

A-583-833
AR: 5/1/06-4/30/07
Public Document
O/5: TES x0410

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Certain Polyester Staple Fiber from
Taiwan for the Period May 1, 2006, through April 30, 2007

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of certain polyester staple fiber from Taiwan covering the period May 1, 2006, through April 30, 2007. As a result of our analysis, we have made changes to the preliminary results. 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 interested parties:

Comments

Comment 1: Date of Sale
Comment 2: Classification of Sales
Comment 3: Grade Designations
Comment 4: Home-Market Credit Expenses
Comment 5: Verification Findings
Comment 6: U.S. Actual Credit Expenses

BACKGROUND

On April 17, 2008, 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.¹ The period of review (POR) is May 1, 2006, through April 30, 2007. We invited interested parties to comment on the preliminary results. We received case and rebuttal briefs from Wellman, Inc., and Invista, S.a.r.l. (collectively, the petitioners), and the sole respondent, Far Eastern Textile Limited (FET).

DISCUSSION OF ISSUES

Comment 1: Date of Sale

The petitioners argue that the Department should use the date of order confirmation rather than the date of shipment as the date of sale for FET's U.S. sales. The petitioners assert that the Department found, through supplemental questions and at verification, that the material terms of sale did not change for any of FET's U.S. sales of subject merchandise during the POR or during the PORs of the two prior reviews. The petitioners also contend that, in response to the Department's inquiry, FET's only justification for using the date of shipment as the date of sale was that changes in the material terms of sale were possible and that such changes did occur with respect to U.S. sales of non-subject merchandise, an example, the petitioners assert, which is irrelevant to the Department's analysis. The petitioners contend that the fact that no customer has changed the price or quantity for a sale of subject merchandise in over three years establishes that, under the Department's policy and practice, the order-confirmation date is the correct date of sale. The petitioners also argue that the fact that payment for a number of transactions was made prior to the date of shipment highlights the fact that no changes to the material terms of sale could or would be made and that the Department should use the order-confirmation date as the date of sale. The petitioners also argue that, because FET reported its U.S. sales to the Department based on an improper date of sale and, as a result, the Department does not have the proper universe of sales on which to calculate FET's margin, the Department should use, as partial facts available, the highest non-aberrational dumping margin for FET and apply it to all U.S. sales.

FET responds that it reported the date of sale correctly. FET contends that it allows order changes by customers up to the date of shipment regardless of whether the merchandise is subject or non-subject. FET asserts that the Department verified order changes with respect to U.S. sales of non-subject merchandise to the same U.S. customer which also bought subject merchandise during the POR. Citing the final results of three reviews of the antidumping duty order on stainless steel butt-weld pipe fittings from Taiwan, FET contends that the Department has used invoice date as the date of sale even if there were no significant changes in terms of sale between order date and invoice date as long as the terms of sale can change.

FET also argues that the petitioners' reference to payment occurring before shipment applies to home-market sales and not U.S. sales. FET contends further that the fact that cash payments were made close to the time of shipment does not support the use of order date as the date of sale.

¹ See Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 20907 (April 17, 2008).

Department's Position: The Department's regulations instruct that, "[i]n identifying the date of sale of the subject merchandise or the foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." See 19 CFR 351.401(i).

FET reported the date of shipment, rather than the date of invoice, as the date of sale for its U.S. sales on the grounds that the material terms of sale are established on the date of shipment because it "accepts order changes up to the shipment date." See FET's August 29, 2007, section A response at page A-15. Furthermore, FET submitted documentation that the terms of sale can and do change between the date of order confirmation and the date of shipment with respect to one of its U.S. customers. See FET's February 20, 2008, supplemental response at Exhibit SE-13. While the petitioners are correct in observing that this sale was not of subject merchandise, there is no evidence or argument on the record to suggest that FET's sales practices to its U.S. customers differ depending on whether the merchandise it sells is subject to the antidumping duty order. As a result, we are satisfied that the terms of sale may change up to the time of shipment. Therefore, we determine that FET reported the date of shipment properly as the date of sale for its U.S. sales.

In addition, we have used the date of shipment as the date of sale for the two previous reviews based on the same circumstances present in this review. See Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 31283, 31284-85 (June 6, 2007) (unchanged in final results, 72 FR 69193 (December 7, 2007)), and Certain Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 32514, 32515 (June 6, 2006) (unchanged in final results, 71 FR 60476 (October 13, 2006)). There is no new evidence on the record of this review to change our finding that it is proper to use the date of shipment as the date of sale.

Finally, the petitioners argue that the fact that payment for a number of transactions was made prior to the date of shipment highlights the fact that no changes to the material terms of sale could or would be made and that the order-confirmation date should be used as the date of sale. In fact, however, the date of payment precedes the date of shipment only with respect to certain home-market sales. With respect to FET's U.S. sales, the date of shipment preceded the date of payment for every U.S. sale which FET reported. See FET's U.S. sales database which it submitted with its February 20, 2008, supplemental response. Thus, the petitioners' argument on this point is inapposite.

Comment 2: Classification of Sales

The petitioners argue that FET reported certain export sales improperly as home-market sales. The petitioners claim that, under the Department's knowledge-of-destination test, sales of merchandise must be classified as home-market sales when the respondent knew or had reason to know at the time of sale that the merchandise would be consumed in the home market. According to the petitioners, consumption in the home market occurs when merchandise that is sold in the home market, even if ultimately destined for export, is converted in the home market

into non-subject merchandise prior to exportation. Thus, the petitioners argue, if a respondent knew or had reason to know at the time of sale that the merchandise would not be consumed in the home market but would be exported, it must report those sales as either third-country or U.S. sales, as appropriate.

The petitioners claim that FET treated sales to Taiwanese companies as export sales only when it prepared the export customs declaration. The petitioners argue that this is in error because FET should have considered those sales which it should have known were destined for export markets as export sales. According to the petitioners, the Department discovered at verification that some sales to at least one customer were reported as home-market sales notwithstanding that all sales to that customer were destined for export. The petitioners argue that the Department should remove the export sales that FET included incorrectly in its home-market sales database.

FET argues that it distinguished its sales between home-market sales and export sales properly. FET claims that it did its best to report the sales by classifying, as export sales, all sales to home-market customers for which FET knew or had reason to know that the sales were destined for export. FET also contends that the Department verified FET's segregation of its sales between home-market sales and export sales.

Department's Position: We examined this issue at verification and found, contrary to the petitioners' assertion, no evidence that FET misclassified any of its sales when segregating them between sales of subject merchandise, sales of the foreign like product, or other sales. See Memorandum entitled "Verification of the Sales Response of Far Eastern Textile Co., Ltd., in the May 1, 2006, through April 30, 2007, Administrative Review of Polyester Staple Fiber from Taiwan" dated July 11, 2008, at pages 7 through 9 (Verification Report). Furthermore, we found no evidence at verification that FET knew or had reason to know that any of the sales which it reported as sales of the foreign like product were ultimately destined for export. *Id.* Because we have no evidence or any reason to suspect that FET misclassified any of its sales in this administrative review, we have accepted FET's reported classification of sales for the final results.

Comment 3: Grade Designations

The petitioners argue that the Department should disregard FET's grade designations for home-market sales. The petitioners assert that FET's cost data show that there is no difference in the costs of producing the different grades. The petitioners contend further that, at verification, the Department selected a purported grade "B" sale and found that it did not meet the standard specifications for grade B. In other words, the petitioners assert, the sale was in reality a grade A sale identical in physical characteristics to all PSF sold in the United States but excluded from the margin calculation due to FET's artificial and unsupported grading scheme. The petitioners argue that antidumping proceedings are price-discrimination investigations and that the Department should reject the manipulation of data where there are no objective and verifiable standards to support the segregation of certain sales.

FET responds that the Department's acceptance of its grade designations was appropriate. FET contends that its grade designations are based on standards that were in place before the

antidumping proceeding began, that it maintains its inventory records by grade, and that it specifies the grade in sales and shipping documents in its normal course of business.

FET also asserts that it did not manipulate the grade of the products. FET claims that it never intends to produce grade B or C merchandise but only designates PSF as such grades when the product does not meet the specifications of grade A merchandise. FET contends that evidence on the record supports its assertion.

Finally, FET contends that the fact that each of the grades has the same cost of production is meaningless because the production process is the same but the outcome is different. FET asserts that the Department has found such situations in other proceedings.

Department's Position: As a preliminary matter, there is a typographical error in the verification report. In our verification report we state, "We selected a sale of grade B merchandise and tied the invoice to the quality-control report for the merchandise sold and FET's standard specifications for the product which demonstrated that the merchandise sold did not meet the standard specifications for grade B." See Verification Report at page 6. In fact, the verification report should say, "We selected a sale of grade B merchandise and tied the invoice to the quality-control report for the merchandise sold and FET's standard specifications for the product which demonstrated that the merchandise sold did not meet the standard specifications for grade A." That this is so can be seen in the fact that any product that meets FET's standard specifications is classified as grade A merchandise and any product that does not meet its standard specifications is classified as grade B or grade C. See FET's February 20, 2008, supplemental response at SE-14. In fact, there is no "standard specification for grade B."

We found at verification that the grade B product we examined did not meet the standard specifications for Grade A. See Verification Report at page 6 and Exhibit 6 which shows the standard specification, and that the product we examined did not meet that standard. Thus, we found that FET classified this product properly as grade B merchandise. If we had actually found any inconsistency in how FET had reported its grades, we would have identified it in the "Summary of Issues" section of the report.

We examined this issue at verification and, notwithstanding the typographical error described above, we found no evidence that FET distinguished its sales improperly between different grades. The standards and quality-control reports we examined were all kept in the ordinary course of business and there is no evidence that these standards are "artificial" in any way. Nor is there any evidence of manipulation on the part of FET with respect to how it tracked and reported the grades of its merchandise. Thus, we have accepted FET's reporting for the final results.

Comment 4: Home-Market Credit Expenses

The petitioners argue that the Department should deny FET's reported home-market imputed credit expenses. The petitioners contend that the Department found that the reported payment date was later than the actual payment date for all of the home-market transactions it examined at verification. The petitioners assert that FET's explanation for this discrepancy demonstrates that it knew it was supposed to report the date the payment was received and that it reported a different date intentionally and, thus, overstated its home-market credit expenses.

FET states that it reported the date on which it offset the payment against accounts receivable in its accounting records as the date of payment for all home-market sales. FET argues that this is reasonable because such dates are readily verifiable from the accounting records. FET asserts further that the Department's Verification Report demonstrates that the actual payment dates were very close to the shipment dates with the maximum difference being four days which FET claims is a *de minimis* difference. FET contends that it raised this reporting issue at the beginning of the verification and suggests that the Department revise to zero the credit expense for all home-market sales with payment terms of "cash."

Department's Position: We only observed discrepancies between the dates FET reported it had received payment and actual payment dates with respect to home-market sales where the terms of payment were "cash." See Verification Report at pages 11 through 12. Therefore, for all home-market sales where the terms of payment were something other than "cash," there is no reason for the Department to reject the dates of payment FET reported.

With respect to those transactions for which we verified the actual date of payment, however, we have calculated the imputed credit expense based on the payment dates we verified. For transactions with payment terms of "cash" that we did not examine at verification, we have denied the claim for home-market credit expenses because FET did not demonstrate entitlement to the claim.

Comment 5: Verification Findings

The petitioners argue that the Department should correct certain other inaccuracies it found at verification. First, the petitioners contend that the Department found that FET understated the interest rate for two U.S. dollar-denominated loans and argue that the Department should use the actual interest rate charged on the two loans.

Second, the petitioners contend that the Department found that FET reported bank charges and actual credit expenses in Taiwan dollars rather than U.S. dollars, the currency in which the expenses were incurred. The petitioners argue that FET's reasons for not reporting these expenses in the proper currency are not sufficient. The petitioners assert, in response to FET's claim that it would have had to sort through the documents manually in order to report the expenses properly, that FET requested this review knowing the Department's requirements, that it never requested that it be allowed to report these charges in a different currency, and that it has reported these charges correctly in the past. Because of this, the petitioners argue, the Department should use the most adverse exchange rate during the POR for all U.S. bank charges and actual credit expenses when converting the reported expenses to U.S. dollars.

FET contends that it reported bank charges and actual interest expenses based on its accounting records on a transaction-specific basis and that the Department verified the accuracy of its claim for these expenses. FET asserts that there is no evidence that reporting these expenses on the basis in which they were incurred would result in any real difference.

Department's Position: With respect to the two understated U.S. dollar-denominated loans, we have not made an adjustment because we do not have sufficient information on the record to allow us to make the adjustment accurately. Both of the loans had credit periods that extended

over more than one month but the record only contains the worksheets for one of the months for each of those loans. See Verification Report at Exhibit 11.

With respect to FET's reported bank charges and actual interest expenses, we have not made an adjustment for this review. We requested that FET "{r}eport all expenses and revenues in the currencies in which they were incurred." See the July 25, 2007, questionnaire at page G-5. FET did not, however, follow this instruction and reported these expenses, which were incurred in U.S. dollars, in New Taiwan dollars. See Verification Report at 17. We agree with the petitioners that the reason FET provided for not reporting these expenses in U.S. dollars is insufficient. FET provided no evidence that manually processing the data required to properly report these expenses would be infeasible or burdensome. Nevertheless, we determine that an adverse inference is not warranted because we did not afford FET an opportunity to remedy the deficiency in its response. See section 782(d) of the Tariff Act of 1930, as amended (the Act). Therefore, we have used the expenses FET reported and converted them using the same exchange-rate data we used to convert expenses actually incurred in New Taiwan dollars for the Preliminary Results. See the margin-calculation program attached to the Memorandum entitled "Far Eastern Textile Limited Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order (5/1/06 - 4/30/07)," dated April 10, 2008. We intend to pursue this matter in the next administrative review.

Comment 6: U.S. Credit Expenses

FET contends that the Department made a ministerial error in adding actual U.S. credit expenses to normal value when making comparisons to export-price sales. FET contends that the Department should have converted these expenses to U.S. dollars before adding them to normal value. FET provides a formula which it claims would correct the error. The petitioners agree with FET but suggest alternative programming language to correct the error.

Department's Position: We agree that we inadvertently added the expense reported in Taiwan dollars (CREDIT2U) to normal value. Because the normal value has already been converted to U.S. dollars when we add U.S. direct selling expenses, it is necessary to convert the actual U.S. credit expenses to U.S. dollars before adding it. In fact, we did so in section 2-F of the preliminary results margin-calculation program, in which we created a variable called CREDIT2UD, which is the expense reported in Taiwan dollars multiplied by the exchange rate. Accordingly, we used the variable CREDIT2UD instead of CREDIT2U for the final results. Although both alternatives parties have suggested would yield the same result, we applied the suggestion of the petitioners for the final results because it is what we had intended to do for the preliminary results.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final weighted-average dumping margin for FET in the Federal Register.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date