

October 7, 2002

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary for
Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary
Import Administration, Group I

SUBJECT: Issues and Decision Memorandum for the First Administrative
Review of Polyester Staple Fiber from Korea; Final Results

SUMMARY

We have analyzed the briefs and rebuttal briefs of interested parties in the first administrative review of polyester staple fiber from Korea. As a result of our analysis, we have only made corrections of certain inadvertent programming and clerical errors in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is a complete list of the issues in this review for which we received comments and rebuttals by parties:

- Comment 1: De Minimis Threshold
- Comment 2: Treatment of Sales Above Normal Value
- Comment 3: Imposition of Margins and Injury to the Domestic Injury
- Comment 4: Individual-Rate Duty Drawback Scheme
- Comment 5: Fixed-Rate Duty Drawback Scheme
- Comment 6: Treatment of Disqualified Duty Drawback Benefits
- Comment 7: Sunlim G&A and Financial Expense Ratios
- Comment 8: Sunlim Foreign Movement Charges
- Comment 9: Estal U.S. Credit Expense
- Comment 10: Estal General and Administrative Expenses
- Comment 11: Estal Financial Expenses
- Comment 12: Huvis Home Market Sales in U.S. Dollars
- Comment 13: Huvis Matching Criteria
- Comment 14: Huvis G&A Expense Ratio
- Comment 15: Mijung G&A Expenses

BACKGROUND

On June 7, 2002, the Department of Commerce (“the Department”) issued the preliminary results of the administrative review of the antidumping duty order on polyester staple fiber (“PSF”) from Korea. See Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review, 67 FR 39350 (June 7, 2002) (“Preliminary Results”). The period of review (“POR”) is November 8, 1999, through April 30, 2001. We invited parties to comment on the Preliminary Results.

DISCUSSION OF ISSUES

1. Common Issues

Comment 1: De Minimis Threshold

Respondents’ Argument: Sam Young Synthetics Co., Ltd. (“Sam Young”), Mijung Ind. Co. Ltd. (“Mijung”), Keon Baek Co., Ltd. (“Keon Baek”), and Stein Fibers, Ltd. (collectively, “Sam Young et al.”) argue that the Department should apply a two-percent de minimis rate as set forth in Article 5.8 of the World Trade Organization (“WTO”) Agreement on the Implementation of Article VI. Sam Young et al. argue that the use of the lower 0.5 percent threshold is contrary to law and is so low that it frustrates the intent of the antidumping law, which is to encourage producers and exporters in foreign countries subject to antidumping duty orders to manage their pricing. Furthermore, they assert that the Department’s use of the 0.5 percent threshold in reviews is inconsistent with the de minimis standard applied by other WTO signatory countries.

Petitioners’ Argument: The petitioners assert that the 0.5 percent threshold is the minimum as established by U.S. statute and the Department’s regulations, and is consistently applied in all antidumping duty administrative reviews. According to the petitioners, Sam Young et al. have provided no persuasive argument for departing from the Department’s regulations and, accordingly, the Department should continue to apply its 0.5 threshold for the final results.

Department’s Position: We disagree with Sam Young et al. that the Department’s de minimis standard for administrative reviews (see 19 CFR 351.106(c)(1)) is contrary to U.S. law and our international obligations under the WTO. U.S. law is fully consistent with the WTO Antidumping Agreement. See Statement of Administrative Action (“SAA”) at 669.

Sections 733(b) and 735(a) of the Act were amended by the Uruguay Round Agreements Act (“URAA”) to require that, in investigations, the Department treat the weighted-average dumping margin of any producer or exporter which is below two percent ad valorem as de minimis. Hence, pursuant to this change, the Department is required to apply a two percent de minimis standard during investigations initiated after January 1, 1995, the effective date of the URAA (see sections 733(b)(3) and 735(a)(4)). However, the Act does not mandate a change to the Department’s regulatory practice of using a 0.5 percent de minimis standard during

administrative reviews. Thus, the Act and the Department's regulations recognize investigations and reviews to be two distinct segments of an antidumping proceeding. See Roller Chain, Other Than Bicycle From Japan: Preliminary Results, Intent Not To Revoke in Part, and Partial Rescission of Antidumping Duty Administrative Review, 64 FR 25015, 25023 (May 10, 1999); Professional Electric Power Tools from Japan: Final Results of Antidumping Duty Administrative Review, 63 FR 6891, 6897 (February 11, 1998).

In addition, the SAA explains that the two percent de minimis standard applies only to investigations, not to reviews of antidumping duty orders or suspended investigations in full compliance with our obligations under the WTO Antidumping Agreement. See SAA at 845. The SAA further states that “in antidumping investigations, Commerce [shall] treat the weighted-average dumping margin of any producer or exporter which is below two percent ad valorem as de minimis.” SAA at 844. Likewise, “[t]he Administration intends that Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent ad valorem, the existing regulatory standard for de minimis.” SAA at 845.

In fact, a WTO Panel Report similarly concluded that the de minimis standard in Article 5.8 of the WTO Antidumping Agreement does not apply in the context of Article 9.3 duty assessment procedures (i.e., administrative reviews). See WTO Panel Report, United States--Anti-dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above From Korea, WT/DS99/R (adopted March 19, 1999), at 150. Accordingly, the Department, consistent with U.S. law, is continuing to treat all companies with a weighted-average margin of less than 0.5 percent ad valorem as de minimis.

Comment 2: Treatment of Sales Above Normal Value

Respondents' Argument: Sam Young *et al.* argue that the Department's practice of disregarding the amounts by which particular U.S. sales were made in excess of normal value is contrary to law and unfairly inflates the calculated margins. See European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, Report of the Appellate Body, WT/DS141/AB/R (March 1, 2001), affirming European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, Report of the Panel, WT/DS141/R (October 30, 2000) (“Bed Linen from India”).

Petitioners' Argument: The petitioners argue that the Department has properly rejected this argument in the past and has found that Bed Linen from India does not apply to U.S. antidumping proceedings. See, e.g., Stainless Steel Wire Rod From India: Final Results of Antidumping Duty Administrative Review, 67 FR 37391, 37392 (May 29, 2002) (“SSWR from India”); Notice of Final Determination of Sales at Less Than Fair Value; Structural Beams From Spain, 67 FR 35482, 35484 (May 20, 2002).

Department's Position: We agree with the petitioners that Bed Linen from India does not apply

to U.S. antidumping proceedings. As we have discussed in prior cases, our methodology is consistent with the Act. See, e.g., SSWR from India; Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Japan, 67 FR 6495, (February 12, 2002), and accompanying Issues and Decision Memorandum, at Comment 1. Under this methodology, sales that do not fall below normal value are included in the weighted-average margin calculation as sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not, however, allow sales that do not fall below normal value to cancel out dumping found on other sales.

The Act requires that the Department employ this methodology. Section 771(35)(A) of the Act defines “dumping margin” as “the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” Section 771(35)(B) of the Act defines “weighted-average dumping margin” as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” These sections, taken together, direct the Department to aggregate all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price (“EP”) or constructed export price (“CEP”), and to divide this amount by the value of all sales. The directive to determine the “aggregate dumping margins” in section 771(35)(B) makes clear that the singular “dumping margin” in section 771(35)(A) applies on a comparison-specific level, and does not itself apply on an aggregate basis. At no stage in this process is the amount by which EP or CEP exceeds normal value on sales that did not fall below normal value permitted to cancel out the dumping margins found on other sales.

This does not mean, however, that sales that do not fall below normal value are ignored in calculating the weighted-average rate. It is important to note that the weighted-average margin will reflect any “non-dumped” merchandise examined during the administrative review because the value of such sales is included in the denominator of the dumping rate, while no dumping amount for “non-dumped” merchandise is included in the numerator. Thus, a greater amount of “non-dumped” merchandise results in a lower weighted-average margin.

This is, furthermore, a reasonable means of establishing duty deposits in investigations, and assessing duties in reviews. In an administrative review, the deposit rate calculated must reflect the fact that the Customs Service is not in a position to know which entries of merchandise entered after the imposition of a dumping order are dumped and which are not. By spreading the estimated liability for dumped sales across all reviewed sales on an importer-specific basis, the weighted-average dumping margin allows the Customs Service to apply this rate to all merchandise entered after the close of the review period.

Finally, with respect to respondents’ WTO claim, U.S. law fully implements the WTO obligations of the United States. See SAA at 669. Accordingly, we are continuing to apply our margin calculation methodology pursuant to U.S. law.

Comment 3: Imposition of Margins and Injury to the Domestic Injury

Respondents' Argument: Sam Young et al. allege that there is no reasonable connection between the low calculated margins of Sam Young, Mijung, and Keon Baek, and the injury to the domestic industry. Thus, Sam Young et al. contend that the Department, consistent with the spirit of Article 9 of the WTO Agreement, should decline to impose antidumping duties on these respondents whose calculated dumping margins are less than the two-percent international de minimis threshold.

Petitioners' Argument: The petitioners argue that the U.S. International Trade Commission (“ITC”) has established injury in this proceeding, and there is no requirement for the Department to link injury to the U.S. industry when assessing antidumping duties. Moreover, the petitioners argue that the Department is bound by Congress to apply U.S. law should it conflict with the WTO Antidumping Code. Accordingly, the petitioners argue that the Department should continue to calculate margins in the same manner as the Preliminary Results.

Department's Position: We disagree with Sam Young et al. that the Department should not impose antidumping duties where calculated dumping margins in reviews are less than two percent. The Department issued an antidumping duty order, in accordance with section 736(a) of the Act, upon notification by the ITC that the U.S. domestic industry was being “materially injured,” within the meaning of section 735(b)(1)(A) of the Act, by reason of less-than-fair-value imports of PSF from Korea. 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). Thus, the ITC determined that there is a reasonable connection between the finding of dumping by the Department in the less-than-fair-value investigation and the injury to the domestic industry. Accordingly, upon completion of this administrative review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries equal to the amount by which the normal value of the subject merchandise exceeds the EP or CEP of the subject merchandise for all relevant entries of PSF from Korea. This process will continue until such time as the Department revokes the order.

Finally, we note that the imposition of antidumping duties where dumping margins exceed the 0.5 percent de minimis threshold is consistent with U.S. law which consequently, is in full compliance with our international obligations under the WTO. See SAA at 669.

Comment 4: Individual-Rate Duty Drawback Scheme

Petitioners' Argument: The petitioners argue that Huvis should not receive an upward adjustment to its U.S. price (“USP”) for the duty drawback it received under the individual-rate scheme because Huvis failed to demonstrate that it paid sufficient import duties to cover the total amount of duty drawback it claimed.

Respondent's Argument: Huvis states that the Department explicitly stated in the Preliminary Results that the Government of Korea ("GOK") controls in place under the individual-rate scheme ensure that the Department's criteria for an upward adjustment to USP for duty drawback are met. In addition, Huvis notes that the petitioners did not provide any evidence contradicting the Department's conclusion.

Department's Position: We agree with Huvis that rebates received under the individual-rate scheme are entitled to an upward adjustment to USP because the structure of the GOK's controls over that scheme ensures that the Department's criteria are met. See Preliminary Results at 67 FR 39351. Therefore, we are continuing to grant full duty drawback adjustments on all sales receiving rebates under the individual-rate scheme, including sales by Huvis.

Comment 5: Fixed-Rate Duty Drawback Scheme

Respondents' Arguments: Keon Baek, Mijung and Sam Young contend that the Department's criteria for receiving a duty drawback adjustment are met (*i.e.*, that 1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and 2) there were sufficient imports to account for the rebates received). Specifically, they argue that because they produce and sell/export only PSF, there is necessarily a direct link between imported inputs and duty drawback received upon the export of subject merchandise. With respect to the second criterion, they state that there is record evidence of the amounts, if any, by which duty drawback rebates exceeded import duties paid. Consequently, Keon Baek, Mijung and Sam Young maintain that they are entitled to an upward adjustment to USP for duty drawback received.

Contrary to the Department's preliminary finding that Korea's fixed-rate scheme does not meet the Department's criteria for an upward adjustment to USP, Estal and Sungrim point out that, earlier this year, the Department found that the fixed-rate scheme does meet its criteria. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Korea, 67 FR 3149 (January 23, 2002), and accompanying Issues and Decision Memorandum, at Comment 2 ("SSB"). Estal and Sungrim quote SSB, which states,

"We examined the full range of documents [during verification] which demonstrate . . . the requirements of Korea's duty drawback program . . . [and] reviewed the Korean law explaining the usage ratio for duty drawback and how the government insures that no overpayment is incurred in the process.

"[T]he Korean government requires companies to demonstrate the quantity of imported material used in the production of subject merchandise, the applicable duties assessed upon those imports, and the total quantity of exported merchandise required to obtain duty drawback. . . . [T]he Korean system meets the Department's criteria because . . . [it] sets the drawback rate based on the actual usage quantity of imported raw material."

See SSB at Comment 2. Estal and Sunglim also note that, in Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review, 64 FR 13169, 13173 (March 17, 1999) and Circular Welded Non-Alloy Steel Pipe from Korea, Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32837 (June 16, 1998), the Department allowed for an upward adjustment to USP under the fixed-rate scheme when it was made on a theoretical versus actual weight basis.

Notwithstanding the foregoing, Estal and Sunglim contend that they have provided specific documentation which links the rebates they received to import duties paid and shows sufficient imports to account for the rebates they received. Accordingly, Estal and Sunglim conclude that they have satisfied the Department's criteria for an upward adjustment to USP for duty drawback.

Petitioners' Argument: The petitioners argue that the relative volume of imported inputs by Keon Baek indicates that it failed both aspects of the Department's criteria and is not entitled to a duty drawback adjustment. See, e.g., Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 67 FR 15531 (April 2, 2002), and accompanying Issues and Decision Memorandum, at Comment 17.

The petitioners also state that, when the Department provided Mijung and Sam Young with an opportunity in the supplemental questionnaires to submit supporting documentation with respect to their duty drawback claims under the fixed-rate system, they failed to provide the documentation and simply replied that the GOK does not require a demonstration of eligibility under the fixed-rate scheme. In addition, the petitioners argue that Mijung's claim to have documented on the record the amount of excess duty drawback which it received during the POR does not support the contention that it had sufficient imports of input materials; rather, it supports the conclusion that Mijung did not have sufficient imports.

The petitioners state that the decision in SSB to allow for an upward adjustment to USP for duty drawback received under the fixed-rate scheme was based on the facts in that case and should not be interpreted as a finding that the fixed-rate scheme, in and of itself, meets the Department's two criteria. According to the petitioners, 19 CFR 351.401(b)(1) assigns the burden to each respondent to establish that it meets the criteria. In this review, the respondents have not met that burden.

In particular, the petitioners claim that Estal has failed to meet the criteria because it received its duty drawback income based on a pre-determined ratio. In the past, the petitioners state that the U.S. Court of International Trade ("CIT") has upheld the Department when it rejected duty drawback claims based on "a pre-established determination of import content that fail[ed] to link the rebate to import duties actually paid." See Viraj Group v. United States, 162 F. Supp. 2d 656, 664-668 (August 15, 2001). The petitioners add that Estal did not show that it properly allocated its duty drawback income to all export sales; thus making it unclear whether Estal had sufficient imports to justify the total reported amount of drawback.

The petitioners next claim that Sunghim also failed to meet the Department's criteria for an upward duty drawback adjustment to USP. The petitioners highlight Sunghim's response to the Department's questionnaire where Sunghim said,

“Under the fixed-rate system, on the other hand, Sunghim can not exactly link the rebates Sunghim received to import duties paid on inputs used in the manufacture of PSF because such linkage was not required by the Korean government. . . . The duty refunded is a fixed percentage of export amount which is determined and set by the Korean Customs authorities based on statistics for drawback claims made in the previous year so as to reflect actual industry experience in the usage of imported raw materials.”

See Sunghim's Section C questionnaire response, dated November 30, 2001, at C-18. Based on the foregoing, there is no requirement under the fixed-rate scheme that Sunghim demonstrate to the GOK that it imported enough raw material to account for that quantity exported. In addition, Sunghim failed to provide documentation of adequate imports to the Department. Accordingly, the petitioners argue that Sunghim failed the second criterion and should not be granted an upward adjustment to USP for duty drawback.

Department's Position: As indicated in our Preliminary Results, the Department has, in multiple proceedings, reviewed the two duty drawback systems in Korea, *i.e.*, the fixed-rate scheme (or the simplified drawback scheme) and the individual-rate scheme. While there have been cases where specific respondents have been able, on their own, to demonstrate an entitlement to an upward adjustment to USP for duty drawback under the fixed-rate scheme, the Department has repeatedly found that the fixed-rate system, by itself, does not meet the Department's two-prong test.

The fixed-rate scheme fails to meet the Department's two-prong test on its own merits because the amount of rebate upon export is based upon the average experience of companies using the individual-rate scheme. See, *e.g.*, Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 FR 55965, 55968 (October 30, 1996) (“the Korean government determines the simplified drawback amount using average import duties paid by companies using the individual reporting method.”). Notwithstanding the results in SSB, the respondents in that case also acknowledged that “the Korean [fixed-rate] system sets the drawback rate based on the rebate ratio of **other** exporters who receive duty drawback . . .” SSB, at Comment 2 (emphasis added). In other words, the amount of rebate a company receives under the fixed-rate scheme is not based on its own experience and, therefore, may be more, less, or equal to the amount of the actual duties it paid on the inputs.

Indeed, there have been many instances where the Department has found rebates under the fixed-rate scheme to be in excess of duties paid on inputs. See, *e.g.*, Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 62 FR 55574, 55577 (October 27,

1997). We also note that some respondents have acknowledged as much in this review and that, subsequent to SSB, the Department again found that the fixed-rate scheme did not meet the two-prong test and allowed for excess rebate of import duties. See Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review, 67 FR 40274 (June 12, 2002), and accompanying Issues and Decision Memorandum, at Comment 5. Given this, it is incumbent upon respondents receiving rebates under the fixed-rate scheme to demonstrate that they meet the second criterion of our test, *i.e.*, that there were sufficient imports to account for the duty drawback received for the export of the manufactured product.

In this review, none of the respondents receiving rebates under the fixed-rate scheme provided documentation satisfying the second criterion. While one respondent did report a gross amount of excess duty drawback to all markets, it did not, however, provide enough information to allocate it to U.S. sales. Accordingly, we find it appropriate to continue to deny an upward adjustment to USP for rebates received under the fixed-rate duty drawback scheme.

Comment 6: Treatment of Disqualified Duty Drawback Benefits

Respondents' Argument: In the event the Department continues to deny an upward adjustment to USP for duty drawback received under the fixed-rate scheme, Keon Baek, Mijung and Sam Young contend that Department is essentially treating the benefits received as miscellaneous income from a government subsidy. Because this income/subsidy is related to the production and sale of the subject merchandise, Keon Baek, Mijung and Sam Young state that the Department must allow an offset to their G&A expenses, pursuant to section 773(b)(3)(B) of the Act, to the extent no upward duty drawback adjustment to USP is allowed.

Petitioners' Argument: The petitioners contend that the respondents' failure to meet the Department's two criteria for a duty drawback adjustment does not permit the conclusion that the benefits received were related to the production and sale of subject merchandise.

Department's Position: We disagree with respondents that if they fail to meet the Department's criteria for duty drawback, we must allow the duty drawback as an offset to their G&A expenses. Section 772(c)(1)(B) of the Act specifically provides that duty drawback will be addressed as an adjustment to EP or CEP. If respondents cannot establish that they are entitled to this adjustment, we see no reason to permit them to receive an equivalent adjustment as an offset to cost of production ("COP") or constructed value ("CV").

It would not be appropriate to reduce the COP, which is used for testing whether home market sales were made at below cost prices, since the duties were not rebated on those sales. Similarly, the duty must be included in CV, since the EP or CEP would be increased for duty drawback received on export sales. The CV must therefore include the duties as the drawback would otherwise be double-counted, if the respondent qualified for a duty drawback adjustment. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber

From the Republic of Korea, 65 FR 16880 (March 30, 2000), and accompanying Issues and Decision Memorandum (“PSF Final Determination”), at Comment 16 (stating that it would be double-counting to permit a respondent to both reduce its CV and increase its U.S. price by the same duty drawback claims). Additionally, in cases where excess duty drawback is the subject of a countervailing duty inquiry, and any countervailing duty is added to the U.S. price, it would be double counting to also reduce COP and CV by the excess duty drawback. Therefore, we have not allowed duty drawback as a reduction to product costs.

2. Company-Specific Issues

Comment 7: Sungrim G&A and Financial Expense Ratios

Petitioners’ Argument: The petitioners contend that the Department should reject Sungrim’s interest income offset to its total financial expenses because Sungrim did not provide any supporting documentation and a review of Sungrim’s financial statements demonstrates that its reported interest income is overstated. Instead, the petitioners argue that the Department should cap the amount of the offset by Sungrim’s ratio of short-term liabilities to total liabilities.

In addition, the petitioners assert that Sungrim did not provide supporting documentation for its losses to foreign currency transactions, which Sungrim attributed to accounts receivable and, therefore, excluded from financial expenses. The petitioners argue that the Department should cap the amount of the foreign exchange losses related to receivables by the ratio of accounts receivable to the sum of total accounts receivable and accounts payable.

Respondent’s Argument: Sungrim argues that the ratio of short-to long-term borrowings does not demonstrate that Sungrim’s interest income offset is overstated because the structure of Sungrim’s loans is not indicative of the type of interest income that Sungrim receives. Similarly, Sungrim argues that there is no evidence to support the petitioners’ assumption that Sungrim pays its vendors in foreign currencies to the same extent that it receives payment from its customers in foreign currencies. Further, with respect to the petitioners’ claim that it did not provide support documentation, Sungrim contends that it provided all the information requested in the Department’s original and supplemental cost questionnaires. Thus, Sungrim concludes that the Department should continue to accept Sungrim’s reported financial and G&A expense ratios.

Department’s Position: We disagree with the petitioners that Sungrim’s G&A and financial expense ratios should be revised. While the Department may request supporting documentation when it has reason to do so, we did not make such a request in this instance. Sungrim has provided all of the relevant information pertaining to these offsets requested by the Department. In addition, we disagree with the petitioners that the ratio of long-term and short-term debt of Sungrim has anything to do with the short-term proportion of interest income, which is earned on bank accounts, etc. Also, we note that the petitioners are relying on the balance sheet, which is a snapshot on a specific date, to determine the proportion of short-term vs. long-term income

earned throughout the year. While the balances at year end can give some indication of the company's capital structure, they are not definitive enough to rely on for the adjustment requested by petitioners.

Finally, we disagree with the petitioners' assertion that the relative size of the accounts payable and accounts receivable balances are conclusive enough evidence to indicate an adjustment is necessary. The source of the raw materials (domestic vs. imported) would be of importance in any such question. We did not ask Sunglim to provide such an analysis. Therefore, we have continued to allow the inclusion of the items in question in our calculation.

Comment 8: Sunglim Foreign Movement Charges

Petitioners' Argument: The petitioners argue that the Department should disallow Sunglim's reported VAT adjustment to freight and handling because Sunglim failed to document its refund of VAT paid on freight or handling services, nor did it provide any accounting records showing such rebates being granted. Given the irregularity of Sunglim's VAT adjustment, the petitioners conclude that Sunglim's freight and handling expenses should be increased by an appropriate percentage in order to include VAT.

Respondent's Argument: Sunglim states that it correctly calculated its foreign movement charges exclusive of VAT because it is the Department's practice to calculate movement expenses on a VAT-exclusive basis. See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001) ("Rebar from Turkey") and accompanying Issues and Decision Memorandum, at Comment 21.

Department's Position: We agree with Sunglim that its foreign movement charges were calculated correctly and, therefore, have continued to use VAT-exclusive movement expenses in adjusting its gross unit price. The Department's stated policy is to use charges and adjustments on a VAT-exclusive basis. In its questionnaire responses, Sunglim adequately documented which portions of freight and handling expense were allocated to VAT. Because we are satisfied that Sunglim's methodology resulted in the calculation of VAT-exclusive movement expenses, we find that no adjustment is necessary for purposes of the final results.

Comment 9: Estal U.S. Credit Expense

Petitioners' Argument: The petitioners assert that the weighted-average U.S. interest rate used by the Department to calculate Estal's U.S. credit expenses was understated. The petitioners contend that when applying its general practice of calculating credit expenses in the absence of actual U.S. dollar borrowings using U.S. average short-term lending rates derived from the Federal Reserve, the Department must also take the actual borrowing experience of the company into account. See Import Administration Policy Bulletin 98.2: Imputed Credit Expenses and Interest Rates (February 23, 1998) ("IA Policy Bulletin"); see also Final Results of Antidumping Duty Administrative Reviews; Certain Fresh Cut Flowers From Colombia, 61 FR 42849 (August

19, 1996) (“Flowers from Colombia”) (stating that several factors, including a firm’s creditworthiness, should be considered when determining a reasonable surrogate interest rate for U.S. credit expenses in the absence of actual dollar-denominated short-term borrowings). The petitioners assert that the Department must consider Estal’s actual won borrowing rate when determining the U.S. interest rate used for calculating credit expenses by adjusting the U.S. prime lending rate for the difference between Estal’s actual borrowing rate in Korea and the Korean prime lending rate.

Respondent’s Argument: Estal argues that the IA Policy Bulletin specifically states that, where a respondent does not have short-term borrowings in U.S. dollars, then, for dollar-denominated transactions, the Department will use as an interest rate “the Federal Reserve’s weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made.” Estal further asserts that the IA Policy Bulletin specifically rejected the methodology announced in Flowers from Colombia. See IA Policy Bulletin, at para. 10. Finally, Estal claims that the petitioners have offered no explanation as to why the Department should adjust the U.S. prime lending rate rather than simply relying on the Federal Reserve short-term interest rate. Accordingly, Estal concludes that the Department should continue to base Estal’s U.S. interest rate on the Federal Reserve short-term rates.

Department’s Position: We agree with Estal that it appropriately calculated its U.S. credit expenses. The IA Policy Bulletin requires that the interest rate be a reasonable surrogate rate, readily obtainable and predictable, and a short-term interest rate actually realized by borrowers in the course of “usual commercial behavior” in the United States. The Federal Reserve rate is derived from loans made by a sampling of 340 commercial banks, ranging in sizes. Therefore, the Federal Reserve rate meets the three criteria laid out in the IA Policy Bulletin. Moreover, as Estal noted, the IA Policy Bulletin addresses shortcomings in Flowers From Colombia, including its complicated nature, by establishing a methodology that can be administered in a consistent manner. Accordingly, for the final results, we have continued to rely on the short-term interest rate derived from the Federal Reserve and have not made the petitioners’ suggested adjustments.

Comment 10: Estal General and Administrative Expenses

Petitioners’ Argument: The petitioners argue that the Department should disallow Estal’s unexplained offsets to its reported G&A expense for non-operating income because Estal did not establish the nature and amount of the claimed adjustment. Furthermore, the petitioners argue that the Department must also correct the denominator of Estal’s G&A ratio by using the amount of cost of goods sold provided in Estal’s financial statements because Estal did not explain why it used a different cost-of-goods sold amount.

Respondent’s Argument: Estal contends that it explained in detail the nature and amount of its claimed non-operating income offset in its supplemental cost questionnaire response. Furthermore, Estal argues that the Department has allowed such offsets where they relate to the general operations of the company. See Polyethylene Terephthalate Film, Sheet and Strip from

Korea, Final Results of Antidumping Duty Administrative Review, 66 FR 57417 (November 15, 2001), and accompanying Issues and Decision Memorandum (“PET Film”), at Comment 1. Finally, Estal notes that it deducted packing expense from its total cost of goods sold as reported in its financial statements, in accordance with the Department’s instructions in the supplemental cost questionnaire. Accordingly, Estal concludes that the Department should reject the petitioners’ arguments.

Department’s Position: We agree with Estal that its G&A expense ratio was reported in accordance with the Department’s instructions and, accordingly, we have not made any changes for the final results.

Comment 11: Estal Financial Expenses

Petitioners’ Argument: The petitioners object to the offsets made by Estal to its total interest expense for interest income and exchange gains and losses. With respect to the interest income, the petitioners contend that Estal did not report the actual short-term income received during 2000, but instead used an estimate based on the ratio of balances at the end of 2000. Such an estimate, the petitioners continue, may not be indicative of the entire year. Concerning the exchange gains and losses, the petitioners assert that Estal did not support its allocation of losses on foreign currency transactions. Finally, as with G&A expenses, the petitioners argue that the Department must correct the denominator of the financial expense ratio so that it is consistent with the cost of goods sold reported in Estal’s financial statements.

Respondent’s Argument: Estal contends that, in its supplemental cost response, it recalculated short-term interest income to reflect Estal’s actual short-term interest income and it provided supporting documentation for Estal’s foreign exchange gains and losses. Accordingly, Estal concludes that the Department should reject the petitioners’ arguments concerning its reported offsets to its total interest expense. Furthermore, for the reasons explained in Comment 10, Estal argues that it reported the denominator of the financial expense ratio in accordance with the Department’s instructions.

Department’s Position: We agree with Estal that its financial expense ratio was reported in accordance with the Department’s instructions and, accordingly, we have not made any changes for the final results.

Comment 12: Huvis Home Market Sales in U.S. Dollars

Petitioners’ Argument: The petitioners note that Huvis reported gross unit price on home market sales in either Korean won or U.S. dollars. They note that, while the Department accounted for this difference in currencies when calculating home market credit expenses, the Department only relied on the Korean won gross unit price in calculating normal value and not on U.S. dollar gross prices for those sales made in U.S. currency. The petitioners argue that the Department should correct the gross unit price and rely on the U.S. dollar gross unit price for those sales

made in U.S. dollars.

Respondent's Argument: Huvis argues that the Department did, in fact, use the U.S. dollar price for home market sales made in U.S. dollars when calculating normal value.

Department's Position: We agree with Huvis that the Department correctly used the U.S. dollar price for home market sales made in U.S. dollars when calculating normal value. The Department's normal value calculation in the Preliminary Results incorporated the U.S. dollar prices for Huvis' U.S. dollar-denominated home market sales. See Memorandum from David J. Goldberger to the file, "Huvis Preliminary Results Calculation Memorandum," dated May 31, 2002, at Attachments 1 (lines 3272-3285 of the Comparison Market Program) and 2 (line 4473 of the Margin Program). Accordingly, no change is required for the final results.

Comment 13: Huvis Matching Criteria

Petitioners' Argument: The petitioners argue that Huvis unilaterally included the product grade in the third position of its reported matching hierarchy for each sale. The petitioners contend that the Department should reject the inclusion of grade in the matching control number because Huvis has not demonstrated that the grade characteristic is commercially significant. See Pesquera Mares Australes v. United States, 266 F.3d 1372 (Fed. Cir. 2001) ("Pesquera Mares Australes"). In fact, Huvis has acknowledged in its questionnaire responses that the grade designation is significant only for marketing purposes, but that differences in grade do not have cognizable differences in COP. Thus, because there is no actual difference in the physical characteristics for products with different grades and Huvis has not demonstrated that grade is commercially significant, the petitioners conclude that the inclusion of the grade characteristic is a "marketing ploy." Accordingly, the Department should remove grade from Huvis' product hierarchy and revise its sales and cost databases. The petitioners note that making this change will result in all respondents in this review being treated equally with respect to the definition of the "foreign like product." See SKF USA, Inc. v. United States, 263 F.3d 1369, 1382 (Fed. Cir. 2001).

Respondent's Argument: Huvis argues that the Department should continue to rely on its product matching hierarchy. First, Huvis explains that its grades are not arbitrary, but rather are determined in the normal course of business by observable differences noted by inspection and technical criteria. Second, Huvis notes that its inclusion of the product grade was not unilateral because the Department accepted grade as a product characteristic in the less-than-fair-value investigation for Samyang by assigning grade the third position in the product matching hierarchy in Samyang's investigation margin calculation program. This, Huvis asserts, demonstrates the Department's recognition that fair comparisons cannot be achieved if products of different grades are mixed together. Huvis further notes that the Department has included grade in the third position in the product matching hierarchy in the second administrative review questionnaires.

Department's Position: We agree with Huvis that grade should be included in its product matching hierarchy. The U.S. Court of Appeals for the Federal Circuit upheld the Department's finding that "merchandise should be considered to be identical despite the existence of minor differences in physical characteristics, if those minor differences are not commercially significant." See Pesquera Mares Australes at 1372, 1384. In this review, Huvis has satisfied the burden established in Pesquera Mares Australes in supporting its claim that grade is a commercially significant characteristic. Specifically, in its supplemental questionnaire responses, Huvis described the commercial significance of the grade characteristic and the various activities performed by company personnel in the normal course of business to establish grade. Thus, we are satisfied that the grade characteristic is not a "marketing ploy."

Moreover, as noted by Huvis, in the less-than-fair-value investigation, we accepted grade as a product matching characteristic. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Certain Polyester Staple Fiber From the Republic of Korea, 64 FR 60776, 60779 (November 8, 1999); Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea, 65 FR 16880, 16881 (March 30, 2000), and accompanying Issues and Decision Memorandum. There is no record evidence in this review to change our findings from the investigation. Accordingly, no change to Huvis' product matching hierarchy is necessary.

Comment 14: Huvis G&A Expense Ratio

Petitioners' Argument: The petitioners contend that, in revising Huvis' G&A ratio for the Preliminary Results, the Department did not consider all expenses contained in Huvis' 2001 financial statement that had been omitted from Huvis' submitted G&A expense ratio. Further, the Department included in the G&A expense ratio certain income items that Huvis did not demonstrate were short-term in nature and related to the sales and production of the subject merchandise. Accordingly, the petitioners conclude that the Department should correct its calculation of Huvis' G&A expense ratio.

Respondent's Argument: Huvis counters that the Department, contrary to the petitioners' assertions, adjusted the G&A expense ratio for losses on the disposition of tangible assets and losses on foreign currency translations. With regard to gains and losses relating to accounts receivable, Huvis argues that these items were excluded because such expenses are unrelated to the manufacturing activities of the company. See PET Film, at Comment 1. Likewise, Huvis argues that losses on disposition of marketable securities are properly excluded from G&A. See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea, 60 FR 33561, 33567 (June 28, 1995). Further, although Huvis agrees with the petitioners that currency forward transaction and translation losses should have been included in the G&A calculation, Huvis claims that the corresponding gains must also be included. See PET Film.

Finally, Huvis argues that non-operating income items such as rental income, revenue on sale of test materials, and revenue on the sale of raw materials need not be short-term in nature or

specifically related to the production of subject merchandise in order to be properly included in the non-operating income offset to G&A. Instead, the Department will allow income offsets where they relate to the general operations of the company as a whole. See PET Film, at Comment 1; Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review, 65 FR 13717 (March 14, 2000), and accompanying Issues and Decision Memorandum, at Comment 9.

Department's Position: We disagree with the petitioners that the miscellaneous income and expense items in question need to be short-term in nature and relate to the production and sale of the subject merchandise. While the Department limits the interest income offset to financial expense to short-term investments, it does so because the goal is to calculate the cost of the respondent's current working capital. On the other hand, G&A expenses are associated with the fiscal period. We also disagree with the petitioners that the standard is whether the items are directly linked to Huvis' production and sale of the subject merchandise. The only cost elements that are directly linked to a product are those costs normally found in cost of manufacturing (*i.e.*, direct materials, labor and factory overhead). General and administrative expenses are by definition related only to the general operations of the company. Therefore, the items in question were allowed as offsets because they do not relate to a separate line of business, but only to the general operations of the company. The items that were allowed as offsets to G&A expense (miscellaneous rental income, revenue from sales of test materials, etc.) represented a small percentage of G&A expense in this case and were typical of general activities experienced by companies. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9182 (February 24, 1998). Finally, while the Department may request supporting documentation when it has reason to do so, we did not make such a request in this instance. Huvis has provided all of the relevant information pertaining to these offsets requested by the Department. Therefore, we have continued to allow the inclusion of the items in question in our calculation of G&A expense.

Comment 15: Mijung G&A Expenses

Respondent's Argument: Mijung argues that the Department unlawfully disallowed Mijung an offset to its G&A expenses, even though the miscellaneous income item and other adjustment in question were directly linked to Mijung's production and sale of the foreign like product. See section 773(b)(3)(B) of the Act. Moreover, Mijung notes that the adjustment was prepared in the normal course of business and in accordance with Korean Generally Accepted Accounting Principles ("GAAP") and, therefore, Mijung contends that the Department must not arbitrarily disregard its adjustments to G&A.

Petitioners' Argument: The petitioners argue that the Department should continue to disallow Mijung's claimed offsets to G&A. First, the petitioners contend that Mijung submitted no information to substantiate its claim that its miscellaneous income items were directly linked to the production and sales of the foreign like product until the deadline for submitting new factual information had passed. Second, the petitioners argue that Mijung has not met the burden of

establishing the nature and amount of the G&A offset, as set forth in 19 CFR 351.401(b)(1). Thus, the petitioners conclude that the Department should continue to deny Mijung's claimed offset to G&A.

Department's Position: We disagree with Mijung that the standard to apply here is whether the items are directly linked to Mijung's production and sale of the foreign like product. The only cost elements that are directly linked to a product are those costs normally found in cost of manufacturing (i.e., direct materials, labor and factory overhead). General and administrative expenses are by definition related only to the general operations of the company. Therefore, the question is whether these items relate to a separate line of business or to the general operations of the company. Neither the item in miscellaneous income that we disallowed nor the "reversal of provision for investments" are of a type that the Department includes in G&A expense. The first item is associated with sales to particular markets and its proper accounting is addressed under the statute. The "reversal of provision for investments" is excluded because the Department excludes gains and losses, income and expenses, write-downs or reversals on investing activities. By definition investing is an activity separate from the production or sale of merchandise. While the Department properly includes in COP or CV the financial expenses related to borrowings, including an offset for short-term interest income from working capital, it would be inappropriate to include income or expenses related to what is essentially a separate line of business. See also the proprietary memorandum from Rebecca Trainor to the File, "Telephone Conversation with Counsel for Mijung, Keon Baek, and Sam Young," dated June 6, 2002. Accordingly, for these final results, we are continuing to disallow Mijung's claimed G&A offsets.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins for all reviewed firms in the Federal Register.

AGREE _____

DISAGREE _____

Faryar Shirzad
Assistant Secretary for
Import Administration

Date