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Sunset Review
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February 16, 2018

TO: P. Lee Smith
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Policy
performing the non-exclusive duties of Assistant Secretary
for Enforcement and Compliance

FROM: Edward Yang
Senior Director
for Antidumping and Countervailing Duty Operations, Office VII
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results of the Expedited
Sunset Review of the Antidumping Duty Order on Certain Polyester Staple
Fiber from the People's Republic of China

SUMMARY

We have analyzed the Substantive Response of the domestic producers in the sunset review of the antidumping duty order on certain polyester staple fiber (PSF) from the People's Republic of China (China).¹ Below is a complete list of issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margin likely to prevail.

We recommend that you approve the positions described in the "Discussion of Issues" section of this memorandum.

HISTORY OF THE ORDER

On April 19, 2007, the Department of Commerce (Commerce) published the *Final Determination* in the investigation of PSF from China.² On June 1, 2007, Commerce

¹ The domestic producers in this sunset review are DAK Americas, LLC, Nan Ya Plastics Corporation, America and Auriga Polymers Inc. See letter from the domestic producers, "Polyester Staple Fiber from China: Five Year ("2nd Sunset") Review of Antidumping Duty Order," dated October 6, 2017 (Substantive Response).

² See *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical*



published the antidumping duty order on PSF from China.³ The calculated margins set forth in the *Order* were:

Exporter	Weighted-Average Dumping Margin (percent)
Cixi Jiangnan Chemical Co., Ltd	<i>De minimis</i>
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
China-wide Rate	44.30

Since the issuance of the *Order*, Commerce has completed several administrative reviews with respect to PSF from China.⁴ On November 9, 2011, Commerce determined that Ningbo

Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007) (*Final Determination*) and accompanying Issues and Decision Memorandum.

³ See *Notice of Antidumping Duty Order: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 30545 (June 1, 2007) (*Order*).

⁴ See *First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010); *Certain Polyester Staple Fiber from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 76 FR 2886 (January 18, 2011); *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Revocation of an Order in Part*, 76 FR 69702 (November 9, 2011) (PSF AR3); *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 2366 (January 11, 2103); *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 38939 (June 28, 2013); *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4542 (January 28, 2015) (PSF AR6); *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014*, 81 FR 4613 (January 27, 2016); *Polyester Staple Fiber from the People's Republic of China: Rescission of Antidumping Duty Administrative Review*;

Dafa Chemical Fiber Co. Ltd. (Ningbo Dafa) and Cixi Santai Chemical Fiber Co. Ltd. (Cixi Santai) did not sell subject merchandise at less-than-fair-value for three consecutive periods, and Commerce revoked Ningbo Dafa and Cixi Santai from the *Order*.⁵ On September 6, 2012, Commerce completed the first sunset review of the *Order* on PSF from China.⁶ There are no ongoing reviews of PSF from China. There have been no new shipper reviews, scope inquiries, no changed circumstances reviews, and no duty absorption findings.

BACKGROUND

On September 6, 2017, Commerce initiated the second sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).⁷ On September 21, 2017, Commerce received a timely notice of intent to participate in the sunset review from the domestic producers, pursuant to 19 CFR 351.218(d)(1)(i).⁸ In accordance with 19 CFR 351.218(d)(1)(ii)(A), the domestic producers claimed interested party status under section 771(9)(C) of the Act, as producers of the domestic like product. On October 6, 2017, the domestic producers filed a substantive response in the sunset review within the 30-day deadline, as specified in 19 CFR 351.218(d)(3)(i).⁹ Commerce did not receive a substantive response from any respondent interested party in the sunset review. On November 15, 2017, Commerce made its adequacy determination in the sunset review finding that Commerce did not receive a substantive response from any respondent interested party.¹⁰ Our analysis of the domestic producers' comments submitted in their Substantive Response is set forth in the "Discussion of the Issues" section, below.

SCOPE OF THE ORDER

The merchandise subject to the order 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

2014-2015, 80 FR 80319 (December 24, 2015); *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*; 2015-2016, 82 FR 23187 (May 22, 2017); *Certain Polyester Staple Fiber from the People's Republic of China: Rescission of 2016-2017 Antidumping Duty Administrative Review*, 83 FR 4470 (January 31, 2018).

⁵ See PSF AR3, 76 FR at 69703.

⁶ See *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 54898 (September 6, 2012) (*First Sunset Review*).

⁷ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews*, 82 FR 42078 (September 6, 2017).

⁸ See letter from the domestic producers, "Polyester Staple Fiber from China – Petitioners' Notice of Intent to Participate," dated September 21, 2017.

⁹ See Substantive Response.

¹⁰ See Letter to the ITC from Commerce, "Sunset Reviews Initiated in September 2017," dated November 15, 2017. In this letter, we stated that based on the lack of an adequate response in the sunset review from any respondent party, {Commerce} is conducting an expedited (120-day) sunset review consistent with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). See also *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516, 13519 (March 20, 1998) (Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response).

finish, or not coated. Polyester staple fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.

The following products are excluded from the scope of the order: (1) polyester staple fiber of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at 5503.20.0025 and known to the industry as polyester staple fiber for spinning and generally used in woven and knit applications to produce textile and apparel products; (2) polyester staple fiber 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 polyester staple fiber 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 polyester staple fiber is classifiable under the HTSUS numbers 5503.20.0045 and 5503.20.0065. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

DISCUSSION OF THE ISSUES

Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the order.

Consistent with guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA));¹¹ House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report);¹² and Senate Report, S. Rep. No. 103-412 (1994) (Senate Report)), Commerce will make its likelihood determination on an order-wide, rather than company-specific, basis.¹³ Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.¹⁴ Alternatively, Commerce normally will determine that revocation of an antidumping duty

¹¹ Reprinted at 1994 U.S.C.C.A.N. 4040.

¹² Reprinted at 1994 U.S.C.C.A.N. 3773.

¹³ See SAA at 879, and House Report at 56.

¹⁴ See SAA at 889-90, House Report at 63-64, and Senate Report at 52.

order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.¹⁵

Further, section 752(c)(3) of the Act states that Commerce shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, Commerce selects the margin(s) from the final determination in the investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.¹⁶ However, in certain circumstances, a more recently calculated rate may be more appropriate (e.g., “if dumping margins have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review”).¹⁷ Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself require” Commerce to determine that revocation of an order would not be likely to lead to a continuation or recurrence of sales at less than fair value.¹⁸

In the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be World Trade Organization (WTO)-inconsistent, *i.e.* zeroing/the denial of offsets.¹⁹ Commerce also noted that “*only in the most extraordinary circumstances* will {Commerce} rely on margins other than those calculated and published in prior determinations.”²⁰ Commerce further stated that apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins that were not affected by the zeroing methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”²¹

1. Likelihood of continuation or recurrence of dumping

Domestic Producers’ Comments

- Commerce has consistently found margins above *de minimis* for most respondents in the administrative reviews conducted since the issuance of the *Order*. Although the order was

¹⁵ See SAA at 889-90, and House Report at 63.

¹⁶ See SAA at 890; see also *Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁷ See SAA at 890-91.

¹⁸ See *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) (*Folding Gift Boxes*) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8109 (February 14, 2012) (*Final Modification for Reviews*).

²⁰ *Id.* (emphasis added); see also 19 CFR 351.218(e)(2).

²¹ See *Final Modification for Reviews*, 77 FR at 8109.

effective in forcing two Chinese producers/exporters to increase their prices, and were subsequently granted revocation from the order, numerous other Chinese producers continue to be restrained by dumping duties as high as 44.30 percent. The 44.30 percent margin is reliable despite the change in Commerce's zeroing policy because it is based on the use of total adverse facts available (AFA). For example, in *PSF AR6*, the margin of 42.36 percent for one respondent was a calculated rate, and not an AFA rate.²²

- The record of this proceeding demonstrates that, following the issuance of the *Order*, PSF import volumes declined significantly in the first year, but then rebounded to pre-*Order* levels, and have remained there since.²³ Although increases in imports from China have occurred notwithstanding the antidumping duty order, import volumes would have been much greater had there been no antidumping duties in place, based on the massive, unused capacity in China at over 150 production facilities, as well as China's heavy export-orientation.²⁴ These facts indicate that dumping is likely to continue or recur if the discipline of the order were removed.²⁵
- Chinese producers are currently subject to trade barriers in several other countries, providing further evidence that dumping is likely to continue or recur in the United States if the order is revoked. For example, Chinese PSF producers are subject to antidumping duty orders in Indonesia, Pakistan, and Turkey.²⁶ An antidumping duty order against Chinese PSF has been in place in Turkey since 2007 and in Indonesia since 2011.²⁷ In addition, Pakistan recently imposed its own antidumping duty order against Chinese PSF in 2016.²⁸ Moreover, India recently initiated its own antidumping duty investigation against Chinese PSF in February 2017.²⁹ The dumping practices by Chinese producers/exporters in other third country markets demonstrate that dumping will likely continue or resume in the U.S. market if the order is revoked.
- For the reasons listed above, Commerce should find that revocation of the *Order* would lead to a continuation or recurrence of dumping by subject PSF producers in China.

Commerce's Position: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (URAA),³⁰ Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for

²² See *PSF AR6*, 80 FR 4542, 4543; Substantive Response at 20.

²³ See Substantive Response at 21.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 22 and Attachment I.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See, e.g., SAA at 889-90, House Report at 63-64, and Senate Report at 52.

the subject merchandise declined significantly.³¹ Thus, one consideration is whether Commerce continued to find dumping at above *de minimis* levels in administrative reviews subsequent to the imposition of the AD order.³² According to the SAA and the House Report, “if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.”³³ We find that revocation of the *Order* would likely result in the continuation of dumping in the United States due to the continued existence of dumping margins since the issuance of the *Order*.

The domestic producers note that dumping has continued at above *de minimis* rates after the issuance of the order, and most Chinese producers and exporters are currently subject to margins that are well above *de minimis*, and the China-wide entity continues to have a substantial margin.³⁴ Moreover, the domestic producers maintain that, even after the *Final Modification for Reviews*, Commerce has continued to find above *de minimis* margins.³⁵ As noted below, in this sunset review, Commerce has relied on a weighted-average dumping margin that was not affected by the methodology (*i.e.*, “zeroing”) addressed in the *Final Modification for Reviews*.

In addition, pursuant to section 752(c)(1)(B) of the Act, Commerce also considered the volume of imports of the subject merchandise in determining whether revocation of the *Order* would likely lead to continuation or recurrence of dumping. We reviewed the import data on the record which reflects the import quantity of imports of PSF from China for the period from 2004 through 2016, which is based on import data, collected by the U.S. Census Bureau and available through the ITC website (ITC Dataweb).³⁶ We note that this data is acceptable for our analysis, as we obtained it from the ITC Dataweb, a source Commerce has relied on in the past.³⁷

Separately, pursuant to section 752(c)(1)(B) of the Act, Commerce considered the volume of imports of the subject merchandise for the period before and after the issuance of the *Order*. Since the issuance of the *Order*, import volumes of Chinese PSF into the United States have increased and remain above pre-investigation levels. In analyzing import volumes for the period of this sunset review, based on U.S. Census Bureau import statistics, Commerce has determined that imports from China under the HTSUS numbers listed in the scope of the

³¹ See, e.g., *Malleable Cast Iron Pipe Fittings from the People’s Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 74 FR 10239 (March 10, 2009) and accompanying Issues and Decision Memorandum at 3; see also *Pure Magnesium in Granular Form from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 5417 (February 6, 2007) and accompanying Issues and Decision Memorandum at 3-4.

³² See SAA at 890.

³³ *Id.*; see also House Report, at 63-64.

³⁴ See Substantive Response at 7-15.

³⁵ *Id.*

³⁶ See Substantive Response at 21.

³⁷ See, e.g., *Circular Welded Carbon-Quality Steel Line Pipe from the People’s Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 79 FR 19052 (April 7, 2014) and accompanying Issues and Decision Memorandum at 5; *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order*, 79 FR 60452 (October 7, 2014) and accompanying Issues and Decision Memorandum at 7.

Order, have been at levels higher than the year immediately preceding the initiation of the LTFV investigation (*i.e.*, 2005).³⁸ Specifically, the volume of imports for 2004, the year prior to the filing of the petition, was 71,281 pounds (lbs).³⁹ The volume of imports for 2008, the year after the *Order* was imposed, was 247,636 lbs, and has remained at a similar level since that time.⁴⁰ Thus, record evidence shows that the imports are significantly higher in the last ten years when compared to pre-initiation import volumes. Thus, the combination of above *de minimis* margins and increasing import volumes reasonably indicates that dumping is likely to continue or recur.

Therefore, pursuant to section 752(c)(1) of the Act, Commerce determines that revocation of the *Order* is likely to lead to continuation or recurrence of dumping because the record indicates that dumping has continued at levels above *de minimis* during the period of investigation and in subsequent reviews, even with increasing import volumes.

2. Magnitude of the Margins Likely to Prevail

Domestic Producers' Comments

- Although the dumping margins calculated in the original investigation and subsequent administrative reviews may have been calculated using the “zeroing” methodology, there is no need to recalculate such margins in this sunset review. Commerce has made clear in its *Final Modification for Reviews* that it may rely on past dumping margins determined on the basis of AFA for purposes of its sunset determinations.⁴¹ In this case, the dumping margin calculated in the original investigation for the China-Wide entity was determined based on the application of adverse facts available.⁴²

Commerce’s Position: Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Normally, Commerce will select a margin from the final determination in the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.⁴³ Commerce continues to find that the margin calculated in the original investigation is the best indication of the margins likely to prevail if the order were revoked, because it is the only calculated rate without the discipline of an order in place.

As indicated in the “Legal Framework” section, Commerce’s current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology, consistent

³⁸ See Substantive Response at 21.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See *Final Modification for Reviews*, 77 FR at 8103.

⁴² See *Final Determination*, 72 FR at 19692.

⁴³ See, e.g., SAA at 890; *Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008) and accompanying Issues and Decision Memorandum at 7; *Magnesium Metal from the People’s Republic of China and the Russian Federation: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 75 FR 38983 (July 7, 2010) and accompanying Issues and Decision Memorandum at 6.

with the *Final Modification for Reviews*. Instead, we may rely on other rates that may be available, or we may recalculate weighted-average dumping margins using our current offsetting methodology in extraordinary circumstances.⁴⁴

The dumping margin for the China-wide entity in the *Final Determination* was based on the dumping margin from the petition, and therefore, did not include zeroing. Commerce determines that the rate assigned to the China-wide entity is another available rate that we may report to the ITC, consistent with the *Final Modification for Reviews*. Therefore, consistent with section 752(c)(3) and section 752(c)(4)(A) of the Act, Commerce will report the China-wide entity rate to the ITC without modification.

FINAL RESULTS OF REVIEW

Commerce determines that revocation of the *Order* on PSF from China would be likely to lead to continuation or recurrence of dumping. Commerce also determines that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 44.30 percent.

Recommendation: Based on our analysis of the Substantive Response, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.



Agree

Disagree

2/16/2018

X 

Signed by: PRENTISS SMITH

P. Lee Smith
Deputy Assistant Secretary
for Policy and Negotiations

⁴⁴ See *Final Modification for Reviews*, 77 FR at 8103.