

DEPARTMENT OF COMMERCE

International Trade Administration

A580807

Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea:
Preliminary Results of Antidumping Duty Administrative Review

AGENCY:

Import Administration, International Trade Administration, Department of
Commerce.

SUMMARY:

The Department of Commerce is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET film) from the Republic of Korea (Korea). This review covers one company, Kolon Industries Inc. (Kolon) and the period June 1, 2008, through May 31, 2009. We preliminarily determine that Kolon has not made sales below normal value (NV). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE:

(Insert date of Publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT:

Maryanne Burke or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 4825604 or (202) 4820649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2009, the Department published in the Federal Register a notice of Opportunity to Request Administrative Review of the antidumping duty order on PET film from Korea. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 74 FR 26202 (June 1, 2009).

In accordance with Section 751(a)(1) of the Tariff Act, as amended (the Act) and 19 CFR 351.213(b)(2), on June 30, 2009, Kolon requested an administrative review of the antidumping duty order on PET film from Korea. On June 30, 2009, DuPont Teijin Films (DuPont), Mitsubishi Polyester Film, Inc. (Mitsubishi), and Toray

Plastics America Inc. (Toray) (collectively Petitioners), also requested a review of Kolon.

On July 29, 2009, the Department initiated an administrative review for Kolon covering the period June 1, 2008, through May 31, 2009. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review, 74 FR 37690 (July 29, 2009).

On August 6, 2009, we issued our antidumping questionnaire to Kolon. We received Kolon's response to our questionnaire on September 16, 2009 (Section A) and October 13, 2009 (Sections B, C, and D). On February 1, 2010, we issued a supplemental questionnaire to Kolon which covered sections A through D. Kolon responded to this supplemental questionnaire on March 1, 2010. Then, on June 15, 2010 we issued a second supplemental questionnaire to Kolon which covered sections B through D. Kolon filed its response to this questionnaire on June 29, 2010.

On March 3, 2010, we extended the deadline for the preliminary results of this review until no later than July 7, 2010. See Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review, 75 FR 9579 (March 3, 2010).

Scope of the Order

Imports covered by this order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performanceenhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3920.62.00. The HTSUS subheading is provided for convenience and for customs purposes. The written description remains dispositive as to the scope of the product coverage.

Period of Review

The period of review (POR) is June 1, 2008, to May 31, 2009.

Comparisons to Normal Value

To determine whether sales of PET film from Korea to the United States were made at less than normal value (NV), we compared Kolon's constructed export price (CEP) or export price (EP) sales made in the United States to unaffiliated purchasers to NV, as described in the United States Price and Normal Value sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the CEP and EP of individual transactions to monthly weightedaverage NVs.

Product Comparisons

In accordance with section 771(16) of the Act we considered all products produced by Kolon covered by the description in the Scope of the Order section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We

first attempted to compare contemporaneous U.S. and comparisonmarket sales of products that are identical with respect to the following characteristics: 1) specification; 2) thickness; 3) surface treatment; and 4) grade. Consistent with the methodology employed in the 20072008 administrative review of this order, and in the less than fair value (LTFV) investigation of PET film from Thailand, we used the actual thicknesses of the film rather than a range of thicknesses for product comparison purposes. See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 31922, 31923 (July 6, 2009) (unchanged in final results.) See also, Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand, 73 FR 24565, 24567 (May 5, 2008) (unchanged in final determination). Where we were unable to compare sales of identical merchandise, we compared U.S. sales to home market sales of the most similar merchandise based on the above characteristics. Where there were no sales of the foreign like product of the identical merchandise in the ordinary course of trade in the home market to compare to a U.S. sale, we compared the price of the U.S. sale to constructed value (CV).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the home market at the same level of trade (LOT) as the CEP or EP sales in the U.S. market. The NV LOT is defined as the startingprice sales in the home market or, when NV is based on CV, as the sales from which selling, general, and administrative (SG&A) expenses and profit are derived. See 19 CFR 351.412(c)(1). The EP LOT is defined as the starting price in the United States to the unaffiliated U.S. customer. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. See 19 CFR 351.412(c)(1)(ii) of the Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. See 19 CFR 351.412(c)(2). If the homemarket sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparisonmarket sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See, e.g., Certain HotRolled FlatRolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review, 70 FR 17406, 17410 (April 6, 2005); unchanged in Notice of Final Results of Antidumping Duty Administrative Review: Certain HotRolled FlatRolled Carbon Quality Steel Products from Brazil, 70 FR 58683 (October 7, 2005). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 13141315 (Fed. Cir. 2001). We expect that if the LOTs claimed by the respondent are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelainon-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decisions Memorandum at Comment 6.

We obtained information from Kolon regarding the marketing stages involved in making its reported foreign market and U.S. sales to unaffiliated customers. Kolon provided a description of all selling activities performed, along with a flowchart and tables comparing the LOTS among each channel of distribution and customer category for both markets. See Kolon's September 16, 2009, questionnaire response at Exhibit A12.

For the home market, Kolon identified two channels of distribution described as follows: 1) direct shipments (i.e., products produced to order); and 2) warehouse shipments from inventory. Id. Within each of these two channels of distribution, Kolon made sales to unaffiliated customers. Id. We reviewed the level at which Kolon performed each of these selling functions with respect to each claimed channel of distribution and customer category. For all of the activities listed (which included sales forecasting, strategic and economic planning, sales promotion, order processing, and technical assistance), the level of performance for both direct shipments and warehouse shipments was identical across all types of customers. Based on our analysis of all of Kolon's home market selling functions, we find all home market sales were made at a single LOT, the NV LOT. We also found that Kolon provided a similar level of selling functions on all of its EP sales, and that the level of these EP selling functions was comparable to the level of selling functions Kolon performed on its home market sales. Based on the foregoing, we determine there is one level of trade for Kolon's EP sales and that the EP LOT is comparable to the home market LOT.

Kolon also indicated it made CEP sales through its U.S. affiliate, Kolon USA. Id. We then compared the CEP LOT to the NV LOT. The CEP LOT is based on the selling activities associated with the transaction between Kolon and its affiliated importer, Kolon USA, whereas the NV LOT is based on the selling activities associated with the transactions between Kolon and unaffiliated customers in the home market. Our analysis indicates the selling functions performed for sales to unaffiliated home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for sales to Kolon USA. For example, in comparing Kolon's selling activities, we find there are more functions performed in the home market which are not a part of CEP transactions (e.g., sales promotion, inventory maintenance, sales and marketing support). For selling activities performed for both home market sales and CEP sales (e.g., processing customer orders, freight and delivery arrangements), we find Kolon actually performed each activity at a higher level of intensity in the home market.

We note that CEP sales from Kolon to Kolon USA generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory that resembles exfactory sales. In contrast, all sales in the home market occur closer to the end of the distribution chain and involve smaller volumes and more customer interaction which, in turn, require the performance of more selling functions. Id. Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT. Because we found the home market and U.S. sales were made at different LOTS, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market prices, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. See 19 CFR 351.412(d)(1). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available

do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

United States Price

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of this section. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of the subject merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this administrative review, Kolon classified all of its U.S. sales shipped directly from Korea to the United States as EP sales. Kolon reported all sales that were invoiced through its U.S. subsidiary Kolon USA as CEP transactions. For these preliminary results, we have accepted these classifications. The merchandise shipped directly to unaffiliated customers in the U.S. market was not sold through an affiliated U.S. importer, and we find no other grounds for treating these transactions as CEP sales. We, therefore, preliminarily determine that these transactions were EP sales. We have classified as CEP transactions the merchandise invoiced through Kolon USA because these sales were sold in the United States within the meaning of 772(b) of the Act.

Export Price

We calculated EP in accordance with section 772(a) of the Act. We based EP on packed prices to customers in the United States. We made adjustments for the following movement expenses in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, foreign brokerage and handling charges, bank charges and ocean freight. Finally, we made an addition to U.S. price for duty drawback in accordance with section 772(c)(1)(B) of the Act based upon Kolon's demonstration that it received duty drawback on imported materials used in the production of PET film. See Kolon's October 13, 2009, Section C response at C34 to C35 and Exhibit C16.

Constructed Export Price

In accordance with section 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States, we calculated CEP. We based CEP on packed prices to unaffiliated purchasers in the United States. We made adjustments for billing adjustments and early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling charges, U.S. brokerage and handling, ocean freight, marine insurance, U.S. inland freight, and U.S. customs duties. As further directed by section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activity in the United States including direct selling expenses (i.e., commissions, warehousing, and U.S. credit expenses), inventory carrying costs, and other U.S. indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Finally, we made an addition to U.S. price for duty drawback in accordance with section 772(c)(1)(B) of the Act based upon Kolon's demonstration that it received duty

drawback on imported materials used in the production of PET film. See Kolon's October 13, 2009, Section C response at C34 to C35 and Exhibit C16.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Kolon's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Kolon's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined the home market was viable. See Kolon's September 16, 2009, questionnaire response at Exhibit A1.

B. Cost of Production Analysis

Pursuant to 773(b)(2)(A)(ii) of the Act, because the Department had disregarded certain of Kolon's sales in the Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order 73 FR 18259 (April 3, 2008) (the most recently completed review in which Kolon participated), the Department had reasonable grounds to believe or suspect that Kolon made home market sales at prices below Kolon's costs of production (COP) in this review. As a result, the Department was directed under section 773(b) of the Act to determine whether Kolon made home market sales during the POR at prices below its COP.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Kolon's cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), interest expenses, and home market packing costs. We relied on the COP information provided by Kolon.

To determine whether Kolon's home market sales had been made at prices below the COP, we computed weighted average COPs during the POR, and compared the weighted average COP figures to home market sales prices of the foreign like product as required under section 773(b) of the Act. On a product-specific basis, we compared the COP to the home market prices net of billing adjustments, discounts and rebates, any applicable movement charges, selling expenses, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any belowcost sales of that model because we determined that the belowcost sales were not made within an extended period of time and in substantial quantities. See section 773(b)(2)(C) of the Act. Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we normally disregard the belowcost sales because: (1) they were made within an extended

period of time in substantial quantities, in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Kolon revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these belowcost sales from our analysis and used the remaining abovecost sales as the basis for determining NV.

C. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Kolon's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials for CV as described above in the Cost of Production Analysis section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

D. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers in Korea. We used Kolon's adjustments and deductions as reported. We made deductions, where appropriate, for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. In addition, for comparisons involving similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise compared pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. As noted above in the Level of Trade section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

E. Price-to-CV Comparisons

If we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

We preliminarily determine the following weighted average dumping margin exists for the period June 1, 2008 through May 31, 2009:

<GPOTABLE COLS="2" OPTS="L2,i1" CDEF="s50,16">

Manufacturer / Exporter

Weighted Average Margin (percentage)

Kolon Industries, Inc.
0.30% (de minimis)

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit case briefs not later than 30 days after the publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the case briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculated importerspecific (or customerspecific) ad valorem assessment rates for PET film from Korea based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. See 19 CFR 351.212(b). However, where Kolon did not report the entered value for its sales, we will calculate importerspecific (or customerspecific) per unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above de minimis.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of

the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Kolon will be the rate established in the final results of review (except, if the rate is zero or de minimis, i.e., less than 0.5 percent, no cash deposit will be required for Kolon); (2) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the allothers rate of 21.50 percent from the LTFV investigation. 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).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of administrative review are issued and this notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary
for Import Administration.

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