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**TRADE ALERT:
ANTIDUMPING PETITION FILED AGAINST IMPORTS OF
POLYESTER STAPLE FIBER FROM CHINA**

On June 23, 2006, an **antidumping petition** was filed by DAK Americas LLC, Nan Ya Plastics Corporation America and Wellman, Inc. against **imports of certain polyester staple fiber (PSF) from the People's Republic of China.**

The average "dumping margin" (defined below) alleged in the petition is extremely high: **101.52 percent.** The margins actually determined in the course of an investigation become the "deposit requirement" at the time of entry of the merchandise into the United States. For example, if, as a result of this investigation the margin for China is determined to be 100 percent, a U.S. importer will need to make a cash deposit at the time of entry of the merchandise equal to 100 percent of the value of the imports. Imports from the China totaled approximately \$93 million in 2005; with a 100 percent deposit requirement, for example, this would mean \$93 million in penalty duties over the course of a year. In many cases, the deposit requirement is prohibitive, meaning that it becomes commercially impractical to continue importations from the foreign supplier.

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An antidumping (AD) investigation is conducted by two U.S. Federal agencies. The first is the U.S. Department of Commerce, International Trade Administration (DOC), which is charged with determining whether an imported product is being sold in the United States at prices that are below “normal value,”¹ and if so, by what margin (referred to as the “dumping margin”). The second is the U.S. International Trade Commission (ITC), a quasi-judicial independent agency within the Executive Branch, which is charged with determining whether the dumped imports are a cause of material injury to a domestic industry or threaten the domestic industry with material injury. In the course of an AD investigation, both agencies issue a preliminary and a final determination. An AD order is issued only when both agencies issue an affirmative final determination (*i.e.*, when DOC determines that dumping has occurred, and the ITC determines that the dumped imports are a cause of material injury to the domestic industry or threaten the industry with material injury). An investigation can be terminated at several points in the investigatory process, or could be “suspended” if an agreement is concluded between the U.S. Government and the foreign producers that will cause a cessation of the unfair pricing and/or the material injury.

After a petition is filed and an investigation is initiated by the respective agencies, the general progress of the investigation is as follows:

1. ITC preliminary investigation (investigation is terminated in preliminary determination is negative)
2. DOC preliminary investigation (investigation proceeds regardless of whether the preliminary determination is negative for any specific foreign producer).
3. DOC final investigation (investigation is terminated with respect to any foreign producer that receives a negative final determination)
4. ITC final investigation (an AD order is issued if the final determination is affirmative; the investigation ends without an AD order being issued if the final determination is negative).

¹ As a general matter, “normal value” is defined as the price at which a product is sold for in the foreign producer’s home market. However, because China is considered for these purposes to be a “nonmarket economy,” the normal value of the product is usually calculated by assigning “market economy” values to the several factors of production. This is a rather more complex calculation, and typically results in higher dumping margins for products from China in antidumping investigations.

The U.S. International Trade Commission (ITC) has now formally set a **schedule for this preliminary investigation**, which is as follows:

- June 23:** Questionnaires issued to U.S. importers, U.S. producers and foreign producers
- July 7:** Questionnaire response deadline
- July 14:** ITC preliminary hearing (in Washington, DC)
- July 19:** Deadline for briefs from all interested parties

If ITC issues a “negative” vote in this preliminary investigation, the case ends on the spot. If the ITC issues an affirmative determination, the case moves to the U.S. Department of Commerce which will initiate an in-depth pricing/cost investigation of Chinese producers. Should that occur, it is highly likely that a deposit requirement on imports of the product will go into effect sometime in early December (meaning that U.S. importers will need to make a deposit with U.S. Customs for estimated antidumping duties at the time of entry of the product; product will not be allowed entry without this deposit).

The full investigation process usually takes approximately 12 months. If an AD order is issued at the end of the investigation, that order will generally remain in force for at least 5 years (subject to indefinite 5-year renewals), and the actual dumping duties owed by U.S. importers are normally determined on an annual retroactive basis through a process called an “administrative review.” In other words, in most instances, U.S. importers will not know what their actual duty liability is until upwards of 2 years after the product has entered the country.

For further information, please contact Ira Shepard, Mateo Paz-Soldan or Jeff Levin at Schmeltzer, Aptaker & Shepard, P.C.