

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-475-818]

Certain Pasta from Italy: Notice of Court Decision Not in Harmony

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

SUMMARY: On September 14, 2005, the United States Court of International Trade ("CIT") held void *ab initio* the Department of Commerce's ("the Department") initiation of the sixth administrative review of the antidumping duty order with regard to PAM, S.p.A. and JCM, Ltd. ("PAM") in all respects. See *PAM S.p.A. & JCM, Ltd. v. United States*, Court No. 04-00082, Slip. Op. 05-124 (CIT, Sept. 14, 2005) ("*PAM v. United States*"). Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("Federal Circuit") in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Department is notifying the public that the *PAM v. United States* decision was "not in harmony" with the Department's original results.

EFFECTIVE DATE: September 24, 2005.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0395.

SUPPLEMENTARY INFORMATION:**Background**

On July 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order for certain pasta from Italy. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 67 FR 44172 (July 1, 2002). In response, the Department received requests for review of thirteen respondent companies, including PAM, from domestic petitioners.¹ Petitioners served their requests for administrative reviews upon all respondent companies except for PAM. On August 27, 2002, the Department published a notice of initiation of its sixth antidumping duty administrative review covering the period of July 1, 2001, through June 30, 2002, listing PAM and twelve other

¹New World Pasta Company, Dakota Growers Pasta Company, Borden Foods Corporation, and American Italian Pasta Company.

companies as respondents. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). Thereafter, PAM notified the Department that PAM was not served properly with a request for review. On August 7, 2003, the Department published its preliminary results of the sixth administrative review of the antidumping duty order where it applied adverse facts available for PAM to arrive at an antidumping margin of 45.49 percent. See *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part: For the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 68 FR 47020 (August 7, 2003). On February 10, 2004, the Department published its final results, which affirmed its decisions in the preliminary results. See *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: For the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 69 FR 6255 (Feb. 10, 2004).

PAM challenged that the initiation of this review, as well as its subsequent results, should be void *ab initio* because petitioners failed to serve their request for initiation of the review in violation of 19 C.F.R. § 351.303(f)(3)(ii) (2002). The CIT granted PAM's motions for judgment on the agency record, held void *ab initio* the initiation of the sixth administrative review of the antidumping duty order with respect to PAM, and directed the Department to rescind the sixth administrative review of the antidumping duty order with respect to PAM.

Timken Notice

In its decision in *Timken*, the Federal Circuit held that, pursuant to 19 U.S.C. § 1516a(e), the Department must publish notice of a decision of the CIT which is "not in harmony" with the Department's results. The CIT's decision in *PAM v. United States* was not in harmony with the Department's final antidumping duty results. Therefore, publication of this notice fulfills the obligation imposed upon the Department by the decision in *Timken*. In addition, this notice will serve to continue the suspension of liquidation. If this decision is not appealed, or if appealed, it is upheld, the Department will rescind the sixth administrative review of the antidumping duty order with respect to PAM.

Dated: October 7, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE**International Trade Administration**

[A-580-807]

Polyethylene Terephthalate Film from Korea; Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty order on polyethylene terephthalate (PET) film from Korea would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of this antidumping duty order.

EFFECTIVE DATE: October 20, 2005.

FOR INFORMATION CONTACT: Dana Mermelstein or Robert James, AD/CVD Operations, Offices 6 and 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-1391 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:**Scope of the Order**

The antidumping duty order on PET film from Korea covers shipments of all gauges of raw, pre-treated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or co-extruded. The films excluded from this order are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order. PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00.¹

¹Effective July 1, 2003, the HTS subheading 3920.62.00.00 was divided into 3920.62.00.10