIEs Using Imported Goods to Create Fixed Assets
 - 2. Import Tax Exemptions for FIEs Importing Raw Materials
 - 3. VAT Exemptions for FIEs Using Imported Goods to Create Fixed Assets

For further information explaining why the Department is investigating these programs, see *Initiation Checklist*.

Application of the Countervailing Duty Law to Vietnam

This is the first countervailing duty Petition filed involving Vietnam. Vietnam has been treated as a non-market economy (NME) country in all past antidumping duty investigations and administrative reviews. See, e.g., Memorandum from Office of Policy, to Faryar Shirzad, Assistant Secretary, Import Administration, *Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam - Determination of Market Economy Status*, November 8, 2002 (this document is available online at <http://ia.ita.doc.gov/download/vietnam-nme-status/vietnam-market-status-determination.pdf>); see also *Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45738, 45739 (August, 6, 2008), unchanged in *Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 62479 (October 21, 2008). In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001-2002 Administrative Review and Partial Rescission of*

Review, 68 FR 70488 (December 18, 2003).

The petitioners contend that there is no statutory bar to applying countervailing duties to imports from non-market economy countries like Vietnam. Citing *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) (*Georgetown Steel*), the petitioners argue that the Court of Appeals for the Federal Circuit affirmed the Department's discretion regarding application of the countervailing duty law to NME countries.

Following its assessment of another NME country, the People's Republic of China (China), the Department, in its final affirmative countervailing duty determination on coated free sheet paper from China, determined that the current nature of the Chinese economy does not create obstacles to applying the necessary criteria in the countervailing duty law. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from the Office of Policy, Import Administration, *Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Whether the Analytical Elements of the Georgetown Steel Holding are Applicable to the PRC's Present-day Economy*, March 29, 2007 (*Georgetown Memo*); *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and the accompanying *Issues and Decision Memorandum at Comment 1*; see also *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying *Issues and Decision Memorandum at Comment 1*.

The petitioners argue that the Vietnamese economy, like China's economy, is substantially different from the Soviet-style economy investigated in *Georgetown Steel* and that the Department should not have any special difficulties in the identification and valuation of subsidies involving a non-market economy like Vietnam. Finally, the petitioners contend that Vietnam's economy significantly mirrors China's present-day economy and is at least as different from the Soviet-style economy at issue in *Georgetown Steel*, as China's economy was found to be in 2007. The petitioners also argue that Vietnam's accession to the World Trade Organization (WTO) allows the Department to apply countervailing duties on imports from that country. The WTO Subsidies and Countervailing

Measures Agreement (SCM Agreement), similar to U.S. law, permits the imposition of countervailing duties on subsidized imports from member countries and nowhere exempts non-market economy imports from being subject to the provisions of the SCM Agreement. As Vietnam agreed to the SCM Agreement and other WTO provisions on the use of subsidies, the petitioners argue Vietnam should be subject to the same disciplines as all other WTO members.

Request for Public Comment on the Application of the Countervailing Duty Law to Imports From Vietnam

Because the petitioners have provided sufficient information to support their allegations, meeting the statutory criteria for initiating a countervailing duty investigation of PRCBs from Vietnam, initiation of a countervailing duty investigation is warranted in this case. However, the Department intends to determine whether the countervailing duty law should be applied to imports from Vietnam. Given the complex legal and policy issues involved, the Department, therefore, invites public comment on this matter.

Any person wishing to comment should file a signed original and eight copies of each set of comments which must be submitted no later than thirty days after publication of this Notice. Comments should be limited to thirty pages, double spaced. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice of request for public comment will be a matter of public record and will be available for public inspection and copying at Import Administration's CRU. The Department requires that comments be submitted in written form, but also recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: <http://ia.ita.doc.gov/>. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import

Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

All comments and submissions should be submitted to Barbara E. Tillman, Director, AD/CVD Operations, Office 6; Subject: Application of the Countervailing Duty Law to Imports from the Socialist Republic of Vietnam: Request for Comment; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Respondent Selection

For this investigation, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under Harmonized Tariff Schedule of the United States (HTSUS) number 3923.21.0085 during the POI (*i.e.*, calendar year 2008). We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of the announcement of the initiation of this investigation. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at <http://ia.ita.doc.gov/apo>.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public versions of the Petition and amendments thereto have been provided to the GOV. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, by no later than May 15, 2009, whether there is a reasonable indication that imports of subsidized PRCBs from Vietnam materially injure, or threaten material injury to, a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the

investigation being terminated; *see* section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

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

Dated: April 20, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

ATTACHMENT

Scope of the Investigation

The merchandise subject to this investigation is polyethylene retail carrier bags (PRCBs), 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.

[FR Doc. E9-9565 Filed 4-24-09; 8:45 am]

BILLING CODE 3510-DS-S