



A-580-839

Changed Circumstances Review


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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Polyester Staple Fiber from the Republic of Korea:
Decision Memorandum for Preliminary Results of Changed
Circumstances Review

I. Summary

In response to a request from Toray Chemical Korea Inc. (Toray), a producer/exporter of certain polyester staple fiber (PSF) from the Republic of Korea (Korea), the Department of Commerce (Department) initiated a changed circumstances review (CCR) on August 13, 2014, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216.¹ As indicated in the *CCR Initiation Notice*, we did not combine the preliminary results with the initiation on the basis that additional information was required to reach a preliminary finding.² Now that we have solicited, received, and analyzed this information, we preliminarily determine that Toray is the successor-in-interest to Woongjin Chemical Co., Ltd. (Woongjin).

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of PSF from Korea made by Toray, effective on the publication date of the final results in the *Federal Register*, at the cash deposit rate equal to the cash deposit rate assigned to Woongjin.

II. Background

On May 25, 2000, the Department published notice of the antidumping duty order on PSF from Korea in the *Federal Register*.³ On July 2, 2014, Toray requested that the Department conduct a CCR pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b) to determine that it is the successor-in-interest to Woongjin for purposes of the order.

¹ See *Certain Polyester Staple Fiber From the Republic of Korea: Initiation of Changed Circumstances Review*, 79 FR 49285 (August 20, 2014) (*CCR Initiation Notice*).

² *Id.* at 49285.

³ *Id.*



Woongjin, a producer and exporter of PSF from Korea, was a publicly-traded company whose shares were primarily owned by Woongjin Holdings Co., Ltd.⁴ In early 2014, Toray Advanced Materials Korea Inc. purchased 56 percent of Woongjin's shares, including all of Woongjin Holdings' shares of Woongjin.⁵ Subsequently, on March 31, 2014, the shareholders of Woongjin voted to change the company's corporate name to "Toray Chemical Korea Inc.," effective on March 31, 2014.⁶ The company's shares are still publicly traded.⁷

In response to Toray's request, we initiated this CCR on August 13, 2014,⁸ and issued a questionnaire to Toray on August 18, 2014.⁹ Toray submitted its response to our questionnaire on September 4, 2014.¹⁰ To date, we have received no comments from other interested parties.

III. Scope of the Order

The product covered by the order is certain PSF. Certain PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.

Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the order. Also specifically excluded from the order are PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of these orders is dispositive.

IV. Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b) of the Act, the Department will conduct a CCR upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order.

⁴ See CCR Request at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 1-3.

⁸ See *CCR Initiation Notice*, 79 FR 49285.

⁹ See Letter from the Department "Polyester Staple Fiber from the Republic of Korea: Changed Circumstances Review" (August 18, 2014) (CCR Questionnaire).

¹⁰ See Letter from Toray "Certain Polyester Staple Fiber from the Republic of Korea: Questionnaire Response" (September 4, 2014) (Toray Questionnaire Response).

As explained above, we initiated a CCR based upon a timely request submitted by Toray. Since that time, Toray submitted information in support of its claim that it is the successor-in-interest to Woongjin. The Department's methodology and preliminary findings regarding Toray's request follows.

Discussion of Methodology

In making a successor-in-interest determination, the Department examines several factors, including but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.¹¹ While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the predecessor if the resulting operations of the successor are not materially dissimilar to that of its predecessor.¹² Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates in all material respects as the same business entity as the predecessor company, the Department will treat the successor company the same as the predecessor and assign the new company the cash deposit rate of its predecessor.¹³

Analysis

In its CCR Request, Toray provided a 10-page description and 13 exhibits in support of its claim that it is the successor-in-interest to Woongjin. In response to our questionnaire, Toray provided additional information, further supporting its assertion that Toray is the successor-in-interest to Woongjin. Below, we analyze the information Toray submitted in the context of the four main criteria considered in a successor-in-interest proceeding.

Management

Toray is a publicly-traded company, which was 56.3 percent owned by Woongjin Holdings and related parties, and now is 56.7 percent owned by Toray Advanced Material Korea Inc. and related parties. Although the management structure of Toray remained largely unchanged from the structure of Woongjin, we note that the following changes took place at the time of the company's change in ownership:¹⁴

- 1) Five members of Woongjin's seven member Board of Directors (BOD) left the board and were replaced by new members appointed by Toray's shareholders;
- 2) Toray decided to change the company's management structure to a three-person joint representative director system, thus creating two additional board member seats; Toray's

¹¹ See, e.g., *Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 75 FR 8925, 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review*, 75 FR 27706 (May 18, 2010).

¹² See, e.g., *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941, 69941 (November 18, 2005).

¹³ See *Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999) (*Salmon from Norway*).

¹⁴ See CCR Request at 7.

shareholders appointed the two new board members, resulting in a nine member board; and

- 3) Three new executives were appointed to Toray's Filter Division, the Film Division, and the Production Division. The new executives were added under the existing directors for these divisions. They are not involved in the day-to-day activities of the company; thus, their individual roles do not impact the production or sale of subject merchandise.

In our questionnaire to Toray, we asked Toray to provide a detailed explanation for these changes, why they occurred, and the impact that these changes had on the management of day-to-day operations concerning the production and sale of subject merchandise.

In response, Toray stated that, after Toray Advanced Materials Korea Inc. purchased Woongjin's shares in the company, two positions were added to the BOD, resulting in a total of nine members on the BOD.¹⁵ Toray provided meeting minutes from the shareholder meeting in which these changes took place.¹⁶ Toray provided an explanation and source documentation that explains the reasons behind the departure of Woongjin's five board members and the appointments of Toray's five replacement BOD members, as well as the two new BOD members.¹⁷

We find that Toray's acquisition of Woongjin did not materially change the management related to the production or sale of subject merchandise. The two members of the BOD most involved in the day-to-day activities of Woongjin maintained their membership on the BOD and continued to hold operational/managerial positions after the ownership and name changes.¹⁸ In addition, one of the seven new members appointed by Toray's shareholders previously worked for Woongjin and its predecessor for more than 25 years.¹⁹ In addition, Toray submitted information documenting that all 13 of Woongjin's executives involved in the company's day-to-day activities have continued in that same capacity after the ownership change, including the three executives directly responsible for the production and sale of PSF.²⁰

We asked Toray to explain why three additional executives were appointed to Toray's Filter Division, the Film Division, and the Production Division and how their individual roles impacted the production, marketing, and sale of subject merchandise. Toray's response states that the three new executives were all Japanese executives added as assistants to the existing heads of the company's Filter Division, Film Division, and Production Division.²¹ According to Toray, these executives' roles are to act as liaisons between Toray and Toray Industries in Japan for "cooperative matters such as technology transfer."²² Furthermore, Toray reported that these

¹⁵ *Id.* at 7 and Exhibit 2; *see also* Toray Questionnaire Response at 1 and Exhibit S-1.

¹⁶ *See* CCR Request at Exhibit 4 (business proprietary information).

¹⁷ *Id.*; *see also* Toray Questionnaire Response at 3-4. The reasons for these changes are proprietary and, thus, not susceptible to public summary.

¹⁸ *See* CCR Request at 7 and Exhibit 2; *see also* Toray Questionnaire Response at 1 and Exhibit S-1. The old representative director remained on the board is now co-representative director/vice-president/chief of operations. In addition, the business administration division director remained with the board.

¹⁹ *See* Toray Questionnaire Response at 2. The Department previously determined that Woongjin was the successor-in-interest to Saehan Industries Inc. *See Notice of Final Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber from the Republic of Korea*, 73 FR 49168 (August 20, 2008).

²⁰ *See* CCR Request at 7 and Exhibit 3.

²¹ *See* Toray Questionnaire Response at 3.

²² *Id.* at 3-4

executives are not involved in the day-to-day activities of the company, nor do their roles impact the production, marketing, or sale of the subject merchandise.²³ Thus, we find that the appointment of these three executives did not impact the production, marketing, or sale of subject merchandise.

In sum, and similar to our finding in *Salmon from Norway*,²⁴ though a number of the members of the BOD has changed, the key officers and management of the old and new companies related to the production, marketing, and sale of subject merchandise are virtually identical. Therefore, we preliminarily find that the management remained essentially unchanged from that of its predecessor with respect to the production or sale of subject merchandise.

(2) Production Facilities

The production facilities for Woongjin and Toray remained the same since the changes in ownership and name.²⁵ We also note that product brochures submitted by Toray support its claim that its production facilities remain unchanged as a result of the acquisition.²⁶ The product brochures that Toray provided (one from before the ownership and name changes and one from after), which include the addresses and telephone numbers of the head office, production facilities, and branch offices of both companies, are identical, apart from the name change.²⁷ Therefore, based on this information, we preliminarily find that the ownership and name changes did not result in material changes to the production of the subject merchandise.

(3) Supplier Relationships

Information submitted by Toray indicates that its supplier base remained essentially the same before and after the acquisition. To support its claim, Toray provided a table of the suppliers used prior and subsequent to the acquisition and name change.²⁸ In our questionnaire to Toray, we requested that it explain how that table was assembled and that it provide source documentation as support.²⁹ Toray provided the requested information in its questionnaire response and noted minor corrections to the table, based on inadvertent clerical errors that occurred in the first table it submitted.³⁰

Based on the revised supplier list of major raw materials that Toray provided, all but one of the suppliers provided the same input before and after the acquisition and name change.³¹ Although

²³ *Id.*

²⁴ In *Salmon from Norway Prelim*, we stated that while the board of directors has changed, the officers and management of the new company are virtually identical to the officers and management of the old company, as are the address and telephone numbers. Thus, despite the changes in the board, we found the business operation with respect to the subject merchandise to be virtually identical. See *Fresh and Chilled Atlantic Salmon from Norway; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 50880 (September 23, 1998) (*Salmon from Norway Prelim*), unchanged in *Salmon from Norway*, 64 FR at 9979.

²⁵ See CCR Request at 8.

²⁶ *Id.* at Exhibit 11.

²⁷ *Id.* at 8.

²⁸ *Id.*, at Exhibit 12.

²⁹ See CCR Questionnaire at questions II. 1-2.

³⁰ See Toray Questionnaire Response at 4-6 and Exhibit S-2.

³¹ *Id.*

Toray selected a different supplier for one input after the acquisition and name change, we note that Woongjin previously used that supplier.³² Moreover, Toray did not end the relationship with the former supplier of the input in question, but rather used it to supply other inputs.³³ Toray substantiated its supplier relationships with evidence from the company's accounting system.³⁴ Thus, the same base of suppliers was used for all major inputs used in the production of subject merchandise.

Thus, based on this information, we preliminarily find that the ownership and name changes did not result in material changes to supplier relationships with respect to the subject merchandise.

(4) Customer Base

Toray reported that its customers of PSF remain substantially the same as they were for Woongjin. To support its claim, Toray provided a copy of the letter it sent to its customers on April 1, 2014, notifying them of the name change,³⁵ as well as lists of U.S. and home market customers.³⁶ However, because the lists provided in the CCR Request were reported only on a monthly basis and, thus, did not provide a sufficient basis for comparison, we requested that Toray provide a more complete record of its customers.³⁷

In response, Toray provided lists of Woongjin's U.S. and home market customers spanning calendar years 2011-2013, as well as for the first two quarters of 2014, which cover the period leading up to and after the ownership and name changes.³⁸ While the lists indicate that not all customers were identical during the periods before and after the ownership and name changes, the vast majority of the customers were the same in each period. Moreover, Toray asserts that these differences are part of the normal course of business (*i.e.*, adding new customers, losing customers) and are due to the timing of the purchase (*i.e.*, information related to purchases made later in 2014 from customers that purchased in 2013 are not yet available).³⁹ The record also demonstrates that fewer changes to the customer base occurred during the period before and after the ownership and name changes than occurred in certain years when Woongjin maintained its name.⁴⁰ In addition, our analysis of these customer lists reveals no meaningful correlation between changes in the company's customer base over any of the time periods for which we have data, including the time subsequent to the company's name change in 2014.

Based on this information, we preliminarily find that ownership and name changes did not result in material changes to the customer base of the subject merchandise.

(5) Summary of Preliminary Findings

³² *Id.* The input at issue and the name of the supplier are proprietary and, thus, not susceptible to public summary.

³³ *Id.*

³⁴ *Id.*, at Exhibit S-3.

³⁵ See CCR Request at Exhibit 8.

³⁶ *Id.*, at Exhibit 13.

³⁷ See CCR Questionnaire at questions III. 1-4.

³⁸ See Toray Questionnaire Response at Exhibit S-5.


³⁹ *Id.* at 8-9 (citing *Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 75229 (December 14, 2006)).

⁴⁰ *Id.* at 9.

Accordingly, based on the evidence reviewed, we preliminarily determine that Toray is the successor-in-interest to Woongjin. Specifically, we find that the change of the company's name as a result of shareholder/ownership change resulted in no material changes to management, production facilities, supplier relationships, and customer base with respect to the production and sale of the subject merchandise. Thus, Toray operates in all material respects as the same business entity as Woongjin regarding the production and sale of subject merchandise.


V. Recommendation

We recommend applying the above methodology for these preliminary results. If these preliminary results are adopted in our final results, we will instruct CBP to suspend liquidation of entries of PSF from Korea made by Toray, effective on the publication date of the final results in the *Federal Register*, at the cash deposit rate equal to the cash deposit rate assigned to Woongjin.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance



Date