

May 19, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Review of the Antidumping Duty Order on Certain Orange Juice
from Brazil

Summary

We have analyzed the responses of the interested parties in the first sunset review of the antidumping duty order covering certain orange juice (OJ) from Brazil. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in the sunset review for which we received substantive responses:

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

History of the Order

On January 13, 2006, the Department of Commerce (the Department) published its final determination in the less than fair value (LTFV) investigation of OJ from Brazil.¹ On March 9, 2006, the Department published the antidumping duty order on OJ from Brazil.² For the respondents in the investigation, the Department found the following antidumping duty margins:

¹ See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (Jan. 13, 2006); as amended in Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Orange Juice from Brazil, 71 FR 8841 (Feb. 21, 2006).

² See Antidumping Duty Order; Certain Orange Juice from Brazil, 71 FR 12183 (Mar. 9, 2006).

Fischer S.A. Comercio, Industria, and Agricultura*	12.46
Montecitrus Trading S.A.	60.29
Sucocitrico Cutrale, S.A.	19.19
All-Others Rate**	16.51

*Fischer S.A. Comercio, Industria, and Agricultura is the successor-in-interest to Fischer S/A – Agroindustria.

** The all-others rate in regards to FCOJM applies to Cargill Citrus Limitada and Coinbra-Frutesp (SA). The all-others rate for not-from-concentrate (NFC) applies to all other companies not identified above.

Administrative Reviews

Since the issuance of the OJ from Brazil antidumping duty order, the Department has conducted and completed three administrative reviews. See Discussion of the Issues.

Background

On February 1, 2011, the Department published the notice of initiation of the first sunset review of the antidumping duty order on OJ from Brazil, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).³

On February 16, 2011, the Department received two separate notices of intent to participate from Florida Citrus Mutual, Citrus World, Inc., and Peace River Citrus Products, Inc. (the petitioners) and from Southern Gardens Citrus Processing Corporation (Southern Gardens), a producer in the United States of a domestic like product. Both the petitioners and Southern Gardens (collectively, the domestic interested parties) claimed interested party status under sections 771(9)(C) and (D) of the Act as producers of OJ in the United States.

The Department received adequate substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the sunset review. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on OJ from Brazil.

The order on OJ from Brazil remains in effect for all manufacturers, producers, and exporters of the subject merchandise.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting the sunset review to determine whether revocation of the antidumping duty order would be likely to lead to a 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

³ See Initiation of Five-Year ("Sunset") Review, 76 FR 5563 (Feb. 1, 2011).

the subject merchandise for the periods before and the periods 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 margins 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 the antidumping duty order would likely lead to a continuation or recurrence of dumping by the manufacturers/producers and exporters of the subject merchandise, as well as material injury to the U.S. industry. See the substantive responses of the petitioners (Mar. 3, 2011) at 3, 4, and 5 and Southern Gardens (Mar. 2, 2011) at 3.

With respect to volume of exports, the domestic interested parties assert that the imposition of the order has had an impact on the volume of imports of OJ from producers and exporters. In addition, Southern Gardens notes that imports of frozen concentrated OJ for manufacture (FCOJM) covered by certain producers, notably Citrovita Agro Industrial Ltda, are not covered by the order. Thus, Southern Gardens asserts that the decline in imports of subject merchandise may be greater than that indicated by the data. According to Southern Gardens, this decline demonstrates that the respondents are unable to sell the subject merchandise in the United States at non-dumped prices. See the substantive responses of the petitioners (Mar. 3, 2011) at 4 and Southern Gardens (Mar. 2, 2011) at 6, 7, and 8.

The domestic interested parties state that the administrative reviews conducted by the Department reveal that the Brazilian producers of subject merchandise have continued dumping throughout the history of the order. In fact, the domestic interested parties point out that the margins for two companies included within the order, Fischer S.A. Comercio, Industria, and Agricultura (Fischer) and Sucocitrico Cutrale, S.A. (Cutrale) increased significantly in the most recently completed administrative review. See the substantive responses of the petitioners (Mar. 3, 2011) at 4 and Southern Gardens (Mar. 2, 2011) at 4, 5, and 6.

Citing to the Department's Policy Bulletin, the domestic interested parties conclude that revocation of an antidumping duty order is inappropriate where dumping continued at any level above de minimis after the issuance of the order.⁴ In sum, the domestic interested parties argue that record evidence strongly supports the conclusion that dumping of OJ by producers, manufacturers, and exporters in Brazil would be likely to continue or recur if the order were to be revoked.

⁴ See Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (Apr. 16, 1998) (Policy Bulletin).

Department's Position:

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act, specifically the Statement of Administrative Action (SAA), H. 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's determination of likelihood will be made on an order-wide basis.⁵ In addition, the Department normally will determine 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. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

A. Dumping Continued at Any Level Above De Minimis After the Issuance of the Order

In reviews conducted subsequent to the issuance of the order, dumping margins above de minimis continued for Brazilian manufacturers, including those subject to the all-others rate. See Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (Aug. 11, 2008); Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 40167 (Aug. 11, 2009); and Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (Aug. 18, 2010). Accordingly, because we find that dumping margins continue at above de minimis levels, we determine that dumping is likely to continue or recur if the order were revoked.

B. Import Volumes for the Subject Merchandise Declined Significantly after the Issuance of the Order

Separately, the Department may find that the revocation of an antidumping duty order is likely to lead to the continuation or recurrence of dumping even if dumping was eliminated after the issuance of the order where import volumes for the subject merchandise declined significantly.⁶

The Department examined the ITC data for the relevant periods which demonstrate that import volumes of OJ from Brazil, while fluctuating from year to year, significantly decreased from the pre-order level of 881,191,000 single strength liters in 2005 to 648,331,000 single strength liters in 2010. See the memorandum to the file from Hector Rodriguez entitled, "Placing Data from the ITC Trade Dataweb on the Record of the Expedited Sunset Reviews of Certain Orange Juice (OJ) from Brazil" (ITC Dataweb Memo); see also attachment to this memorandum. Accordingly, we find that imports are significantly below pre-order levels and, thus, the Department determines that dumping is likely to continue or recur if the order were revoked.

⁵ See SAA at 879 and House Report at 56.

⁶ See SAA at 889 and 890, House Report at 63-64, and Senate Report at 52; and Granular Polytetrafluoroethylene Resin From Italy: Final Results of Expedited Sunset Review of the Antidumping Duty Order, 76 FR 12939 (Mar. 9, 2011).

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

Southern Gardens requests that the Department report to the ITC the antidumping duty margins that were determined in the final determination of the LTFV investigation based on the guidance set forth in the SAA. See SAA at 890. Alternatively, the petitioners request that the Department report to the ITC the antidumping duty margins that were published in the order, in accordance with the Policy Bulletin. The rates published in the order are set forth in the “History of the Order” section, above.

Department’s Position:

Normally, the Department will provide to the ITC the company-specific margin from the investigation for each company. See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999). 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” rate from the investigation. See *Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People’s Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (Dec. 5, 2006) (*Hot-Rolled*), and accompanying Issues and Decision Memorandum at Comment 2. 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 manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. Id. at Comment 2. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC. See section 752(c)(3) of the Act. *See also Final Results of Full Sunset Review: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands*, 65 FR 65294 (Nov. 1, 2000), and accompanying Issues and Decision Memorandum at Comment 3.

Since the imposition of the order, import volumes of the subject merchandise have significantly decreased from the pre-order levels. See ITC Dataweb Memo. This indicates that the order has imposed a discipline on exports. Thus, the amended final determination rates from the LTFV investigation reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. Therefore, the Department finds that it is appropriate to provide the ITC with the amended final determination rates from the LTFV investigation of OJ from Brazil.⁷

⁷ In addition, because we determined that we made certain ministerial errors in the final determination of the LTFV investigation, it would be inappropriate to provide the final determination rates to the ITC as Southern Gardens has suggested.

Final Results of Review

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

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Fischer S.A. Comercio, Industria, and Agricultura*	12.46
Montecitrus Trading S.A.	60.29
Sucocitrico Cutrale, S.A.	19.19
All-Others Rate**	16.51

*Fischer S.A. Comercio, Industria, and Agricultura is the successor-in-interest to Fischer S/A – Agroindustria.

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Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of review in the Federal Register, and notify the ITC of our determination.

Agree_____

Disagree_____

 Ronald K. Lorentzen
 Deputy Assistant Secretary
 for Import Administration

 Date