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A-580-807
Sunset Review
Public Document
AD/CVD Operations, O7/DLS

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 Sunset Review of the
Antidumping Duty Order on Polyethylene Terephthalate Film from
Korea; Final Results

SUMMARY:

We have analyzed the substantive response of the interested parties in the second sunset review of the antidumping duty order on polyethylene terephthalate (PET) film from Korea.¹ We recommend that you approve the positions we develop in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

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

History of the Order

On June 5, 1991, the Department published the antidumping duty order and amended final determination of sales at less than fair value (LTFV) on PET film from Korea. See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea, 56 FR 25669 (June 5, 1991). On September 26, 1997, the Department published the notice of final court decision and amended final determination on PET film from Korea. See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Notice of Final Court Decision and Amended Final Determination of Antidumping Duty Investigation, 62 FR 50557 (September 26, 1997). In the notice of final court decision and amended final determination of the antidumping duty LTFV investigation, based on our redetermination on remand, SKC Limited and SKC America, Inc. (collectively, SKC) was assigned a margin of 13.92 percent, Cheil

¹ Substantive response was received from domestic interested parties. No response was received from any respondent interested party.

Synthetics, Inc. (Cheil), a margin of 36.33 percent, and the “all others” margin was 21.5 percent.

On July 1, 1999, the Department of Commerce (the Department) initiated the first sunset review of the antidumping duty order on PET film from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-Year (“Sunset”) Reviews, 64 FR 35588 (July 1, 1999). Prior to the first sunset review, the Department completed seven administrative reviews² and two new shipper reviews.³ During the course of these administrative reviews, the Department revoked the antidumping duty order on PET film from Korea with respect to Cheil and Kolon Industries (Kolon) because neither Cheil nor Kolon had sold the subject merchandise at less than fair value for at least three consecutive periods of review. In addition, prior to the first sunset review, the Department published the final results of a changed circumstances review in which it found that Saehan Industries, Inc. (Saehan) was the successor-in-interest to Cheil. See Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea, Final Results of Changed Circumstances Antidumping Duty Administrative Review, 63 FR 3703 (January 26, 1998).

As a result of the first sunset review, pursuant to sections 751(c) and 752 of the Act, the Department determined that revocation of the antidumping duty order on PET film from Korea would likely lead to continuation or recurrence of dumping. See Final Results of Expedited Sunset Review: Polyethylene Terephthalate Film from Korea, 65 FR 5592 (February 4, 2000) (Department’s first sunset review). On February 24, 2000, the International Trade Commission (the ITC), pursuant to section 751(c) of the Act, determined that revocation of the antidumping

² See Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 60 FR 42835 (August 17, 1995), as amended, Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Amended Final Results of Antidumping Duty Administrative Review, 61 FR 5375 (February 12, 1996), as amended, Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review, 63 FR 52241 (September 30, 1998) and Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review, 64 FR 7855 (February 17, 1999); Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part, 61 FR 35177 (July 5, 1996); Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part, 61 FR 58374 (November 14, 1996), as amended, Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Amendment of Final Results of Antidumping Duty Administrative Review, 62 FR 1735 (January 13, 1997); Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 62 FR 38064 (July 16, 1997), as amended, Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Amendment of Final Results of Antidumping Duty Administrative Review, 62 FR 45222 (August 26, 1997); Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 37334 (July 10, 1998); and Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke in Part, 64 FR 62648 (November 17, 1999).

³ See Polyethylene Terephthalate Film, Sheet and Strip from Korea; Final Results of Antidumping Duty New Shipper Review, 64 FR 42670 (August 5, 1999) and Polyethylene Terephthalate Film, Sheet and Strip from Korea; Final Results of Antidumping Duty New Shipper Review, 64 FR 57862 (October 27, 1999).

duty order on PET film from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Polyethylene Terephthalate (PET) Film from Korea, 65 FR 9298 (February 24, 2000), and USITC Publication 3278 (February 2000), entitled Polyethylene Terephthalate (PET) Film from Korea: Investigation No. 731-TA-459 (Review). Accordingly, the Department published a notice of the continuation of the antidumping duty order on PET film from Korea, pursuant to 19 C.F.R. § 351.218(f)(4) of the Department's regulations. See Continuation of Antidumping Duty Order: Polyethylene Terephthalate (PET) Film from Korea, 65 FR 11984 (March 7, 2000).

Since the final results of the first sunset review, the Department completed two administrative reviews of PET film from Korea. In the first, the Department calculated weighted-average margins of zero percent for both H.S. Industries (HSI) and Hyosung Corporation (Hyosung) and a 1.23 percent weighted-average margin for SKC. See Polyethylene Terephthalate Film, Sheet and Strip from Korea: Final Results of Antidumping Duty Administrative Review, 65 FR 55003 (September 12, 2000). In the second administrative review, the Department found that a weighted-average margin of zero percent existed for both HSI and Hyosung and 1.91 percent existed for SKC. See Polyethylene Terephthalate Film, Sheet and Strip from Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 57417 (November 15, 2001). Subsequent to the first sunset review the Department also conducted a changed circumstances review in which it determined that Toray Saehan, Inc. (TSI) was the successor-in-interest to Saehan. See Polyethylene Terephthalate Film, Sheet and Strip from Korea, Final Results of Changed Circumstances Antidumping Duty Administrative Review, 65 FR 34661 (May 31, 2000).

Background

On February 2, 2005, the Department initiated the second sunset review of the antidumping duty order on PET film from Korea pursuant to section 751(c) of the Act. See Initiation of Five-Year ("Sunset") Reviews, 70 FR 5415 (February 2, 2005) (Department's second sunset review). This sunset review covers imports from all producers and exporters of PET film from Korea, other than imports by TSI and Kolon, for which the order was revoked. In its notice of initiation, the Department invited parties to comment. The Department received a notice of intent to participate from two domestic interested parties, DuPont Teijin Films (DTF) and Mitsubishi Polyester Film LLC (Mitsubishi), within the deadline specified in 19 C.F.R. § 351.218(d)(1)(i). DTF and Mitsubishi claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of a domestic like product. The Department received a substantive response from DTF and Mitsubishi within the deadline specified in 19 C.F.R. § 351.218(d)(3)(i). DTF was established as a joint venture between E.I. DuPont de Nemours & Company (DuPont) and Teijin Limited. DuPont was a petitioner in the investigation of PET film from Korea and has participated actively in each of the administrative reviews conducted since the investigation. Mitsubishi purchased U.S. PET film operations from the Hoechst Celanese Corporation (Celanese), a petitioner in the investigation of PET film from Korea. Celanese was an active participant in administrative reviews up to the time of the first sunset review. Mitsubishi has participated actively in subsequent administrative reviews. The Department did not receive responses to the notice of initiation from any respondent interested parties. As a result, pursuant

to section 751(c)(3)(B) of the Act and 19 C.F.R. § 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this order.

On May 26, 2005, the Department extended the time limit for final results of this sunset review to August 31, 2005. See Polyethylene Terephthalate Film from South Korea; Extension of Time Limit for Final Results of Sunset Review of Antidumping Duty Order, 70 FR 30416 (May 26, 2005).

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order on PET film from Korea would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins calculated in the investigation and subsequent administrative reviews and the volume of imports of the subject merchandise for the periods before and after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

Interested Party Comments

1. Likelihood of Continuation or Recurrence of Dumping

DTF and Mitsubishi argue that revocation of the order on PET film from Korea is likely to lead to continued dumping because dumping has continued at levels above de minimis since the issuance of the order. See Substantive Response of DTF and Mitsubishi, March 4, 2005, at 6 (Substantive Response). According to DTF and Mitsubishi, in the first sunset review the Department found dumping would be likely to continue or recur if the order were revoked because some producers had continued dumping at levels above de minimis. See Id. at 7. DTF and Mitsubishi maintain the Department made this conclusion despite finding dumping margins below de minimis for some Korean producers of PET film in the two administrative reviews immediately preceding the first sunset review. See Id. In the two administrative reviews since the first sunset review, DTF and Mitsubishi assert, the Department found dumping margins above de minimis levels, and they note SKC's dumping margins were at their highest level since 1993. See Id. at 8. Moreover, DTF and Mitsubishi claim, depreciation of the U.S. dollar in relation to the Korean won over the past year has "masked the extent of dumping by Korean importers." See Id. DTF and Mitsubishi argue that the existence of continued dumping margins above de minimis should be dispositive of continued dumping if the order were revoked. With respect to import volumes, DTF and Mitsubishi argue the data are inconclusive. DTF and Mitsubishi state the growth of Korean PET film imports skyrocketed in the years immediately prior to the initiation of the investigation, dropped precipitously upon initiation, and generally declined throughout the 1990s, and then note the absolute volume of imports increased slightly in more recent years. See Id. at 8-9 and Exhibits 1 and 2. DTF and Mitsubishi note that compared

to the size of the U.S. merchant market, imports of Korean PET film have remained constant or declined over time. See Id. at 9.

In addition, DTF and Mitsubishi contend that revocation of the order on PET film from Korea is likely to lead to continued dumping because parties for which the order has been revoked might resume dumping if the order were revoked entirely. DTF and Mitsubishi assert that without the discipline of an antidumping duty order, Korean companies would be able to resume dumping PET film in the United States.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), specifically the Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) (“House Report”), 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.

The records of the order show that dumping has persisted since the issuance of the order on PET film from Korea. Deposit rates above de minimis remain in effect for imports of PET film from Korea. The Department also analyzed and considered the volume of imports of the subject merchandise for the period before issuance of the order and for the period after the issuance of these orders, as well as import volumes over the past five years. We note that since the issuance of the order, the volume of U.S. imports for consumption has been greater than pre-order levels. See Memorandum to File, dated August 30, 2005, regarding import volumes of PET film from Korea. We agree with DTF and Mitsubishi that the continuation of dumping at above de minimis levels alone warrants the continuation of this order. Therefore, on the basis of information provided by DTF and Mitsubishi, information on the record, and the complete lack of information provided by the respondent parties, we continue to find that it is likely that if the antidumping duty order were revoked, dumping would continue or recur.

2. Magnitude of the Margin Likely to Prevail

DTF and Mitsubishi contend that in accordance with the legislative history and the Department’s normal policy and practice, the Department should provide the ITC the rates from the original investigation, 13.92 percent for SKC and 21.50 percent for all other importers of PET film from Korea. See Substantive Response at 10.

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 order 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, and the House Report at 64.

In the final determination of the investigation of PET film from Korea, the Department found dumping margins of 13.92 percent for SKC, 36.33 percent for Cheil, and 21.50 percent for all other importers. In the final results of subsequent administrative reviews, the Department continued to find margins above de minimis levels.⁴ In the first sunset review, the Department determined that the margins calculated in the original investigation were probative of the behavior of Korean producers and exporters of PET film without the discipline of the antidumping duty order. Furthermore, for the second sunset review, the Department does not find any indication that the margins calculated in administrative reviews subsequent to the first sunset review are more probative of the behavior of exporters without the discipline of the order. As in the first sunset review, the Department finds that the margins from the original investigation of PET film from Korea are the appropriate margins to report to the ITC. Therefore, the Department continues to find that the margins calculated in the original investigation are probative of the behavior of Korean producers and exporters if the order were revoked. Consistent with section 752(c) of the Act, the Department will report to the ITC the company-specific and “All Others” rates from the investigation as indicated in the “Final Results of Review” section of this memorandum.

Final Results of Review

As a result of this sunset review, the Department determines that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
SKC	13.92
All Others	21.50

⁴As noted above, the antidumping duty order on PET film from Korea has been revoked with respect to TSI (formerly Saehan/Cheil) and Kolon.

Recommendation

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

AGREE _____

DISAGREE _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date