

EFFECTIVE DATE: April 5, 2004.

FOR FURTHER INFORMATION CONTACT:

Drew Jackson or John Conniff, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-4406 or (202) 482-1009, respectively.

Background

On August 22, 2003, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain polyethylene terephthalate film, sheet and strip from India, covering the period December 21, 2001 through June 30, 2003. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750. The preliminary results of review are currently due no later than April 1, 2004.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. See Decision Memorandum from Thomas F. Futtner, Acting Office Director to Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, dated concurrently with this notice, which is on file in the Central Records Unit, room B-099 of the Department's main building. The Department is therefore extending the time limit for the completion of the preliminary results by 120 days. We intend to issue the preliminary results no later than July 30, 2004.

This notice is published in accordance with section 751(a)(3)(A) of the Act.

Dated: March 22, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-853]

Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea

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

ACTION: Notice of Final Determination of Sales at Not Less Than Fair Value.

EFFECTIVE DATE: April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Mike Heaney, or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-2924, (202) 482-4475, or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that wax and wax/resin thermal transfer ribbons (TTR) are not being, nor are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Tariff Act).

Case History

The Department published the preliminary determination of sales at not less-than-fair-value on December 22, 2003. See *Notice of Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons from the Republic of Korea*, 68 FR 71078 (December 22, 2003) (Preliminary Determination). Since then the following events have occurred.

On December 22, 2003 respondent Illinois Tool Works, Inc. (the only known producer/exporter of TTR from Korea to the United States (ITW)) submitted its response to the Department's November 28, 2003 supplemental questionnaire regarding the section E further manufacturing response of ITW's U.S. affiliate ITW

Thermal Films (ITWTF). Also on December 22, 2003 ITW submitted its response to the Department's sections A, B, and C supplemental questionnaire, issued on December 1, 2003.

On December 23, 2003 DigiPrint International, a U.S. importer of TTR slit in India, submitted comments on substantial transformation and country of origin. These comments were made part of the TTR from Korea investigation as an attachment to a memorandum to the file dated January 9, 2004. See memorandum from Cheryl Werner to the file dated January 9, 2004 on file in room B-099 of the Department of Commerce building.

On January 5, 2004 ITW submitted its response to the Department's December 18, 2003 section D supplemental questionnaire. Also on January 5, 2004 the Department issued another section E supplemental questionnaire.

On January 5, 2004 and January 16, 2004, International Imaging Materials, Inc. (petitioner) submitted comments regarding (1) its allegation that respondents in the three concurrent investigations of TTR (France, Japan, and South Korea) would attempt to circumvent the order by slitting jumbo rolls in third countries, and (2) its request that the Department therefore determine that slitting does not change the country of origin of TTR for antidumping purposes.

On January 6, 2004 petitioner submitted comments on the upcoming cost of production (COP) verification.

On January 9, 2004 Armor S.A. (the sole respondent in the antidumping investigation of TTR from France) submitted a response to petitioner's January 5, 2004 comments on country of origin.

On January 12, 2004 ITW submitted its response to the Department's January 5, 2004 section E supplemental questionnaire.

From January 12 through January 16, 2004 Department officials verified the cost of production response of ITW Specialty Films Co., Ltd. (ITWSFK) in Seoul, Korea. See February 5, 2004 cost verification report. This and all other memoranda cited herein are on file in the Central Records Unit, room B-099 of the Department of Commerce building.

From January 16 through January 19, 2004 Department officials verified the sales response of ITWSFK in Seoul, Korea. See February 17, 2004 sales verification report.

On January 20, 2004 petitioner met with Department officials to discuss their concerns about some of the information on the record. See Memorandum from Fred Baker to the File, dated January 22, 2004.

On January 21, 2004 petitioner requested a hearing.

On January 22, 2004, petitioner submitted pre-verification comments for the upcoming further manufacturing verification in Romeo, Michigan.

On January 23, 2004 ITW requested to participate in the hearing. Also on January 23, 2004 petitioner submitted comments on ITW's sections supplemental A, B, and C responses and the submissions by three of ITW's affiliated U.S. resellers. Also on January 23, 2004 petitioner requested that the Department postpone the final determination until March 22, 2004.

From January 26 through January 28, 2004 Department officials verified the further manufacturing response of ITW Thermal Films (ITWTF) in Romeo, Michigan. See February 5, 2004 further-manufacturing verification report. From January 28 through January 30, 2004 Department officials verified the sales response of ITWTF in Romeo, Michigan. See February 18, 2004 CEP verification report.

On February 9, 2004 petitioner met with Department officials to discuss various aspects of the distribution process for TTR in both the United States and Korea. See Memorandum from Robert James to the File dated February 9, 2004. On February 11, 2004 petitioner made a submission in follow-up to the February 9, 2004 meeting with Department officials.

On February 12, 2004 the Department extended the deadline for issuing the final determination. See *Notice of Postponement of Final Antidumping Duty Determination: Wax and Wax/Resin Thermal Transfer Ribbons from the Republic of Korea*, 69 FR 6941 (February 12, 2004).

On February 18, 2004 the Department issued a "post-preliminary analysis" of ITW's submitted data in response to the below-COP allegation made by petitioner. We initiated the below-cost sales investigation on November 19, 2003. The "post-preliminary analysis" consisted of a recalculation of ITW's dumping margin based on all the information on the record to date, including cost data and verification findings. See Memorandum from Fred Baker to the File dated February 18, 2004.

On February 26, 2004 ITW and petitioner submitted case briefs.

On February 27, 2004 petitioner withdrew its request for a hearing.

On March 2, 2004 ITW and petitioner submitted rebuttal briefs.

On March 3, 2004 petitioner met with Department officials to discuss issues raised in the case briefs. See

Memorandum to the File dated March 4, 2004.

On March 10, 2004 ITW held a meeting with Department officials to discuss issues raised in the case briefs. See memorandum to the file dated March 10, 2004.

On March 25, 2004 the Department again extended the deadline for issuing the final determination. See *Notice of Postponement of Final Antidumping Duty Determination: Wax and Wax/Resin Thermal Transfer Ribbons from the Republic of Korea*, 69 FR 15298 (March 25, 2004).

On March 22, 2004 Department officials met with counsel for petitioners. See Memorandum to the File dated March 23, 2004. The following day Department officials met with counsel for ITW. See Memorandum to the File dated March 23, 2004.

Period of Investigation

The period of investigation is April 1, 2002 through March 31, 2003.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated March 29, 2004, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

This investigation covers wax and wax/resin thermal transfer ribbons (TTR), in slit or unslit ("jumbo") form originating from Korea with a total wax (natural or synthetic) content of all the image side layers, that transfer in whole or in part, of equal to or greater than 20 percent by weight and a wax content of the colorant layer of equal to or greater than 10 percent by weight, and a black

color as defined by industry standards by the CIELAB (International Commission on Illumination) color specification such that $L < 35$, $-20 < a^* < 35$ and $-40 < b^* < 31$, and black and near-black TTR. TTR is typically used in printers generating alphanumeric and machine-readable characters, such as bar codes and facsimile machines.

The petition does not cover pure resin TTR, and finished thermal transfer ribbons with a width greater than 212 millimeters (mm), but not greater than 220 mm (or 8.35 to 8.66 inches) and a length of 230 meters (m) or less (*i.e.*, slit fax TTR, including cassetted TTR), and ribbons with a magnetic content of greater than or equal to 45 percent, by weight, in the colorant layer.

The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) at heading 3702 and subheadings 3921.90.40.25, 9612.10.90.30, 3204.90, 3506.99, 3919.90, 3920.62, 3920.99 and 3926.90. The tariff classifications are provided for convenience and Customs and Border Protection (CBP) purposes; however, the written description of the scope of the investigation is dispositive.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Tariff Act based on exchange rates in effect on the dates of the United States sales, as provided by the *Dow Jones Business Information Services*.

Verification

As provided in section 782(i) of the Tariff Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondent.

Affiliation Issues

Petitioner alleges in its February 26, 2004 Case Brief that ITW is affiliated to SKC Corporation, a Korean film producer which sold its TTR and specialty film mill to ITW in April 1999. Petitioner also accuses ITW of misreporting home market sales by concealing its affiliation with a certain home market customer. ITW denies both allegations in its March 2, 2004 Rebuttal Brief. A complete discussion of these issues, necessitating extensive references to business proprietary information, is found in a memorandum to Joseph A. Spetrini, "Antidumping

Duty Investigation on Wax and Wax/Resin Thermal Transfer Ribbons from South Korea: Affiliation Issues Concerning Respondent Illinois Tool Works, Inc.," dated March 25, 2004. See also, the Decision Memorandum.

Country of Origin

As noted above, petitioner has requested that the Department determine that TTR produced in Korea (in jumbo roll, i.e., unslit form) that is slit in a third country does not change the country of origin for antidumping purposes. According to petitioner, because slitting does not constitute a "substantial transformation," Korean jumbo rolls slit in a third country should be classified as Korean TTR for antidumping purposes, and, therefore, within the scope of this investigation and any resulting order. Petitioner submitted comments on this request on October 28, 2003, December 5, 2003, January 5 and January 16, 2004. According to petitioner, substantial transformation does not take place because: 1) both slit and jumbo rolls have the same essential physical characteristics (e.g., both have the same chemical properties that make them suitable for thermal transfer printing); 2) large capital investments are required for coating and ink-making (production stages prior to slitting), but not for slitting; 3) coating and ink-making require significantly more skill, expertise, and research and development; and, 4) the majority of costs and value comes from coating and ink-making. Petitioner states that, for purposes of this issue, slitting and packaging do not account for a substantial amount of the total cost of finished TTR (depending on the degree of automation and whether new or secondhand equipment is involved); and that a slitting operation requires a small amount of capital, compared with a large amount of capital required for a coating and ink-making operation.

Armor, the sole respondent in the investigation of TTR from France, argues that slitting does constitute substantial transformation, and, therefore, that the Department should determine that French jumbo rolls slit in a third country should be considered to have originated in that third country for antidumping purposes. Armor submitted comments on November 26, 2003, December 12, 2003, and January 9, 2004. Armor argues that substantial transformation does take place because: 1) slitting, and the repackaging that necessarily goes along with it, involves transforming the product into its final end-use dimensions, the insertion of one or two cores (for loading the ribbons

into printers), and the addition of leaders, bridges, and trailers, which result in a new product, with a new name, new character, and new purpose; 2) petitioner excluded TTR slit to fax proportions, acknowledging the importance of slitting; and, 3) U.S. Customs and Border Protection (CBP) and the Court of International Trade (CIT) have determined that slitting and repackaging amount to substantial transformation. DigiPrint, in comments received on January 2, 2004, argues that the record of this investigation indicates that slitting and packaging account for a large amount (34%) of total cost, indicating substantial transformation.

The Department has considered several factors in determining whether a substantial transformation has taken place, thereby changing a product's country of origin. These have included: the value added to the product; the sophistication of the third-country processing; the possibility of using the third-country processing as a low cost means of circumvention; and, most prominently, whether the processed product falls into a different class or kind of product when compared to the downstream product. While all of these factors have been considered by the Department in the past, it is the last factor which is consistently examined and emphasized.¹ When the upstream and processed products fall into different classes or kinds of merchandise, the Department generally finds that this is indicative of substantial transformation. See, e.g., *Cold-Rolled 1993*, 58 FR at 37066.

Accordingly, the Department has generally found that substantial transformation has taken place when the upstream and downstream products fall within two different "classes or kinds" of merchandise: (see, e.g., steel slabs converted to hot-rolled band; wire rod converted through cold-drawing to wire; cold-rolled steel converted to corrosion resistant steel; flowers arranged into bouquets; automobile chassis converted to limousines).²

¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 58 FR 37062, 37066 (July 9, 1993) (*Cold-Rolled 1993*); *Final Determination of Sales at Less Than Fair Value: Limousines From Canada*, 55 FR 11036, 11040, comment 10 (March 26, 1990) (*Limousines*); *Erasable Programmable Read Only Memories (EPROMs) From Japan*; *Final Determination of Sales at Less Than Fair Value*, 51 FR 39680, 39692, comment 28 (October 30, 1986) (*EPROMs*); and, *Cold-Rolled 1993*, 58 FR at 37066; respectively.

² *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the United Kingdom*, 64 FR 30688, 30703, comment 13 (June 8, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, 64 FR

Conversely, the Department almost invariably determines substantial transformation has not taken place when both products are within the same "class or kind" of merchandise: (see, e.g., computer memory components assembled and tested; hot-rolled coils pickled and trimmed; cold-rolled coils converted into cold-rolled strip coils; rusty pipe fittings converted to rust free, painted pipe fittings; green rod cleaned, coated, and heat treated into wire rod).³ In this case, both jumbo and slit TTR are within the same class or kind of merchandise, as defined in the Department's initiation and as defined for this final determination.

While slitting and packaging might account for 34 percent of the total cost of production,⁴ the processes and equipment involved do not amount to substantial transformation of the jumbo TTR for antidumping purposes. According to information submitted by petitioner, and not rebutted by any party to this investigation, a slitting operation requires only a fraction of the capital investment required for a coating and

17324, 17325, comment 1 (April 9, 1999); *Cold-Rolled 1993*, 58 FR at 37066; *Certain Fresh Cut Flowers From Colombia*; *Final Results of Antidumping Duty Administrative Review*, 55 FR 20491, 20499, comment 49 (May 17, 1990); and, *Limousines*, 55 FR 11040; respectively.

³ *Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 67 FR 70927, 70928 (November 27, 2002) (*DRAMs*); *EPROMs*, 51 FR at 39692; *Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above from Japan*; *Suspension of Investigation and Amendment of Preliminary Determination*, 51 FR 28396, 28397 (August 7, 1986); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183, 22186 (May 3, 2001); *Memorandum to Troy H. Cribb, Acting Assistant Secretary, from Holly Kuga, Acting Deputy Assistant Secretary, Issues and Decision Memorandum for the Investigation of Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Taiwan*, comment 1 (May 22, 2000); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Canada*, 62 FR 51572, 51573 (October 1, 1997); *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India*, 60 FR 10545, 10546 (February 27, 1995); respectively.

⁴ The ITC report states that "[s]ix U.S. producers indicate that slitting and packaging accounts for an average of 34 percent of the cost of finished bar code TTR." *Certain Wax and Wax/Resin Thermal Transfer Ribbons from France, Japan, and Korea, Investigations Nos. 731-TA-1039-1041 (Preliminary)*, (July 2003) (*ITC Report*), at 7. DigiPrint apparently is referring to this figure, when it refers to 34 percent in its January 2, 2004 submission. Figures placed on the record by petitioner related to this issue are proprietary, but indicate that the relevant figure might be significantly less than 34 percent, depending on the country in which the slitter is located, the type of equipment used, the degree of automation involved, and whether the process relies more on labor than capital.

ink-making operation.⁵ Moreover, the ITC noted in this investigation that the “slitting and packaging process is not particularly complex, especially as compared to the jumbo TTR production process.” *ITC Report*, at 7. The ITC also noted that the primary cost involved in a slitting and packaging operation is not capital cost, but direct labor cost, which, we note, might be hired cheaply in a third country. *Id.* at 14. Thus, it appears that a slitting operation could be established in a third country for circumvention purposes with far greater ease than a coating and ink-making operation.

Finally, the ITC concluded that, while slit and jumbo TTR are like products, U.S. slitting and packaging operations (or “converters”) were not part of the domestic industry for purposes of this investigation, “for lack of sufficient production related activities.” *Id.* at 13. The implication of the ITC’s conclusion, based on its extensive multi-pronged analysis, is that TTR is the product of coating and ink-making, not slitting and packaging: “The production related activities of converters are insufficient for such firms to be deemed producers of the domestic like product.” *Id.* While we are not bound by the ITC’s decisions, the ITC’s determination is important to consider in this particular instance because it is based on the full participation of respondents and petitioner, whereas respondent withdrew its information from our investigation.

As the Department has stated on numerous occasions, CBP decisions regarding substantial transformation and customs regulations, referred to by respondent, are not binding on the Department, because we make these decisions with different aims in mind (e.g., anticircumvention). *See, e.g.,* DRAMs, 67 FR at 70928. The Department’s independent authority to determine the scope of its investigations has been upheld by the CIT. *See Diversified Products Corp. v. United States*, 572 F. Supp. 883, 887 (CIT 1983). Presumably, a CIT decision interpreting substantial transformation in the context of CBP regulations, also cited by respondent, also is not binding on the Department.

While the other facts noted by respondent are not necessarily irrelevant to this determination, they do not overcome the conclusion indicated

by the fact that the slitting and packaging of jumbo rolls into slit TTR does not create a “new and different article.” In other words, the totality of the circumstances indicates that slitting does not constitute substantial transformation for antidumping purposes. Even accepting, *arguendo*, DigiPrint’s statement regarding the amount of total cost accounted for by slitting and packaging, and respondent’s statements regarding how slitting and packaging transform the product into its final end-use form, the product still has not changed sufficiently to fall outside the class or kind of merchandise defined in this investigation. Jumbo rolls are intermediate products, and slit rolls are final, end-use products, but the transformation of an upstream product into a downstream product does not necessarily constitute “substantial transformation” and, in this case, does not, given the considerations listed above.

Similarly, in *DRAMs*, we decided that wafers shipped to a third country to be used in the assembly of DRAMs (subject merchandise) did not amount to substantial transformation because the wafers were the “essential” component in the product. In this case, the ITC report notes petitioner’s statement, unrefuted by respondents, that “the essential characteristic of finished TTR, like that of jumbo TTR, is that of a strip of PET film coated with ink.” We agree and note that the essential characteristic is contained in the jumbo TTR imported into the third country.

Therefore, in light of this fact and the facts discussed below, we determine that slitting jumbo rolls does not constitute substantial transformation. Jumbo rolls originating in Korea but slit in a third country will be subject to any antidumping duties imposed on Korean TTR, if an antidumping duty order on such products is issued.

Changes Since the Preliminary Results

Based on our findings at verification and our analysis of comments received, we have made adjustments to the preliminary determination calculation methodology and post-preliminary analysis methodology in calculating the final margin for ITW. These adjustments are discussed in the Decision Memorandum for this investigation.

Suspension of Liquidation

Because the estimated weight-averaged dumping margin for the investigated company is 1.65 percent (*de minimis*), we are not directing the CBP to suspend liquidation of entries of TTR from Korea.

Final Determination Margin

We determine that the following percentage weighted-average margin exists:

Exporter/manufacturer	Margin (percent)
ITW	1.65

ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission (ITC) of our determination.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) or their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to section 735(d) and 777(i)(1) of the Tariff Act.

Dated: March 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix 1 Issues in the Decision Memorandum

Comment 1: Affiliation Between ITW and SKC

Comment 2: Alleged Affiliation with Customer

Comment 3: Costs of Connums Sold in the United States

Comment 4: Allocation Indices

Comment 5: Low Costs of Type 2 Wax With Some Resin Jumbo Rolls

Comment 6: Film Cost

Comment 7: Ink-Making Costs

Comment 8: Coating Index

Comment 9: Korean Slitting Cost

Comment 10: Alleged Incorrectly-Reported U.S. Further-Manufacturing Costs

Comment 11: Use of Adverse Facts Available

Comment 12: Allocation of Goodwill Expenses

Comment 13: Royalty Expenses

Comment 14: Non-Operating Income

Comment 15: Averaging Groups for U.S. Sales

Comment 16: Treatment of Non-Dumped Sales

Comment 17: Clerical Errors

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⁵ These figures agree with statements made by DNP, a respondent in the Japanese TTR investigation, recorded in the preliminary report by the U.S. International Trade Commission (ITC), that capital investment in a slitting operation was “generally very small” (\$100,000 to \$300,000). *Id.* at 14.