A-570-878
Sunset Review
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TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

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

SUMMARY

We have analyzed the substantive response of the domestic interested party in the sunset review of the antidumping duty order on saccharin from the People's Republic of China ("PRC"). We recommend that you approve the positions we describe in this memorandum. 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.

<u>History of the Order</u>

On July 9, 2003, the Department of Commerce ("the Department") issued an antidumping duty order on imports of saccharin from the PRC.[1] The Department established a weighted-average margin of 291.57 percent for Suzhou Fine Chemical Group Co., Ltd.; 249.39 percent for Shanghai Fortune Chemical Co., Ltd. ("Shanghai Fortune"); 281.97 percent for Kaifeng Xinhua Fine Chemical Factory; and 329.94 percent for the PRC-wide entity.

The Department conducted two administrative reviews prior to the period of this first sunset review.[2] The Department rescinded the 2006-2007 review due to the timely withdrawal of a request for review submitted by Shanghai Fortune.[3]

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[1] *See Notice of Antidumping Duty Order: Saccharin From the People's Republic of China*, 68 FR 40906 (July 9, 2003).

[2] *See Saccharin From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7515 (February 13, 2006) and *Saccharin From the People's Republic of China: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 51800 (September 11, 2007).

[3] *See Saccharin from the People's Republic of China: Notice of Rescission of the 2006-2007 Administrative Review of the Antidumping Duty Order*, 72 FR 65294 (November 20, 2007).

Background

On June 5, 2008, the Department published the notice of initiation of the sunset review of the antidumping duty order on saccharin from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[4] On June 20, 2008, the Department received a notice of intent to participate from a domestic interested party, PMC Specialties Group, Inc. ("PMCSG"), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. PMCSG claimed interested party status under section 771(9)(C) of the Act as the sole domestic producer of saccharin in the United States and the petitioner in the original investigation. On July 7, 2008, the Department received a substantive response from PMCSG within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(*2*) of the Department's regulations, the Department determined to conduct an expedited review of the order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a 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 these determinations, 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 states 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 made by PMCSG in this proceeding.

1. Likelihood of continuation or recurrence of dumping

Interested Party Comments

PMCSG asserts that the Act requires the Department to determine whether revocation of an antidumping duty order would be likely to lead to continuation or recurrence of dumping, citing section 752(c)(1) of the Act. PMCSG also asserts that the Department should consider (1) the weighted-average dumping margins determined in the investigation and subsequent reviews, and (2) the volume of imports of the subject merchandise for the periods before and after the issuance of the antidumping duty order. PMCSG references section 752(c)(1)(B) of the Act and *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) ("*Sunset Policy Bulletin*").

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[4] *See Initiation of Five-Year ("Sunset") Reviews*, 73 FR 31974 (June 5, 2008) ("*Initiation Notice*").

PMCSG argues that, as stated in the Statement of Administrative Action: "Existence of dumping margins after the order . . . is 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 discipline were removed."[5] According to PMCSG, the trends in the antidumping duty margins and import volumes of saccharin from the PRC, subsequent to the imposition of the order, lead to the conclusion that dumping would continue or recur should the order be revoked.

Department Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"),[6] 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.[7] In this case, the Department found dumping at above *de minimis* levels in the original antidumping duty investigation of saccharin from the PRC, as well as in the subsequent administrative reviews it has conducted since the original antidumping duty investigation. In fact, the margin of 329.94 percent for the PRC-wide entity is in effect for all exporters of saccharin from the PRC except for Shanghai Fortune who received a zero margin in the last full administrative review.[8]

Consistent with section 752(c)(1)(B) of the Act, the Department also considers the volume of imports of subject merchandise before and after issuance of the order. In reviewing import statistics obtained from the ITC Trade DataWeb, the Department has noted that the level of imports of saccharin from the PRC fluctuated in volume during the period of this sunset review, and that imports are higher in volume than before the order was put in place. Despite PMCSG's argument that the level of pre-order imports have declined, our own analysis indicates otherwise. Using statistics provided by the ITC Trade DataWeb, the Department finds that imports of saccharin from the PRC dramatically decreased in 2003 from the prior year, when the Department published the original order. However, following an initial decrease in imports in 2003 and then again in 2004, compared with 2002 which was the last complete year before the

[5] *See* Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, 890 (1994) ("SAA").

[6] *See, e.g.*, SAA accompanying the URAA, H.R. Doc. No. 103-316, vol. 1, 889 (1994); House Report, H. Rep. No. 103-826, pt. 1 (1994); and Senate Report, S. Rep. No. 103-412 (1994).

[7] *See, e.g., 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), and accompanying Issues and Decision Memorandum at comment 1; *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 comment 1.

[8] *See Saccharin from the People's Republic of China: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 51800 (September 11, 2007).

issuance of the order, imports have been increasing every year. *See* import statistics provided at Attachment 1.[9] Of particular interest is that during 2007/2008 period, imports have approached the pre-order volumes. This may be attributable to the zero margin received by Shanghai Fortune in the 2005/2006 administrative review.

Not only have imports from the PRC increased since the order, but companies have also continued to dump with the discipline of an order in place. The Department finds that the existence of dumping margins even with an order in place is highly probative of the likelihood of continuation or recurrence of dumping, if the order were to be revoked. Therefore, the Department determines that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Margins Likely to Prevail

Interested Party Comments

PMCSG states that the Department is to provide the ITC with the magnitude of dumping likely to prevail if the Department revoked the order. PMCSG notes that the only calculated rate that reflects the behavior of exporters without the discipline of an order is the margin from the original investigation and that the Department will normally select this rate in a sunset proceeding. PMCSG argues that there is no reason to depart from the normal policy in this case.

PMCSG explains that the Department calculated the following company-specific margins in the original investigation: 291.57 percent for Suzhou Fine Chemical Group Co., Ltd.; 249.39 percent for Shanghai Fortune Shanghai Fortune; 281.97 percent for Kaifeng Xinhua Fine Chemical Factory; and 329.94 percent for the PRC-wide entity. According to PMCSG, these rates should be provided to the ITC as indicative of the magnitude of dumping margins likely to prevail if the order were to be revoked.

Department 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, the Department 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.[10] Furthermore, pursuant to section 752(c)(4)(A), a dumping margin of "zero or *de minimis* shall not by itself require" that the Department determine that revocation of an antidumping duty order would not be likely to lead to a continuation or recurrence of sales at less than fair value. Although the Department has completed two administrative reviews of Shanghai Fortune, one in which the Department calculated a zero

[9] The Department ran a query using the following the HTS category: 2925.11.00. The Department's analysis of import trends is based on the aggregate data contained in category 2925.11.00, as shown in Attachment I.

[10] *See 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.

dumping margin, since the issuance of the antidumping duty order, the Department continues to find that the margins calculated in the original investigation are the best indication of the margins likely to prevail if the order were revoked, because they are the only calculated rates without the discipline of an order in place.

Therefore, consistent with section 752(c)(3) and section 752(c)(4)(A) of the Act, the Department will report to the ITC the corresponding individual company rates and the PRC-wide rate from the original investigation as noted in the "Final Results of Review" section, below.

Final Results of Review

We determine that revocation of the antidumping duty order on saccharin from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Suzhou Fine Chemical Group Co., Ltd.	291.57
Shanghai Fortune Chemical Co., Ltd.	249.39
Kaifeng Xinhua Fine Chemical Factory	281.97
PRC-Wide	329.94

Recommendation

Based on our analysis of the substantive response received, 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*.

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David M. Spooner
Assistant Secretary
for Import Administration

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(date)

Attachment I

Imports of Saccharin to the United States from the PRC
United States International Trade Commission DataWeb

Saccharin: Customs Value by Country Name and Customs Value for PRC

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Jun

Country	HTS Number	2003	2004	2005	2006	2007	2007 YTD	2008 YTD	Percent Change YTD2007 - YTD2008
		In Actual Dollars							
Customs Value where quantities are collected in kilograms									
China	29251100	23,090	7,337	12,011	667,835	3,103,171	1,517,391	13,673,529	801.10%
Total		**23,090**	**7,337**	**12,011**	**667,835**	**3,103,171**	**1,517,391**	**13,673,529**	**801.10%**

Saccharin: First Unit of Quantity by Country Name and Customs Value for PRC

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Jun

Country	HTS Number	2003	2004	2005	2006	2007	2007 YTD	2008 YTD	Percent Change YTD2007 - YTD2008
		In Actual Units of Quantity							
First Unit of Quantity where quantities are collected in kilograms									
China	29251100	6,846	1,385	835	102,287	505,722	247,988	741,158	198.90%

Sources: Data on this site have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.