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A. General Issues

Comment 15: Mis-coding of Regenerated and Virgin Products

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-839]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea

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

SUMMARY: On November 8, 1999, the Department of Commerce published its preliminary determination of sales at less than fair value of certain polyester staple fiber from the Republic of Korea. The investigation covers three manufacturers/exporters. The period of investigation is April 1, 1998, through March 31, 1999.

Based on our analysis of the comments received, we have made

changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: March 30, 2000.

FOR FURTHER INFORMATION CONTACT:

Craig Matney, Suresh Maniam, or Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-1778, 482-0176, or 482-4207, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Case History

Since the preliminary determination of this investigation (*see* 64 FR 60776 (November 8, 1999) ("Preliminary Determination")), the following events have occurred:

On November 2 and 5, 1999, we received responses, including a revised U.S. sales listing, to our October 15, 1999, supplemental questionnaire from Samyang Corporation ("SAMYANG"). We verified SAMYANG's questionnaire responses in November 1999.

Geum Poong Corporation ("Geum Poong") submitted a section B response covering sales to third countries on January 5, 2000. On January 11, 2000, we rejected Geum Poong's section B response on the grounds that it contained untimely filed new factual information. Also on January 11, 2000, the Department solicited additional information from respondent Geum Poong and petitioners E.I. DuPont de Nemours, Inc.; Arteva Specialities S.a.r.l.; d/b/a KoSa; Wellman, Inc.; and Intercontinental Polymers, Inc. (hereinafter collectively referred to as "the petitioners") regarding the appropriate methodology for calculating Geum Poong's constructed value profit ratio. The petitioners objected to our soliciting additional information regarding this subject on January 31, 2000. Geum Poong submitted

information concerning the constructed value profit ratio on February 8, 2000.

Verification of the responses submitted by Geum Poong and Sam Young Synthetics Co. ("Sam Young") took place in January 2000 (*see* the "Verification" section below). (We refer hereinafter to Samyang, Sam Young, and Geum Poong collectively as "the respondents".)

On February 18, 2000, we received comments from petitioners objecting to the request of Gates Formed-Fiber Products, Inc., ("Gates") a U.S. importer, to treat black automotive substrate ("BAS") as a separate class or kind of merchandise. The petitioners, the respondents and Gates filed case briefs on February 22, 2000. On February 28, 2000, petitioners and respondents filed rebuttal briefs. At the request of interested parties, the Department held a public hearing on March 2, 2000.

Scope of Investigation

For the purposes of this investigation, the product covered is certain polyester staple fiber ("PSF"). Certain polyester staple fiber 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 investigation 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) classified under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this investigation. Also specifically excluded from this investigation 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).

The merchandise subject to this investigation is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

For a discussion of scope comments and determinations, *see* the March 22, 2000, memorandum from Susan H. Kuhbach, Acting Deputy Assistant Secretary, Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, ("Decision Memorandum"), Comments

4 and 5, which is on file in the Central Records Unit of the main Department building ("B-099") and on the Web at www.ita.doc.gov/import_admin/records/frn.

Period of Investigation

The period of investigation ("POI") is April 1, 1998 through March 31, 1999.

Critical Circumstances

In the *Preliminary Determination*, we found that critical circumstances within the meaning of section 773(e)(1) of the Act existed for each of the respondents because (1) there was a history of dumping and material injury, and (2) each of the respondents had more than a 15 percent increase in imports during the three-month period following the filing of the petition (as compared to the three-month period prior to the filing of the petition). We also preliminarily determined that critical circumstances did not exist for "all other" exporters.

At verification, we examined each company's monthly shipment data for November 1998 through August 1999. Based on a comparison of the five-month periods before and after the filing of the petition, we determine that imports have not been massive over a relatively short period for any respondent or for companies subject to the all other rate. Accordingly, we have reversed our preliminary finding of critical circumstances with regard to Samyang, Sam Young, and Geum Poong, and affirmed our negative preliminary finding for all other exporters. (See Decision Memorandum, Comment 1.)

Product Comparisons

We compared the products sold by the respondents in the comparison market during the POI to the products sold in the United States during the POI using the methodology described in the *Preliminary Determination*, with the following exception:

For the final determination we have determined that it is appropriate to include grade as a matching criterion for Sam Young.

Date of Sale

For the final determination, we have concluded that invoice date is the appropriate date of sale for Sam Young and Geum Poong. (See Decision Memorandum, Comment 2.)

Fair Value Comparisons

To determine whether sales of PSF from Korea to the United States were made at less than fair value, we compared the export price ("EP") to comparison market prices or CV, as described in the Export Price and

Normal Value sections below. Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in the company-specific calculation memoranda dated March 22, 2000, which have been placed in the file in B-099.

1. Export Price

For the price to the United States, we used EP as defined in section 772 of the Act. We calculated EP based on the same methodology described in the *Preliminary Determination*.

2. Normal Value

We used the same methodology to calculate NV as that described in the *Preliminary Determination*, with the following exceptions:

(a) Cost of Production Analysis

As noted in the *Preliminary Determination*, the Department has investigated whether Samyang's and Sam Young's sales of PSF in their respective comparison markets were made at prices below the cost of production ("COP") during the POI. In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for Samyang and Sam Young, by control number, based on the sum of each company's cost of materials, fabrication, general expenses, and packing costs. We have made the following changes to the COP calculations since the preliminary determination:

We have found that Sam Young's fiscal year 1998 COP provides a more accurate measure of its production costs than its POI-based COP. Therefore, we have calculated Sam Young's COP based on its fiscal year data. (See Decision Memorandum, Comment 13.)

(b) Calculation of NV Based on Comparison Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the comparison market that did not fail the cost test, using the same methodology described in the *Preliminary Determination*.

(c) Calculation of NV Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on the constructed value ("CV"). Accordingly, for Samyang and Sam Young, where we could not determine the NV based on comparison market sales, either because (1) there were no sales of a comparable product or (2) all

sales of comparison products failed the COP test, we based NV on the CV. In addition, for Geum Poong, which did not have a viable comparison market, we based NV on CV.

We calculated CV as in the *Preliminary Determination*, with the following exceptions:

For Geum Poong, we have changed our methodology for calculating CV profit. (See Decision Memorandum, Comment 15.)

Level of Trade

We have made the same level of trade determinations described in the *Preliminary Determination*.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the March 22, 2000, Decision Memorandum, which is hereby adopted. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in B-099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at: <http://www.ita.doc.gov/import-admin/records/frn/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(A) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of the subject merchandise from Korea, except for subject merchandise produced and exported by Samyang (which has a *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for

consumption on or after November 8, 1999, the date of publication of the Preliminary Determination in the **Federal Register**. We will instruct Customs to refund all bonds and cash deposits posted on subject merchandise exported by Samyang. In addition, consistent with our reversal of our preliminary determination of critical

circumstances, we will instruct Customs to refund all bonds and cash deposits posted on subject merchandise exported by Sam Young and Geum Poong that was entered, or withdrawn from warehouse, for consumption prior to November 8, 1999.

Customs shall continue to require a cash deposit or the posting of a bond

equal to the weighted-average amount by which the NV exceeds the EP as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Samyang Corporation	¹ 0.14	No.
Sam Young Synthetics Co	7.96	No.
Geum Poong Corporation	14.10	No.
All Others	11.38	No.

¹ (*de minimis*).

The rate for all other producers and exporters applies to all entries of the subject merchandise except for entries from exporters that are identified individually above. In accordance with section 735(c)(5)(A) of the Act, we have excluded the *de minimis* margin for Samyang from the calculation of the "all others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 22, 2000.

Richard W. Moreland,
Acting Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

I. General Issues

- Comment 1: Critical circumstances
- Comment 2: Date of sale methodology
- Comment 3: Quarterly averaging periods
- Comment 4: Regenerated PSF
- Comment 5: Black automotive substrate

II. Issues Specific to Samyang Corporation

- Comment 6: Major input value
- Comment 7: Home market price changes

Comment 8: G&A and interest expense ratios

Comment 9: "P" channel sales

Comment 10: Coding of home market products

Comment 11: Duty drawback

III. Issues Specific to Sam Young Synthetics Co., Ltd.

Comment 12: Duty drawback

Comment 13: Cost of manufacture

Comment 14: Adjustment to production quantities

IV. Issues Specific to Geum Poong Corporation

Comment 15: Constructed value profit ratio

Comment 16: Duty drawback

Comment 17: G&A calculation

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032400A]

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Sanctuaries - Socioeconomic Impacts of Marine Reserves.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden Hours: 1,330.

Number of Respondents: 665.

Average Hours Per Response: 2 hours.

Needs and Uses: The National Marine Sanctuaries Act Authorizes the designation and management of National Marine Sanctuaries. NOAA has developed a process for establishing "no take" areas. The process includes establishing a Sanctuary Advisory Council (SAC) made up of representatives of all the stakeholders of a sanctuary; a working group; and scientists to provide analysis in developing alternatives for a "no-take area". However, no-take areas have been called Ecological Reserves, Marine Reserves or Sanctuary Preservation Areas.

Also, to implement the no-take areas, a set of regulations prohibiting certain activities must be created. This proposed data collection is designed to work with each user group to develop the necessary information.

Under this requirement, a person from the agency visits the establishment and uses the survey to guide the data collection effort. The following three (3) surveys will be used in evaluating alternative boundaries for Marine Reserves in the Channel Islands National Marine Sanctuary: (1) Commercial Fishing Operations; (2) Wholesale Processors (of commercial fish); and (3) Recreational for Hire Businesses. The objective is to minimize the socioeconomic impacts of Marine Reserves.

Finally, the Marine Reserves no-take areas are used to protect sanctuary resources and resolve user conflicts. As a result, NOAA would not be able to meet the requirements under the National Environmental Policy Act (NEPA) for evaluating the socioeconomic impacts of no-take regulations if this data collection were not conducted.

Frequency: One time.

Respondent's Obligation: Voluntary.