

Scope Rulings

The Department has issued the following scope rulings:

(1) On August 25, 1997, the Department issued a scope ruling, finding that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the order.⁸

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the order.⁹

(3) On October 23, 1997, the petitioners filed a request that the Department initiate an anti-circumvention investigation against Barilla, an Italian producer and exporter of pasta. On October 5, 1998, the Department issued a final determination that, pursuant to section 781(a) of the Act, Barilla was circumventing the antidumping duty order by exporting bulk pasta from Italy, which it subsequently repackaged in the United States into packages of five pounds or less for sale in the United States.¹⁰

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing up to (and including) five pounds four ounces, and so labeled, is within the scope of the order.¹¹

Partial Rescission of Review

If a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1). In this case, petitioners, Valdigrano, and Indalco withdrew their requests for administrative reviews within 90 days from the date of initiation. No other party requested review of the companies covered by each of the requests for

⁸ See Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997.

⁹ See letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998.

¹⁰ See *Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

¹¹ See Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999.

review. Therefore, we are rescinding this review of the antidumping duty order on certain pasta from Italy, in part, with respect to Rummo, Pagani, Russo, Domenico, Indalco, Valdigrano and Atar.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties at the cash deposit rate in effect on the date of entry for entries during the period July 1, 2006, through June 30, 2006.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 251.213(d)(4).

Dated: December 3, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-23892 Filed 12-7-07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-839]

Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review

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

SUMMARY: On June 6, 2007, the Department of Commerce published the preliminary results of the sixth administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. The review covers the shipments of subject merchandise to the United States by Huvis Corporation and Dongwoo Industry Co., Ltd. Based on our analysis of the comments received from interested parties and an examination of our calculations, we have made certain changes for the final results. The final weighted-average dumping margins are listed below in the "Final Results of the Review" section of this notice.

EFFECTIVE DATE: December 10, 2007.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Brandon Farlander, Office 1, AD/CVD Operations, 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) 482-0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2007, the Department of Commerce ("the Department") published *Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind*, 72 FR 31279 (June 6, 2007) ("Preliminary Results") in the **Federal Register**.

On July 12, 2007, the Department issued a memorandum releasing shipment data for Dongwoo Industry Co., Ltd. ("Dongwoo"). On July 17, 2007, the Department issued a memorandum releasing these shipment data to legal counsel for Dongwoo.

We invited parties to comment on the preliminary results. On July 27, 2007, Wellman, Inc.; Invista, S.a.r.l.; and DAK Americas, LLC (collectively, "the petitioners"), Huvis Corporation ("Huvis"), and Consolidated Fibers Inc. ("Consolidated Fibers") (an importer of subject merchandise sales by Dongwoo)/Dongwoo, filed case briefs. On August 3, 2007, the Department rejected Consolidated Fibers/Dongwoo's case brief because the brief contained untimely filed new factual information. Also, on August 3, 2007, the Department requested comments from interested parties on the discrepancies between information provided in Dongwoo's August 10, 2006, questionnaire response and information contained in the Department's July 12, 2007, memorandum. On August 7, 2007, we received a revised case brief from Consolidated Fibers/Dongwoo. We received no comments from interested parties regarding Dongwoo's discrepancies. On August 24, 2007, the petitioners and Huvis filed rebuttal briefs.

On September 28, 2007, the Department published in the **Federal Register** an extension of the time limit for the completion of the final results of this review until no later than December 3, 2007, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.213(h)(2). See *Certain Polyester Staple Fiber from Korea: Notice of Extension of Time Limit for the Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 1703 (September 28, 2007).

Scope of the Order

For the purposes of this order, the product covered is certain polyester staple fiber ("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 under the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 5503.20.00.25 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 the order is dispositive.

Period of Review

The period of review ("POR") is May 1, 2005, through April 30, 2006.

Application of Adverse Facts Available

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

In its August 10, 2006, questionnaire response, Dongwoo reported that it made no sales or shipments of subject merchandise to the United States during the POR. However, on July 12, 2007, we placed a memorandum on the record confirming through U.S. Customs and Border Protection data that Dongwoo made shipments to the United States during the POR.

Although the deadline to submit new factual information had passed, on August 3, 2007, we sought comments on the discrepancies between information provided in Dongwoo's August 10, 2006, questionnaire response and the Department's July 12, 2007, memorandum. Dongwoo did not provide any comments.

By asserting in its original questionnaire response that it had no sales or shipments to the United States, Dongwoo failed to provide the requested information. In doing so, Dongwoo withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department finds that the use of total facts available is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002). It is the Department's practice to apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See, e.g., Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103-316, Vol. 1, at 870 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198-99. Furthermore, "the affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) ("*Nippon*").

We find that Dongwoo did not act to the best of its abilities in this proceeding, within the meaning of section 776(b) of the Act, because it withheld information specifically requested by the Department. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to this company. *See Nippon*, 337 F.3d at 1382-83.

Section 776(b) of the Act provides that the Department may use as AFA,

information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006). In this case, the Department considered: 1) the rates alleged in the petition, which ranged from 48.14 to 84.03 percent; 2) the rates calculated in the final determination of the investigation, which ranged from 0.12 to 7.91 percent (*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, 33808 (May 25, 2000); *see also Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 70 FR 74552, 74553 (December 24, 2003)); and 3) the rate calculated in the fourth administrative review, *i.e.*, 5.87 percent (*see Notice of Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the Republic of Korea*, 70 FR 73435, 73436 (December 12, 2005)).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have assigned a rate of 48.14 percent, which is the lowest rate alleged in the petition, as modified in the Department's initiation notice. *See Initiation of Antidumping Duty Investigations: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 69 FR 23053, 23055 (April 29, 1999) ("*LTFV Initiation*"). The Department finds that this rate is sufficiently high to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

Information from the petition and prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent

practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department's regulations provide that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See 19 CFR 351.308(d); see also SAA at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used.

To corroborate the petition margin, we compared it to the transaction-specific rates calculated for the participating respondent in this review. We find that it is reliable and relevant because the lowest transaction-specific petition rate is comparable to the range of individual transaction margins calculated for the participating respondent. See *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10658, 10663 (March 7, 2007) (unchanged in the final results).

Further, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. See, e.g., *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company's uncharacteristic business expense resulting in an unusually high margin). In the instant case, we examined whether any information on the record would discredit the selected rate as reasonable facts available. Specifically, we reviewed the quantities involved in the transaction-specific rates used for corroboration purposes and we note that the quantities of these transactions are quantities typical of the participating respondent's normal transactions. See Memorandum from Team to the File, "Corroboration of Data Contained in the Petition for Assigning Facts Available Rates in the 2005-2006 Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from Korea," dated December 3, 2007 ("Corroboration Memo"). Therefore, we have determined that the 48.14 percent margin is appropriate as AFA and are assigning it to Dongwoo.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the December 3, 2007, Issues and Decision Memorandum for the Sixth Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from the Republic of Korea ("Decision Memorandum"), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B-099 of the main Department building ("CRU"). In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/fxsp0:frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

To determine whether sales of PSF from Korea to the United States were made at less than normal value, we compared export price ("EP") to the NV. We calculated EP, NV, constructed value ("CV"), and the cost of production ("COP"), based on the same methodologies used in the *Preliminary Results*, with the following exceptions:

To establish a market value for the input QTA pursuant to the major input rule, the Department applied a proxy market price calculated from the affiliated supplier's financial statements in the preliminary results. Based upon a further review of the record of this proceeding, we have determined that MTA can be substituted for QTA in similar quantities to produce the same amount of finished PSF. Therefore, for the final results, we have used the market price of MTA reported by Huvis as a proxy for the market price of QTA. Based on this, we made an adjustment to the value of QTA to reflect the difference between the transfer price of QTA and the higher of the COP of QTA or the market price of MTA. See Decision Memorandum at Comments 4 and 5; see also Memorandum from Team to File, "2005/2006 Antidumping Duty Administrative Review of Certain Polyester Staple Fiber from Korea - Final Results Calculation Memorandum for Huvis Corporation," dated December 3, 2007 ("Huvis Final Calculation Memorandum").

In the preliminary results, we allowed Huvis to exclude impairment losses

related to property, plant, and equipment from SK Chemicals' SG&A expenses. For the final results, we determine that these impairment losses are ordinary losses and represent real economic losses. Therefore, we have included these impairment losses in SK Chemicals' SG&A expenses because these losses are part of the general operations of SK Chemicals. See Decision Memorandum at Comment 7; see also Huvis Final Calculation Memorandum.

Final Results of the Review

We find that the following percentage margins exist for the period May 1, 2005, through April 30, 2006:

Exporter/manufacturer	Weighted-average margin percentage
Dongwoo Industry Co., Ltd.	48.14
Huvis Corporation	2.51

Assessment Rates

The Department has treated Huvis as the importer of record for certain POR shipments. Pursuant to 19 CFR 351.212(b)(1), for all sales where Huvis is the importer of record, Huvis submitted the reported entered value of the U.S. sales and we calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding sales where Huvis was not the importer of record, we note that Huvis did not report the entered value for the U.S. sales in question. Accordingly, we 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 appropriate assessment instructions to CBP 15 days after publication of these final results of review.

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 POR produced by companies included in these final results for which the reviewed companies did not know their 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. *Id.*

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of certain PSF from Korea entered, or withdrawn from warehouse, for consumption, effective 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 rates for the reviewed companies will be the rate listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis*, i.e., less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior 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, a prior review, or the investigation, the cash deposit rate will be 7.91 percent, the all-others rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003). These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final 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 doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

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

Dated: December 3, 2007.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Decision Memorandum

Comment 1: Coding of Specialty Fibers

Comment 2: Home Market Sales Database

Comment 3: Classification of U.S. Sales as Constructed Export Price Sales

Comment 4: MTA and QTA as Identical Products

Comment 5: Valuing PTA and QTA at the Transfer Price Paid by Huvis

Comment 6: Major Input Test for Samnam's Purchases of Paraxylene

Comment 7: SK Chemicals' SG&A and Financial Expenses Ratios

Comment 8: Huvis' G&A Expenses

Comment 9: Zeroing Dumping Margins

Comment 10: The Rate Applicable to Dongwoo's Sales

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-824]

Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: December 10, 2007.

FOR FURTHER INFORMATION CONTACT:

Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-5050.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain polyethylene terephthalate sheet, and strip from India for the period July 1, 2005 through June 30, 2006. *See Certain Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 44086 (August 7, 2007). This review covers one producer of the subject merchandise to the United States.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to issue the final results in an administrative review within 120 days of the publication date of the preliminary results. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days. The Department has determined that completion of the final results of this review within the original time period is not practicable. Specifically, the Department requires additional time to analyze whether an adjustment for any countervailing duties imposed on the subject merchandise to offset an export subsidy is warranted. Thus, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by an additional 60 days, from December 5, 2007 until no later than February 4, 2008.

This notice is published pursuant to sections 751(a)(3)(A) and 777(I)(1) of the Act.

Dated: December 4, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

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