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Sunset Reviews
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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Reviews of the Antidumping Duty Orders on Certain Polyester
Staple Fiber from the Republic of Korea and Taiwan; Final Results

Summary

We have analyzed the substantive responses of the domestic interested parties in the first sunset review of the antidumping duty orders covering certain polyester staple fiber from the Republic of Korea and Taiwan. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in these sunset reviews for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Orders

On March 30, 2000, the Department of Commerce (“the Department”) published its final affirmative determinations of sales at less than fair value (“LTFV”) in the Federal Register with respect to imports of certain polyester staple fiber (“PSF”) from the Republic of Korea (“Korea”)

and Taiwan.¹ In May 2000, the International Trade Commission (“ITC”) concluded that the subject PSF included two like products, low-melt PSF and conventional PSF (all subject PSF except for low-melt fiber).² While the ITC found injury to the U.S. industry producing the conventional PSF, it did not find that the U.S. industry producing low-melt PSF was injured or threatened with material injury.³ Accordingly, the Department revised the final antidumping duty margins for the Taiwanese producers to exclude low-melt PSF. The Department did not revise the margins for Korean producers because sales of low-melt PSF were never included in their margin calculations. Following amendments to the Korean Final Determination and the Taiwanese Final Determination, as well as a redetermination pursuant to court remand,⁴ antidumping duty orders on PSF from Korea and Taiwan reflected the following weighted-average dumping margins:⁵

Korea

Samyang Corp. (“Samyang”)	0.14 percent <u>ad valorem</u> (<i>de minimis</i>)
Sam Young Synthetics Co. (“Sam Young”)	7.91 percent <u>ad valorem</u>
Geum Poong Corporation (“Geum Poong”)	0.12 percent <u>ad valorem</u> (<i>de minimis</i>)
All Others	7.91 percent <u>ad valorem</u>

Taiwan

Far Eastern Corporation (“Far Eastern”)	11.50 percent <u>ad valorem</u>
Nan Ya Plastics Corporation, Ltd. (“Nan Ya”)	3.79 percent <u>ad valorem</u>
All Others	7.31 percent <u>ad valorem</u>

¹ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea, 65 FR 16880, 16882 (Mar. 30, 2000) (“Korean Final Determination”); see also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan, 65 FR 16877, 16879 (Mar. 30, 2000) (“Taiwanese Final Determination”).

² See Certain Polyester Staple Fiber from Korea and Taiwan, USITC Pub. 3300, at 5, Inv. Nos. 731-TA-825-826 (May 2000).

³ Id., at 20.

⁴ See Final Results of Redetermination Pursuant to Court Remand: Geum Poong Corp. et. al. v. Untied States, Ct. No. 00-06-00298 (Oct. 5, 2001) (available at <http://ia.ita.doc.gov/remands/01-115.htm>); see also, Geum Poong Corp. et. al. v. United States, Ct. No. 00-06-00298, Slip. Op. 02-95, 2002 Ct. Intl. Trade LEXIS 94 (CIT Aug. 22, 2002) (affirming the Department’s redetermination); Certain Polyester Staple Fiber from the Republic of Korea: Notice of Court Decision and Suspension of Liquidation, 67 FR 61316 (Sept. 30, 2002); and Geum Poong Corp. and Sam Young Synthetics Co. v. United States, et. al, Appeal Nos. 03-1056, 1057, 2003 U.S. App. LEXIS 21438 (Fed. Cir. Oct. 9, 2003) (affirming the CIT’s decision).

⁵ See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From Taiwan, 65 FR 24678, 24680 (Apr. 27, 2000); see also, Amended Final Determination and Antidumping Duty Orders, 65 FR 33807, 33808 (May 25, 2000); and Certain Polyester Staple Fiber from Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision, 68 FR 74552, 74553 (Dec. 24, 2003).

Since the issuance of the antidumping duty orders, the Department conducted three administrative reviews with respect to PSF from Korea⁶ and no administrative reviews with respect to PSF from Taiwan.⁷ On June 25, 2004, the Department initiated the fourth administrative review of PSF from Korea.⁸ The Department published the preliminary results of that review on June 6, 2005,⁹ and intends to issue the final results no later than October 4, 2005. On June 30, 2005, upon a request by Invista S.a.r.l. (formerly Arteva Specialties S.a.r.l, d/b/a/ KoSa),¹⁰ Wellman, Inc., and DAK Fibers, LLC., (collectively, “the petitioners,” or “the domestic interested parties”), as well as Huvis Corporation (“Huvis”), a respondent, the Department initiated the fifth administrative review of PSF from Korea.¹¹ On June 30, 2005, upon a request by Far Eastern Textile, the Department initiated the fifth administrative review of PSF from Taiwan.¹²

⁶ See Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 67 FR 63616, 63617 (Oct. 15, 2002) (“1st AR Final Results”); Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review, 68 FR 59366, 59367 (Oct. 15, 2003) (“2nd AR Final Results”); Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke the Order, in Part, 69 FR 61341, 61342-43 (Oct. 18, 2004) (“3rd AR Final Results”); and Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from Korea, 69 FR 67891 (Nov. 22, 2004).

⁷ The Department initiated administrative reviews of PSF from Taiwan for the period covering March 30, 2000, to April 20, 2001, and the period covering May 1, 2001, to April 30, 2002. Both reviews were rescinded following withdrawal requests by both petitioners and respondents. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation, in Part, 66 FR 32934 (June 19, 2001); Certain Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review, 66 FR 52107 (Oct. 12, 2001); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation, in Part, 67 FR 42753 (June 25, 2002); and Certain Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review, 67 FR 48441 (July 24, 2002). Although the Department published notice informing interested parties of their opportunity to request a third administrative review of the Taiwanese order, no interested parties requested a review. Opportunity to Request Administrative Review, 67 FR 30356 (May 6, 2002). The Department initiated and rescinded a fourth administrative review upon request by Far Eastern and Fibertext Corporation. See Certain Polyester Staple Fiber from Taiwan: Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation, in Part, 69 FR 39409 (June 30, 2004); see also, Certain Polyester Staple Fiber from Taiwan: Rescission of Antidumping Duty Administrative Review, 69 FR 63363 (Nov. 1, 2004).

⁸ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations, in Part, 69 FR 39409 (June 30, 2004).

⁹ See Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 70 FR 32756 (June 6, 2005).

¹⁰ On March 11, 2005, the Department was informed that Arteva Specialties, Inc. d/b/a KoSa changed its name to Invista S.a.r.l.

¹¹ See Initiation of Antidumping and Countervailing Duty Administrative Review, 70 FR 37749 (June 30, 2005).

¹² Id.

There has been one changed circumstances review and no duty absorption reviews of the aforementioned orders. On January 9, 2001, the Department initiated a changed circumstances review to determine whether Huvis, which was formed through a joint venture merger between Samyang and SK Chemicals Co., Ltd., was the successor-in-interest to either of the pre-merger companies.¹³ On June 6, 2001, the Department issued the final results of the changed circumstances review, in which it found that Huvis was a new entity subject to the “all-others” rate calculated in the antidumping duty investigation.¹⁴

Background

On April 1, 2005, the Department initiated the sunset review of the antidumping duty orders on PSF from Korea and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).¹⁵ The Department invited parties to comment and received notices of intent to participate from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. producers of the domestic like product. The Department received a substantive response from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(3)(i). The domestic interested parties have been active since the original investigation, and have participated in these proceedings since that time. The Department did not receive responses to the notice of initiation from any of the respondents. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of these orders.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted these sunset reviews to determine whether revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty orders. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margins of dumping likely to prevail if the orders were revoked. Below we address the comments of the domestic interested parties.

¹³ See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber from the Republic of Korea, 66 FR 1642 (Jan. 9, 2001).

¹⁴ See Notice of Final Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber from the Republic of Korea, 66 FR 30411 (June 6, 2001).

¹⁵ See Initiation of Five-Year (“Sunset”) Reviews, 70 FR 16800 (Apr. 1, 2005).

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties contend that the records in these proceedings demonstrate that, since the imposition of the original antidumping orders, most respondents have persisted in dumping in the U.S. market. See Substantive Response of Domestic Interested Parties, at 14 (May 2, 2005) (“Substantive Response”). According to the domestic interested parties, if the antidumping duty orders were revoked, it is likely that the foreign producers and exporters would continue dumping to sell their subject merchandise in significant quantities in the United States.

The domestic interested parties cite to section 752(c)(1) of the Act, and assert that the Department's sunset review should consider the weighted-average dumping margins determined in the original investigation, as well as the change in volume of subject merchandise imports following the issuance of the antidumping order. The petitioners also argue that the Department should consider declining import volumes that are accompanied by continued dumping margins after the order's issuance as an indication that dumping would likely continue absent an order.¹⁶ Additionally, the domestic interested parties cite to the Act and the Policy Bulletin to argue that the existence of several de minimis margins in multiple administrative reviews should not, in themselves, require the Department to conclude that dumping is not likely to continue if these antidumping duty orders were revoked.¹⁷

The domestic interested parties claim that the record demonstrates that the discipline of the orders has forced subject producers to increase their prices to lower dumping levels or to significantly reduce their volumes to the United States. See Substantive Response at 16. According to the domestic interested parties, imports from Taiwan declined substantially following the imposition of the order, from more than 155 million pounds in the year before the order was imposed, to 72 million pounds in 2004. Id. The domestic interested parties contend that no Taiwanese respondents have been reviewed by the Department since the original investigation, and dumping has therefore continued at significant levels.

With respect to Korea, the domestic interested parties contend that the existence of de minimis margins fails to indicate that revocation of the antidumping order would not likely lead to continuation or recurrence of sales at less than fair value. See Substantive Response at 17. The domestic interested parties argue that, of the three companies who have received de minimis dumping margins in administrative reviews, at least one company, Huvis, has received a higher

¹⁶ See Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316 at 889 (1994); see also Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871, 18872 (Apr. 16, 1998) (“Policy Bulletin”).

¹⁷ See Policy Bulletin, 63 FR at 18873 (citing section 752(c)(4)(A) of the Act, 19 U.S.C. 1675a(c)(4)(A)).

dumping margin in a subsequent review.¹⁸ Id. The domestic interested parties assert that a second company, Keon Baek, was later excluded from the order, and there is therefore no evidence on the record to indicate the company's current pricing behavior.¹⁹ The domestic interested parties state that a third Korean producer, Estal, has not been reviewed after receiving a de minimis margin in the second administrative review, and thus there is no evidence that this company has not increased its level of dumping since that review. Therefore, the petitioners contend the de minimis antidumping duty margins for these three companies are not probative of future pricing behavior.

Finally, the domestic interested parties claim that both Korean and Taiwanese producers of PSF are currently subject to trade barriers in several other countries, which provide further evidence that increased imports to the United States would be likely if revocation were to occur. See Substantive Response, at 17. The domestic interested parties note that there are existing antidumping measures against PSF from both Korea and Taiwan in India, Japan, and Turkey, and also note that Korean PSF is additionally subject to antidumping measures in Argentina, China, and Mexico. According to the domestic interested parties, a Mexican sunset review cited, “an increasing number of cases worldwide of anti-dumping duties being levied on South Korean polyester staple fiber and the possibility of the products being further reduced in price.”²⁰ See Substantive Response, at 18. Thus, the domestic interested parties contend that the recent dumping practices by subject producers in other markets provide further evidence that dumping will likely resume in significant volumes in the United States if the order is revoked.

Department's Position

Section 752(c)(1) of the Act instructs that in determining whether revocation of the order would be likely to lead to continuation or recurrence of sales at less than fair value, the Department shall consider:

- (A) the weighted average dumping margins determined in the investigation and subsequent reviews, and
- (B) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order ...

The Act further explains in section 752(c)(2) that the Department, if good cause is shown, “shall also consider such other price, cost, market or economic factors as it deems relevant.”

Drawing on the guidance provided in the legislative history accompanying the URAA, specifically the SAA, the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”),

¹⁸ Compare 2nd AR Final Results, 68 FR 59366 (calculating a de minimis rate of 0.21 percent ad valorem for Huvis), with 3rd AR Final Results, 69 FR 61341 (calculating a rate of 1.54 percent ad valorem for Huvis).

¹⁹ See 3rd AR Final Results, 69 FR 61341.

²⁰ See Mexico to Maintain Anti-Dumping Duties on Korean Polyester, Asia Pulse (Dec. 16, 2004).

and the Senate Report, S. Rep. No. 103-412 (1994) (“Senate Report”), the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of an order and import volumes for the subject merchandise declined significantly. In addition, the SAA explains that:

{D}eclining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes. See SAA, H.R. Rep. No. 103-316 at 889 (1994).

The Department analyzed and considered the volume of imports of the subject merchandise for the periods before and after the issuance of these orders. With respect to PSF from Korea, we note that in 1999, 2000, and 2004, import volumes decreased from the previous year, and in 2001, 2002, and 2003, import volumes increased from the previous year. See Attachment 1. With respect to PSF from Taiwan, we note that in 2002, 2003, and 2004, import volumes decreased from the previous year, and in 1999, 2000, and 2001, import volumes increased from the previous year. Import volumes of PSF from both Korea and Taiwan have fluctuated over the life of these orders. Id. With respect to Taiwan, imports have declined sharply since the issuance of the order.

The record of the order on PSF from Korea shows that dumping has persisted since the issuance of the order. Deposit rates above de minimis remain in effect for imports of PSF from Korea and Taiwan. For Huvis, a Korean producer of PSF and the only respondent to have participated in three reviews of the antidumping order, deposit rates, as determined by the third administrative review, increased from the previous administrative review. Based on the record evidence, dumping was not eliminated after the issuance of the order on PSF from Korea. In fact, since the imposition of the order, dumping continued in the first, second and third administrative reviews. Accordingly, because dumping continued even with the discipline of an order in place, the Department infers that revocation of this order on PSF from Korea is likely to lead to a continuation or recurrence of dumping. Since no administrative reviews on PSF from Taiwan have been completed, the actual dumping margins on Taiwanese PSF are unknown, and the current margins are unchanged from the deposit rates determined in the LTFV investigation.

We agree with the domestic interested parties that the continuation of dumping at above de minimis levels warrants the continuation of these orders. Although some Korean exporters received de minimis margins in subsequent administrative reviews,²¹ a de minimis margin does not, by itself, require the Department to determine that sales at less than fair value are unlikely to continue or recur upon revocation of an antidumping duty order. See section 752(c)(4)(A) of the

²¹ See 3rd AR Final Results, 69 FR 61341.

Act. Therefore, on the basis of information provided by the domestic interested parties, information on the record, and the lack of information provided by the respondent parties, we continue to find that it is likely that, if the antidumping duty orders were revoked, dumping would continue or recur.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested parties argue that the Department should report the dumping margins found in the original investigations to the ITC as the margins likely to prevail if the dumping orders were revoked. See Substantive Response, at 18. According to the domestic interested parties, the SAA and the Department's Policy Bulletin state that, dumping margins found in the original investigations establish the dumping margins likely to prevail if the orders at issue were revoked. See SAA, at 890; see also Policy Bulletin, 63 FR, at 18873. The domestic interested parties apply this principle to suggest the following likely prevailing margins upon revocation of the orders:

Korea

Sam Young Synthetics Co.	7.91 percent <u>ad valorem</u>
All Others	7.91 percent <u>ad valorem</u>

Taiwan

Far Eastern Corporation	11.50 percent <u>ad valorem</u>
Nan Ya Plastics Corporation , Ltd.	3.79 percent <u>ad valorem</u>
All Others	7.31 percent <u>ad valorem</u>

Department's Position

Section 752(c)(3) of the Act provides that the Department will report to the ITC the magnitude of the margin of dumping that is likely to prevail if the orders were revoked. The Department normally will select a margin from the final determination of the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. See SAA, at 890. The SAA further explains that “[i]n certain instances, a more recently calculated rate may be more appropriate.” Id. The SAA explains that “certain instances” may exist if, “dumping margins have declined over the life of an order and imports have remained steady or increased.” SAA, at 890-91. As previously explained, with respect to the orders on PSF from Korea and Taiwan, dumping margins have not declined and import volumes have decreased. Therefore, the circumstances described in SAA, at 890-91, do not exist.

For the antidumping order of PSF from Korea, margins calculated in subsequent administrative reviews have increased for one exporter. For the antidumping order of PSF from Taiwan, the Department has not completed any subsequent administrative reviews. Therefore,

the Department does not find any indication that the margins calculated in subsequent reviews are more probative of behaviors without the discipline of the order. For this sunset review, because the Department continues to find that the margins calculated in the original investigations are probative of the behavior of Korean and Taiwanese producers and exporters, the Department intends to report these margins to the ITC, as indicated in the “Final Results” section of this memorandum.

Final Results

We determine that revocation of the antidumping duty orders on PSF from Korea and Taiwan would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin
<u>Korea</u>	
Sam Young Synthetics Co.	7.91 percent <u>ad valorem</u>
All Others	7.91 percent <u>ad valorem</u>
<u>Taiwan</u>	
Far Eastern Corporation	11.50 percent <u>ad valorem</u>
Nan Ya Plastics Corporation , Ltd.	3.79 percent <u>ad valorem</u>
All Others	7.31 percent <u>ad valorem</u>

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of these sunset reviews in the Federal Register.

AGREE _____

DISAGREE _____

 Joseph A. Spetrini
 Acting Assistant Secretary
 for Import Administration

 (Date)

Attachment 1

U.S. General Imports of Polyester Staple Fiber by Volume: HTS 5503.20.0045* and HTS 5503.20.0065*								
(in kilograms)								
Country	1997	1998	1999	2000	2001	2002	2003	2004
Korea	71,642,837	100,573,349	95,455,137	90,088,187	91,208,027	100,968,006	117,187,430	95,190,078
Taiwan	35,126,519	54,023,154	70,110,239	74,604,543	77,136,070	63,626,524	42,997,746	32,829,686
Subtotal	106,769,356	154,596,503	165,565,376	164,692,730	168,344,097	164,594,530	160,185,176	128,019,764
All Others	141,665,697	194,475,970	211,834,542	197,806,425	218,575,523	238,500,047	247,038,128	203,468,954
Total	248,435,053	349,072,473	377,399,918	362,499,155	386,919,620	403,094,577	407,223,304	331,488,718

Source: U.S. International Trade Commission, DataWeb; <http://dataweb.usitc.gov/>

* Note: Prior to July 2001, polyester staple fiber was classified under HTS 5503.20.0040 and 5503.20.0060

U.S. General Imports of Polyester Staple Fiber by Volume: HTS 5503.20.0045 and HTS 5503.20.0065							
(Percent Annual Change)							
Country	1998	1999	2000	2001	2002	2003	2004
Korea	40.4%	-5.1%	-5.6%	1.2%	10.7%	16.1%	-18.8%
Taiwan	53.8%	29.8%	6.4%	3.4%	-17.5%	-32.4%	-23.6%
Subtotal	44.8%	7.1%	-0.5%	2.2%	-2.2%	-2.7%	-20.1%
All Others	37.3%	8.9%	-6.6%	10.5%	9.1%	3.6%	-17.6%
Total	40.5%	8.1%	-3.9%	6.7%	4.2%	1.0%	-18.6%