

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-583-833]

Certain Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. The period of review is May 1, 2004, through April 30, 2005. This review covers imports of certain polyester staple fiber from one producer/exporter. We have preliminarily found that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties. Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* June 6, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-1174 and (202) 482-3853, respectively.

Background

On May 25, 2000, the Department of Commerce ("Department") published an antidumping duty order on certain polyester staple fiber ("PSF") from Taiwan. See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000) ("PSF Orders"). On May 2, 2005, the Department published a notice of "Opportunity to Request Administrative Review" of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 22631 (May 2, 2005). On May 31, 2005, Far Eastern Textile Limited ("FET") requested an administrative review. On June 30, 2005, the

Department published a notice initiating the review for FET. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 37749, 37756 (June 30, 2005). The period of review ("POR") is May 1, 2004, through April 30, 2005.

On July 6, 2005, we issued an antidumping questionnaire to FET. We received questionnaire responses from FET on August 5, 2005, and August 30, 2005. In October, November, and December 2005, and March and April 2006, we issued supplemental questionnaires to FET. We received responses to these supplemental questionnaires in November and December 2005, and January, April and May 2006. In February 2006, we requested FET to revise its reported model matching characteristics, as described in the "Product Comparisons" section, below. We received FET's response in February 2006.

Scope of the Order

For the purposes of this order, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from this order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Fair Value Comparisons

To determine whether FET's sales of PSF to the United States were made at

less than normal value ("NV"), we compared export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended ("the Act"), we compared the EP of individual U.S. transactions to the weighted-average NV of the foreign like product, where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section, below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with sections 773(a)(1)(B) and (C) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. (For further details, see the "Normal Value" section, below.)

We compared U.S. sales to monthly weighted-average prices of contemporaneous sales made in the home market. Where there were no contemporaneous sales of identical merchandise in the home market, we compared sales made within the window period, which extends from three months prior to the POR until two months after the POR. As directed by section 771(16) of the Act, where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

Further, as provided in section 773(a)(4) of the Act, where we could not determine NV because there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market to compare to U.S. sales, we compared U.S. sales to constructed value ("CV").

During the investigation and this administrative review, classification of PSF products with certain physical characteristics within the model matching hierarchy has been highly contentious. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan* ("LTFV

Investigation: PSF from Taiwan”), 65 FR 16877 (March 30, 2000), and accompanying *Issues and Decision Memorandum* at Comments 4, 5, and 15. In this review, the Department received new information in FET’s supplemental questionnaire response regarding the physical characteristics of certain PSF products. See *December 28, 2005, Supplemental Questionnaire Response*, Appendix SS–3. These events led the Department to reconsider whether the product matching characteristics established in the investigation accurately reflect the physical characteristics of the PSF products under review. For this administrative review and the concurrent administrative review of PSF from the Republic of Korea (A–580–839), the Department requested comments regarding the adequacy of the model match criteria to reflect the physical characteristics of the merchandise under review. See Letter from Julie H. Santoboni to Interested Parties, 2004–2005 *Administrative Reviews of the Antidumping Duty Orders on Certain Polyester Staple Fiber from Korea and Taiwan*, dated November 9, 2005, which is on file in the Central Records Unit (“CRU”) in room B–099 of the main Department building; see also Memorandum to File: *Modifications to the Department’s November 9, 2005 letter to Interested Parties*, dated November 10, 2005. On November 16, 2005, we received comments from Wellman, Inc. and Invista, S.a.r.l. (collectively, “the petitioners”), Huvis Corporation (“Huvis”), and FET. On November 28, 2005, we received rebuttal comments from Dongwoo Industry Company, the petitioners, FET, Consolidated Fibers, Inc., and Huvis. On December 8, 2005, we received additional rebuttal comments from FET.

The comments we received and the facts and information on the record of this review lead us to preliminarily conclude that relying on the model matching criteria established in the *LTFV Investigation: PSF from Taiwan* does not provide the best product comparisons because the criteria do not adequately reflect the physical differences exhibited by specialty PSF products. See *Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Preliminary Negative Critical Circumstances Determination: Certain Polyester Staple Fiber From Taiwan*, 64 FR 60771, 60772 (November 8, 1999); *LTFV Investigation: PSF from Taiwan*, and accompanying *Issues and Decision Memorandum* at Comments 4, 5, and 15; *Structural Steel Beams from Korea*; *Notice of Final Results of*

Antidumping Duty Administrative Review, 70 FR 6837 (February 9, 2005), and accompanying *Issues and Decisions Memorandum* at Comment 1 (“It is appropriate to consider changes when additional expertise and knowledge with regard to the market demands and market realities of the products subject to the scope indicate that such changes allow more accurate comparison of U.S. and normal value products.”). Therefore, to account for the new information regarding physical characteristics of PSF and to increase product matching accuracy, the Department has preliminarily modified the matching criteria that were established in the original investigation. Accordingly, for the preliminary results, we matched the merchandise under review based on the physical characteristics reported by the respondent in the following order: loft, specialty fibers, type, grade, cross section, finish, and denier. See Letter from Julie H. Santoboni to FET, 2004–2005 *Administrative Reviews of the Antidumping Duty Orders on Certain Polyester Staple Fiber from Korea and Taiwan*, dated February 2, 2006, which is on file in the Department’s CRU.

Date of Sale

In its questionnaire responses, FET reported invoice date as the date of sale for its home market and U.S. sales. FET has stated that it permits home market and U.S. customers to make order changes up to the date of shipment. According to FET’s descriptions, the sales processes in the home market and to the United States are identical. Thus, record evidence demonstrates that FET’s invoices establish the material terms of sale. See 19 CFR 351.401(i). However, because the merchandise is always shipped on or before the date of invoice, we are using the date of shipment as the date of sale. See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998). For sales to the United States, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We calculated EP based on the cost, insurance and freight (“CIF”) price to unaffiliated purchasers in the United States. Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland

freight—plant to port of exportation, brokerage and handling, harbor service fee, trade promotion fee, international freight, and marine insurance.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales of PSF in the home market to serve as a viable basis for calculating NV, we compared the respondent’s home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because the respondent’s aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (“LOT”) as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See 19 CFR 351.412(c)(2); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison market sales were made at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the “chain of distribution”),¹ including selling functions,² class of customer (“customer category”), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for

¹ The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent’s sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

² Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),³ we consider the starting prices before any adjustments. See *Micron Technology, Inc. v. United States, et al.*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

FET reported that it made direct sales to one distributor in the U.S. market and to end users in the home market. FET has reported a single channel of distribution and a single level of trade in each market, and has not requested a LOT adjustment. We examined the information reported by FET regarding the type and level of selling activities performed, and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) across the markets. Based on our analysis, we found a single level of trade in the United States, and a single, identical level of trade in the home market. Thus, it is unnecessary to make a LOT adjustment for FET in comparing EP and home market prices.

C. Cost of Production Analysis

Because FET had sales below the cost of production that were disregarded in the original investigation, there were reasonable grounds to believe or suspect that the respondent made sales of the merchandise under review in its comparison market at prices below the cost of production (“COP”) within the meaning of section 773(b) of the Act.

1. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of the respondent’s costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (“G&A”) expenses, interest expenses, and the costs of all expenses incidental to placing the

foreign like product packed and in a condition ready for shipment, in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted in FET’s cost questionnaire responses, except for the following adjustments:

We adjusted FET’s reported cost of manufacturing to account for purchases of purified terephthalic acid (“TPA”) and mono ethylene glycol (“EG”) from affiliated parties at non-arm’s-length prices. See Memorandum from Team to the File, *Preliminary Results Calculation Memorandum—Far Eastern Textile Limited*, dated May 31, 2006 (“*FET Calculation Memorandum*”), which is on file in the Department’s CRU.

We noted significant fluctuations in the costs of direct materials reported in FET’s cost database due to (1) The different mix percentages between virgin and recycled polymer or polyester chips, (2) the efficiency factors of the various production lines, and (3) the time of production (reflecting fluctuations in the prices of the inputs, TPA and EG). See FET’s January 20, 2006, supplemental questionnaire response, at TS–15 and TS–16. To address the resulting distortions to FET’s costs, we adjusted the company’s reported costs using a weighted-average direct materials cost by specialty fiber and fiber type (*i.e.*, one direct materials cost for regular virgin, one for regular blended, one for virgin of each reported specialty fiber, and one for blended of each reported specialty fiber). See *FET Calculation Memorandum*.

FET produced PSF differing only in grade. The products that differ only in grade have identical material inputs and undergo the same production process, and, therefore, should theoretically have the same cost. However, as reported by FET, they do not have the same cost. To adjust for this distortion in the reported costs, we have weight-averaged the costs to obtain an equal cost for each grade of otherwise identical PSF. See *FET Calculation Memorandum*.

In its net interest expenses calculation, FET excluded interest expenses related to a consolidated subsidiary involved in financial investments. For the preliminary results, we included these expenses because they relate to the consolidated company’s overall interest expenses. See *FET Calculation Memorandum*.

2. Test of Home Market Prices

On a product-specific basis, we compared the adjusted weighted-average COP figures for the POR to the home market sales of the foreign like product, as required under section

773(b) of the Act, to determine whether these sales were made at prices below the COP. The prices were exclusive of any applicable movement charges and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of COP Test

We found that, for certain products, more than 20 percent of the respondent’s home market sales were at prices less than the COP and, thus, the below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales of the same product, as the basis for determining NV, in accordance with section 773(b)(1).

D. Calculation of Normal Value Based on Home Market Prices

We relied on FET’s submitted home market sales information, except for the following adjustments:

We disregarded FET’s reported other discounts because they related to free samples provided to certain home market customers during the POR. Moreover, FET’s reported other discounts are accounted for in the G&A expenses ratio. See *FET Calculation Memorandum*.

We reclassified FET’s reported warranty expenses as discounts. These expenses are more properly classified as discounts because they related to compensation for a delay in merchandise delivery. See *FET Calculation Memorandum*.

We reclassified FET’s reported home market rebates as warranty expenses because these rebates were to satisfy claims regarding product quality defects. We allocated the total warranty expenses incurred in the home market during the POR across all home market sales. See *FET Calculation Memorandum*.

FET applied its calculated indirect selling expenses ratio to the control number-specific total cost of manufacture to obtain the reported per-unit home market indirect selling expenses. We recalculated the per-unit home market indirect selling expenses by applying the indirect selling expenses ratio to the reported home

³ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative expenses, and profit for CV, where possible.

market gross unit price net of discounts. See *FET Calculation Memorandum*.

FET reported its U.S. credit expenses based on the New Taiwan Dollar denominated gross unit price. Because FET's U.S. sales were invoiced in U.S. dollars, we recalculated FET's U.S. credit expenses by applying the standard credit formula to FET's reported U.S. dollar denominated gross unit price. See *FET Calculation Memorandum*.

We calculated NV based on the price to unaffiliated customers. We deducted discounts, where applicable, from the gross unit price. We made adjustments for packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight from the plant to the customer. In addition, we made adjustments for differences in circumstances of sale ("COS"), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales (i.e., credit expenses and warranties) and adding U.S. direct selling expenses (i.e., credit expenses and other credit expenses).

Preliminary Results of the Review

We find that the following dumping margin exists for the period May 1, 2004, through April 30, 2005:

Exporter/manufacturer	Weighted-average margin percentage
Far Eastern Textile Limited	3.13

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review,

including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

FET has indicated that it was not the importer of record for any of its sales to the United States during the POR. FET reported the name of its U.S. customer as the importer of record for all U.S. sales. As such, FET did not report the entered value for any of its U.S. sales. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific ad valorem ratios based on the estimated entered value.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). The Department will issue appraisement instructions directly to CBP.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as

provided 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 administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*, i.e., less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation, the cash deposit rate will continue to be the most recent rate published in the final determination for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 7.31 percent, the "all others" rate established in *PSF Orders*.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-802]

Final Results of Five-Year Sunset Review of Suspended Antidumping Duty Investigation on Uranium From the Russian Federation

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

SUMMARY: On July 1, 2005, the Department of Commerce ("the Department") initiated the second