



DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-905]

4th Tier Cigarettes from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that 4th tier cigarettes from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV) during the period of investigation (POI), October 1, 2018 through September 30, 2019. The final weighted-average dumping margins are listed below in the section entitled “Final Determination.”

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3936.

SUPPLEMENTARY INFORMATION:

Background

On July 22, 2020, Commerce published the *Preliminary Determination* in this investigation, and invited interested parties to comment on our findings.¹ The petitioner in this investigation is the Coalition Against Korean Cigarettes.² The mandatory respondent subject to this investigation is KT&G Corporation (KT&G). A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues

¹ See *4th Tier Cigarettes from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Negative Determination of Critical Circumstances*, 85 FR 44281 (July 22, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

² The members of the Coalition Against Korean Cigarettes are Xcaliber International and Cheyenne International.

raised by parties for this final determination, may be found in the Issues and Decision Memorandum.³

The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The POI is October 1, 2018 through September 30, 2019.

Scope of the Investigation

The products covered by this investigation are 4th tier cigarettes from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Analysis of Comments Received

All issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Verification

Commerce normally verifies information relied upon in making its final determination, pursuant to section 782(i)(1) of the Tariff Act of 1930 amended (the Act). However, during the course of this investigation, we were unable to conduct verification.⁴ Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information

³ *See* Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of 4th Tier Cigarettes from the Republic of Korea," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁴ *See* Memorandum, "Cancellation of Verification," dated October 21, 2020.

cannot be verified, Commerce will use “facts otherwise available” in reaching the applicable determination. Accordingly, we relied on facts available in making our final determination.

Changes Since the *Preliminary Determination*

Based on our analysis of the comments received, we made no changes to the scope of the merchandise under investigation but made one change to the margin calculation for KT&G since the *Preliminary Determination*. For a discussion of this change, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding any margins that are zero, *de minimis*, or any margins determined entirely under section 776 of the Act.

Commerce calculated a weighted-average dumping margin for KT&G, the only individually examined exporter/producer in this investigation, that is above *de minimis*. We have assigned KT&G’s margin to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Final Determination

The final weighted-average dumping margins are as follows:

Exporter/Producer	Weighted-Average Dumping Margin (percent)
KT&G Corporation	5.48
All Others	5.48

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public

announcement, within five days of the date of the publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of all appropriate entries of 4th tier cigarettes, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after July 22, 2020, the date of publication of the *Preliminary Determination* of this investigation in the *Federal Register*.

Further, Commerce will instruct CBP to require a cash deposit equal to the amount by which the normal value exceeds the U.S. price as follows: (1) for KT&G, the cash deposit rate will be equal to the weighted-average dumping margin determined in this final determination; (2) if KT&G is the producer, but not the exporter, then the cash deposit rate will be equal 5.48 percent; and (3) the cash deposit rate for all other producers and exporters will be 5.48 percent. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of 4th tier cigarettes no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce,

antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: December 4, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain tobacco cigarettes, commonly referred to as “4th tier cigarettes.” The subject cigarettes are composed of a tobacco blend rolled in paper, have a nominal minimum total length of 7.0 cm but do not exceed 12.0 cm in total nominal length, and have a nominal diameter of less than 1.3 cm. These sizes of cigarettes are frequently referred to as “Kings” and “100’s,” but subject merchandise that meets the physical description of the scope is included regardless of the marketing description of the size of the cigarettes. Subject merchandise typically has a tobacco blend that consists of 10% or more tobacco stems.

Subject merchandise is typically sold in packs of 20 cigarettes per pack which generally includes the marking “20 Class A Cigarettes” but are included regardless of packaging. 4th tier cigarette packages are typically sold in boxes without a rounded internal corner and without embossed aluminum foil inside the pack.

Both menthol and non-menthol cigarettes and cigarettes with or without a filter attached are covered by the scope of this investigation.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2402.20.8000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation

IV. Changes Since the *Preliminary Determination*

V. Discussion of the Issues

General Issues

- Comment 1: Whether 4th Tier Cigarettes are a Distinct Domestic Like Product
- Comment 2: Whether the Petition Established Industry Support to Initiate the Investigation
- Comment 3: Whether Commerce Clarified the Scope of the Investigation for Proper Product Comparisons
- Comment 4: Whether Commerce Correctly Determined Negative Critical Circumstances

KT&G Calculation Issues

- Comment 5: Whether Commerce Should Deduct Korean Taxes in the Normal Value (NV) Calculation
- Comment 6: Whether Commerce should include KT&G's sales to Non-Korean Military Forces in Home Market sales
- Comment 7: Whether Commerce's level of trade (LOT) adjustment in place of a constructed export price (CEP) Offset was in accordance with law
- Comment 8: Whether KT&G unlawfully deducted U.S. Taxes from KT&G's U.S. Price
- Comment 9: Whether Commerce Erred in the Rate It Selected to Compute KT&G USA's Imputed Credit Expenses and Inventory Carrying Costs
- Comment 10: Whether Commerce Erred in its Treatment of REBATE4U, REBATE5U, and REBATE6U
- Comment 11: Whether Commerce Improperly Assumed Certain Returns Were Billing Adjustments in the U.S. Market
- Comment 12: Whether Commerce Improperly Classified KT&G's Repacking Costs as a Selling Expense

VI. Recommendation