

REDETERMINATION  
PURSUANT TO COURT REMAND  
GEUM POONG CORPORATION AND SAM YOUNG SYNTHETICS CO., LTD.  
V. UNITED STATES V. E. I. DUPONT DE NEMOURS, INC., ET.AL.  
Court No. 00 - 06000298

SUMMARY

The Department of Commerce (“Commerce” or “the Department”) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade in Geum Poong Corporation and Sam Young Synthetics Co., Ltd. v. United States v. E. I. Dupont De Nemours, Inc., et. al., Slip Op 02-26 (March 8, 2002). This is the second redetermination the Department has made in this proceeding. In the current remand order, the Court instructed the Department to determine Geum Poong’s constructed value (“CV”) profit rate by (1) applying a facts available profit cap, which may or may not include non-home market sales; and (2) calculating a profit rate derived from the financial statements for Samyang, Saehan, and SK Chemicals, or from the industry-wide BOK profit data, or from some other method that will avoid the deficiencies described in the remand order.

In accordance with the Court’s order, the Department has derived a facts available profit cap using the financial statements of Saehan and SK Chemicals, and has calculated a profit rate using the same information. We have used this rate as the CV profit rate for Geum Poong.

If the Court approves these results of redetermination on remand, Geum Poong will be excluded from the antidumping duty order on Polyester Staple Fiber from Korea because its antidumping duty rate is de minimis (0.12 percent). The All Others rate will be 7.91 percent.

BACKGROUND

In the underlying investigation,<sup>1</sup> the Department was required to calculate a CV profit rate for Geum Poong. The information available to the Department to make this calculation was limited. Specifically, based on the record developed in the investigation, the Department could select from: (1) Geum Poong’s own profit rate; (2) the CV profit rates calculated for two other responding companies, Sam Young and Samyang; (3) the profit rates found in the public audited financial statements of three Korean polyester staple fiber (“PSF”) producers, Samyang, Saehan Industries, Inc., and SK Chemical Co. Ltd.; and (4) a general profit ratio for the entire man-made fibers industry in Korea, extracted from a Bank of Korea (“BOK”) publication. The Department

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<sup>1</sup> See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan, 65 FR 33807 (May 25, 2000) (“Final Determination”).

determined that a combination of the second and fourth sources was a reasonable method for calculating Geum Poong's profit and, thus, was permissible under section 1677b(e)(2)(B)(iii).

In its September 6, 2001 opinion, the Court affirmed certain aspects of the Department's method for calculating Geum Poong's CV profit. (See Geum Poong Corp. v. United States, 163 F. Supp. 2d 669 (Ct. Int'l Trade 2001) ("Geum Poong I").) The Court also remanded certain aspects of the Department's determination. Specifically, the Court stated that Commerce had not adequately explained why a profit cap was not available and, even assuming a profit cap could not be applied, Commerce had not adequately explained why the profit methodology it selected was reasonable. Id. at 678-9.

On October 5, 2001, Commerce submitted its Final Results of Redetermination Pursuant to Court Remand ("Redetermination I") in response to the Court's remand order in Geum Poong I. In that redetermination, Commerce stated its view that as a matter of law none of the profit information on the record of this proceeding could be used as a profit cap because all of the profit rates under consideration included, or likely included, profits on non-Korean sales. Commerce further provided an explanation of its decision to reject certain profit data and to combine other profit rates to calculate the CV profit rate for Geum Poong.

In Geum Poong Corporation and Sam Young Synthetics Co., Ltd. v. United States v. E. I. Dupont De Nemours, Inc., et. al., Slip Op 02-26 (March 8, 2002) ("Geum Poong II"), the Court remanded again the issue of Geum Poong's CV profit. On April 16, 2002, we submitted a draft redetermination on remand to the parties for comment. Their comments were received on April 23, 2002.

Pursuant to the Court's instructions in Geum Poong II, we have calculated a facts available profit cap and a profit rate, and have used those rates to determine Geum Poong's CV profit rate. The analysis underlying this redetermination and our response to the comments submitted by the parties follow.

## ANALYSIS

### *Calculation of a Facts Available Profit Cap*

In Geum Poong II, the Court found that Commerce had ignored "the court's specific instruction to apply a 'facts available profit cap' if a reasonable means of calculating one could be devised." Id. at 4. The Court explained that a facts available profit cap "contemplates that there may be some deficiencies in the data, e.g., the data include some non-home market sales" (footnote omitted). Id. at 5. Because "Commerce did not determine that any of the data sources were predominantly or exclusively non-home market sales" nor did the agency "assess the relative validity among the sources in light of their deficiencies," the Court found that Commerce had failed to determine whether a reasonable facts available profit cap existed. Id. at 6.

The language of the Court's order is derived from the language of Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel, 66 Fed. Reg. 49349 (Sept. 27, 2001) ("Pure Magnesium from Israel") and accompanying Decision Memorandum at Comment 8. The Department initially found in that case that it could not calculate CV profit under sections 1677b(e)(2)(A), 1677b(e)(2)(B)(i) or 1677b(e)(2)(B)(ii). In addition, under 1677b(e)(2)(B)(iii), the Department found that:

the profit cap cannot be calculated in the instant case because, as we noted above, we do not have information allowing us to calculate the amount normally realized by exporters or producers (other than respondent) in connection with the sale for consumption in the foreign country of the merchandise in the same general category.

Id. The Department stated that it therefore had to apply section 1677b(e)(2)(B)(iii) under a facts available analysis, "without quantifying a profit cap." Id. (emphasis added). In determining the reasonable facts available on the record, the Department stated that it did not want "to construct a normal value based upon financial data that contains exclusively or predominately U.S. sales." Id. (emphasis added).

The Department, in its analysis of Pure Magnesium From Israel, failed to cite the directing authority from which it believed that it could apply a facts available number, exclusive of the existence of a profit cap. That authority, which has been cited in past reviews, and has been addressed in this litigation, is the Statement of Administrative Action (SAA), accompanying H.R. Doc. No. 103-826(1), at 841 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4176 (1994). The specific language states:

The Administration also recognizes that where, due to the absence of data, Commerce cannot determine amounts for profit under alternatives (1) and (2) or a "profit cap" under alternative (3), it might have to apply alternative (3) on the basis of "the facts available." This ensures that Commerce can use alternative (3) when it cannot calculate the profit normally realized by other companies on sales of the same general category of products

Id. It is the Department's interpretation of the statute and the SAA to understand that the sequence by which the Department has authority to determine CV profit is clear: We may only use a "facts available" analysis if (1), (2), and (3) (which describes the cap as profits realized in connection with the sale of goods "for consumption in the foreign country") are unavailable.

From the Court's order, we believe that the Court may have interpreted our analysis in Pure Magnesium From Israel to have created another step, not articulated in either the statute, or in the SAA, by which we created a pseudo-profit cap under alternative (3). We find no authority for making such a determination and it was not our intention to create an extra step not expressed by Congress in determining CV profit. We believe that our decision in Pure Magnesium From

Israel may have created some confusion because we failed to cite the sequence specifically expressed in the SAA for the application of facts available, and we hope that this remand explanation clarifies our analysis in that case.

Because the Court has instructed us, however, to calculate a “facts available profit cap” in this case, we have analyzed the profit data contained in the financial statements of Samyang, Saehan and SK chemicals, and the BOK data, to determine if such a facts available number can be derived. To do this, we have used the framework articulated by the Court, i.e., we have rejected those data sources that we have determined are based predominantly or exclusively on non-home market sales and we have assessed the relative validity of the remaining data sources taking account of their deficiencies.

Based on our review of the financial statements of Samyang, Saehan, and SK Chemicals, we determine that only Samyang’s statement provides information about the geographical distribution of the company’s sales. Specifically, Samyang’s financial statement at page 5 shows that 50.6 percent of the company’s sales are to export markets. Consequently, we determine that Samyang’s sales are predominantly non-home market sales and, under the Court’s standard, Samyang’s profit should not be used to calculate the facts available profit cap. Lacking information about the geographical distribution of Saehan’s and SK Chemical’s sales, we cannot determine that their sales are predominantly non-home market sales. Similarly, the BOK information provides no indication that the sales reflected there are predominantly non-home market sales. Therefore, we have not rejected the profit information of Saehan or SK Chemicals, nor the industry-wide data from the BOK.

To assess the relative validity of these sources in light of their deficiencies, we have ranked the remaining alternatives using three criteria: the similarity of the merchandise to the subject merchandise; the contemporaneity of the data source with the period of investigation; and, for the reasons explained below, the extent of detail provided by the data source.<sup>2</sup>

Similarity of the merchandise to the subject merchandise: Both Saehan and SK Chemicals are producers of the subject merchandise.<sup>3</sup> The BOK data relates to “manmade fibers.” While no detail is provided about these products, the Department believes it is reasonable to assume that the term “manmade fibers” covers more products than just the subject merchandise.

Contemporaneity of the data source with the period of investigation: The period of investigation in this proceeding was April 1, 1998 through March 31, 1999. The BOK data and

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<sup>2</sup> These criteria are similar to those employed by the Department in Pure Magnesium from Israel.

<sup>3</sup> Both companies were named as exporters of subject merchandise in the petition. See Antidumping Duty Petition, Certain Polyester Staple Fiber from South Korea and Taiwan, April 2, 1999, at p.9 (Res. Exh. 4) (P.R.1)

the financial statements for Saehan and SK Chemicals reflect the calendar year 1998.

Extent of detail provided: During a portion of the period of investigation in this proceeding, the Korean won underwent a “sustained” change in value, appreciating approximately 8.5 percent in April 1988. (See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea, 64 FR 60776, 60780 (November 9, 1999).) As a result of this appreciation, Korean companies that imported inputs, borrowed money abroad, or sold to foreign countries would experience currency gains or losses that would be reflected in their costs and profits. It is the Department’s practice to recognize certain gains or losses caused by currency fluctuations and to disallow others. Specifically, the effects of currency fluctuations on borrowing costs and accounts payable are accounted for, whereas the effects of currency fluctuations on receivables are not. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9181-2 (Feb. 24, 1998).

Because the Korean won underwent a sustained appreciation during a portion of our period of investigation, we believe it is appropriate to account for the effects of that appreciation in determining a facts available profit cap. The detail provided in the financial statements of Saehan and SK Chemicals permits us to do this. The lack of detail in the BOK data precludes such adjustments.

Based on our ranking of the data sources using the criteria described above, we determine that the financial statements of Saehan and SK Chemicals are the best sources for calculating a facts available CV profit cap as directed by the court. Taking a simple average of the profit rates of these companies, after adjustments for the effects of currency appreciation, we determine that the facts available profit cap is 1.92 percent.

#### *Calculation of a Profit Rate for Geum Poong*

Having determined a facts available profit cap, the next step under the Court’s order is to calculate “a profit rate derived from the financial statements for Samyang, Saehan, and SK Chemicals, or from the industry-wide BOK profit data, or some other method that will avoid the deficiencies described herein.” Geum Poong II at 15.

We believe that the deficiencies referred to by the Court relate to combining individual company data with the BOK industry-wide data. We have not combined these data for this redetermination and, therefore, have not addressed the concerns raised by the Court on this issue.

Section 1677(e)(2)(B)(iii) requires the Department to use a reasonable method in calculating the profit rate for Geum Poong. Where the Department has been obliged to calculate CV profit based on facts available and more than one profit rate is available, the Department has ranked the various alternatives using three criteria: (i) the similarity of the alternatives’ business operations and products to the respondent’s; (ii) the extent to which the alternatives’ financial data reflects sales in the United States as well as the home market; and (iii) the contemporaneity

of the alternatives' data with the period of investigation.<sup>4</sup>

The similarity of the alternatives' business operations and products to the respondent's: As discussed above with respect to the facts available profit cap, Saehan and SK Chemicals produce the subject merchandise and, hence, their products are identical or similar to those produced by Geum Poong. Samyang, a respondent in the investigation, also produces subject merchandise. The term "manmade fibers," as reported by the BOK, appears to encompass more products than just the subject merchandise.

The extent to which the alternatives' financial data reflects sales in the United States as well as the home market: As discussed above, the financial statements of Saehan and SK Chemicals provide no indication of where those companies' sales are made. Nor does the BOK data with respect to sales of manmade fibers. Thus, while it is likely that U.S. sales are included in these data sources, we cannot determine what contribution they make to the total. Nor can we determine the shares accounted for by third country or home market sales.

For Samyang, as discussed above, the financial statement shows that non-home market sales predominate. However, we are unable to measure the shares accounted for by U.S. versus third country sales.

The contemporaneity of the alternatives' data with the period of investigation (April 1, 1998 - March 31, 1999): As discussed above, Saehan's, SK Chemical's and the BOK data cover calendar year 1998. Samyang's financial statement covers the period July 1997 through June 1998.

Based on these criteria, the financial statements for Saehan, SK Chemicals and Samyang are superior to the BOK data because these financial statements are for companies that produce subject merchandise. Among the three companies, we cannot determine from record information the relative importance of U.S. sales in their total sales. However, with respect to Samyang, we can say that sales to the United States may exceed home market sales and that, in any case, home market sales are less than export sales.

Therefore, for this redetermination we have calculated a simple average of Saehan's and SK Chemicals' profit rates. Because this average is the same as the facts available profit cap calculated above, 1.92 percent, we have set the CV profit for Geum Poong at 1.92 percent.

*Comments:*

Geum Poong and Sam Young state that the redetermination appears to comply with the Court's order in Geum Poong II and that they reserve their further comments for the Court. Therefore, we have not addressed this submission further.

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<sup>4</sup> Pure Magnesium from Israel Issues and Decision Memorandum at Comment 8.

## Reasonability and Reliability of Saehan's and SK Chemicals' Financial Statements

The petitioners<sup>5</sup> object that the methodology used in the draft redetermination would result in revocation of the antidumping duty order for Geum Poong, the company found to have the highest dumping margin in both the preliminary and final determinations in the investigation. Under this methodology, the Department relies on the financial statements for two companies, SK Chemicals and Saehan, precisely because there is so little information on the record about their products and sales. The petitioners find it troubling that the lack of information about these companies somehow makes their data reasonable, reliable, or probative of the correct profit ratio to apply to Geum Poong.

In the first remand redetermination, the petitioners point out, the Department stated that it could not use the financial statements for these companies because they exported to the United States. The Department also indicated in the first remand determination that these particular financial statements were submitted by Geum Poong because Geum Poong was seeking a low profit rate. By relying on such flawed data in this second redetermination, the petitioners claim that the Department has violated the Court's instructions in Geum Poong II because they believe that a facts available figure, calculated on such information, would be based on data that is so deficient that use of the data would be unreasonable or lead to inaccurate results.

DOC Position: In the Department's Final Determination, we did not use the financial statements of Saehan and SK Chemicals as the basis for the profit cap, because under our interpretation of section 1677b(e)(2)(B)(iii) and the SAA, once the Department has determined that a "profit cap" derived solely from home market sales is unavailable, we are directed to calculate CV profit using the reasonable facts available on the record of the proceeding. As we discussed in our first remand redetermination, because we believed that some of Saehan's and SK Chemicals' profits were derived from U.S. sales, we did not use those companies' data to compute a profit cap under a standard 19 USC 1677(e)(2)(B)(iii) analysis.

However, the Court has stated, under its reading of the law, we "need not reject financial statements of a potential surrogate simply because that company made some non-home market sales." Geum Poong II at n.6. The Court has stated its belief that the Department must attempt to determine if any of the data sources were "predominately or exclusively non-home market sales" before concluding that the profit cap of 19 USC 1677(e)(2)(B)(iii) does not exist. Thus, the Court has directed the Department to calculate Geum Poong's CV profit rate by "applying a facts available profit cap, which may or may not include non-home market sales," stating that we may only dispense with the profit cap if "available data are significantly undermined by non-home market data." Id. at 15 and n.11.

Pursuant to the Court's order, we have therefore not rejected the use of Saehan's and SK

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<sup>5</sup> E.I. DuPont de Nemours, Inc.; Arteva Specialities S.a.r.l., d/b/a KoSa, Wellman, Inc., and Intercontinental Polymers, Inc.

Chemicals' financial statements to calculate the profit cap because we believe some of their profit was derived from U.S. sales. We agree with the petitioners that there is a lack of information about the products produced by Saehan and SK Chemicals, and the markets in which they are sold. But as we understand the Court's direction, we must first determine that the companies sold predominantly or exclusively in export markets before we can reject their data in calculating the profit cap. (See Geum Poong II at 6) We cannot make this determination for these companies. Therefore, we have calculated a profit cap using the financial statements of these companies.

Regarding the Department's earlier caution about using company-specific data submitted by parties, we note that the Court also addressed this issue in Geum Poong II, rejecting the Department's concerns (see Geum Poong II at 6 - 8). Therefore, we do not believe that the flaws cited by the petitioners render these companies' financial statements unusable under the Court's order.

#### Department's Ranking of Available Data

In ranking the available data for use in calculating the profit cap, the Department examined the similarity of business operations, the extent to which the data reflects sales to the United States and the home market, and the contemporaneity of the data with the POI. With respect to the first criterion, the petitioners contend that the Department has no idea what percentage of Saehan's or SK Chemicals' business operations were of subject merchandise. Thus, the petitioners hypothesize, sales of subject merchandise may have accounted for as little as one percent of these companies' total sales and, therefore, high profits on the subject merchandise may have been negated by losses on other products.

Second, regarding the extent of U.S. and home market sales, the petitioners object that exports could account for 90 or 99 percent of Saehan's and SK Chemicals' sales, with the result that dumping of the subject merchandise and other merchandise by these companies could absolve Geum Poong of dumping. Finally, with respect to contemporaneity, the petitioners claim that the Department rejected the financial statement data for Samyang because it was less contemporaneous with the POI than the financial statement data for Saehan and SK Chemicals, despite the fact that the Department does not even know whether Saehan and SK Chemicals produced subject merchandise during 1998. In the petitioners' view, contemporaneity is not important when the data itself is meaningless. Moreover, in light of these concerns, the petitioners cannot see how the Department can find it "reasonable" to rely on Saehan's and SK Chemicals' financial statements.

DOC Position: As noted above, there are deficiencies in the information about Saehan and SK Chemicals. However, the record does not provide the Department with a better alternative: the BOK data supplies even less information on the record, Samyang's financial statement shows a predominance of export sales, and all other options have been rejected or addressed by the Court.

Nevertheless, despite the lack of information, we do not believe these deficiencies force us to reject the data, in light of the Court's analysis. Indeed, the Court expected that there may be "deficiencies in the data" when it ordered the Department to calculate a "facts available profit cap." See Geum Poong II at 5.

Regarding the petitioners' argument that we rejected Samyang's financial statement because it was less contemporaneous with the POI, we disagree. As the remand redetermination analysis shows, Samyang's data was not used because, upon review of the information on the record, we realized the predominance of Samyang's export sales and we could not rule out the possibility that its U.S. sales exceeded its home market sales.

#### Use of Actual Profit Figures for Samyang and Sam Young

The petitioners concede the Court's order strongly suggests that the Department should use the financial statements submitted by Geum Poong. However, the petitioners object, the Department has used the Saehan and SK Chemicals data mechanically, without any substantive analysis or honest assessment of the shortcomings of the data. The petitioners point out that the first remand order in this proceeding identified certain problems about "mixing data" and "inconsistencies," and that those problems are made even worse by using the Saehan and SK Chemicals data because profits are now being calculated across product lines using data that may or may not include subject merchandise and large proportions of U.S. sales.

The petitioners contend that the Department reaches the absurd conclusion of rejecting the actual profit figures for Samyang and Sam Young, which are limited to non-U.S. sales and to subject merchandise, and are contemporaneous with the POI, in favor of the Saehan and SK Chemicals' information which is for unknown merchandise sold to unknown markets.

DOC Position: We disagree that we have not analyzed the data available for calculating the facts available profit cap and the profit rate to be applied to Geum Poong. Drawing upon the framework developed in Pure Magnesium from Israel, we have examined and ranked the data based on the similarity of the merchandise to the subject merchandise, the shares of home market sales and export sales, the contemporaneity of the data source with the period of investigation, and the extent of detail provided by the data source.

Regarding the petitioners' argument that the Department should use the actual profit calculated for Samyang and Sam Young, the Court has already rejected this approach. (See Geum Poong I at 673.)

#### RESULTS OF REDETERMINATION

As instructed by the Court and explained above, the Department determines, on remand, that the facts available CV profit cap is 1.92 percent. In addition, the CV profit rate for Geum

Poong is 1.92. Applying this profit rate in our calculations results in an antidumping duty margin of 0.12 percent for Geum Poong.

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Faryar Shirzad  
Assistant Secretary  
For Import Administration

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Date