70 FR 24394, May 9, 2005

A-823-801
Sunset Review
Public Document
IA/OPS/HES/4340

May 2, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary, Import Administration

FROM: Ronald K. Lorentzen
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Solid Urea from Ukraine; Final Results

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the antidumping duty order covering solid urea ("urea") from Ukraine. We recommend that you approve the positions we have 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 we received a substantive response:

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

History of the Order

On May 26, 1987, the Department published its final determination in the investigation of solid urea from the Union of Soviet Socialist Republics ("USSR") to find dumping margins of 68.26 percent for Soyuzpromexport, 53.23 percent for Phillipp Brothers, and 64.93 percent for all others (52 FR 19557). On July 14, 1987, the Department of Commerce ("Department") published an antidumping duty order on solid urea from the Union of Soviet Socialist Republics. *See Antidumping Duty Order on Solid Urea from the Union of Soviet Socialist Republics*, 53 FR 26367 (July 14, 1987). In December 1991 the USSR divided into fifteen independent states. The Department changed the name and case number of the original antidumping order to conform to the new apportionment by dividing the original order into fifteen (15) orders applicable to each independent state. *See Solid Urea from the Union of Soviet Socialist Republics; Transfer of the Antidumping Duty Order on Solid Urea from the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and the Opportunity to Comment*, 57 FR 28828 (June 29, 1992). In the transfer notice, the Department announced a country-wide rate of 68.26 percent for each new state. This rate was based upon the cash deposit rate calculated for Soyuzpromexport in the prior administrative review. *See Final Results of Antidumping Duty Administrative Review; Solid Urea From the Union of Soviet Socialist Republics,* 54 FR 33262 (August 14, 1989), and *Amendment to Final Results of Antidumping Duty Administrative Review; Solid Urea From the Union of Soviet Socialist Republics,* 54 FR 39219 (September 25, 1989).[1] The Department stated that the substance of each new order would not change from the original order and its amended administrative review.[2]

Since the issuance of the antidumping order regarding imports of solid urea from Ukraine, the Department has conducted no administrative reviews, changed circumstance reviews, or duty absorption reviews.

On September 3, 1999, the Department published the final results of the first sunset review of this antidumping duty order, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Final Results of Expedited Sunset Reviews: Solid Urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan ("First Sunset Review")*, 64 FR 48357 (September 3, 1999). In November 1999 the Department continued the antidumping duty order on Ukraine with dumping margins of 68.26 percent for Soyuzpromexport, 53.23 percent for Phillipp Brothers, Ltd./Phillipp Brothers, Inc., and 68.26 percent for all other producers. *See Continuation of Antidumping Duty Orders: Solid Urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan*, 64 FR 62653 (November 17, 1999).

On October 1, 2004, the Department published the notice of initiation of the second sunset review of the antidumping duty order of solid urea from Ukraine. *See Initiation of Five-Year ("Sunset") Reviews*, 69 FR 58890 (October 1, 2004). The Department received a Notice of Intent to Participate from the following domestic interested parties: the Ad Hoc Committee of Domestic Nitrogen Producers, (consisting of CF Industries, Inc. and PCS Nitrogen Fertilizer, LP (collectively "the Ad Hoc Committee")), and Agrium U.S., Inc. (collectively "the domestic interested parties") within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations ("Sunset Regulations"). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as domestic manufacturers of urea or coalition whose members are engaged in the production of urea in the United States. The

---

[1]The Department conducted one administrative review prior to the division of the U.S.S.R.

[2]Antidumping duty determinations are country-wide. The order on solidurea from the USSR covered all subject merchandise exported from the USSR to the United States and applied to all producers of solid urea in the USSR, including those located within the boundaries of Ukraine. After the breakup of the USSR, the order was transferred to each of the newly independent states and applied to all producers within those newly independent states, including Ukraine. *See Transfer of the Antidumping Duty Order to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment*, 57 FR 28828 (June 29, 1992). The transfer of proceedings initiated against the USSR to the newly independent states was upheld by the court. *See Techsnabexport. Ltd. v. United States*, 16 C.I.T. 855 (September 25, 1992).

Department received a complete substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a response from any respondent interested parties to the proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(*2*), the Department conducted an expedited 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 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 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 parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of this antidumping duty order would likely lead to a continuation or recurrence of dumping by the Ukrainian producers of the subject merchandise due to continued dumping. *See* Substantive Response of the Ad Hoc Committee at 6 (November 1, 2004) and Substantive Response of Agrium at 6 (collectively "Domestic Response").[3] The domestic interested parties also contend that the complete cessation (in the alternative, a drastic reduction) of Ukrainian imports since the issuance of the order is clear proof of the restraining effect of the order. *Id.* at 7-8. The domestic interested parties remark that the U.S. Census data reports erroneously reflect urea imports from Ukraine in 1997. *Id.* at 6 and 8. The domestic interested parties submit that Ukraine producers did not export any urea to the United States 2000-2004. *Id.* at 9. The domestic interested parties also point out that the Ukrainian producers have never requested an administrative review either. *Id.* Consequently, the domestic interested parties conclude that the Ukrainian producers are incapable of selling solid urea in the United States without dumping; therefore, the Department should determine that dumping of Ukrainian urea would be likely to recur if the order were revoked. *Id.* at 10.

[3] Agrium adopts and incorporates by reference the submission of the Ad Hoc Committee with respect to the likely effects of revocation of this order, as supported by the cited information, argument, and reasons to conclude that revocation of this order would likely lead to the recurrence of dumping in the United States. *Id.*

Department's Position

The Department finds that the existence of dumping margins after the order, or the cessation of imports after the order is highly probative of the likelihood or 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. If imports cease after the order is issued, it is reasonable to assume that exporters could not sell in the United States, without dumping and that, to reenter the U.S. market, they would have to resume dumping. See Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994) at 890.

In this case, the Department found dumping at above *de minimis* levels in the original antidumping duty investigation against solid urea from the USSR. As discussed above, the resulting antidumping duty order against solid urea from the USSR was transferred to each of the individual newly independent states, including Ukraine. The cash deposit rates established in the original investigation remain in effect, and there have been no administrative reviews of the antidumping duty order since the last sunset review of this order. In addition, the Department finds that imports of subject merchandise from Ukraine ceased and remained at virtually no import levels since the issuance of the original order against the USSR. Therefore, given the existence of dumping margins at above *de minimis* levels, the almost complete cessation of imports since the issuance of the original order, and the absence of argument or evidence to the contrary, 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 their substantive response, the domestic interested parties argue that the antidumping duty margins from the transferred rate are the margins that will likely prevail if the order were revoked. *See* Domestic Response at 10. The domestic interested parties request that if the Department finds that shipments have not ceased, then the Department should determine that dumping continued at 68.26 percent. *Id*. Also, the domestic interested parties add that no Ukrainian exporter sought an administrative review to lower the dumping margins. *Id*. at 11. Consequently, the Department cannot select a more recently calculated rate because there have been no administrative reviews in which a new margin could have been calculated. *Id*. Accordingly, the domestic interested parties contend that the Department should determine the same antidumping rates found in the first sunset review: 53.23 percent for Phillipp Brothers, Ltd./Phillipp Brothers, Inc. and 68.26 percent as the country-wide rate. *Id*. at 13.

Department's Position

The Department normally will 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 "All Others" or "Country-wide" rate from the investigation. Exceptions to this approach include the use of a more recently calculated margin, where appropriate.

After considering the dumping margins determined in the investigation, the Department agrees with domestic interested parties that it is appropriate to report to the ITC the investigation rates for Phillipp Brothers, Ltd./Phillipp Brothers, Inc. and the country-wide rate. In the first sunset review of the order, the Department determined that it would be appropriate to report the cash deposit rate from the second administrative review to the ITC because that dumping rate was officially transferred to the newly independent states, including Ukraine. Moreover, there have been no administrative reviews of the antidumping duty order since the transfer of the order to Ukraine. Therefore, pursuant to section 752(c) of the Act, the Department will report to the ITC the company-specific and the country-wide rate at levels indicated in the Final Results of Review section of this notice.

Final Results of Review

We determine that revocation of the antidumping duty order on solid urea from Ukraine 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)
Phillipp Brothers, Ltd./Phillipp Brothers, Inc.	53.23 percent
Country-wide Rate	68.26 percent

Recommendation

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

AGREE ___JAS______ DISAGREE _________

ORIGINAL SIGNED

____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

5/2/05

____

(Date)