telephone: (202) 482–4207 or (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Determination*, Rhodia, Inc., the petitioner in this case, and respondents, Jilin and Shandong, filed lawsuits with the CIT challenging the Department's *Final Determination*.

In the underlying investigation, the Department was required to develop values for factory overhead, SG&A, and profit relying on ''surrogate'' data from Indian producers of comparable merchandise. *See* section 773(c) of the Act. Regarding factory overhead, the Department used information from three Indian producers: Andhra Sugars, Alta Laboratories, and Gujarat Organics, Ltd. In the *Final Determination*, the Department found that the PRC producers of bulk aspirin were more fully integrated than the Indian producers. Therefore, the Department reasoned, the PRC producers would have a higher overhead-to-raw material ratio than the surrogate Indian producers. To account for this in computing normal value, the Department applied the overhead ratio calculated from the Indian producers' data twice, once to reflect the overhead incurred in producing the inputs for aspirin, and again to reflect the overhead incurred in producing aspirin from those inputs.

The Court remanded this issue to the Department. First, the Court pointed to the lack of evidence or explanation regarding the Department's position that integrated producers would experience higher overhead ratios than non-integrated producers. The Court acknowledged that the Department had provided a more detailed explanation of its rationale in its brief to the Court. However, citing *Hoogovens Staal B.V. v. United States*, 86 F. Supp. 2d 1317, 1331 (CIT 2000), the Court ruled that the Department could not rely upon such *post hoc* rationalizations. *Rhodia* at 10.

Additionally, the Court questioned the Department's conclusion that the Indian producers were less integrated than the PRC producers. Specifically, the Court found that the Department could not reasonably infer this from the evidence cited in the Issues and Decision Memorandum. Therefore, the Court remanded this issue to the Department and asked the agency to identify the facts in the record that support its final determination. *Rhodia* at 12.

The second issue remanded to the Department relates to the calculation of the ratios for overhead, SG&A, and profit. In the *Final Determination*, the Department computed a weighted average of the overhead, SG&A, and profit of the three Indian surrogate producers. However, citing to the agency's usual practice of using simple averages in these situations, the Court ruled that the Department had provided no explanation for departing from this practice. Thus, the Court directed the Department to explain its reasoning for computing weighted averages in this case. *Rhodia* at 15.

Finally, the Department sought, and the Court granted, a voluntary remand to correct the calculation of the overhead ratio by removing traded goods from the denominator. *Rhodia* at 13.

To assist it in complying with the Court's instructions, the Department asked the parties to identify information on the record of the proceeding regarding the extent of integration of Indian producers of comparable merchandise. *See* the December 13, 2001, letter to Rhodia, Inc., Jilin and Shandong. Responses were received from the three parties on January 15, 2002, and rebuttal comments were received on January 22, 2002.

The *Draft Redetermination Pursuant to Court Remand* (''*Draft Results*'') was released to the parties on February 4, 2002. In its *Draft Results*, the Department reviewed the record evidence regarding the extent to which the Indian surrogate producers are integrated and concluded that the evidence did not support the *Final Determination* in this regard. We also reconsidered our use of weighted-average ratios for overhead, SG&A, and profit, and amended our calculations using simple averages. Finally, in accordance with our voluntary request for remand, we removed ''trade sales'' (or ''traded goods'') from the denominator in calculating the overhead ratio.

Comments on the *Draft Results* were received from Rhodia, Inc. and Shandong on February 11, 2002, and rebuttal comments were received from the petitioner and Jilin on February 14, 2002. On March 29, 2002, the Department responded to the Court's Order of Remand by filing its *Final Results of Redetermination* pursuant to the Court remand. (''*Final Results of Redetermination*''). The Department's *Final Results of Redetermination* were identical to the *Draft Results* except that in the *Final Results of Redetermination*, the Department did not include the two companies with negative profits, *i.e.*, Alta and Gujarat, in the profit calculation.

The CIT affirmed the Department's *Final Results of Redetermination* on September 9, 2002. *See Rhodia, Inc. v. United States*, Consol. Court No. 00–08–00407, Slip. Op. 02–109 (CIT 2002).

Suspension of Liquidation

The U.S. Court of Appeals for the Federal Circuit, in Timken, held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not ''in harmony'' with the Department's *Final Determination*. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's September 9, 2002, decision or, if that decision is appealed, pending a final decision by the Federal Circuit. The Department will instruct the Customs Service to revise cash deposit rates and liquidate relevant entries covering the subject merchandise effective September 30, 2002, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the Court of Appeals for the Federal Circuit.

Dated: September 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–24777 Filed 9–27–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber from the Republic of Korea: Notice of Court Decision and Suspension of Liquidation

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

SUMMARY: On August 22, 2002, in *Geum Poong Corporation and Sam Young Synthetics Co., Ltd. v. United States v. E.I. Dupont De Nemours, Inc., et. al.*, Court No. 00–06–00298, Slip. Op. 02–95 (CIT 2002), a lawsuit challenging the Department of Commerce's (''the Department's'') *Notice of 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*, FR 65 16880

(March 30, 2000) and accompanying Issues and Decision Memorandum, and *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) (collectively, ''*Final Determination*''), the Court of International Trade (''CIT'') affirmed the Department's second remand redetermination and entered a judgment order. In the instant remand redetermination, in accordance with the Court's order, the Department reviewed the record evidence and derived a facts available profit cap using the financial statements of Saehan Industries, Inc., (''Saehan'') and SK Chemical Co. Ltd., (''SK Chemical''), and calculated a profit rate for Geum Poong Corporation (''Geum Poong'') using the same information.

As a result of the remand redetermination, Geum Poong will be excluded from the antidumping duty order on certain polyester staple fiber from Korea because its antidumping rate was decreased from 14.10 percent to 0.12 percent (*de minimis*). The ''all others'' rate was decreased from 11.38 percent, established in the Final Determination, to 7.91 percent. The antidumping duty rates for respondents Sam Young Synthetics Co. (''Sam Young''), and Samyang Corporation (''Samyang'') were unchanged from the *Final Determination*.

This decision was not in harmony with the Department's original *Final Determination*. Consistent with the decision of the Court of Appeals for the Federal Circuit in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a ''conclusive'' decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation for Geum Poong and revise the all others cash deposit rate.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or Scott Holland, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, D.C. 20230, telephone: (202) 482–0189 or (202) 482–1279, respectively.

SUPPLEMENTARY INFORMATION:

Background:

Following the publication of the *Final Determination*, the petitioners and the respondents in this case filed lawsuits with the CIT challenging the Department's *Final Determination*.

In the underlying investigation, the Department was required to calculate a CV profit rate for Geum Poong. Based on the information on the record, the Department determined that a combination of the CV profit rates calculated for the other respondents, Sam Young and Samyang, and a general profit ratio for the entire man-made fibers industry in Korea, extracted from a Bank of Korea (''BOK'') publication, was a reasonable method for calculating Geum Poong's profit and was permissible under section 773 (e)(2)(B)(iii) of the Act. (*See Final Determination*)

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 2002) (''*Geum Poong I*''). The Court also remanded certain aspects of the Department's determination. Specifically, the Court stated that the Department 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.

We released the *Draft Redetermination Pursuant to Court Remand* (''*Draft Results*'') to interested parties on April 16, 2002. Comments on the *Draft Results* were received from the petitioners and Geum Poong and Sam Young on April 23, 2002. On April 30, 2002, the Department responded to the Court's Order of Remand by filing its *Final Results of Redetermination Pursuant to Court Remand* (''*Final Results of Redetermination*'').

In the *Final Results of Redetermination*, we calculated a ''facts available profit cap'' using the financial statements of Saehan and SK Chemical. As per the Court's express instructions, we used this ''facts available profit cap'' as the CV profit rate for Geum Poong.

The Court affirmed the Department's *Final Results of Redetermination* on August 22, 2002. *See Geum Poong Corporation and Sam Young Synthetics Co., Ltd. v. United States v. E.I. Dupont De Nemours, Inc.*, Court No. 00–06–00298, Slip. Op. 02–95 (CIT 2002).

Suspension of Liquidation

The U.S. Court of Appeals for the Federal Circuit in Timken held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not ''in harmony'' with the Department's *Final Determination*. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's August 22, 2002, decision or, if that decision is appealed, pending a final decision by the Federal Circuit. The Department will instruct the U.S. Customs Service to revise cash deposit instructions and liquidate relevant entries covering the subject merchandise effective September 30, 2002, in the event that the CIT's ruling is not appealed.

Dated: September 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–24775 Filed 9–27–02; 8:45 am]

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