

**DEPARTMENT OF COMMERCE****International Trade Administration****[A-570-877]****Notice of Postponement of Preliminary Antidumping Duty Determination: Lawn and Garden Steel Fence Posts From the People's Republic of China**

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

**EFFECTIVE DATE:** September 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Salim Bhabhrawala or Christopher Smith, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482-1784, or (202) 482-1442, respectively.

**SUPPLEMENTARY INFORMATION:****Postponement of Preliminary Determination:**

The Department of Commerce (the Department) is postponing the deadline for issuance of the preliminary determination in the antidumping duty investigation of lawn and garden steel fence posts from the People's Republic of China until November 27, 2002.

On May 21, 2002, the Department initiated an antidumping investigation of lawn and garden steel fence posts from the People's Republic of China. *See Initiation of Antidumping Duty Investigation: Lawn and Garden Steel Fence Posts from the People's Republic of China*, 67 FR 37388 (May 29, 2002). The notice stated that the Department would issue its preliminary determination no later than 140 days after the date of initiation (*i.e.*, October 8, 2002).

On August 26, 2002, the petitioner, Steel City Corporation, made a timely request pursuant to 19 CFR 351.205(e) for a fifty-day postponement. Therefore, in accordance with section 733 (c)(1)(a) of the Tariff Act of 1930, as amended, the Department is postponing the date of the preliminary determination until November 27, 2002, which is 190 days from the date on which the Department initiated this investigation. We will issue our final determination no later than 75 days from the date on which the Department issues its preliminary determination in this proceeding.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 3, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE****International Trade Administration****[A-570-504]****Notice of Preliminary Results of Antidumping Administrative Review: Petroleum Wax Candles From the People's Republic of China**

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) in response to a request from Dongguan Fay Candle Co., Ltd. (Fay), a PRC producer and exporter of subject merchandise, and its U.S. importers, TIJID, Inc. (TIJID) (d/b/a DIJIT Inc.), and Palm Beach Home Accents, Inc., (Palm Beach), (collectively, "respondents"). The review covers the period August 1, 2000 through July 31, 2001.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on imports into the United States of subject merchandise exported by Fay. Interested parties are invited to comment on these preliminary results. (*See* the "Preliminary Results of Review" section of this notice.)

**EFFECTIVE DATE:** September 10, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Sally C. Gannon or Mark Hoadley, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0162 or (202) 482-3148, respectively.

**SUPPLEMENTARY INFORMATION:****The Applicable Statute**

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations

to the Department's regulations are to 19 CFR part 351 (2001).

**Background**

The Department published in the **Federal Register** an antidumping duty order on petroleum wax candles from the PRC on August 28, 1986 (51 FR 30686). On August 31, 2001, the Department received, in accordance with section 751(a)(2)(B) of the Act and section 351.213(b) of the Department's regulations, a timely request from respondents to conduct an administrative review of the antidumping duty order on petroleum wax candles from the PRC. On October 1, 2001, the Department published its initiation of this administrative review for the period August 1, 2000 through July 31, 2001 (66 FR 49924). Because it was not practicable to complete the review within the initial time period, on April 18, 2002, the Department published an extension of the deadline for completion of the preliminary results of this administrative review until no later than September 3, 2002 (67 FR 19159).

**Scope of the Antidumping Duty Order**

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

**Period of Review**

The period of review (POR) is August 1, 2000 through July 31, 2001.

**Application of Facts Available**

The Department conducted verification at Fay's factory in China from July 22 through 26, 2002. On July 22, 2002, respondents presented corrections to their questionnaire responses. The corrections included a previously unreported production order, which amounted to a significant increase in the production for the POR. The verification team proceeded with verification of the questionnaire responses, but indicated that it would

have to confer with Washington concerning whether the new information could be accepted. On July 26, 2002, after consulting with Washington, the team returned all documents relating to the new production data and halted the remainder of the verification in China. See *Administrative Review of Petroleum Wax Candles from the Peoples Republic of China (PRC) (A-570-504): PRC Verification*, Memorandum to the File, through Sally C. Gannon, from Mark Hoadley, Brett Royce, and Jessica Burdick (August 30, 2002) (*PRC Verification Report*), which is on file in the Central Records Unit (CRU), room B-099 of the main Department building; *2000/2001 Administrative Review on Candles from the People Republic of China (A-570-504): Telephone Call Regarding Verification*, Memorandum to the File from Sally C. Gannon (July 26, 2002).

The next week, the Department informed respondents that it would proceed with the U.S. portion of the verification, and the Department and respondents agreed on August 12 through 15, 2002 as the dates for this verification. See *2000/2001 Administrative Review on Candles from the People Republic of China (A-570-504): Telephone Call Regarding Verification & Rejection of New Factual Information*, Memorandum to the File, through Sally C. Gannon, from Jessica Burdick (July 31, 2002). On August 9, 2002, respondents called and informed the Department that they had made a decision not to proceed with the U.S. portion of the verification. See *2000/2001 Administrative Review on Candles from the People Republic of China (A-570-504): Telephone Call Regarding Verification dated August 9, 2002*, Memorandum to the File from Sally C. Gannon (August 9, 2002). On August 9, 2002, respondents also filed a letter informing the Department of their decision not to participate in the U.S. verification.

We find that, in accordance with section 776(a)(2)(D) of the Act, the use of facts available for respondents is appropriate for these preliminary results of review. Respondents' decision not to allow the Department to conduct an on-site U.S. verification prevented necessary information from being verified as provided in section 782(i), a condition specifically listed in section 776(a)(2)(D) as mandating the use of facts available. Once the Department determines that the use of facts available is warranted, section 776(b) of the Act further permits the Department to apply an adverse inference if it makes the additional finding that "an interested

party has failed to cooperate by not acting to the best of its ability to comply with a request for information." As stated above, the Department set a date for the U.S. portion of the verification that respondents agreed was acceptable. The respondents decided not to proceed with verification. The respondents did not ask that the verification be rescheduled, but simply stated that they would not proceed with the verification. Since the respondents cancelled the U.S. sales verification, the Department cannot rely on respondents' questionnaire responses to calculate a dumping margin for Fay. The U.S. sales verification is integral to our calculation because, without performing the U.S. sales verification, we were unable to complete the sales reconciliation as well as verification of total quantity and value, which are principle elements of the over all verification of respondents' questionnaire responses.

Furthermore, while the Department was able to verify parts of the questionnaire responses in China, that information is inextricably linked with the information unverified in the United States. See *PRC Verification Report*. For example, the Department was able to verify several factors used in the production of candles; that information, however, is not usable if the Department is unable to verify which products were actually sold in the United States, a step in the verification process that would have taken place in the United States if verification had been allowed. Moreover, personnel at Fay stated that some items in the factors of production portion of the response would have to be verified, at least in part, in the United States. For example, they stated that additional documents we requested to confirm the amounts of dyes, fragrances, packaging and hang tags used in production were kept in Florida. In addition, as noted above, by not performing the U.S. sales verification, we were unable to complete the sales reconciliation as well as verification of total quantity and value, which are principle elements of the overall verification of respondents' questionnaire responses. Thus, the use of facts available is mandated for the total response of Fay and its importers. In other words, it is not possible to rely on the respondents' questionnaire responses to calculate a margin for Fay's exports, even using partial facts available "plugs" for U.S. sales data, which is the data for which respondents decided not to allow verification.

Therefore, we determine that the respondents did not cooperate to the best of their ability and that the use of adverse facts available is appropriate

under section 776(b). Accordingly, as adverse facts available, we have applied the calculated margin of 95.22 percent as published in *Petroleum Wax Candles from the People's Republic of China: Notice of Final Results of New Shipper Review*, 67 FR 41395 (June 18, 2002) (*Candles NSR*). See *Memorandum to Joseph A. Spetrini, Regarding the Application of Facts Available for Exports from Dongguan Fay Candle Co., Ltd.* (September 3, 2002) for a complete discussion of the Department's decision to apply adverse facts available and the choice of the rate from the new shipper review.

### Corroboration

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *Statement of Administrative Action (SAA)*, H.R. Doc. 103-316, states that "corroborate" means to determine that the information used has probative value. See *SAA* at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. See, e.g., *Grain-Oriented Electrical Steel From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin

was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here.

Accordingly, we determine that the new shipper rate is in accord with section 776(c)'s requirement that secondary information be corroborated, *i.e.*, that it have probative value. The information used in the new shipper review to determine this margin was fully verified and subject to the comments of both respondents and petitioner throughout the review. Thus, it is based on the verified sales and production data of the respondents in that review, as well as on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review as well as information gathered by the Department itself. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as facts available for respondents, we determine that this rate has probative value.

#### Separate Rates

Fay requested a separate, company-specific rate. In its questionnaire responses, Fay stated that it is an independent legal entity. To establish whether a company operating in an NME country is sufficiently independent to be eligible for a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are granted separate, company-specific margins when they can demonstrate an absence of government control, in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence

of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

#### De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record indicates that Fay's export activities are not controlled by the government. Fay submitted evidence of its legal right to set prices independently of all government oversight. The business license of the company indicates that it is permitted to engage in the exportation of candles. We find no evidence of *de jure* government control restricting this company's exportation of candles.

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over privately-owned companies, such as Fay, and that control over these enterprises rests with the enterprises themselves. The Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations, issued on June 3, 1988 by the State Council of the PRC, and the Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures, promulgated on April 13, 1998 by Order No. 4 of the President of the People's Republic of China and effective from April 13, 1998, all placed on the record of this review, provide that, to qualify

as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*). Therefore, we preliminarily determine that there is an absence of *de jure* government control over export activity with respect to this firm.

#### De Facto Control

With respect to the absence of *de facto* control over export activities, the information on the record indicates that the government has no involvement in the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we found that Fay's pricing and export strategy decisions are not subject to any governmental review or approval, and that there are no governmental policy directives that affect these decisions. There are no restrictions on the use of export earnings. The company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. Fay has stated that its management is selected by its board of directors and/or its employees and that there is no government involvement in the selection process. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that Fay has met the requirements for receiving a separate rate for purposes of this review.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine the antidumping margin for Fay, for the period of August 1, 2000 through July 31, 2001, to be as follows:

Manufacturer/exporter	Time period	Margin
Dongguan Fay Candle Co., Ltd. ....	8/1/00–7/31/01	95.22%

### Cash Deposit Requirements

If these preliminary results are not modified in the final results of this review, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for previously reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is currently 54.21 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

### Comments and Hearing

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited

to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days from the date of publication of these preliminary results, unless the time limit is extended.

### Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates, where appropriate, against the entered Customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777 (i)(1) of the Act.

Dated: September 3, 2002.

**Faryar Shirzad,**  
Assistant Secretary for Import  
Administration.

[FR Doc. 02-22992 Filed 9-9-02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-807]

### Polyethylene Terephthalate Film Sheet, and Strip From Korea; Notice of Rescission of Antidumping Duty Administrative Review

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

**ACTION:** Notice of rescission of the antidumping duty administrative review.

**SUMMARY:** On July 24, 2002, in response to requests by Hyosung Corporation (Hyosung), the Department of Commerce (the Department) published a notice of initiation of antidumping duty administrative review of Polyethylene Terephthalate Film, Sheet and Strip from Korea, for the period June 1, 2001 through May 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002). Hyosung has timely withdrawn its request for review; therefore, the Department is rescinding this review.

**EFFECTIVE DATE:** September 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-4475 and (202) 482-0649, respectively.

### SUPPLEMENTARY INFORMATION:

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

#### Background

On June 5, 1991 the Department published the antidumping duty order on polyethylene terephthalate film, sheet and strip from Korea. *See Antidumping Duty Order and Amendment to Final Determination of Less Than Fair Value: Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea*, 56 FR 25660 (June 5, 1991). On June 28, 2002,