

DEPARTMENT OF COMMERCE**International Trade Administration**

A-570-905

Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 19, 2007

SUMMARY: On December 26, 2006, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of certain polyester staple fiber ("PSF") from the People's Republic of China ("PRC"). The period of investigation ("POI") is October 1, 2005, to March 31, 2006. We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculations for the mandatory respondents. The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

FOR FURTHER INFORMATION CONTACT: Michael Holton or Paul Walker, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1324 or (202) 482-0413, respectively.

Final Determination

We determine that PSF from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

SUPPLEMENTARY INFORMATION:**Case History**

The Department published its preliminary determination of sales at LTFV on

December 26, 2006. *See Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373 (December 26, 2006) ("Preliminary Determination"). Between January 8 and February 16, 2007, the Department conducted verifications of Cixi Jiangnan Chemical Fiber Co. Ltd. ("Cixi Jiangnan"), Far Eastern Industries (Shanghai) Ltd. ("Far Eastern"), Hangzhou Huachuang Co., Ltd. ("Hangzhou Huachuang"), Jiaying Fuda Chemical Fibre Factory ("Fuda"), Ningbo Dafa Chemical Fiber Co., Ltd. ("Ningbo Dafa") and Zhaoqing Tifo New Fiber Co., Ltd. ("Tifo"). *See the "Verification" section below for additional information.*

We invited parties to comment on the *Preliminary Determination*. On March 15, 2007, the Petitioners,¹ Insituform Technologies, Inc. ("ITI"), Ashley Furniture Industries, Inc. ("Ashley"), Fibertex Corporation ("Fibertex")², Far Eastern, Cixi Jiangnan and Ningbo Dafa filed case briefs. On March 20, 2007, the Petitioners, Far Eastern, Cixi Jiangnan and Ningbo Dafa filed rebuttal briefs. All parties that submitted a timely request for a hearing in this case withdrew those requests. Therefore, the Department did not hold a hearing.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Issues and Decision Memorandum," dated April 10, 2007, which is hereby adopted by this notice ("Issues and Decision Memorandum"). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issue and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room B-099, and is accessible on the Web at <http://www.trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made changes to the margin calculation for Cixi Jiangnan, Far Eastern and Ningbo Dafa as follows.

We have made the following changes to Cixi Jiangnan's margin calculation:

Other than the issues discussed below, we have determined to not include marine insurance from Cixi Jiangnan's CNF market economy purchases. At verification, Cixi Jiangnan provided information that it did not incur marine insurance. For a detailed analysis of Cixi Jiangnan's margin calculation, see *Final Determination in the Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Analysis Memorandum for Cixi Jiangnan Fiber Co. Ltd.*, dated April 10, 2007.

We have made the following changes to Far Eastern's margin calculation:

Other than the issues discussed below, we have determined to include the additional international freight expense that Far Eastern reported as a minor correction to its market economy international freight expense. Furthermore, we have also determined to make an adjustment to Far Eastern's reported scrap by-product by capping it at the level of scrap it actually produced during the POI. Finally, we have determined to use a surrogate value for Far Eastern's purchases of EG from its affiliated supplier. See below and *Issues and Decision Memorandum at Comment 21*. For a detailed analysis of Far Eastern's margin calculation, see *Final Determination in the Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Analysis Memorandum for Far Eastern Industries (Shanghai) Ltd.*, dated April 10, 2007.

We have made the following changes to Ningbo Dafa's margin calculation:

We have determined that it is appropriate to apply partial facts available to Ningbo Dafa. As noted below in the "Facts Available" Section, we are applying the color-specific market economy purchase prices of Ningbo Dafa's PET flake invoices to the surrogate value of PET flake, based on the CONNUM of the finished PSF. See below and *Issues and Decision Memorandum at Comment 25*. For a detailed analysis of Ningbo Dafa's margin calculation, see *Final Determination in the Investigation of Certain Polyester Staple Fiber from the People's Republic of China: Analysis Memorandum for Ningbo Dafa Chemical Fiber Co., Ltd.*, dated April 10, 2007.

In addition, the Department has made changes to its calculation of the

brokerage and handling, PSF wastes and by-product surrogate values as described in the *Issues and Decision Memorandum at Comments 5 through 9*. Moreover, the Department has made changes to its calculation of surrogate financial ratios as described in the *Issues and Decision Memorandum at Comment 12*. The Department has also revised the surrogate value for labor to \$0.83, using a revised expected wage rate posted on the Department's website on February 2, 2007. Further, the Department determines that it is appropriate to apply the methodology described in the December 27, 2006, **Federal Register** Notice regarding the treatment of negative margin to this investigation. See *Issues and Decision Memorandum at Comment 4 and Final Modification; Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation*, 71 FR 77722 (December 27, 2006).

Scope of Investigation

The merchandise subject to this proceeding is 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 subject merchandise 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.

The following products are excluded from the scope: (1) PSF of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 5503.20.0025 and known to the industry as PSF for spinning and generally used in woven and knit applications to produce textile and apparel products; (2) PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting; and (3) low-melt PSF defined as a bi-component fiber with an outer, non-polyester sheath that melts at a significantly lower temperature than its inner polyester core (classified at HTSUS 5503.20.0015).

Certain PSF is classifiable under the HTSUS subheadings 5503.20.0045 and 5503.20.0065. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the orders is dispositive.

Scope Comments

We received scope comments from ITI. However, these scope comments contained untimely and new factual information and were rejected by the Department. See the Department's letter dated March 19, 2007. No other interested party submitted scope comments since the *Preliminary Determination*. Therefore, we have not changed the scope from the *Initiation Notice*. See *Initiation of Antidumping Duty Investigation: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 41201 (July 20, 2006) ("Initiation Notice").

Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

For this final determination, in accordance with section 776(a)(2)(B) of the Act and 782(c)(1) of the Act, we have determined that the use of neutral facts available is appropriate for Ningbo Dafa's PET flake. See *Issues and Decision Memorandum at Comment 20*. As neutral facts available, we are applying the color-specific, market economy purchase prices of Ningbo Dafa's PET flake invoices to value PET flake, based on the CONNUM of the finished PSF. See *Analysis for the Final Determination of Certain Polyester Staple Fiber from the People's Republic of China: Ningbo Dafa Chemical Fiber Co., Ltd.*, dated April 10, 2007.

Verification

As provided in section 782(i) of the Act, we verified the information

submitted by the respondents and three separate rate applicants for use in our final determination. See the Department's verification reports on the record of this investigation in the CRU with respect to Cixi Jiangnan, Far Eastern, Hangzhou Huachuang, Fuda, Ningbo Dafa and Tifo. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. See *Preliminary Determination*. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and Section 351.107(d) of the Department's regulations.

In the *Preliminary Determination*, we found that Cixi Jiangnan, Far Eastern and Ningbo Dafa, and the separate rate applicants who received a separate rate ("Separate Rate Applicants") in the *Preliminary Determination* demonstrated their eligibility for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by Cixi Jiangnan, Far

Eastern and Ningbo Dafa, and the Separate Rate Applicants demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate rate status.

The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that certain companies and the PRC-wide entity did not respond to our requests information. In the *Preliminary Determination* we treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC-wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also, "*Statement of Administrative Action*" accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) ("*SAA*"). We determined that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within a NME country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate - the PRC-wide rate - to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000).

The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the "Final Determination Margins" section below (except as noted).

Critical Circumstances

In the *Preliminary Determination*, we found that there have been massive imports of the subject merchandise over a relatively short period for Far Eastern. In addition, we relied on a period of six months as the period, which was the maximum duration for the information we had available at that time, for comparison in preliminarily determining whether imports of the subject merchandise were massive.

For the final determination, however, we collected an additional three months of data from the respondents. After analyzing the additional data, we continue to find that Far Eastern had massive imports of PSF over a relatively short period of time. See Memorandum from James C. Doyle, Office Director, to Stephen J. Claeys, Deputy Assistant Secretary, Preliminary Affirmative Determination of Critical Circumstances, (December 15, 2006) at 2-3 ("*Critical Circumstances Memo*"), dated April 10, 2007. Moreover, we continue to find that Ningbo Dafa, Cixi Jiangnan, the Separate Rates Applicants and the PRC-wide entity did not have massive imports of PSF over a relatively short period of time. *Id.*

Corroboration

At the *Preliminary Determination*, in accordance with section 776(c) of the Act, we corroborated our adverse facts available ("AFA") margin by comparing the U.S. price and normal values from the petition to the U.S. price and normal values for the respondents. We continue to find that the margin of 44.30 percent has probative value. See Memorandum to the File: Corroboration of the PRC-Wide Facts Available Rate for the Final Determination in the Antidumping Duty Investigation of Certain Polyester Staple Fiber from the People's Republic of China, dated April 10, 2007 ("*Final Corroboration Memo*"). Accordingly, we find that the rate of 44.30 percent is corroborated within the meaning of section 776(c) of the Act.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

PSF FROM THE PRC - WEIGHTED—
AVERAGE DUMPING MARGINS

Exporter & Producer	Weighted—Average Deposit Rate
Cixi Jiangnan Chemical Co., Ltd.	de minimis
Far Eastern Industries (Shanghai) Ltd.	3.47%
Ningbo Dafa Chemical Fiber Co., Ltd.	4.86%
Cixi Sansheng Chemical Fiber Co., Ltd.	4.44%
Cixi Santai Chemical Fiber Co., Ltd.	4.44%
Cixi Waysun Chemical Fiber Co., Ltd.	4.44%
Hangzhou Best Chemical Fibre Co., Ltd.	4.44%
Hangzhou Hanbang Chemical Fibre Co., Ltd.	4.44%
Hangzhou Huachuang Co., Ltd.	4.44%
Hangzhou Sanxin Paper Co., Ltd.	4.44%
Hangzhou Taifu Textile Fiber Co., Ltd.	4.44%
Jiaxang Fuda Chemical Fibre Factory	4.44%
Nantong Luolai Chemical Fiber Co. Ltd.	4.44%
Nanyang Textile Co., Ltd.	4.44%
Suzhou PolyFiber Co., Ltd.	4.44%
Xiamen Xianglu Fiber Chemical Co.	4.44%
Zhaoqing Tifo New Fiber Co., Ltd.	4.44%
Zhejiang Anshun Pettechs Fibre Co., Ltd.	4.44%
Zhejiang Waysun Chemical Fiber Co., Ltd.	4.44%
PRC—Wide Rate	44.30%

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all entries of subject merchandise from Ningbo Dafa, the Separate Rate Applicants and the PRC-wide entity entered, or withdrawn from warehouse, for consumption on or after December 26, 2006, the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above.

The Department continues to find that critical circumstances exist for Far Eastern therefore, the Department will direct the CBP suspend liquidation of any entries of PSF from the PRC as described in the “Scope of Investigation” section, that are entered, or withdrawn from warehouse, for consumption 90 days before the date of publication of this notice in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

With respect to Cixi Jiangnan, the Department will instruct CBP not to suspend liquidation of any entries of PSF from the PRC as described in the “Scope of Investigation” section, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department will not require any cash deposit or posting of a bond for Cixi Jiangnan when the subject merchandise is produced and exported by Cixi Jiangnan. These suspension of liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (“ITC”) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 10, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I**Changes from the Preliminary Determination****General Comments:**

Comment 1: Zeroing/Targeted Dumping
Comment 2: Adjustments to Market Economy Purchases—Foreign Inland Freight

Comment 3: Adjustments to Market Economy Purchases—Foreign Brokerage & Handling

Comment 4: Adjustments to Market Economy Purchases—Application of PRC Duties

Surrogate Value Comments:

Comment 5: Surrogate Value for Brokerage & Handling

Comment 6: Surrogate Value for Waste Inputs

Comment 7: Surrogate Value for Polymer Polyester Staple Fiber Waste
Comment 8: Surrogate Value for Lump, Popcorn or X-ray Film

Comment 9: Surrogate Value for Scrap Waste By-Product

Comment 10: Surrogate Value for Labor
Comment 11: Surrogate Value for Alkali Flake

Comment 12: Calculation of Surrogate Financial Ratios

Comment 13: General Export Subsidy Countries and Market Economy Inputs

Company Specific Comments - Cixi Jiangnan:

Comment 14: Cixi Jiangnan’s Sales to Trading Companies

Comment 15: Cixi Jiangnan’s International Freight for Its U.S. Sales
Comment 16: Cixi Jiangnan’s Indirect Labor

Comment 17: Insurance for Cixi’s Market Economy Purchases

Company Specific Comments - Far Eastern:

Comment 18: Far Eastern’s Critical Circumstances

Comment 19: Far Eastern’s Reported Scrap Offsets

Comment 20: Far Eastern's Bank
Charges

Comment 21: Far Eastern's Market
Economy Price for Ethylene Glycol

Comment 22: Far Eastern's Market
Economy Price Adjustments for Purified
Terephthalic Acid ("PTA")

Comment 23: Far Eastern's Brokerage
and Handling Expenses

**Company Specific Comments - Ningbo
Dafa:**

Comment 24: Ningbo Dafa's
Consumption of Oils

Comment 25: Ningbo Dafa's Market
Economy Purchases and Factor Usage of
PET Flake

[FR Doc. E7-7386 Filed 4-18-07; 8:45 am]

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