

DATE: February 14, 2011

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

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Antidumping Duty Administrative Review of Polyethylene
Terephthalate Film, Sheet, and Strip from Taiwan: Issues and
Decision Memorandum for the Final Results

I. Summary

We have analyzed the comments of the interested parties in the antidumping duty administrative review of polyethylene terephthalate film (PET Film) from Taiwan. As a result, we have made changes to the margin calculation for Shinkong Synthetic Fibers Corporation (SSFC) and Shinkong Materials Technology Co. Ltd. (SMTC) (collectively, Shinkong) as described below. No comments were received for Nan Ya Plastics Corporation, Ltd. (Nan Ya). However, Nan Ya's margin has also changed as the result of a revised database. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. Background

On August 16, 2010, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of PET Film from Taiwan. See Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 49902 (August 16, 2010) (Preliminary Results). This administrative review covers two producers/exporters of the subject merchandise: Nan Ya and Shinkong. See Preliminary Results. The period of review (POR) is July 1, 2008, through June 30, 2009. The Department had insufficient time to address certain issues in the Preliminary Results. These issues, however, were addressed prior to the filing of briefs, and are discussed in detail in the "Background" section of the accompanying Federal Register notice.

The Department received a timely case brief on January 7, 2011, from DuPont Teijin Films, Mitsubishi Polyester Film of America, SKC, Inc., and Toray Plastics (America), Inc. (collectively, Petitioners) raising certain issues with respect to Shinkong. Shinkong filed a timely rebuttal brief with the Department on January 13, 2011. Based on our analysis of the comments received, the weighted average margin for Shinkong changed from the calculated margin in the Preliminary Results. The weighted average margin for Nan Ya also changed as the result of revised data submitted after the Preliminary Results. The revised margins are published in the accompanying Federal Register notice.

III. List of the Issues

Below is the complete list of issues in this review on which we received comments from interested parties.

- Comment 1: Shinkong's Cost Data do not Account for the Physical Characteristics of the Subject Merchandise
- Comment 2: Shinkong Understates its Adjustment for General and Administrative Expenses
- Comment 3: The Date of Sale for Shinkong's U.S. Sales

IV. Discussion of the Issues

Comment 1: Shinkong's Cost Data do not Account for the Physical Characteristics of the Subject Merchandise

The Department requested that the respondents categorize products sold in the U.S. and home markets based on four physical characteristics: specification, thickness in microns, thickness range, and surface treatment. Petitioners claim that Shinkong's reporting methodology appears only to account properly for two of these characteristics, thickness in microns and thickness range, and that Shinkong has not offered an adequate explanation to conclude otherwise.

Despite providing definitions of the product codes used to report per unit cost of manufacturing (COM) and other information, Petitioners argue Shinkong's responses are still deficient as it provided limited explanation regarding how these internal product codes relate to the Department's four product characteristics. In the view of Petitioners, Shinkong's response amounts to a refusal to answer the Department's questions to the best of its ability, warranting the use of facts available for Shinkong's costs.

Specifically, Petitioners argue that the internal codes chosen by Shinkong are not the best match for the physical characteristic "specification," which is the first characteristic in the Department's control number (CONNUM) for PET Film products. According to Petitioners, Shinkong's claims regarding a link between the code it relied on and the specification characteristic, "absent other factors, are reasonable." Nevertheless, they continue, an alternative code is "highly correlated" with the characteristic and Shinkong has failed to explain why it "abandoned" the use of this alternative code.

Similarly, Petitioners argue Shinkong has failed to offer a convincing explanation as to why it cannot account for variations in surface treatment (the fourth characteristic in the CONNUM) or why such variation is insignificant. Petitioners note that the Department's questionnaire states that, if a product characteristic is not tracked by a respondent's normal cost accounting system, the respondent should use a reasonable reporting method based on available company records to calculate the appropriate cost differences for that physical characteristic. Petitioners believe that Shinkong failed to provide evidence substantiating its claims and note that, in Shinkong's own production process, surface treatment is a separate and distinct stage of production. They also argue that Shinkong's claims pertain only to the raw materials of surface

treatment and do not address how labor and machinery costs might vary across treatment processes. Petitioners conclude that, given these deficiencies, the use of adverse facts available for COM is warranted.

In response, Shinkong argues it used all data available in its accounting system to determine accurately the cost differences associated with specification. Shinkong argues that specification is more accurately indicated by a combination of the code for PET chips and a sub-code of the finished film product code—the code Petitioners claim to be the most appropriate—than by the sub-code of the finished product code alone. Shinkong states that the finished film product sub-code indicates “application,” which does not necessarily correspond with specification, because some applications of film involve more than one specification of plastic. Instead, it argues, reliance on the input code, which indicates the type of PET chip used in production, results in a more accurate accounting for differences in specification; *i.e.*, the finished film will have the same plastic specification as the plastic chips used to make it. Shinkong claims a second sub-code of its finished film product code was also used to identify the properties that match the specification characteristic.

When addressing surface treatment, Shinkong admits cost differences were not accounted for, and restates its claims that the cost differences are insignificant. According to Shinkong, its 13-digit product codes cannot account for surface treatment as defined by the Department. Shinkong claims it has demonstrated through various submissions that the cost differences for surface treatments are very minor, and that, specifically, total coating material costs accounted for only a relatively small percentage of the entire COM. While Shinkong does designate a separate production stage for the coating process, which is where surface treatment occurs, it argues that this is only one step in a multi-stage production process. Shinkong concludes that it answered all the Department’s questions to the best of its ability, and that the use of facts available is unwarranted.

Department’s Position:

The Department finds that Shinkong has provided sufficient explanations regarding how it chose to rely for reporting purposes on a combination of the internal product code for the PET chip input and its 13-digit internal product code for the finished PET Film. The detail provided by its 13-digit code (*i.e.*, the sub-codes therein), plus the PET chip code for the specific type of PET chips used to make the film, allows Shinkong to identify properly the appropriate Department specification code.

Regarding surface treatment, Shinkong has reported the per-unit COM for each CONNUM, which includes the total costs of surface treatment, including materials, labor, and overhead, and Petitioners do not dispute this. We find that Shinkong has adequately explained its inability to account for the variations among these surface treatment costs and has provided a calculation to support its claims regarding the insignificance of these variations in terms of COM. In its October 5, 2010 response to the Department’s supplemental questionnaire, Shinkong provided an analysis demonstrating its arguments that little or no cost difference exists among surface treatments. *See* Shinkong’s October 5, 2010 section D supplemental questionnaire response at 2. A demonstration that there are insignificant cost differences with respect to one of the matching

characteristics has been permitted by the Department in the past. See, e.g., Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review, 72 FR 52070 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 5, where the respondent provided support demonstrating that cost differences for a specific physical characteristic involving shrimp processing were minor. While ideally the Department seeks cost information relating to all differences among physical characteristics in the CONNUM, in this case, Shinkong has demonstrated to the best of its ability that it is unable to provide such information, and has adequately supported its claim that varying surface treatments have only insignificant cost differences. Thus, we do not find a basis for applying facts available as Petitioners argue. See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey, 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Discussion of the Issues, in which the Department cited to section 782(e) of the Act, stating: “{The Department} shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by {the Department},” if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information.

Comment 2: Shinkong Understates its Adjustment for General and Administrative Expenses

Petitioners claim that the Department should adjust the general and administrative expenses (G&A) ratio in order to account for two methodological errors. Petitioners argue that Shinkong reduced the G&A ratio by revenue from the sale of supplies, but then excluded the related costs of these supplies. Thus, the net effect from this activity was not captured. Moreover, according to Petitioners, Shinkong included packing costs in the denominator of the ratio, despite excluding packing costs from the COM, to which the ratio is applied.

Shinkong agrees that the suggested adjustments are correct, but disagrees with Petitioners’ method of combining the G&A ratios of the two collapsed companies that we are treating as a single entity. Petitioners suggest that the G&A ratio should be separately calculated for SSFC and for SMTC (a wholly-owned subsidiary of SSFC); the two ratios should then be weight-averaged into a single G&A ratio before being applied to COM. Shinkong argues that this method is problematic because SMTC’s cost of sales, which is the denominator of the G&A ratio, was incurred solely for sales to SSFC. It claims that without deducting the costs incurred for inter-affiliate sales the weighted-average G&A ratio will be distorted.

Department’s Position:

We agree with both Petitioners and Shinkong that the costs of supplies sold should be added to the numerator and that packing costs should be deducted from the denominator of the G&A ratio calculation. However, we disagree with both Petitioners and Shinkong on how the combined G&A rate should be calculated and applied. It is the Department’s normal practice to calculate G&A ratios separately for the companies of a collapsed respondent, and to apply the separate ratios to each company’s COM before weight averaging their costs of production together into

one database. See, e.g., Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) and accompanying Issues and Decision Memorandum at Comment 11, and Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 11. It is not the Department's practice to calculate G&A ratios based on consolidated figures, even when the affiliates in question have been collapsed for other cost purposes. Thus, for the final results, we will make adjustments to the G&A ratios for both companies, apply the adjusted ratios to each company's COM, and then weight-average the two cost of production databases into one set of cost data.

Comment 3: The Date of Sale for Shinkong's U.S. Sales

The invoice date was chosen as the date of sale for U.S. sales in the Preliminary Results. Petitioners argue the Department should use the earlier of shipment date or invoice date. Respondents provided no rebuttal arguments.

Department's Position:

For these final results, we have limited sales date to no later than "the" shipment date, consistent with Department regulations and practice. See 19 CFR 351.401(i); see also Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 7244 (February 18, 2010), unchanged in Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 41808 (July 19, 2010).

V. Recommendation

We recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final dumping margins for all companies in the Federal Register.

Agree _____ Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date