70 FR 53165, September 7, 2005

A-570-856
Sunset Review
Public Document
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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Synthetic Indigo from the People's Republic of China ("China");

Summary

We have analyzed the substantive response of the only interested party in the second sunset review of the antidumping duty order covering synthetic indigo from China. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which the Department of Commerce ("the Department") received a substantive response:

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

History of the Order

The Department issued an antidumping duty order on imports of synthetic indigo from China with a country-wide rate of 129.60 percent and specific margins for the following companies. *See Notice of Amendment of Antidumping Duty Order: Synthetic Indigo from the People's Republic of China*, 65 FR 39128 (June 23, 2000) .

Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry Company, Ltd.	79.70

China National Chemical Construction Jiangsu Company	79.70
China Jiangsu International Economic Technical Cooperation Corp	79.70
Shanghai Yongchen International Trading Company Ltd.	79.70
Hebei Jinzhou Import & Export Corporation	79.70
Sinochem Hebei Import & Export Corporation	79.70
Chongqing Dyestuff Import & Export United Corporation	79.70
Wuhan Tianjin Chemicals Imports & Exports Corp., Ltd	
China-wide Rate	129.60

The Department conducted two administrative reviews with respect to synthetic indigo from China in which the Department found margins for the following companies: China National Chemical Construction Jiangsu Co. (129.60 percent); Wonderful Chemical Industrial, Ltd./ Jiangsu Taifeng Chemical Industry Co., Ltd. (129.60 percent); and Liyang Skyblue Chemical Co., Ltd. (4.60 percent). *See Synthetic Indigo from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 67 FR 36573 (May 24, 2002) and *Synthetic Indigo from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 67 FR 53711 (September 12, 2003). The order remains in effect for all manufacturers and exporters of the subject merchandise from China.

The Department has not conducted any changed circumstances reviews or made any scope rulings for this order.

Background:

On May 2, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on synthetic indigo from China pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Reviews*, 70 FR 22632 (May 2, 2005). The Department received the Notice of Intent to Participate from Buffalo Color Corporation ("Buffalo Color"), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Buffalo Color claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of synthetic indigo. The Department also received a complete substantive response from Buffalo Color within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department received no response from any respondent party. As a result, pursuant to section 751(c)(5)(A) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department 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 antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission ("ITC") the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

Buffalo Color argues that revocation of this order would likely lead to the recurrence of dumping and force Buffalo Color to cease production. *See* Synthetic Indigo from the People's Republic of China, Substantive Response of Buffalo Color Corporation ("Substantive Response") (June 1, 2005) at 3-4. Buffalo Color notes that dumping under critical circumstances was found in the original investigation. *Id*. at 4. Buffalo Color states that import volumes dramatically declined since the imposition of the order until 2004. *Id*. In addition, Buffalo Color states that the average unit import value also decreased from over $7.00 per kilogram in 1997 to below $4.00 per kilogram in 2004. *Id*. at 5. However, Buffalo Color contends that Korean indigo imports have risen and suggest that the imports represent Chinese material that is being illegally transhipped into the United States to avoid the imposition of the antidumping duty order. *Id*. Buffalo Color states that because of the increased imports and decreased pricing of indigo, it filed for bankruptcy and has begun importing Chinese indigo. *Id*. at 5-6. On June 21, 2005, an interested party, Clariant Corporation, filed a submission that was rejected as untimely. *See* Department's Rejection Letter to Clariant Corporation (August 5, 2005). Buffalo Color argues that it can continue its U.S. production only if the order remains in place; otherwise the domestic industry would cease indigo production. *Id*. at 6.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report"), and the Senate Report, S. Rep. No. 103-412 (1994) ("Senate Report"), the Department 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 the subject merchandise declined significantly. With respect to the antidumping duty order on synthetic indigo from China, the Department has conducted two reviews since the issuance of this order in which it found that dumping continued at levels above *de minimis*. *See Synthetic Indigo from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 67 FR 36573 (May 24, 2002) and *Synthetic Indigo from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 53711 (September 12, 2003).

Pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. Using statistics provided by the ITC Dataweb, the Department finds that imports of synthetic indigo from China have significantly decreased since the issuance of the order. *See* attached import statistics. For example, imports from China decreased from 9.8 million kilograms in 1999 (pre-order) to 625,100 kilograms in 2004. *Id*. The Department finds that the existence of dumping margins and the decrease of imports after the order are highly probative of the likelihood of continuation or recurrence of dumping.

If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed. *See* SAA at 890. In this case, the Department found dumping above *de minimis* levels in the two subsequent administrative reviews of Chinese manufacturers and exporters after the order was published. Therefore, given the existence of dumping margins above *de minimis* levels accompanied by decreased imports, the Department determines that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail:

Interested Party Comments

In its substantive response, Buffalo Color states that the dumping margin of 129.60 percent from the original investigation is the minimum margin likely to prevail for all manufacturers if the order were revoked because this margin has been found throughout the history of the order. *See* Substantive Response at 6. Buffalo Color states that Jiangsu Taifeng Chemical Industry Company; Wonderful Chemical Industry, Ltd; and Tianjin Hongfa Group Company also received the antidumping margin of 129.60 percent during an administrative review because the Department applied adverse facts available when it did not receive a response to its questionnaires. *Id*. at 7. Therefore, Buffalo Color postulates that these companies would have completed the administrative review if they would have been able to show decreased dumping activity. *Id*.

Buffalo Color points out that Liyang Skyblue Chemical Company, Ltd. received a 4.60 percent margin in an administrative review. *Id.* Buffalo Color thinks that this margin is not indicative of a prevailing margin if the order were revoked because the Department calculated the 4.60 percent margin for a company that was under the pricing discipline of the antidumping duty order. *Id.* at 8-9.

Buffalo Color also contends that the dumping margins for Shanghai Yongchen International Trading Company Ltd., Hebei Jinzhou Import & Export Corporation, Sinochem Hebei Import & Export Corporation, and Chongqing Dyestuff Import & Export United Corporation do not indicate the actual calculated margins specific to those companies because the Department had derived the margins from surrogate values. *Id.* at 8. Buffalo Color states that surrogate values for castor oil, a major raw material for synthetic indigo, have increased sharply. *Id.* at 9. Given the increase in surrogate value and the decrease in average unit value, Buffalo Color postulates that the prevailing antidumping margin would be significantly higher than the 129.60 percent margin that the Department determined in the original investigation. *Id.* at 10.

Although Buffalo Color claims that the margin that would likely prevail if the order were revoked would be substantively higher than the 129.60 percent margin found in the original investigation, it requests that the Department report the margins from the original investigation to the ITC as the likely behavior of the Chinese manufacturers and exporters of synthetic indigo if this order were revoked.

Department's Position

The Department will normally provide to the ITC the company-specific margin from the investigation for each company. For companies not investigated specifically, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "China-wide" rate from the investigation. The Department's preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.

In this case, Buffalo Color requests that the Department report to the ITC the China-wide margin of 129.60 percent found in the investigation for all Chinese manufacturers. *Id.* at 8. The Department may, in response to an argument from an interested party, provide to the ITC a more recently calculated margin for a particular company where for that company, dumping margins increased, even if the increase was a result of the application of best information or facts available. The Department determined in the original investigation a dumping margin of 79.70 percent for several manufacturers and exporters in addition to the 129.60 percent China-wide rate. *See Notice of Amendment of Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Synthetic Indigo from the People's Republic of China*, 65 FR 37961 (June 23, 2000). However, the Department determined a margin of 129.60 percent based on adverse facts available during the first administrative review for China Jiangsu International Economic Technical Cooperation Corporation/Wonderful Chemical Industrial, Ltd. and Jiangsu Taifeng Chemical Industry. *See Synthetic Indigo from the People's Republic of China: Final*

Results of Antidumping Duty Administrative Review, 67 FR 36573 (May 24, 2002). In this instance, a significant decline in import volumes of synthetic indigo to the United States from China during 2000-2004 coupled with an increased dumping margin for these companies indicate that the margins found in the more recent administrative review are probative of the likelihood of the margin to prevail if the order were revoked. *See* attached import statistics.

Regarding the companies that received separate rates, Buffalo Color explains that the surrogate value of the raw input, castor oil, has increased, such that the dumping margin must also increase. Although Buffalo Color has placed on the record some information regarding the price of castor oil, the Department cannot assume that the increased castor oil prices would result in an increased dumping margin. Such a finding would mandate the sort of inquiry normally required for an administrative review. Therefore, the Department will not consider Buffalo Color's argument that additional analysis is required regarding surrogate values in the context of this sunset review.

The Department determines that it is appropriate to report to the ITC a margin of 129.60 percent, the rate from a more recent review, for China Jiangsu International Economic Technical Cooperation Corporation, Wonderful Chemical Industrial, Ltd., and Jiangsu Taifeng Chemical Industry because these companies have continued to dump at increasing rates, despite the discipline of the order. For the other Chinese exporters and producers of synthetic indigo with separate rates from the investigation, the Department will report the investigation rates to the ITC because these rates continue to be the most probative of those companies' behavior in the absence of an order. In addition, the Department will report to the ITC the China-wide rate of 129.60 percent from the original investigation as contained in the *Final Results of Review* section of this notice. The Department views the China-wide rate as probative of the behavior of Chinese producers and exporters not specifically identified in the antidumping duty order if the order were revoked as it is the only margin that reflects their actions absent the discipline of the order.

Final Results of Review

We determine that revocation of the antidumping duty order on synthetic indigo from China would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry Company, Ltd.	129.60
China National Chemical Construction Jiangsu Company	79.70

China Jiangsu International Economic Technical Cooperation Corp	129.60
Shanghai Yongchen International Trading Company Ltd.	79.70
Hebei Jinzhou Import & Export Corporation	79.70
Sinochem Hebei Import & Export Corporation	79.70
Chongqing Dyestuff Import & Export United Corporation	79.70
Wuhan Tianjin Chemicals Imports & Exports Corp., Ltd.	79.70
China-wide Rate	129.60

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this sunset review in the *Federal Register*.

AGREE ____JAS_____ DISAGREE_________

ORIGINAL SIGNED

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

8/30/05

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(Date)