

July 19, 2010

MEMORANDUM TO: Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

FROM: Edward C. Yang  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty  
Administrative Review of Certain Polyester Staple Fiber from  
Taiwan for the Period May 1, 2008, through April 30, 2009

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## SUMMARY

We have analyzed the case brief of an interested party in the administrative review of certain polyester staple fiber from Taiwan covering the period May 1, 2008, through April 30, 2009. As a result of our analysis, we have not made any changes to the preliminary results with respect to any comments received. We recommend that you approve the positions described 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 from an interested party:

### Comments

Comment 1: Exchange Rates  
Comment 2: Selection of Normal Value

## BACKGROUND

On February 5, 2010, the Department of Commerce (the Department) published in the *Federal Register* the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber (PSF) from Taiwan.<sup>1</sup> The period of review (POR) is May 1, 2008, through April 30, 2009. We invited interested parties to comment on the preliminary results. We received a case brief from the sole respondent, Far Eastern Textile Limited (FET).

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<sup>1</sup> See *Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 5964 (February 5, 2010).

## DISCUSSION OF ISSUES

### Exchange Rates

**Comment 1:** The respondent contends that the Department did not use the correct exchange rates when calculating both normal value and the ex-works price for each U.S. transaction. The respondent states that while the Import Administration website cites the source of the exchange rates the Department used for the preliminary results as the *Federal Reserve Statistical Release H.10* (FRSR H.10), the rates the Department used in the preliminary results differ from those published in the FRSR H.10 for nine dates of sale during the POR. Therefore, the respondent requests that the Department correct the exchange rates to use the actual rates available in the FRSR H.10.

**Department's Position:** Section 773(a) of the Tariff Act of 1930, as amended (the Act), directs the Department to use the daily exchange rate in effect on the date of sale to convert foreign currencies into U.S. dollars, subject to certain exceptions. "Those exceptions require {Import Administration} to ignore 'fluctuations' in the exchange rate." See *Notice: Change in Policy Regarding Currency Conversions*, 61 FR 9434, 9435 (March 4, 1996) (*Policy Bulletin*). A fluctuation exists whenever the "actual" daily rate, published by the New York Federal Reserve Bank, varies from the benchmark rate by more than 2.25 percent. *Id.* In turn, the benchmark rate is a moving average of the actual daily exchange rates for the eight weeks immediately prior to the date of the actual daily exchange rate to be classified." *Id.* When a fluctuation exists, we substitute the benchmark rate for the "actual" rate on a day-to-day basis. See, e.g., *Certain Stainless Steel Wire Rods From France; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 8915, 8918 (March 6, 1996), unchanged in *Certain Stainless Steel Wire Rods From France; Final Results of Antidumping Duty Administrative Review*, 62 FR 7206 (February 18, 1997), and *Policy Bulletin*, 61 FR at 9435. When we classify an actual daily rate as fluctuating, the benchmark rate becomes the "official rate" for that date.

For purposes of the preliminary results, we used the "official" conversion rates from the Import Administration website, *i.e.*, the benchmark rates with respect to the nine dates of sale. Consistent with our practice, we determined to use the "official" rates because of fluctuation in exchange rates on the dates of sale of the transactions in question. In those instances where fluctuations did not exist, we used the FRSR H.10 rate in effect on the date of sale. Accordingly, we have made no changes in the exchange rates we used to calculate the margin for FET.

### Selection of Normal Value

**Comment 2:** FET contends that, according to Article 2.4 of the World Trade Organization Antidumping Agreement,<sup>2</sup> implemented by section 773(a)(6)(C)(i) of the Act, the Department should make due allowance for differences which affect price comparability when making fair

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<sup>2</sup> "A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability."

comparisons between export price and normal value including not only differences in physical characteristics but also differences in sales quantities.

In FET's view, the sale of the product the Department selected as a similar home-market match consisted of a *de minimis* quantity on a control number-specific basis, *i.e.*, the quantity sold was less than five percent of the quantity of the comparison sale to the United States. Because of this size discrepancy in the transactions, FET argues that, for comparison purposes, the Department should use sales of a less physically similar home-market model in larger quantities. FET states that the Department should use sales from the comparison month as normal value. FET argues that the smallness of volume of the home-market sale selected as normal value is analogous to a small home or third-country market's non-viability. While FET acknowledges that it is not the Department's practice to do a viability analysis on a product-specific basis, it argues that the Department should do so in cases where compelling facts indicate it should be done to satisfy the statutory mandate to calculate an accurate dumping margin. Citing *Viraj Group v. United States*, Slip Op. 02-24 (CIT 2002), FET claims that conducting the dumping analysis as the Department has is a *per se* mechanical application of the process that leads to an inaccurate calculation of the dumping margin.

**Department's Position:** For the final results, we have continued to select the most physically similar foreign like product for comparison to the product sold in United States for which there was no identical match in the home market. This is consistent with the hierarchical requirements of section 771(16) of the Act. The home-market product which we selected for comparison to the product sold in the United States was identical in all physical characteristics except for denier. FET's proposed home-market match is less similar with respect to denier than our selection. Because the home-market product to which we matched the U.S. sale in the preliminary results is the most similar match of products sold in the ordinary course of trade, there is no reason to disregard it in favor of a home-market product which is less physically similar.

With respect to FET's argument regarding quantities, FET has requested, in effect, that the Department calculate normal value based on sales with quantity discounts. Section 773(a)(6)(C)(i) of the Act states that U.S. price will be adjusted for differences in price tied to differences in the quantities sold of the foreign like product compared to subject merchandise. Moreover, the Department's regulations at 19 CFR 351.409 state that "the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential...is wholly or partly due to that difference in quantities." The regulation states further that the Secretary will calculate normal value based on sales with quantity discounts only if "the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of foreign like product" or "the exporter or producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities." See 19 CFR 351.409(b); see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, 64 FR 17324, 17329 (April 9, 1999) (*Round Wire from Canada*) (declining to grant a quantity discount because the respondent did not provide sufficient information demonstrating that such a discount was warranted), and *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584

(August 11, 2008), and accompanying Issues and Decision Memorandum at Comment 13 (*OJ from Brazil*) (declining to grant a quantity discount because the respondent “merely provided conclusory statements without any supporting analysis”).

Here, similar to the respondents in *Round Wire from Canada* and *OJ from Brazil*, FET did not demonstrate that it granted quantity discounts during the POR nor did it demonstrate that any difference in prices were wholly or partially due to the production of the different quantities. Additionally, our review of the record indicates that there is little correlation between price and quantity with respect to individual home-market sales made by FET during the POR. See Memorandum to the File date July 16, 2010. Finally, FET did not demonstrate how any evidence on the record, such as price lists, support its claim that prices varied by quantity. For these reasons, we determine that it is not appropriate to make any adjustment for a quantity discount. Further, FET has not argued or demonstrated that the home-market sale we used for normal value was outside the ordinary course of trade. Therefore, we have not altered our selection of the appropriate home-market match for purposes of our calculations.

## 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 administrative review in the *Federal Register*.

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date